THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

JOHN DAVID LAURENCE SOPER

-and-

THE LEGAL PROFESSION ACT

HEARING DATE:

May 26, 2017

PANEL:

Jacob P. Janzen (Chair)

Irene Hamilton

Carmen Nedohin (PR)

APPEARANCES:

Rocky Kravetsky for the Law Society

John David Laurence Soper on his own behalf

REASONS FOR DECISION

Introduction

1. John David Laurence Soper ("Mr. Soper") is a practising member of the Law Society of Manitoba ("the Society"). He has been a practising member since 25 June 1992.

2. By citation dated 18 January 2017, the Society charged Mr. Soper with four counts of professional misconduct.

3. Before this panel on 26 May 2017, Mr. Soper entered a plea of guilty to all four counts.

4. Counsel for the Society and Mr. Soper had reached an agreement to make a joint recommendation as to disposition. They filed a statement of agreed facts. They made submissions to this panel in support of that joint recommendation.

5. This panel accepted the joint recommendation. The panel made a finding of professional misconduct as jointly recommended and made an order as to fine and costs as jointly recommended. The panel advised that it would in due course issue brief written reasons. These are those reasons.

Decision

6. The citation alleged professional misconduct. It alleged that, in respect of the same client matter, Mr. Soper

- On two occasions received $250.00 on account of fees for services not yet rendered and disbursements not yet incurred and for which a statement of account had not been rendered, and did not deposit the monies received into trust;

- Failed in respect of cash received to issue and maintain a receipt in a book of duplicate receipts identifying and containing any information as to date, amount, file number, client identity, or person from whom the cash was received;
- Failed to notify the client that he was leaving the firm with which he was associated at the time of his retainer and of the clients' options upon his departure;
- Failed to make any inquiry or other effort to obtain and record the clients' personal identification information.

7. Mr. Soper admitted the conduct alleged and he admitted that it constituted professional misconduct. The panel made the finding, which it hereby confirms, that he is guilty of four counts of professional misconduct.

8. As jointly recommended, the panel made an order, which it hereby confirms, that Mr. Soper pay a fine of $3,500.00 and that he further pay to the Society $3,500.00 as a contribution to its costs.

Brief Facts

9. Mr. Soper has been a practising member of the Society since June 1992. He has worked in a number of different firms and entities. His longest continuous association with a firm was seven years with Walsh and Company. This association ended in October 2011. He is presently a sole practitioner working out of his home. He estimates that 80% of his practice is criminal defence work and 20% civil litigation.

10. Mr. Soper has a discipline history.

- On 13 December 2013 he entered guilty pleas to two charges of failing to respond to the Society. He was fined $1,000.00 and was ordered to pay costs of $1,000.00;
- On 14 April 2015 he entered a guilty plea to one charge of failing to respond to the Society. He was fined $1,500.00 and was ordered to pay costs of $1,000.00;
- On 27 January 2016 he entered guilty pleas to four charges of failing to provide his clients with the quality of service required of a lawyer, one charge of failing to treat the Court with courtesy and respect, and one charge of failing to respond to the Society. He was fined $2,500.00, was

ordered to pay costs of $1,050.00 and was ordered to complete, within six months, a time management or practice management course set by the Society (a course which he has completed).

11. In August 2015, Mr. Soper was retained by B.C. and J.C. on a municipal matter. He on two occasions received $250.00 toward fees and disbursements. On both occasions the monies were deposited directly into his personal bank account rather than into trust. On neither occasion did he issue a receipt. He did not obtain current personal contact information from B.C. and J.C. In October 2015 he left the firm he was then practising with. He did not advise the clients of his departure. As a consequence, the clients had difficulty locating him. Draft correspondence he sent to the clients for review did not reach them. He was finally discharged by them in January 2016.

12. There is no suggestion of misappropriation. There is no suggestion that the monies were unearned. There is no suggestion of a lasting effect on the clients. The clients were inconvenienced but not prejudiced.

Submissions

13. Mr. Kravetsky reviewed his Book of Authorities. The *Nadeau* decision (Manitoba, 2013) sets out some of the factors to be taken into account in disciplinary dispositions. These factors include the nature and gravity of the conduct, the age and experience of the member, the prior discipline record of the member, the impact on the victim, the possibility of remediating or rehabilitating the member, and the need to ensure the public's confidence in the integrity of the profession. In this case, he submitted, the nature of the misconduct was not particularly significant. Of greater concern was Mr. Soper's display of a recent and perhaps escalating governance problem. The penalty should reflect this concern.

14. Mr. Kravetsky's Authorities included four Manitoba decisions in which the offences charged were of a nature broadly similar to the matter before the panel. Two of those decisions imposed fines smaller than the fine recommended in this case (*Levine*, 1994, for example, imposed a $500.00 fine and $1,500.00 costs, a disposition it described as "comparatively lenient"), and

two imposed fines that were larger (*Lasko*, 2010, for example, described its disposition of a fine of $15,000.00 and costs of $10,000 as "severe").

15. Mr. Kravetsky also cited the Supreme Court of Canada decision in *Anthony-Cook* (2016) as authority for the proposition that a discipline panel may depart from a joint recommendation only if the recommended penalty would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. He referred to *Gemby* (Manitoba, 2016) as a discipline panel decision which adopted the "public interest" test from *Anthony-Cook*. The "public interest" test replaces, he submitted, the long used "clear and cogent reasons" test.

16. Mr. Soper in his brief submission offered no excuses. He did explain that most of his years of practice had been ones in which he had had no personal involvement in the accounting aspect of the practice. He mentioned, but did not dwell, on the recent ill-health of his parents. He pointed out that he had practised law for over 20 years without a disciplinary blemish. He said that he was in consultation to join a firm, which would help him with the accounting. Finally, he said he recognized that this was likely the last time he could expect merely a fine as a disciplinary penalty.

Analysis

17. The panel, first of all, accepts the "public interest" test from *Anthony-Cook*. That is, it accepts that it may depart from a joint recommendation only where the recommendation is one that it concludes is contrary to the public interest. The meaning of the test is explicated in the decision in the following language (at para. 34): "Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. This is an undeniably high threshold..."

18. *Anthony-Cook* dealt with a joint sentencing recommendation in a criminal law case. Nevertheless, the factors which make the "public interest" test compelling in the criminal law context are also present in a discipline case context. Joint submissions on disposition are a vital

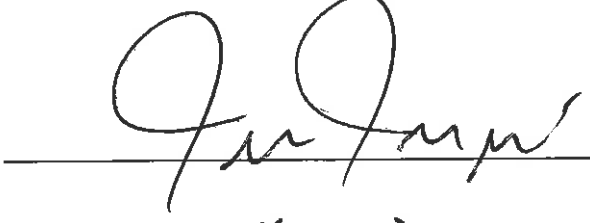
part of the adjudication process of disciplinary matters. They contribute to a fair and efficient system. The parties must have a high degree of confidence that a joint recommendation will be accepted. The parties are well placed to arrive at a joint recommendation that addresses their respective interests. They are well placed to assess the strengths and also weaknesses of their respective positions, to weigh and balance what they are giving up and what they are gaining.

19. Secondly, the panel is satisfied, in any event, that the joint recommendation is a fair and balanced one. Mr. Soper has, as he observed, some 20 years of practice unblemished by disciplinary offences. But he also has, in a short time period, compiled an unenviable record of non-compliances. The transgressions are not ones of integrity, they are ones of governance, but they raise a genuine apprehension as to whether Mr. Soper remains a governable member. The disposition jointly recommended strikes an appropriate balance between a protection of the public interest, on the one hand, and extending the opportunity to Mr. Soper to demonstrate that he is able to practise law in compliance with the governance mandate of the Society.

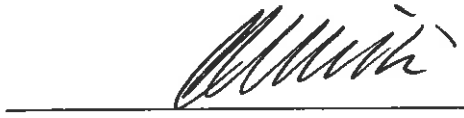
Conclusion

20. The panel wishes to thank Mr. Kravetsky for his helpful submission and materials. It commends Mr. Soper for responding to the charges in a prompt and responsible manner.

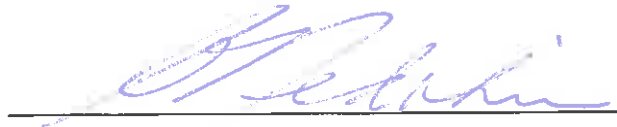
Dated this 19th day of July 2017.



Jacob P. Janzen (Chair)



Irene Hamilton



Carmen Nedohin(PR)