

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

LOUAY RUSTOM ALGHOUL

AND

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

DISPOSITION DECISION OF THE DISCIPLINE COMMITTEE

Background

1. Mr. Alghoul was 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 an 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”.
2. On December 22, 2016, following four days of hearing, and the testimony of seven witnesses, four of whom were expert witnesses, the Panel issued Reasons for Decision, in which the Panel found Mr. Alghoul guilty of discourtesy and disrespect in failing to respond to four emails sent to him, and received by him, from the Adjudicator. The Panel declined to conclude that Mr. Alghoul’s actions constituted dishonourable conduct.

3. On April 6, 2017 the hearing was recommenced for the purposes of submissions as to disposition. Mr. Rocky Kravetsky appeared as counsel for The Law Society of Manitoba. Mr. Kevin Toyne appeared on behalf of Mr. Alghoul, who was also present.

Submissions

4. Both counsel provided written material and made comprehensive submissions as to disposition, given the Panel's findings.
5. Mr. Kravetsky referenced numerous authorities as to both penalty and costs.
6. As to penalty, Mr. Kravetsky pointed out that the panel found Mr. Alghoul guilty of conduct that was both disrespectful and discourteous to the Adjudicator. He noted that, as of the current date, Mr. Alghoul had still not responded to one aspect of the Adjudicator's request and as such the Adjudicator, or her replacement, has not been able to finish a legal fee review that had been undertaken.
7. Mr. Kravetsky acknowledged that this was not the most serious breach of Rule 5.1-1 of the Code, especially given the finding that Mr. Alghoul's actions did not constitute dishonourable conduct. He advised that, had the Panel made that finding, he would have been recommending a significant fine or a short suspension.
8. Mr. Kravetsky also noted that there is no charge directly arising from Mr. Alghoul's conduct during the hearing, which, he says, added days of time and resources, attempting to prove a version of the facts which the Panel found not to be credible. Mr. Kravetsky indicated that he would address that issue when he spoke to the question of costs.

9. Mr. Kravetsky referenced a number of authorities to make the point that penalties imposed as a result of breaches of the Law Society Rules and Code were not in the nature of punishment, but were necessary to both protect the public, and to maintain the high standards of the profession, and the public's confidence in the profession. He emphasized that an appropriate penalty must take into account both specific deterrence to the member, and general deterrence to the profession.
10. Mr. Kravetsky took the Panel through the principles outlined in the case of *The Law Society of Manitoba v. Nadeau*, 2013 MBLs 4, including the "Ogilvy" factors to be taken into account in disciplinary dispositions.
11. Mr. Kravetsky reviewed the testimony given by Mr. Alghoul at the hearing, and asked the Panel to conclude that his participation in this process, from the receipt of the complaint by the Society through the hearing process, to date, has not taught Mr. Alghoul any lessons and accordingly a reprimand alone is not enough of a penalty. In effect, says Mr. Kravetsky, a punitive sanction is needed, given Mr. Alghoul's conduct, to ensure that Mr. Alghoul is specifically deterred from future similar behaviour, and lawyers generally need to know that there is a consequence to the way in which Mr. Alghoul dealt with this matter.
12. Mr. Kravetsky suggests the imposition of a fine in the amount of \$1500, which he characterizes as a small or minimum fine.
13. As to costs, Mr. Kravetsky referred to two previous decisions of Panels of the Discipline Committee of the Society, the 1999 *Schmidt* case and the *MacKinnon* case from 2010 (2010 MBLs 5). In both, significant orders of costs were made against the member, on the principle that:
"The rule permitting costs reflects the view of the Benchers that lawyers who cause the problems ought to be(sic) bear the burden of covering the costs associated with investigating and prosecuting the conduct." (MacKinnon).

14. Mr. Kravetsky filed Calculation of Costs documents, and explained to the Panel that the costs directly attributable to the hearing and the charge which resulted in a finding of guilt, in accordance with Law Society Rule 5-96(8), amount to \$28,000. He says that there is no reason the members of the profession should bear those costs as they relate directly to the way Mr. Alghoul handled his case.
15. Mr. Kravetsky then concluded by spending some time anticipating a position that would be taken by Mr. Toyne regarding the Panel adopting the Law Society of Upper Canada practice of imposing an Invitation to Attend.
16. Mr. Toyne then made submissions on behalf of Mr. Alghoul.
17. He began by characterizing the charge as a “civility” breach which, he said, is at the lower end of the misconduct spectrum. Further, even within the spectrum of civility breaches, he characterized this particular conduct as at the lower end of that spectrum. Mr. Toyne made reference to a number of authorities in his materials, and as well some from Mr. Kravetsky’s materials, to illustrate this point.
18. He reminded the Panel that it had rejected the allegation that Mr. Alghoul, in not responding to the emails, was trying to hide the fact that he had taken his fees and, therefore, Mr. Alghoul was not found guilty of dishonourable conduct.
19. He pointed out that Mr. Alghoul had testified that not only had he apologized to the Adjudicator, but that she had also apologized to him for not calling him before reporting him to the Society (although that evidence did not come directly from the Adjudicator when she testified before the Panel, as she was not asked that question by either side).
20. As to the appropriateness of a reprimand, Mr. Toyne characterized such a disposition as having serious consequences for a lawyer, being a public expression of the profession’s denunciation of the lawyer’s conduct. He referenced a passage

from the *Law Society of Alberta v. King*, 2010 ABL 9, in that regard. He argued that costs alone would suffice in this case, that a reprimand would be punitive, and a fine would be worse.

21. Mr. Toyne then took the Panel through a series of documents from the Law Society of Upper Canada, regarding a process available in Ontario known as an Invitation to Attend. He took the position that, by virtue of the powers available to this Panel pursuant to s.72(1)(k) of The Legal Profession Act, we have the jurisdiction to adopt this Ontario procedure in the current case. This would involve the Panel rescinding its previous finding that Mr. Alghoul is guilty of professional misconduct, and then inviting him to appear before this Panel or another Panel of the Discipline Committee of the Society for what he described as “a talking to”.
22. Mr. Toyne took the Panel through a number of factors that might inform the decision of a Hearing Panel in making a decision to proceed by way of an Invitation to Attend as opposed to a finding of professional misconduct, summarized in the case of *Law Society of Upper Canada v. Mercy Dadebo* , 2009 ONLSHP 0043, and suggested that applying those factors to the present case would lead this Panel to conclude that proceeding in such a manner would be fair and reasonable in these circumstances.
23. Mr. Toyne pointed out that the Panel could also, within its powers under s. 72, decline to withdraw the finding of professional misconduct it has already made, and invoke the Invitation to Attend process in any event.
24. As to costs, Mr. Toyne agreed that there should be a substantial award of costs which, he said, would be sufficient to satisfy the importance of both specific and general deterrence. He suggested a costs award between \$10,000 and \$15,000 as being reasonable, not a slap on the wrist, and yet a reflection that the misconduct here is minor.

25. As to background, Mr. Toyne provided the Panel with Mr. Alghoul's education and work history, as well as pointing out his community involvement, and that this was his first offense before the Society since being called to the bar approximately 11 years ago.
26. In summary, Mr. Toyne urged the Panel to only make an award of costs and, if it felt that something more was required, to adopt the Ontario process of an Invitation to Attend.
27. In Reply, Mr. Kravetsky again pointed out that the Ontario practice was not contemplated in the Manitoba Rules or Act, and that such diversions are available in Manitoba at levels of the complaint process prior to the involvement of a discipline panel, such as before the CEO, before the Complaints Investigation Committee, and by way of prosecutorial discretion.
28. As to Mr. Toyne's recommendation on costs, Mr. Kravetsky reminded the Panel that three of the four days of hearing, including three expert witnesses called by Mr. Alghoul to testify, were spent on something Mr. Alghoul was trying to prove that he did not prove, that is, that the emails sent by the Adjudicator ended up in his junk email folder. As such, the significant amount of costs were not the fault of the Society but of Mr. Alghoul.
29. At the conclusion of the hearing both counsel asked the Panel, assuming it was going to make a specific order of costs, to retain jurisdiction to hear further submissions on costs, should either counsel wish to make such submissions.

Disposition

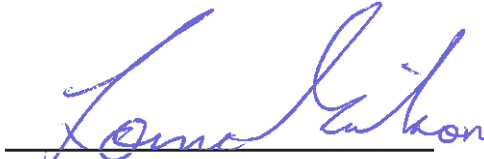
30. Upon deliberating, and taking into account the submissions of both counsel, the Panel hereby imposes a reprimand upon Mr. Alghoul, pursuant to s.72(1)(f), and costs in the amount of \$28,000, pursuant to s.72(1)(e).

31. Without specifically determining whether or not this Panel has the jurisdiction to enter into the Ontario process of an Invitation to Attend, this panel does not believe that would be an appropriate disposition, given the present circumstances, in any event.
32. This Panel believes that the penalty of reprimand is an appropriate penalty for professional misconduct which, as is the case here, is at the lower end of the spectrum, especially where the member has no previous record before the Society.
33. This Panel accepts the passage referenced in the *Law Society of Alberta v. King* by Mr. Toyne wherein that panel said, at paragraph 79:

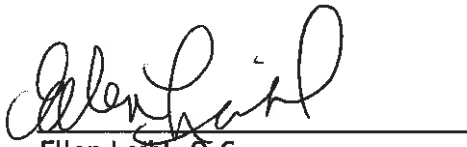
“A reprimand has serious consequences for a lawyer. It is a public expression of the profession’s denunciation of the lawyer’s conduct. For a professional person, whose day to day sense of self-worth, accomplishment and belonging is inextricably linked to the profession, and the ethical tenets of that profession, it is a lasting reminder of failure. And it remains a lasting admonition to avoid repetition of that failure.”
34. Being reprimanded for discourteous and disrespectful behaviour in not responding to multiple communications he received from an Adjudicator, in the course of his practice, will hopefully remind Mr. Alghoul in the future of the expectations the Law Society of Manitoba has of him as a member. So too will Mr. Alghoul’s reprimand remind the profession generally, and the public, of the Society’s expectation of how lawyers in Manitoba will behave.
35. As to costs, this Panel endorses the comments made by Mr. Kravetsky that the evidentiary portion of the hearing was extended due to the extensive evidence put forward by Mr. Alghoul concerning whether or not the four emails were actually delivered to his inbox or, alternatively, ended up in his junk email folder, which evidence was not persuasive and did not establish the facts sought to be established by Mr. Alghoul.

36. This Panel further endorses the comments made in the *Schmidt and MacKinnon* decisions, that the costs of these matters ought, wherever possible, to be borne by those who are perpetrating the bad lawyering and not by the profession as a whole. The Panel is further satisfied that the Calculation of Costs offered by Mr. Kravetsky is reasonable and appropriate at \$28,000.
37. As requested by counsel, the Panel retains jurisdiction to hear further submissions as to costs if requested by either party.


DATED this 17th day of April, 2017.



Lorne Gibson



Ellen Leibt, Q.C.



Garth Smorang, Q.C.