

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

**JAMES GRAEME EARLE YOUNG**

-and-

IN THE MATTER OF:

**THE LEGAL PROFESSION ACT**

HEARING DATE:

July 6, 2015

PANEL:

Jacob P. Janzen (Chair)

Grant Driedger

Neil Cohen (PR)

APPEARANCES:

Darcia Senft for the Law Society

Stephen Vincent for the Member

## REASONS FOR DECISION

### **Introduction**

1. In three citations -- dated December 9, 2014, December 3, 2014, and March 5, 2015 -- James Graeme Earle Young was charged with a total of 22 counts of professional misconduct. These matters were set for hearing before this panel commencing on July 6, 2015.
  
2. On July 6, 2015, counsel for the Law Society and for Mr. Young advised the panel that an agreement had been reached as to the disposition of these matters. Pursuant to that agreement, by consent the parties entered as exhibits the three citations (exhibits #1-#3), a Statement of Agreed Facts (exhibit #4) which included a joint submission on penalty, two reports from Mr. Young's psychologist (exhibits #5 and #10), a report from his family doctor (exhibit # 6) and three letters from past or present colleagues (exhibits #7-#9). By agreement, Mr. Young admitted to 19 counts of professional misconduct, two counts were stayed and one was withdrawn. Counsel then made submissions in support of the joint penalty recommendation.

### **Decision**

3. On July 6, 2015, this panel advised the parties that it accepted the joint recommendation with brief reasons to follow in due course. As jointly recommended, it made a finding that Mr. Young's conduct as set out in the citations and in the Statement of Agreed Facts constitutes professional misconduct and it made an Order that:
  - (i) Mr. Young be suspended from the practice of law for a period of eight months commencing on July 6, 2015;
  - (ii) Mr. Young be required to pay costs to the Law Society in the amount of \$15,000.00 as a contribution towards the costs associated with the investigation, prosecution, and hearing of this matter;
  - (iii) With respect to the payment of costs to the Law Society:

- (a) the payment of the costs is to be paid on a monthly basis, in the amount of \$416.67 per month, commencing on March 7, 2016; and monthly thereafter until the costs are paid in their entirety;
- (b) in the event of a default in any one payment, or if a cheque is dishonoured when tendered, and the default is not rectified or the cheque replaced with cash or money order, the entire amount outstanding will become due and payable within thirty days of the date when the default in payment occurred.

### **Brief Facts**

4. Mr. Young is in his mid 40s. He was called to the Bar in the province of Manitoba on June 16, 2005 and has practiced in Manitoba since that date. He is not a member of any other law society. His practice has been litigation focussed. He has no discipline record. He has been practicing under Law Society directed supervision since April 2014.
5. Of the 19 counts of professional misconduct which were admitted, eight counts related to allegations of breaches of integrity. The particular breach of integrity allegations were:
  - that on February 22, 2013 he misled the court by representing that he had filed a brief on behalf of a client, when such was not the case
  - that on February 7, 2013 he requested an adjournment representing that opposing counsel consented to the adjournment, when such was not the case
  - that in May 2013 he misled the Law Society in response to the Society's inquiries regarding his failure to attend a case conference
  - that in April 2013 he misled opposing counsel and the Law Society by representing that a delay in responding to a Request for Particulars related to difficulty in obtaining instructions, when such was not the case
  - that in December 2012 and February 2013 he misled his client regarding court appearances on December 21, 2012 and February 22, 2013
  - that in February 2013 he misled a colleague, an articling student, as to the purpose of a court matter to be heard on February 22, 2013
  - that he misled the Law Society when it made inquiries as to the February 22, 2013 court appearance matter
  - that in May 2014 he misled opposing counsel by providing a false explanation for a client's failure to attend at an examination for discovery.

Of the remaining eleven counts, four were client quality of service related breaches. Four further counts related to a failure to respond to communications from other counsel that required responses. Finally, three counts related to a failure to treat the court with respect. Most of the allegations fell within the 2012 and 2013 time period.

6. Mr. Young has been receiving medications for depression, anxiety, and insomnia dating back to 2010. He has been seeing a psychologist regularly since November 2014 in respect to the matters pending before the Law Society.

### Submissions

7. Ms. Senft began by asserting that the duty of integrity is the most important of the duties owed by members of the profession on the ground that it is the foundation of all other duties. Her submission in summary was that the panel ought to accept the joint recommendation on the grounds that Mr. Young had no prior discipline record in his ten years of practice, that there was some evidence indicating that medical conditions may have contributed to the conduct in issue, that Mr. Young had accepted responsibility with his plea and his doing so had saved the Law Society both time and costs, that the recommended penalty falls within the range of appropriate sentences for conduct of this kind, and that it meets the objectives of sentencing, primarily general deterrence and maintaining public confidence. More specifically, she submitted that a supervisory element was not a needed component in the disposition in that Mr. Young had practiced under supervision for approximately 15 months and that that supervision had disclosed no ongoing issues.
8. Ms. Senft took some time in placing this matter in the context of other cases. The *Bradley* decision (Manitoba, 2015) (tab #5 in the Law Society's Book of Authorities) involved a member who had systematically misled a client over a period of about ten years. The member also had a prior caution on his record for misleading a client. The panel imposed a suspension period of one year. Mr. Young, in contrast, has no record and the period of misconduct was confined to a period of just over two years. The *Davis* decision (Alberta, 2010) (tab #6) involved a member who was convicted of four counts of professional misconduct. The panel imposed a suspension of one year and actual costs. The member did not appear and a full hearing was necessary. In

*Tilling* (Saskatchewan, 2013) (tab #7), the member entered guilty pleas to failing to serve some nine clients in a conscientious, diligent and efficient manner, misleading three clients as to the status of their matters, and recklessly providing false information to the Law Society of Saskatchewan. He also had a prior discipline record. The panel imposed a nine month suspension plus costs. In *Shustov* (Alberta, 2014) (tab #8), the member entered guilty pleas to allegations that included fabricating documents and lying to clients. The panel imposed a suspension of eight months (and other conditions), citing in mitigation the member's young age and inexperience, his full co-operation with the Law Society of Alberta, his significant remorse, and the fact that there was no financial malfeasance. Finally, in *Therault* (Upper Canada, 1997) (tab #9), the member was suspended for six months on a finding that the member had inter alia misled two clients and failed to serve three others in a conscientious, diligent and efficient manner.

9. Ms. Senft, finally, referred the panel to decisions of the Manitoba Court of Appeal (*R. v. Thomas*) (tab #10) and of the Saskatchewan Court of Appeal (*Rault and The Law Society of Saskatchewan*) (tab #11) as authorities for the proposition that a hearing tribunal may depart from a joint recommendation only for "clear and cogent reasons", of which she submitted there were none present in the instant case.
10. In response to a question from the panel, Ms. Senft advised that, independently of the joint recommendation, the Law Society has an undertaking from Mr. Young to provide as necessary ongoing reporting from his psychologist.
11. Mr. Vincent, in his submission on Mr. Young's behalf, emphasized that the misconduct at issue was confined to a relatively short period of time and that Mr. Young had evidently practiced safely for seven years before that period and safely again after. He related the misconduct to the depression Mr. Young had suffered during that period. He reviewed the factors listed in *Casey's Regulation of Professions in Canada* (in para. 14.2 thereof) as being some of the ones to be considered in determining an appropriate sanction. In this review, he submitted

- that while any breach of the duty of integrity was serious, the breaches in this case were rather spontaneous in nature, and not systematic and ongoing as in *Bradley* (referenced above) and in *Gorlick* (Manitoba, 2015), where misrepresentations spanned over years
- that it was a mitigating factor that Mr. Young has no prior convictions
- that the sheer number of charges admittedly weighed against Mr. Young
- that Mr. Young had accepted responsibility for his misconduct quickly and readily
- that Mr. Young would be suffering a significant financial loss and a public embarrassment
- that there is no indication that any client suffered a financial loss
- that the public has an understanding of the impact that mental and emotional issues may have on a person's life and hence the public's confidence in the integrity of the legal profession would be maintained by the recommended penalty
- that most of the misconduct, if not all, falls into the careless category, rather than the intentional or reckless
- that Mr. Young has felt and expressed genuine remorse for his behaviour.

12. Mr. Young made a brief submission. He spoke of this entire matter being "hugely distressing" for him. He said that he had been overwhelmed by his practice and had lacked the insight to pare back. He said that he had taken the experience of the Law Society charges as being a giant learning opportunity, an opportunity to make wholesale changes in his life, as a way of finding good in what was a horrible experience. He said he could not sufficiently express his sorrow at the grief he will have caused clients. He spoke of the steadfast support he had received from the Boudreau law firm where he expects to practice on his return after a suspension. He offered an apology to everyone involved.

### **Analysis**

13. First, we accept the guiding principle from *Thomas* and *Rault*. That is, we accept the principle that there must be clear and cogent reasons before departing from a joint recommendation made by experienced and competent counsel. There are compelling reasons that underlie this

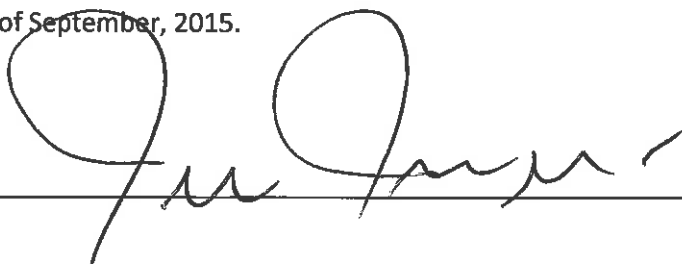
principle which need not be reviewed here. Counsel in this case certainly meet the “experienced and competent” description. We accept their submission that there are in this case no clear and cogent reasons which would justify a departure from the jointly recommended disposition.

14. Secondly, and quite apart from the *Thomas and Rault* guiding principle, this panel is satisfied that the jointly recommended disposition is a fair and reasonable one. The disposition recommended falls squarely within the range of penalties imposed by other tribunals for charges of this nature in similar cases. Further, while on the one hand, Mr. Young’s transgressions are not as egregious as those in some other cases, on the other hand, this factor is to some degree offset by the large number of breaches committed by him. Again, on the one hand, the medical report of Mr. Young’s family physician (ex. #6) falls short of attributing the misconduct to depression, but on the other hand, it is clear from Mr. Young’s psychologist’s reports (ex. #5 and #10) that Mr. Young has benefited substantially in ways material to his practice from this therapy. Overall, the panel is satisfied that the recommended disposition strikes a reasonable balance between protecting the public interest and providing to Mr. Young an opportunity to resume his professional practice.

**Conclusion**

15. We wish to express our appreciation to counsel for the able assistance provided to the panel.

Dated this 23<sup>rd</sup> day of September, 2015.

Jacob P. Janzen (Chair) \_\_\_\_\_  


Grant Driedger \_\_\_\_\_  


Neil Cohen \_\_\_\_\_  
