

1 THE CHAIRPERSON: The hearing is now
2 reconvened. On behalf of the panel I deliver the following
3 disposition.

4 The agreed statement of facts document, marked
5 as Exhibit 3 in this hearing, is accepted by the panel as
6 the factual foundation for its findings today.

7 Ms. Gembey has entered a plea of guilty to all
8 of the charges contained in citation number 1 dated
9 August 18, 2016, and citation number 2, dated October 1,
10 2016 marked as Exhibits 1 and 2 in this hearing.

11 The panel finds that as a result of her
12 admissions Ms. Gembey is guilty of professional misconduct,
13 including failure to respond to The Law Society's letter of
14 July 28, 2016 within 14 days, contrary to Rule 5-64(4) of
15 the Rules, and failure to advance her client's case and
16 serve her client in a thorough and prompt manner contrary
17 to the Code of Professional Conduct, Rule 3.2-1.

18 These offences are part of a single client
19 transaction, and Law Society investigation, in which
20 Ms. Gembey has already been disciplined as a result of a
21 hearing addressing earlier related incidents of failures to
22 respond, which hearing occurred September 6, 2016. In that
23 hearing she was fined \$1,000, with costs of \$2,500. The
24 panel accepted the joint submission in the previous
25 hearing.

1 Law Society counsel submits, and the panel
2 accepts, that the Supreme Court of Canada, in the
3 *Anthony-Cook* decision of October 21, 2016 has set a high
4 threshold for an adjudicator respecting consideration of a
5 joint sentencing submission.

6 We agree that the Supreme Court of Canada
7 threshold applies here. We accept the joint submission as
8 presented.

9 We have considered the *Ogilvie* factors as
10 highlighted by Law Society counsel. Further, we recognize
11 that, but for the timing of these two citations, the
12 factual circumstances are tied to the transaction which was
13 partially prosecuted and determined at the September 6th
14 hearing. Law Society suggested we account for this, and we
15 do so.

16 The Law Society of Manitoba's regulatory record
17 is replete with the statement and restatement of the
18 critical responsibility of lawyers to respond in accordance
19 with the rules to reasonable and lawful inquiries of The
20 Law Society.

21 To quote another recent decision of a Law
22 Society discipline panel,

23 "The Law Society of Manitoba is charged
24 with a responsibility of governing the
25 legal profession on behalf of the public,

1 and to do so it is absolutely necessary
2 for members to cooperate with The Law
3 Society in the investigation of
4 complaints. If members fail to
5 cooperate, the public suffers harm or,
6 at the very least, is put at risk of
7 harm." (*The Law Society of Manitoba v.*
8 *Wang*, 2015 MBL 12 at para. 45)

9 Counsel for The Law Society noted that the
10 September 6th disposition included a two-year practicing
11 condition that another lawyer also receive Ms. Gembey's Law
12 Society communications with obligations specific to that
13 lawyer, that The Law Society expects will help to address
14 these issues.

15 Ms. Gembey's failure to serve her client was
16 also fully accepted by her. Law Society counsel notes that
17 a first offence of failure to serve would typically lead to
18 a reprimand, but that in keeping with The Law Society
19 protocols, any second offence would include a fine, plus
20 costs.

21 While there was harm to the client by the
22 overall delay in this case, there is no evidence that the
23 delay led to substantive harm to the client respecting the
24 client's specific rights.

25 Ms. Gembey confirmed that the combination of

1 the previous fine and costs, and this additional fine and
2 costs, amount to an onerous penalty for her in her
3 circumstance. Law Society counsel made this point as well.
4 The panel, too, acknowledges this point.

5 Finally, Ms. Gembey is genuinely contrite. We
6 recognized in her submission both her honest acceptance of
7 her actions, and her recognition that she must not permit
8 recurrence of similar failures in future.

9 She has sought out help from The Law Society's
10 Practice Management advisor. Under the joint submission
11 Ms. Gembey also formally agrees to undertake a time
12 management program to be approved by The Law Society of
13 Manitoba, and to be completed by December 4, 2017,
14 essentially within one year from now.

15 Ms. Gembey, I direct these comments now to you
16 personally, ma'am. You acknowledge that what you did was
17 wrong. As a panel, we want to urge upon you the need to
18 meet your professional obligations and to cooperate with
19 The Law Society of Manitoba.

20 The panel is hopeful that this hearing,
21 combined with the previous hearing, and the results flowing
22 from these hearings, are enough to impress this upon you.

23 This transcript will be considered the reasons
24 for decision of this panel, Ms. Gembey and Mr. Kravetsky,
25 and therefore the panel, in terms of the disposition, fines

1 Ms. Gembey \$1,000; directs that Ms. Gembey pay \$2,500 as a
2 contribution to The Law Society's costs, and that within
3 one year, which is to say no later than December 4, 2017
4 Ms. Gembey successfully complete, at her own expense, a
5 time management course approved by the Society, which
6 course is to be in addition to, and not included in the
7 continuing professional development activities Ms. Gembey
8 is otherwise required to complete.

9 Is there any submission in respect of time for
10 payment of the fine or costs?

11 MR. KRAVETSKY: I can indicate, Madam Chair,
12 that Ms. Gembey and I have had discussions about that, and
13 arrangements have been made through the powers granted to
14 the CEO to extend time. That is being dealt with
15 administratively, but, yes, there are arrangements in that
16 regard, but we're agreed that it's not required to follow
17 part of your order.

18 THE CHAIRPERSON: Thank you. Anything further
19 that is required, Mr. Kravetsky?

20 MR. KRAVETSKY: I just have a question, Madam
21 Chair, there are three charges in the second citation, and
22 I wanted to be clear as to whether you are also finding
23 Ms. Gembey guilty of charges 2 and 3?

24 THE CHAIRPERSON: Yes, all charges under both
25 citations.

1 MR. KRAVETSKY: Thank you. That's my only
2 question.

3 THE CHAIRPERSON: Ms. Gembey, any questions?

4 MS. GEMBEY: I don't have any questions, Madam
5 Chair.

6 THE CHAIRPERSON: Thank you.

7 MR. KRAVETSKY: Thank you.

8 THE CHAIRPERSON: That concludes our hearing
9 today.

10 MS. GEMBEY: Thank you.

11 THE CHAIRPERSON: Good afternoon.

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14 (HEARING CONCLUDES AT 3:10 P.M.)

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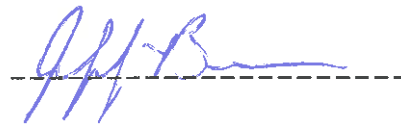
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CERTIFICATE OF REPORTER

I, JEFF BRUCE, Court Reporter, do hereby certify that the foregoing pages, numbered 1 to 7, are a true and accurate transcript of the proceedings herein as recorded by me to the best of my skill and ability.

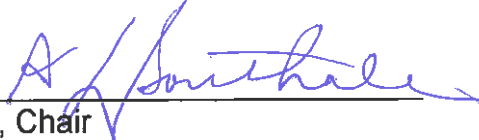


Jeff Bruce

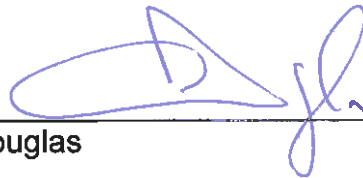
Court Reporter

THE PRECEDING 8 PAGES CONSTITUTE
THE DECISION AND REASONS FOR
DECISION OF THE DISCIPLINE COMMITTEE
OF THE LAW SOCIETY OF MANITOBA
RENDERED THE 5th DAY OF DECEMBER,
2016, IN THE MATTER OF:

BONNIE LYNNE GEMBEY



Anita Southall, Chair



Donald Douglas



Neil Cohen