

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

LOUAY RUSTOM ALGHOUL

AND

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

**REASONS FOR DECISION OF THE DISCIPLINE COMMITTEE**

**Background**

1. LOUAY RUSTOM ALGHOUL appeared before a Panel of the Discipline Committee of the Benchers of The Law Society of Manitoba on March 1, April 21, June 8, and October 21, 2016 pursuant to a Citation dated August 20, 2015. Members of the Panel were Garth Smorang, Q.C., Chair; Ellen Leibl, Q.C.; and Lorne Gibson (public representative). Mr. Rocky Kravetsky appeared as counsel for The Law Society of Manitoba. Mr. Alghoul appeared on his own behalf.
2. The Citation was filed as Exhibit 1. Mr. Kravetsky advised that the Society was not proceeding on charge number 1 contained in the Citation, but was proceeding on charge number 2.
3. Charge number 2 alleged that while acting for his client with respect to her Residential Schools Independent Assessment Process matter, Mr. Alghoul acted

contrary to Rule 5.1-1 of the Code of Professional Conduct, in that he received four emails from the presiding Adjudicator and failed to respond to them.

4. Mr. Alghoul waived the formal reading of the Citation and entered a formal plea of not guilty to charge number 2.
5. Mr. Alghoul admitted membership in The Law Society of Manitoba, as well as of The Law Society of British Columbia, admitted valid service of the Citation upon him, and indicated he had no objection to any of the Panel members either on the basis of bias or conflict.

#### Preliminary Motions

6. Mr. Alghoul brought two preliminary motions.
7. The first motion was for an Order pursuant to s. 78 of The Legal Profession Act (the "Act") excluding members of the public from the hearing.
8. According to Mr. Alghoul, the primary reason for his motion was to fulfil his duty as legal counsel for a client who had retained him in conjunction with the Independent Assessment Process for residential school survivors. Mr. Alghoul's concern was that his client's name might become public through testimony and the filing of exhibits at the hearing.
9. Mr. Kravetsky made submissions and filed a number of authorities, including Law Society Rule 5-96(9), which, he advised, requires anyone from the public, including members of the media, who request a copy of any exhibit filed at a discipline hearing to apply to the Society's CEO, and such documents are not released without appropriate redaction to protect confidentiality.

10. The Panel issued a ruling declining to exclude members of the public from the hearing.
11. Having done so, the Panel indicated that it was mindful of the authorities Mr. Kravetsky provided, including the decision from the Manitoba Court of Appeal in *Jane Doe1 v. Manitoba [2005] M.J. No. 151*, and the Supreme Court of Canada decision in *R. v. Mentuck [2001] S.C.J. No. 73*, reminding the Panel that if it were to exercise discretion towards *in camera* or redaction of documents, that it consider all available options short of closing the hearing to the public, and whether protection could be achieved without going so far as to close the hearing.
12. The Panel advised that every effort would be made during the hearing by the parties, the Panel, and a caution would be given to each witness, to utilize initials, rather than full names, to prevent public disclosure of the identification of clients of Mr. Alghoul. Further, if an application were to be made to the CEO of the Society for production of an exhibit, that would be a matter for the CEO pursuant to the Rule.
13. The second preliminary motion brought by Mr. Alghoul was to tender, as evidence before the Panel, a written statement, not in the form of an affidavit or statutory declaration, but merely signed by Mr. Azeez Ciba, which contained information central to the issues in this case and which, at least in part, contained opinion evidence.
14. Mr. Alghoul provided the Panel with reasons as to why, given Mr. Ciba's current residence of The Bottom of Saba Island of Dutch Caribbean, and given time constraints, he was unable to provide the Panel with either an affidavit or statutory declaration from Mr. Ciba.
15. Mr. Kravetsky opposed the filing of this document in its current form and cited s. 71(1) 5. of the Act, which required the Panel to apply the rules of evidence that

would be applied in a civil proceeding in the Court of Queen's Bench, with the exception that an affidavit or statutory declaration would be admissible as proof of the statements in it. His position was that, because this document did not meet the stated exception, this Panel had no jurisdiction to admit the document.

16. After considering the matter, the Panel declined to admit the document as evidence and indicated to Mr. Alghoul that, at the conclusion of that day's testimony, if he felt that the information contained in the document was necessary to his case, an adjournment would be granted so as to allow Mr. Alghoul to resubmit the document as either an affidavit or statutory declaration, subject to arrangements being made for Mr. Kravetsky to cross-examine the deponent either in person or through the use of technology.

### The Hearing

17. After opening statements, Mr. Kravetsky, on behalf of the Society, called Carolyn Frost as a witness. He then closed his case, reserving his right to call rebuttal evidence, depending on what expert evidence was going to be presented on behalf of Mr. Alghoul.
18. Mr. Alghoul called a number of witnesses. First, Mr. Grant Stone, an employee at his law firm involved in human resources, and involved in residential school matters. Mr. Alghoul then testified. Thereafter, three expert witnesses testified in the area of Information Technology and email systems: Muhammad Iqbal, Mahmoud Alzaibaq, and Azeez Ciba.
19. In rebuttal, Mr. Kravetsky called Sean Rivera, Director of Information Technology, employed by the Law Society of Manitoba, as an expert witness.
20. In total the Panel heard three full days of testimony from seven witnesses, and 53 exhibits were filed.

### Salient Evidence

21. It is not the Panel's intention to review all of the evidence it heard over three days but rather the evidence that it found to be relevant to its determination of the issue before it.
22. Mr. Kravetsky established, through Ms. Frost, that, as an Adjudicator considering a claim being made by one of Mr. Alghoul's clients, in which claim he was representing the client, she was conducting a legal fee review regarding his proposed fees in the matter. For that purpose she required Mr. Alghoul's time records, and as well required information as to whether any "form fillers" had been involved in the case who might be claiming a separate fee in addition to Mr. Alghoul's fees.
23. To that end, Ms. Frost sent a series of four separate emails to Mr. Alghoul, on August 22, 2013, September 4, 2013, September 19, 2013, and October 1, 2013. All emails were sent using an address that, she testified, appeared on Mr. Alghoul's letterhead, being *louay@alghoul-law.ca*.
24. Ms. Frost never received a response from Mr. Alghoul to any of the four emails. When she spoke with another lawyer in his firm in March, 2014, she was directed to speak with another employee, Mr. Grant Stone, who sent her the time records but not an answer regarding whether or not form fillers had been involved in the case.
25. For reasons that are largely unrelated to the allegations contained in the Citation before this Panel, Ms. Frost filed a complaint with the Law Society on April 2, 2014. In her complaint, among the other complaints she made, she advised the Society that she had sent the four emails to Mr. Alghoul and he had not responded to them.

26. As a result, the Society wrote to Mr. Alghoul on April 11, 2014 requiring him to provide a written response within 14 days.
27. Mr. Alghoul responded to the Society by way of letter dated April 24, 2014. In the portion of his response letter referring to his failure to respond to the emails, Mr. Alghoul references the numerous requests by Ms. Frost to provide her with a copy of time records, and advises as to his “surprise” to receive the request from Ms. Frost. He then goes on to explain that, due to the passing of one of his colleagues at the firm sometime in the summer of 2013, the firm was dealing with a very stressful time. He says “... her request came after the passing of Mr. Harvard... we tried our best to accommodate her request and we apologize for any delays...”.
28. There is no other way to interpret Mr. Alghoul’s letter other than that he was admitting to the Society that the emails had been received, and providing an explanation as to why they were not responded to in a timely manner.
29. Subsequent to the issuance of the Citation on August 20, 2015, Gavin Wood, counsel for Mr. Alghoul, communicated by email with Mr. Kravetsky on October 15, 2015. In this email, Mr. Wood said that he had been advised by Mr. Alghoul and Mr. Stone that:
  - Ms. Frost’s emails requesting time records were amongst hundreds of emails that Mr. Alghoul received while he was away on business travel;
  - there would have been “bounce back” emails to Ms. Frost, indicating that Mr. Alghoul was away and that the email would not be answered, and asking that if an answer is required that Mr. Alghoul’s staff be contacted;
  - Mr. Alghoul wouldn’t get paid until the fees were sorted out and as such would always wish to respond to such a request as that made by Ms. Frost.
30. Once again, the message being communicated by Mr. Alghoul, through his lawyer, was that the emails were received but, for the reasons stated, had not been identified or responded to.

31. Mr. Wood subsequently withdrew from representing Mr. Alghoul and he thereafter has represented himself in this matter.
32. On February 29, 2016, the day before the hearing was to commence, Mr. Alghoul advised Mr. Kravetsky that the emails, having been delivered to an old email address no longer in use (but still active), had ended up in a junk email folder and, in essence, had only been recently discovered by Mr. Alghoul.
33. Evidence was given by Mr. Alghoul and by three expert witnesses called on his behalf as to how this might have occurred and as to problems that can arise with email communication but, at the end of the testimony, none of the witnesses could say with any certainty how Ms. Frost's emails might have ended up in a junk email folder.

### Analysis

34. Mr. Kravetsky's submission, and the evidence that he called through Mr. Rivera, supported in large part by the other experts, is that email is generally reliable. In the ordinary course, absent evidence to the contrary, one can presume that an email sent to a valid email address will be received into the addressee's inbox.
35. Mr. Kravetsky urges the Panel to ascribe motive to Mr. Alghoul not responding to the emails due to him having taken his fees prematurely, prior to the conclusion of the fee review. Mr. Alghoul contests this, in terms of the acceptable practice at that time concerning taking fees in matters of this nature.
36. The Panel is not prepared to conclude, on the evidence before it, that Mr. Alghoul was failing to respond to Ms. Frost's emails in an effort to hide the fact that he had already taken his fees.

37. In fact, the Panel is not able to ascribe any particular reason why Mr. Alghoul did not respond to the four successive emails from the Adjudicator.
38. However, as Mr. Kravetsky pointed out in his submission, once the Society has proven through evidence that the emails in question were sent, received, and not responded to by Mr. Alghoul, then to the extent that Mr. Alghoul raises a positive defence, he has an onus to put forward credible evidence in that regard that the Panel can say, with satisfaction, has satisfied that onus, on a balance of probabilities.
39. As Mr. Kravetsky acknowledged in his submission, if it had been established on credible evidence, that the emails, through no fault of Mr. Alghoul, did not come to his attention, then he would not be guilty of any of the elements of the offense set out in the Citation.
40. Based on the evidence before it, and principally the first two communications that he provided to the Society, initially in responding to the letter of complaint, and later through his then legal counsel, the Panel is not able to conclude that the emails did not come to Mr. Alghoul's attention.
41. Specifically, as is outlined above, the first two communications can lead the Panel to no other conclusion but that Mr. Alghoul was acknowledging receipt of the emails and was attempting to mitigate his failure to respond by offering context regarding his circumstances at that time.
42. The Panel is acutely aware that Mr. Alghoul is not charged with breaching section 6.01 of the Code of Professional conduct - *A lawyer must reply promptly and completely to any communication from the Society.*
43. However, having replied promptly and, presumably completely, by letter dated April 24, 2014, and by subsequent email through legal counsel on October 15, 2015, Mr.



Alghoul presented a defence at the hearing, which he first raised the day before the hearing, and almost 2 years after the original letter of complaint filed by Ms. Frost with the Society was received by him, which is wholly inconsistent and diametrically opposed to these first two responses. That is, he now asserts that he never saw the emails because they never arrived in his inbox.

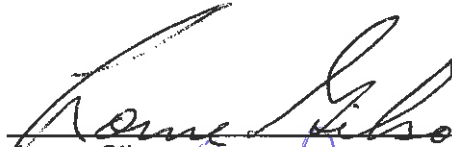
44. Mr. Alghoul was unable to provide the Panel with sufficient evidence, through his own testimony and documents, or that of the expert witnesses who testified, that supported this defence.
45. To the extent that his credibility is at issue, Mr. Alghoul's earlier assertions to the Society as to why he did not respond to the emails leave the Panel unable to accept his most recent assertion that he never saw them.

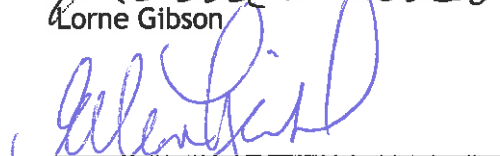
### Decision

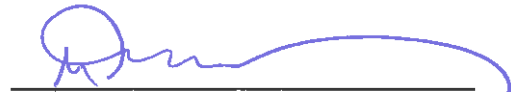
46. The Panel is obliged, pursuant to Law Society Rule 5-96(5), to make and record a resolution stating which, if any, of the acts or omissions stated in the charge have been proven to the satisfaction of the Panel and further, whether or not, by the acts or omissions so proved, the member is guilty of professional misconduct.
47. Mr. Alghoul is charged with a breach of Rule 5.1-1 of the Code of Professional Conduct, by failing in his duty as advocate to act honourably while treating the Adjudicator with "candour, fairness, courtesy and respect and in a way that promotes the party's rights to a fair hearing in which justice can be done".
48. The Panel finds Mr. Alghoul guilty of discourtesy and disrespect in failing to respond to the four emails sent to him, and received by him, from the Adjudicator. The Panel declines to conclude that Mr. Alghoul's actions constitute dishonourable conduct.

49. Accordingly, the Panel is of the view that all of the acts or omissions particularized in charge number 2 of the Citation have been proved and constitute professional misconduct.

DATED this 22nd day of December, 2016.

  
Lorne Gibson

  
Ellen Leibl, Q.C.

  
Garth Smorang, Q.C.