

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

DANIEL PAUL ORLIKOW

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

Date of Hearing: February 21, 2018

PANEL:

RICHARD I. GOOD (Chair and Member of the Law Society)

PATRICIA FRASER (Member of the Law Society)

LORNE GIBSON (Public Representative)

COUNSEL: ROCKY KRAVETSKY for The Law Society of Manitoba ("Law Society")

COUNSEL: ALLAN FINEBLIT, Q.C. for Daniel Paul Orlikow

**REASONS FOR DECISION OF DISCIPLINE COMMITTEE AT THE HEARING OF
FEBRUARY 21, 2018**

The Panel delivered its decision on February 21, 2018 subject to the written reasons which now follow.

We thank experienced counsel for their helpful submissions.

By Amended Citation dated May 23, 2017 Mr. Orlikow has been charged that while representing his client in a family law litigation matter in September and October of

2016, he acted contrary to Rule 3.2-1 of the *Code of Professional Conduct* by failing to provide her with legal services in a competent, timely, conscientious, diligent, efficient and civil manner. Two items of particulars have been alleged in the Amended Citation: a) that Mr. Orlikow made a settlement proposal to opposing counsel and then entered into a settlement agreement without ensuring that his client understood the proposal and without confirming her instructions in writing; and b) on September 14, 2017 he was uncivil with his client during a telephone call about the case in that he was unduly aggressive, raised his voice and was otherwise rude.

A Statement of Agreed Facts and Joint Submission, together with the Amended Citation, was tendered as Exhibit 1.

In the Statement of Agreed Facts and Joint Submission Mr. Orlikow admitted those facts and entered a guilty plea to all charges in the Amended Citation which was confirmed by both counsel during their oral submissions.

Accordingly, this Panel finds and resolves that the foregoing facts are proved and in their entirety, constitute professional misconduct.

In respect of the joint submission on penalty or sentence, we are of the view that the particulars set forth in item a) of the Amended Citation are particularly troubling, especially since another lawyer sharing office space with Mr. Orlikow stated that the client had difficulty accepting legal advice. This highlighted the necessity that Mr. Orlikow ensure that his client understood any settlement proposal and that he obtain written instructions on any settlement agreement. As stated in item b) of the particulars civility and a calm demeanour with a client are important also, especially in circumstances fraught with emotion. The joint submission calls for a reprimand and a contribution of \$2,500 to the costs of the Law Society.

The *Anthony-Cook* decision of the Supreme Court of Canada, cited by the Law Society in its Book of Authorities, is clear that the public interest test applies when a court is determining whether a joint recommendation of counsel is an appropriate disposition of sentence. We are of the view that the test and the principles in that case should be applied to a joint submission made at a Law Society discipline hearing. Therefore, we accept the proposition that there is a very high bar to a rejection of a joint submission ‘ - - - unless the proposed sentence would bring the administration of justice in disrepute or would otherwise be contrary to the public interest.’ Under section 3 of the *Legal Profession Act* we are obliged to uphold and protect the public interest in the delivery of legal services. The joint submission in this matter satisfies that mandate and falls within an appropriate range of sentences in these circumstances.

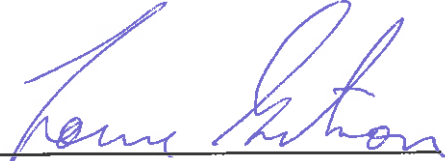
Therefore, Mr. Orlikow we hereby reprimand you for your professional misconduct and order that you pay to the Law Society the sum of \$2,500 as a contribution toward its costs in this matter, at a time to be determined by the Chief Executive Officer of the Law Society.

We note that Mr. Orlikow had previously held an unblemished record for 30 years and hope that from the circumstances of this matter, he will continue his practice without any disciplinary problems in the future. We wish him good luck in that respect.

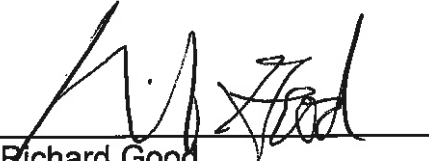
Signed at the City of Winnipeg, in the Province of Manitoba on this 21st day of February, 2018.



Patricia Fraser
Member of the Law Society of
Manitoba



Lorne Gibson
Public Representative



Richard Good,
Chair and Member of the
Law Society of Manitoba