

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

BONNIE LYNNE GEMBEY

-and-

THE LEGAL PROFESSION ACT

HEARING DATE:

September 5, 2017

PANEL:

Jacob P. Janzen (Chair)

Ellen Leibl, Q.C.

Maureen Morrison (PR)

APPEARANCES:

Rocky Kravetsky for the Law Society

Bonnie Lynne Gembey on her own behalf

DECISION AND REASONS

Introduction

1. Bonnie Lynne Gembey (Ms. Gembey) is a practicing member of the Law Society of Manitoba (“the Society”). She has been a member since 15 June 2000. She is also an inactive member of the Law Society of the Northwest Territories.
2. By citation dated 10 July 2017 (entered as exhibit #1), the Society charged Ms. Gembey with one count of professional misconduct. The citation alleged a failure to reply promptly and completely or within the required time to the substance of letters from the Society.
3. On 5 September 2017, Ms. Gembey entered a plea of guilty to the charge. At issue before this panel was the appropriate penalty to be imposed.
4. After hearing submissions, the panel reserved its decision. This is the panel’s decision together with its reasons.

Decision

5. The citation alleged one count of professional misconduct. It alleged that:
 - On 3 May 2017 Ms. Gembey received a letter from the Society regarding her trust accounting practices, which letter required a response within 14 days;
 - Ms. Gembey did not respond to this letter;
 - On 25 May 2017 Ms. Gembey received a follow-up letter from the Society again seeking her response, which letter required a response by 9 June 2017;
 - Ms. Gembey did not respond to this letter by 9 June 2017.
6. Ms. Gembey admitted the conduct alleged and she admitted that it constituted professional misconduct. This panel finds that she is guilty of one count of professional misconduct.

7. This panel orders that Ms. Gembey be suspended from the practice of law for a period of not less than fifteen (15) days. The period of suspension shall commence on a date to be fixed by the CEO of the Society. The period of suspension shall conclude on the later of (i) fifteen (15) days after the commencement of the suspension, or (ii) the day Ms. Gembey provides a satisfactory response to the Society to its inquiries of 3 May 2017 and 25 May 2017.
8. This panel orders that Ms. Gembey pay to the Society \$2,500.00 as a contribution to its costs. The payment terms shall be as fixed by the CEO of the Society.

Summary of Agreed Facts (exhibit #2)

9. Ms. Gembey was called to the Manitoba Bar in June 2000. At all times material to these proceedings, she was practicing as a sole practitioner. Her most recent Annual Member Report, being the one filed for the year 2015, describes her practice as being comprised of 80% criminal law, 15% family law and 5% child protection defence.
10. Ms. Gembey has a discipline history.
 - On 6 September 2016 she entered a guilty plea to three counts of professional misconduct, each count relating to a failure to respond to an inquiry or inquiries from the Society or the Complaints Investigation Committee.
 - The Discipline Committee accepted a joint recommendation. It ordered that she be reprimanded on one count, fined \$1,000.00 on two counts, pay costs of \$2,500.00, and practice for two years subject to a condition that a lawyer acceptable to the Society undertake to monitor Ms. Gembey's communications with the Society.
 - On 5 December 2016 she entered a guilty plea to three counts of professional misconduct. One count related to a further failure to respond to an inquiry from the Society. Two counts related to failing to provide courteous, thorough and prompt

service to a client, failing to comply with her duties on termination of a retainer, and failing to take care of client property.

- The Discipline Committee accepted a joint recommendation. It ordered that she be fined \$1,000.00, pay costs of \$2,500.00, and within one year successfully complete a time management course approved by the Society.

11. Pursuant to the Order of September 2016, an undertaking to monitor was provided by Mr. Greg Littlejohn.

12. Pursuant to the Order of September 2016 and pursuant to the discretion granted to the Society's CEO by Rule 2-91, Ms. Gembey is to pay the fines and costs imposed in the Orders of September 2016 and December 2016 at the rate of \$100.00 per month.

13. On 24 April 2017, the Society's Audit Department notified the Complaints Resolution Department of concerns relating to Ms. Gembey. The concerns related to trust account reconciliation deficiencies, and to persistent non-responses and to delays in responses from Ms. Gembey to inquiries from the Audit Department.

14. These concerns became the subject matter of the Society's letters to Ms. Gembey of 3 May 2017 and 25 May 2017.

15. Mr. Littlejohn, in accordance with the monitoring he had undertaken, phoned Ms. Gembey on each occasion to confirm her receipt of each of the letters from the Society and to confirm that she was making an appropriate response.

16. Ms. Gembey did not in fact respond to the Society's letters. The citation of 10 July 2017 issued as a result.

17. As of the date of the hearing on 5 September 2017, Ms. Gembey had not yet responded to the Society's letters.

Additional Facts

18. The Discipline Committee had in its Order of 5 December 2016 ordered that Ms. Gembey successfully complete a time management course within one year. As of the date of the hearing on 5 September 2017, Ms. Gembey had neither completed nor registered for a time management course.

19. On 4 August 2017, Ms. Gembey entered into an Undertaking to the Society (exhibit #3). The Undertaking provides for substantially enhanced monitoring by a practicing member of Ms. Gembey's communications with and responses to the Society. Mr. Greg Littlejohn has agreed to provide the enhanced monitoring (exhibit #4).

Submissions

20. Mr. Kravetsky submitted that a suspension from practice for a "modest period" -- 15 days to 30 days -- was the appropriate penalty. He argued that Ms. Gembey now had a significant record, a record built in a very short time, of failing to respond to the Society. He said that past fines and past monitoring had failed to remedy her conduct. He said that Ms. Gembey was close to showing herself to be ungovernable. He said that the panel needed to send a strong message both to Ms. Gembey and to the profession that responding to the Society was not merely a technical requirement.

He provided to the panel and reviewed a Book of Authorities. He relied on *Nadeau* (Manitoba, 2013) for the general principles which are to guide disciplinary panels, more particularly as those are set out in *Ogilvy* (British Columbia, 1999). He relied on *Gembey* (Manitoba, 2016) and *Wang* (Manitoba, 2015) as decisions which emphasize the importance of the requirement that lawyers respond to requests from their professional governing body. He relied on *Wang* (Manitoba, 2015) and the decisions referred to in it to support his submission that a suspension was a warranted penalty.

21. Ms. Gembey submitted that the Society's position on penalty was too harsh, that a higher fine together with conditions would be a sufficient penalty. She pointed to her clear record from the time of her call to the Bar in 2000 through to 2016. She gave a brief review of her practicing history -- that she had been with the Crown until 2008, a sole practitioner to the end of 2015, then had taken a position with Legal Aid in Northwest Territories starting in January 2016. Things did not work out for her in Northwest Territories and she returned to Winnipeg in May 2016 to restart her practice. This had been a very stressful time for her, she said. As to the present charge, she explained her failure to respond as resulting from her practice getting very busy again and a feeling of being overwhelmed. She pointed out that there were some inquiries from the Society to which she had responded. She said she had met with Mr. Littlejohn more frequently than required by the monitoring condition imposed in September 2016. She said she was working on office management issues, for example, outsourcing some secretarial work. She reviewed some of the *Ogilvy* factors to make the point that her offence did not have an independent victim, and that the nature and gravity of her offending conduct was all things considered not that serious. She relied on the *Wang* decision to support her view that a fine, not a suspension, was an appropriate penalty.

22. A member of the panel asked Ms. Gembey for an explanation of the fact that answers to the Society's inquiries remained outstanding as of the hearing date. Ms. Gembey replied that it was an error in judgment, and that she had lost sight of the fact that it would be easy to respond. She said she would accept as a condition that she provide the information requested.

Analysis and Conclusion

23. Rule 7.1-1 of the *Code of Professional Conduct* provides that "A lawyer must reply promptly and completely to any communication from the Society". The matter before this panel constitutes Ms. Gembey's fifth conviction for a transgression of this mandate. It is worth noting that while the citation cited only one count, the particulars describe a pattern of failures to respond.

24. The transgression occurred notwithstanding the fact that Ms. Gembey's communications with the Society were being monitored by a lawyer acceptable to the Society as ordered by the panel in September 2016.
25. The panel hearing Ms. Gembey's matter on 5 December 2016 noted (at p. 5) "Ms. Gembey is genuinely contrite. We recognized in her submission both her honest acceptance of her actions, and her recognition that she must not permit recurrence of similar failures in future". To this the panel added (also at p. 5) "You acknowledge that what you did was wrong. As a panel, we want to urge upon you the need to meet your professional obligations and to cooperate with The Law Society of Manitoba. The panel is hopeful that this hearing, combined with the previous hearing, and the results flowing from these hearings, are enough to impress this upon you". Notwithstanding Ms. Gembey's "honest acceptance" and "genuine contrition" in December 2016 and the December panel's urging on her the need to cooperate with the Society, a few months later she was again failing to respond to inquiries from the Society.
26. The December 2016 panel described (at p. 5) the aggregate fines and costs imposed on Ms. Gembey (\$2,000.00 in fines and \$5,000.00 in costs) as being "an onerous penalty for her in her circumstance". An onerous financial penalty was not sufficient to motivate Ms. Gembey to comply with the *Code* mandate.
27. Ms. Gembey had not, by the time of the hearing, responded to the Society. The fact that she had not done so was of and in itself deeply worrying. But moreover, it undermined entirely her argument, referencing the *Ogilvy* factors, that her offence did not have an independent victim and was of a relatively minor nature. The persuasiveness of the argument presupposed that she had done what she manifestly had not done, namely the providing to the Society of responses to its inquiries. Without the responses, neither the Society nor this panel can judge who has been harmed, and the nature and extent of that harm.
28. Finally, Ms. Gembey's explanation for her persisting failure to respond was confounding. To brush the failure off as an error of judgment and then to invite this panel to order that she

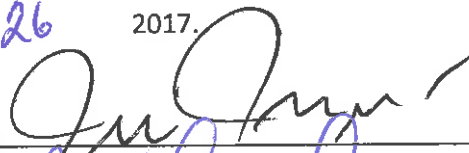
provide the information, displayed a deep misunderstanding both of the nature of her ethical responsibility and of her legal jeopardy by her ongoing breach.

29. These factors, in this panel's view, justify an apprehension that Ms. Gembey is at risk of being ungovernable. We conclude we have no alternative but to order a suspension. The suspension shall be for not less than fifteen (15 days). It will be longer if Ms. Gembey does not provide the required responses to the Society.

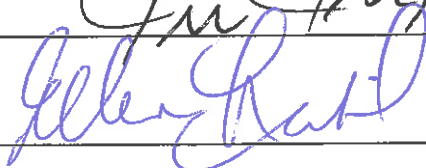
30. The minimum suspension period would have been longer were it not for Ms. Gembey's clear record before 2016 and the fact that Ms. Gembey has voluntarily entered into an enhanced monitoring undertaking with the Society. These factors give this panel the hope that a brief suspension will accomplish the purpose of impressing on Ms. Gembey the necessity of compliance with Rule 7.1-1 of the *Code*.

31. Both Mr. Kravetsky and Ms. Gembey referenced the *Wang* decision. Ms. Wang was fined \$5,500.0 together with costs of \$2,000.00. She was convicted of two counts of professional misconduct, one count for failure to respond to the Society and one count for breach of undertaking to the Society. The decision is valuable in its extensive review of other decisions, in Manitoba and in other jurisdictions, involving breaches of the duty to respond to a professional governing body. The case is also readily distinguishable from the case before this panel. Ms. Wang, unlike Ms. Gembey, was in effect a "first offender". Ms. Wang, unlike Ms. Gembey, had in substance remedied the wrong she committed prior to her matter being heard by a discipline committee panel. Thus, in our view, *Wang* reinforces our conclusion that a brief suspension is the appropriate remedy.

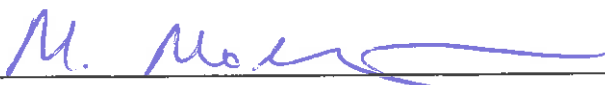
Dated September 26 2017.



(Jacob P. Janzen, Chair)



(Ellen Leibl, Q.C.)



(Maureen Morrison (PR))