Citation: The Law Society of Manitoba v Alghoul, 2018 MBCA 23

Date: 20180308
Docket: AI17-30-08839

IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice Michel A. Monnin
Madam Justice Holly C. Beard
Madam Justice Janice L. leMaistre

BETWEEN:

THE LAW SOCIETY OF MANITOBA	)	***K. D. Toyne*** *for the Appellant*
(Applicant) Respondent	)	***R. H. Kravetsky*** ✓ *for the Respondent*
- and -	)	
LOUAY RUSTOM ALGHOUL	)	*Appeal heard:* ***December 12, 2017***
(Respondent) Appellant	)	*Judgment delivered:* ***March 8, 2018***

On appeal from 2016 MBLS 17

LEMAISTRE JA

[1] The respondent appeals a finding of professional misconduct by a Panel of the Discipline Committee of the Law Society of Manitoba (the Panel). He also appeals the imposition of a reprimand and costs.

[2] For the reasons that follow, I would dismiss the appeal.

Background

[3] An adjudicator required information from the respondent, a lawyer, who represented a claimant under the Indian Residential Schools Independent Assessment Process. She sent the respondent four separate email messages

between August 22, 2013 and October 1, 2013 (the email messages), requesting his time records and other information. The respondent did not respond to the email messages. In March 2014, the adjudicator contacted a member of the respondent's firm about the information she required and she received the time records the next day. After reviewing the time records, the adjudicator believed that the respondent had misled her during submissions and she made a complaint to the Law Society of Manitoba (the LSM).

[4] Pursuant to rr 5-64(2) to 5-64(4) of the *Rules of the Law Society of Manitoba*, the LSM wrote to the respondent, advised him of the complaint and requested his response, in writing, within 14 days. The respondent provided a written response dated April 24, 2014, in which he stated that he was out of the country, he did not knowingly mislead the adjudicator and the adjudicator's email messages came during a stressful time after the death of a member of his firm. He acknowledged that "[his] office made a mistake due to poor communication" and "owe[d] [the adjudicator] an apology".

[5] After conducting an investigation, the LSM issued a citation alleging that the respondent had committed professional misconduct by failing to respond to the email messages from the adjudicator.

[6] After being served with the citation, the respondent retained counsel who advised counsel for the LSM, in writing on October 15, 2015, "I'm advised by [the respondent] and [a member of his firm] that when [the adjudicator] sent the email request for time records, the emails were amongst hundreds of emails that [the respondent] received while he was away on business travel."

[7] The respondent represented himself at the discipline hearing. The day before the hearing, almost two years after the complaint was made, the respondent told counsel for the LSM that he had not received the email messages from the adjudicator. At the hearing, the respondent led evidence in an attempt to establish that the adjudicator sent the email messages to an old email address, the messages went to a junk folder and the respondent did not discover the messages in the junk folder until just prior to the hearing.

[8] The Panel relied on the respondent's letter of April 24, 2014 to the LSM and his counsel's email of October 15, 2015 to the LSM, to find that the respondent had received the email messages. It also found that, once the LSM had proven that the email messages were sent and received with no response by the respondent, he bore the onus of proving that he did not receive the email messages, which he failed to do. In the end, the Panel found that the respondent's conduct was discourteous and disrespectful and constituted professional misconduct.

[9] The respondent retained counsel for the disposition hearing (not the same counsel who represented him prior to the discipline hearing). At the disposition hearing, counsel for the respondent argued that the appropriate penalty would be a costs order in the amount of $10,000 to $15,000 without any additional sanction or, alternatively, that the Panel ought to impose an "[i]nvitation to [a]ttend" (2016 MBLS 17, disposition decision at para 22) rather than a penalty. He described an invitation to attend as an Ontario procedure involving an appearance by the respondent before a Panel of the Discipline Committee for "a talking to" (*ibid* at para 21). The Panel found that, even if an invitation to attend was an available disposition (which it left undetermined), it would not be an appropriate disposition in this case and,

instead, issued a reprimand (see para 20 herein). The Panel also ordered that the costs of the proceedings (as calculated by counsel for the LSM) be borne by the respondent.

Issues

[10] The respondent's notice of appeal lists 11 grounds of appeal which can be summarized as follows:

1. Did the Panel err in finding that the respondent received the email messages?

2. Was the Panel's finding that the respondent's conduct was discourteous and disrespectful reasonable?

3. Were the Panel's reasons for finding the conduct was discourteous and disrespectful adequate?

4. Was the Panel's finding of professional misconduct reasonable? and

5. Was the penalty imposed reasonable?

[11] The respondent asserts that the first two explanations he gave for his failure to respond were provided before he realized that the email messages had gone to his junk folder. He argues that his evidence at the hearing rebutted any prior admission and established that he did not receive the email messages. He also argues that his failure to respond did not constitute conduct that is discourteous or disrespectful and that the Panel's reasons for this finding were inadequate. He says that, if his conduct was discourteous or disrespectful, it was not serious enough to warrant a finding of professional

misconduct. As for the penalty imposed, the respondent contends that a reprimand was too harsh for minor breaches of civility rules. Regarding the award of costs, the respondent argues that the Panel erred when it ruled an unsworn statement inadmissible, that this significantly increased the amount of time required for the hearing and that he should not bear these additional costs.

[12] In response to the assertion that the reasons were inadequate, the LSM argues that the Panel did not address in its reasons arguments that were not made during the hearing and that its reasons were clear. The LSM also argues that the Panel's findings of fact were supported by the evidence, and its conclusions with respect to the respondent's conduct and the appropriate penalty were reasonable.

Discussion

[13] This Court may only interfere with the Panel's findings of fact and credibility and drawing of inferences where the findings are unreasonable (see *Ahmed v College of Registered Nurses of Manitoba*, 2017 MBCA 121 at paras 16, 18; and *Luk v Law Society of Manitoba*, 2011 MBCA 78 at para 9). I have not been persuaded that there is any basis for appellate intervention with respect to the Panel's findings of fact and credibility and its drawing of inferences.

[14] In my view, it was open to the Panel to find on the evidence that the respondent had received the email messages. The respondent admitted receiving them in his April 24, 2014 response to the LSM and through his counsel who confirmed the email messages had been received. The Panel was

entitled to reject the respondent's explanation at the hearing and accept the evidence from which it inferred that the email messages had been received.

[15] The Panel's findings of professional misconduct and its decision to impose a reprimand and costs are reviewable on a standard of reasonableness. This is a deferential standard of review to determine if the result falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47). See also *Doolan v Law Society of Manitoba*, 2016 MBCA 57 at paras 61-63.

[16] As for the adequacy of the Panel's reasons, in *The Law Society of Manitoba v Cherrett*, 2016 MBCA 119, Hamilton JA wrote (at para 12):

> The panel was not required to refer to all of the evidence in its reasons. As Abella J stated in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 (at para 16):
>
> > Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, [1975] 1 S.C.R. 382, at p. 391). In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190) criteria are met.

See also *Doolan* at para 63.

[17] The respondent conceded during submissions that, if he had received, read and then ignored the email messages, he would be guilty of professional misconduct. Moreover, he agreed that the first two explanations he gave for not responding to the email messages, if true, would constitute professional misconduct.

[18] The Panel found that the respondent's conduct fell below the standard expected of him by his governing body and that his conduct amounted to professional misconduct. In my view, this finding was reasonable on the evidence. The adjudicator's evidence was that she sent the respondent four email messages requesting information that she required to conclude a legal fee review. She also testified that, because her messages went unanswered, she did not receive the respondent's time records for five months; she did not believe that she received the other information requested; she had not been able to complete the fee review; and she was no longer an adjudicator.

[19] The LSM argues that the respondent's conduct involved a continuing failure to treat a tribunal with candour, courtesy and respect and that it interfered with the adjudicator's ability to conclude the hearing. The LSM further submits that the respondent's conduct impacted on the fairness of the proceedings and whether justice would be done. I agree. In my view, the finding of professional misconduct was reasonable and was open to the Panel, when considered in the context of the evidence. Moreover, when considered in light of the submissions, the Panel was not required to provide more detailed reasons as to why the respondent's failure to respond to the email messages was discourteous and disrespectful and amounted to professional misconduct.

[20] Without deciding whether it had the jurisdiction to issue an invitation to attend, the Panel determined that it would not be an appropriate disposition in the circumstances of this case. The respondent asserts that the Panel ought to have confirmed the availability of the invitation to attend in Manitoba and that this was the appropriate disposition in this case. Alternatively, he asserts that the imposition of costs alone would have been appropriate. I disagree. Having decided that a reprimand was the appropriate sanction, there was no need for the Panel to consider whether an invitation to attend is available in Manitoba. Moreover, in my view, the Panel's decision to impose a reprimand was reasonable.

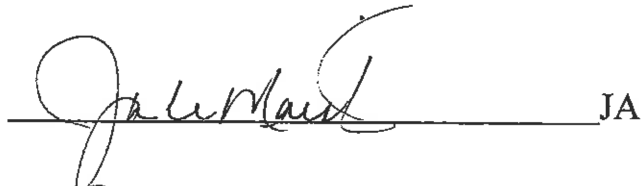
[21] Section 72(1) of *The Legal Profession Act*, CCSM c L107 provides broad discretion regarding the imposition of a penalty for professional misconduct (see *Mackinnon v Law Society of Manitoba*, 2011 MBCA 36 at para 6). The Panel considered the following factors when determining that a reprimand was warranted: a reprimand is at the lower end of the spectrum in terms of penalties available; the respondent had no previous discipline record; a reprimand brings with it serious consequences for lawyers; and there was a need to remind the respondent and the profession generally of the LSM's expectations regarding responding to communications from an adjudicator. In my view, reliance on these factors was appropriate and the reprimand imposed "fell within a range of outcomes that was defensible on the facts and the law" (*Smith v Law Society of Manitoba*, 2011 MBCA 81 at para 55).

[22] The Panel found that the proceedings were prolonged because of the defence asserted by the respondent and made a costs award in the amount of $28,000. This was the calculation of costs offered by counsel for the LSM. The Panel concluded that the defence was revealed at the last minute; the

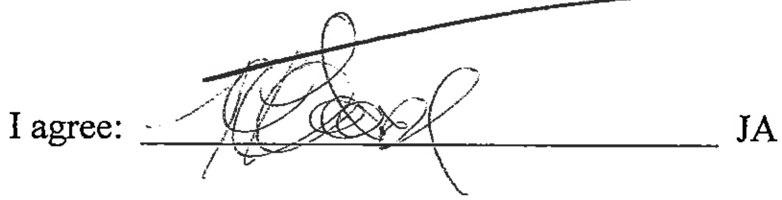
respondent attempted to introduce inadmissible evidence and then decided to call further witnesses which required additional time for the hearing; and, ultimately, the respondent failed to establish what he sought to prove by this evidence. I have not been persuaded that the costs award, while high, was unreasonable in the circumstances of this case, nor do I find support in the evidence for the respondent's contention that the Panel was responsible for prolonging the hearing by refusing to admit the unsworn statement from his witness.

Conclusion

[23] In my view, the respondent has not demonstrated that the Panel's finding of professional misconduct and its decision to impose a reprimand and $28,000 in costs were unreasonable, nor has he demonstrated that the Panel's findings of fact and credibility were unreasonable. Finally, I am not persuaded that the reasons were inadequate. Accordingly, I would dismiss the appeal with costs.


JA

I agree: JA

I agree:  JA