

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Freda M. Steel
Madam Justice Barbara M. Hamilton
Madam Justice Diana M. Cameron

BETWEEN:

<i>THE LAW SOCIETY OF MANITOBA</i>)	<i>G. M. Wood</i>
)	<i>for the Appellant</i>
<i>(Applicant) Respondent</i>)	
)	<i>R. H. Kravetsky ✓</i>
)	<i>for the Respondent</i>
<i>- and -</i>)	
)	<i>Appeal heard:</i>
<i>LAWRENCE BREMNER CHERRETT</i>)	<i>November 21, 2016</i>
)	
<i>(Respondent) Appellant</i>)	<i>Judgment delivered:</i>
)	<i>December 8, 2016</i>

On appeal from 2015 MBLS 10

HAMILTON JA

[1] A panel of the discipline committee of the Law Society of Manitoba (the Law Society) disbarred the appellant for misappropriating \$20,000 from his trust account and misleading his client about those funds. The panel also ordered the appellant to pay costs of \$16,000.

[2] The appellant appeals the finding of misappropriation and the disposition of disbarment. He does not appeal the finding that he misled his client. Nor does he take issue with the findings as to what he did with the \$20,000. He argues that the finding of misappropriation was unreasonable, given his ill health and the

effects on his state of mind. He also asserts that the panel ignored some of his evidence that was relevant to whether his actions were intentional or careless in nature. Relying on *The Law Society of Manitoba v McDowell*, 2007 MBLS 9, he seeks an order that permits him to resign from the practice of law, rather than be disbarred.

[3] For the reasons that follow, I am of the view that the finding of misappropriation and the disposition of disbarment are reasonable. See *Doolan v Law Society of Manitoba*, 2016 MBCA 57, 330 ManR (2d) 68. Therefore, I would dismiss the appeal.

Background

[4] The appellant has had significant health issues for a number of years.

[5] On April 16, 2009, the chief executive officer of the Law Society, Allan Fineblit, contacted the appellant to arrange to meet with him about the continuation of his practice. At that time the appellant was facing a number of disciplinary charges and investigations. Mr. Fineblit met with the appellant the next day and provided him the option to undertake, to the Law Society, to withdraw from practice, on certain conditions.

[6] On April 17, 2009, the appellant transferred \$20,000 from his trust account to a bank account in the name of a numbered company for which he was the sole director and signing authority. The \$20,000 was a holdback on an estate file pending receipt of a clearance certificate from the Canada Revenue Agency. Using this money on two subsequent occasions, he obtained a bank draft for \$10,000 payable to another bank where he had a personal account. Using these bank drafts, he made two deposits of \$10,000 each into his personal account.

[7] On April 22, 2009, the appellant signed the undertaking to withdraw from practice and to turn over all his open files to a custodian. He also undertook to disburse all monies remaining in his pooled trust account in accordance with the trust accounting rules.

[8] Over the course of several years, the appellant led the client to believe that the appellant would be able to release the \$20,000 holdback when he returned to practice.

[9] The Law Society has reimbursed the client.

Appeal of the Finding of Misappropriation

[10] The appellant's main contention is that the panel failed to address the effect of his ill health on his mental capacity. In support, he says that the panel's reasons do not refer to all of his evidence, including the fact that the numbered company was established for a family trust related to another client, that this client owed him \$10,000 for past services that had been previously billed but unpaid (no bill was tendered in evidence) and he was confused about what happened at the time of depositing the \$20,000 into the numbered company bank account. He argues that the panel ignored this evidence, which he says is important because it is consistent with his position that he was in a "cognitive fog" when he dealt with the trust funds. Therefore, he says that the panel's reasons and the finding of misappropriation are not reasonable.

[11] I disagree. The panel acknowledged the appellant's many medical problems in its reasons. It understood, but did not accept his argument that he misappropriated the money in a "cognitive fog". The panel found that the appellant's methodical actions were inconsistent with that argument, and that his

actions were done “purposefully” and were “deliberate and considered conduct.”

[12] The panel was not required to refer to all of the evidence in its reasons. As Abella J stated in *Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 (at para 16):

Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees’ International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, [1975] 1 S.C.R. 382, at p. 391). In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* [*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190] criteria are met.

[13] The record of the hearing demonstrates that the panel engaged the appellant during the hearing to ensure that the panel understood his evidence and submissions. The fact that the panel did not mention in its reasons that the numbered company was related to another client that owed him money does not detract from the significance of the fact that the appellant deposited the \$20,000 into a bank account that he controlled.

[14] The reasons demonstrate, particularly when read in the context of the record, that the panel did not accept the appellant’s evidence that he was confused and careless. Given that, the finding of misappropriation was inevitable.

Appeal of the Disbarment

[15] The panel considered many relevant factors, including the appellant’s prior disciplinary record, and the fact that he had made no effort to repay the client

or the Law Society. It concluded that his actions showed a “particularly culpable disregard for the Law Society” given its remedial and conciliatory approach.

[16] The panel addressed the appellant’s ill health and the effect on him, including psychologically and emotionally. Importantly, however, the panel distinguished the medical evidence filed in this case from that filed in *McDowell*, where the member, who was permitted to resign, provided a psychiatrist’s opinion linking the member’s ill health to his misconduct (misleading his client for a long period of time). While the panel acknowledged that the appellant’s ill health affected his ability to practice law, it found that the appellant’s diminished capacity argument was inconsistent with what he did, and explained why.

[17] The panel accepted the Law Society’s submission that there were no exceptional extenuating circumstances to permit the appellant to resign rather than be disbarred.

[18] Given the panel’s findings, which are unassailable, the disposition of disbarment is well within the range of possible outcomes.

Conclusion

[19] The appellant has not demonstrated that the panel’s findings and conclusions do not meet the deferential standard of review of reasonableness. The reasons “fit comfortably with the principles of justification, transparency and intelligibility” (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59, [2009] 1 SCR 339). Furthermore, the finding of misappropriation and the disposition of disbarment fall well within the range of possible outcomes, in light of the facts and the law.

[20] I would dismiss the appeal with costs.

Bonnie Hamilton JA

I agree: ~~_____~~ JA

I agree: J. Romero JA