

**THE LAW SOCIETY OF MANITOBA**

**DISCIPLINE COMMITTEE**

IN THE MATTER OF:

**SHELLEY LOREEN OVERWATER (“the former Member”)**

- and -

**THE LAW SOCIETY OF MANITOBA (“the Society”)**

***Application for Reinstatement under Rule 5-102 of the Rules of the Law Society of Manitoba***

**Hearing Date:** August 21, 2019

**Panel:** Grant Mitchell, Q.C. (Chair)  
Lori Ferguson Sain, Q.C.  
Maureen Morrison (Public Representative)

**Appearances:** Rocky Kravetsky, Counsel for the Law Society of Manitoba  
Shelley Overwater, Self Represented

**REASONS FOR DECISION**

***Introduction:***

1. The former Member applied for reinstatement after being permitted in 2015 to resign as a member in the face of previous charges that arose from events in 2011-2012. The impetus for this application was an offer to the former Member from a reputable rural Manitoba law firm (“MMJS”) to return to practice as an employed lawyer in Morden under its training and supervision.

2. The former Member is 59 years old, and has experienced an extraordinary number of challenges in her life. She became an alcoholic and a drug user while a teenager, and left school after completing Grade 10. Just after obtaining her high school diploma in Winnipeg, she moved to Thompson, Manitoba in 1989 with her then husband and worked at various jobs. She separated from her husband in 1997 because of her alcohol and drug abuse. She was convicted of impaired driving in 1997. Later that year, she entered a common-law relationship in Thompson. She was charged with assault at the tavern where she was working and received a conditional discharge in 1998. Following the assault incident, she

entered a rehabilitation program and has remained drug and alcohol-free since December 26, 1998. She divorced her first husband in 2006.

3. The former Member obtained a Bachelor of Social Work degree in 2004, taking courses in Thompson, and in 2006, she began studying Law at the University of Manitoba in Winnipeg, graduating in March 2010. She immediately began articling in Morden, Manitoba with Gordon Hoeschen, completing her articles in March 2011. Mr. Hoeschen sold his practice in July 2010 to PKF, a Winnipeg firm. Upon completion of her articles to PKF, she was not offered an associate position and opened her own law office as a sole practitioner. Her practice in Morden grew quickly and she opened a second office in nearby Winkler in September 2011. By June 2012, she had approximately 700 active files between the two offices, performing a wide range of legal services with the support of a bookkeeper and three assistants.

4. On February 29, 2012, the former Member informed the Society that her pooled trust account was short \$66,500, because she had written a cheque in that amount to a renovation contractor who had been working at the Winkler office. The former Member had been aware of the shortage of trust funds since at least early January 2012. At the time of the contractor cheque, the former Member was also indebted to RBC for the acquisition of various equipment for her practice. The former Member gave undertakings to the Society during the investigation process, some of which she did not comply with. She did, however, repay the entire trust account shortage by February 26, 2013.

5. By Order of the CIC, the former Member was suspended from practice on June 13, 2012, and she has not practised since then. In the face of two Citations from the Society, the former Member, through her legal counsel at the time, negotiated a joint recommendation that she be permitted to resign her membership and that she pay \$15,000 in costs. The Society undertook not to oppose an application for reinstatement made after at least two years, and that the Society would not seek to recover the costs until the former Member resumed the practise of law. That joint recommendation was accepted by a panel of the Discipline Committee on March 26, 2015.

6. The former Member married her common-law partner in August 2012, but shortly after, he was diagnosed with a terminal illness and died in January 2013. The former Member suffered a broken leg in April 2013 that required surgery. She received \$50,000 as compensation for her injury and used the entire amount to pay down her indebtedness to the Society. She was diagnosed in August 2015 with lung cancer. Following surgery flowing from that diagnosis, she has been determined to be cancer free. She had knee surgery in 2016 and continues to have difficulty with that knee, for which she is receiving treatment. In December 2018, the former Member married a Morden businessman.

7. Since leaving practice, the former Member has held various jobs, including long haul truck driving and she continues to hold her truck license. She has also completed the Manitoba Real Estate Salesperson course. Her knee problems prevent her from continuing in her most recent employment.

***Criteria for Reinstatement:***

8. The Society's Rules address reinstatement, whether after disbarment or resignation, in Rule 5-102(2) by requiring the applicant to file a declaration that states:

- “(a) the character, conduct, habits of life, particulars of employment and means of livelihood of the applicant since she ceased to be a member of the Society;*
- (b) the applicant’s present financial position;*
- (c) that restitution of any property and payment of all money that was misappropriated or converted by the applicant has been made, or the reason why restitution or payment has not been made;*
- (d) that the applicant has paid back to the Society any money paid out of the reimbursement fund for any misappropriation or conversion by the applicant;*
- (e) the source from which and the manner in which money was obtained by the applicant in order to make the payments in clauses (c) and (d);*
- (f) particulars of any other matters that might be the subject of a complaint to the Society;*
- (g) payment of all money owing by the applicant to the Society or a proposal for repayment acceptable to the chief executive officer;*
- (h) that the applicant has not, since she ceased to be a member of the Society, contravened any provision of the Act; and*
- (i) such other material as the Society may require.”*

Counsel for the Society confirmed that the Declaration filed by the former Member met all of the above criteria.

9. In addition to the matters outlined in the Rule above, the jurisprudence has established certain further criteria to be considered in an application for reinstatement. These have been stated in various cases, but counsel for the Society used a relatively recent precedent from a Society Discipline Committee decision (*Ralph Lawrence Gutkin* (November 19, 2010)):

- (a) “Applicants must show by a long course of conduct that they are persons to be trusted, who are in every way fit to be lawyers.”*

Looking at the former Member’s personal, educational and professional history, counsel for the Society submitted that the former Member met this test in every respect. He pointed to her persistence in improving her education; her resilience in pursuing a wide variety of occupations, despite her age and physical challenges; the loyalty that she had engendered in the staff who had worked with her in her office, as reflected in reference letters that many had submitted in support of the application; her continuing commitment to rehabilitation of her addiction, as reflected in her continuing commitment to attend Alcoholics Anonymous and her over 20 years of sobriety; and the fact that the money that was inappropriately paid out of her trust account was paid to discharge a debt to a contractor at a time when the former Member did not realize that this was not permitted under the Society’s trust account rules. Counsel

also commented on the time lapse of over seven (7) years since the misconduct, and four (4) years since the Discipline Committee accepted her resignation, despite the fact that the previous panel that allowed the former Member's resignation had required only a two year delay. Ultimately, counsel pointed to the complete candour demonstrated by the former Member, in acknowledging and taking responsibility for her misconduct, the mistakes in her personal life, and her obligations to make restitution.

- (b) *"Applicants must show that their conduct is unimpeached and unimpeachable, and this can only be established by evidence of trustworthy persons, especially members of the profession and persons with whom applicants have been associated since disbarment."*

On this issue, counsel for the Society pointed particularly to the members of the MMJS firm who have been made fully aware of the former Member's entire history, as outlined in this decision, and yet have shown complete confidence in encouraging her to seek reinstatement, even though employing her will require them to support training for her and for MMJS to provide substantial supervision of her.

- (c) *"Applicants must show that a sufficient period of time has elapsed before an application for readmission will be granted."*

Counsel for the Society indicated that the former Member might well have applied for readmission sooner than she did, given all of the relevant circumstances, but that in light of the two years indicated by the Discipline panel in 2015, more than sufficient time had elapsed. A longer period would almost certainly have been required had the former Member been disbarred rather than resigning with permission.

- (d) *"Applicants must show that they have entirely purged their guilt."*

Counsel for the Society points out that the former Member has never disputed her guilt and has always accepted full responsibility for her actions, even though her circumstances at the time of the misconduct put her in a very vulnerable situation for falling into error. She was left to practise on her own, in a wide-ranging practice in a smaller community, and a large caseload, all immediately after completing her articles. Still, she offers no excuses and possibly blames herself more than others might. She has not only thoroughly learned her lesson from the discipline experience, but she is proposing to enter a situation where the scope of her practice will be very limited, and she will have no input on the financial aspects of the work she will be doing. The public will be well-protected. Further, and considering the principles outlined in the *Gutkin* decision, she has suffered substantially as a result of her resignation, and she has made impressive efforts to ensure that restitution was made at the earliest reasonable opportunity.

- (e) *"Applicants must show by substantial and satisfactory evidence that it is extremely unlikely that they will misconduct themselves if permitted to resume practice."*

Counsel for the Society acknowledges that this requirement is one of the most difficult to meet, for any applicant. However, in the former Member's case, she has through her conduct and attitude throughout the time since her misconduct in 2011-12, done as much as anyone could to reassure the Society that she does not pose any undue risk of reoffending if allowed to resume practice. This panel agrees with his assessment on this point.

- (f) *“Applicants must show that they have remained current in the law through participating in continuing legal education since the termination of their membership in the Society, or that they have a plan acceptable to the Society that will enable them prior to readmission to become sufficiently current in the law to fulfill their responsibilities as lawyers.”*

Counsel for the Society points out that since her resignation, the former Member has successfully completed the real estate sales course and is a relatively recent (in all the circumstances) graduate of the CPLED course. Furthermore, the conditions which the Society has proposed and the former Member has accepted for her readmission to practice sufficiently address the issue of current legal knowledge. The biggest changes in the law since 2012, Society counsel submitted, were in the fields of criminal, family and civil litigation law, and the former Member will not be providing services in any of these areas. MMJS has stated plans to limit her work to real estate, with a gradual expansion into other areas of solicitor’s work, as she gains experience.

In sum, counsel for the Society submitted that the former Member meets all of the criteria from the *Gutkin* case set out above.

***Proposed Conditions of Readmission:***

10. The Society does not oppose the reinstatement of the former Member, provided that reinstatement is on conditions as set out in the Statement of Agreed Facts. Counsel for the Society submitted to us that in light of the fact that the Society proposed these conditions after a thorough review of the history of this matter, and a full dialogue with the MMJS firm, and having obtained the agreement of the former Member to all of these conditions, the proposed conditions have similar impact on the panel as a joint recommendation in a discipline case would have. We accept that proposition.

11. The conditions are as follows:

1. The former Member will not be issued a practising certificate until she has completed, and has provided to the Society a Certificate in the form provided by the Society, that she has completed the following reading:
  - a. *The Legal Profession Act, Code of Professional Conduct and Rules of the Law Society of Manitoba; and*
  - b. The Manitoba Resource Materials, which is to say the materials used by students in the most recent Bar Admission class.
2. For a minimum period of one year, she must practise as an employee in a firm, government or corporate setting approved by the Society (which, to be clear, means that during this period any change of practising arrangement must be approved by the Society – MMJS is an acceptable employer).
3. For a minimum period of one year, she must not operate or have authority over any trust account, and in particular must not have authority to issue or sign cheques or to withdraw or cause to be withdrawn any money from any trust account.

4. For a minimum period of one year, she must practise under the supervision of a lawyer approved by the Society, who must be a member of the same entity by which she is employed (Mr. Johnston is proposed as her supervisor, and is acceptable).
5. There will be in place a written Undertaking of the Supervisor by which the Supervisor undertakes to supervise the former Member's practise of law and to:
  - a. report to the Society no less frequently than every three months as to his supervisory activities, including concerns that have arisen and how those concerns were dealt with;
  - b. for the first three months, no less frequently than every second week, review with her all of her files and upon such review provide such directions as may be required;
  - c. thereafter, no less frequently than every second week, review with her a random representative sample of her files, but in any event no less than 10 of them, or all if there are less than 10, and upon such review provide such direction as may be required and conduct such further review and follow up as the circumstances may suggest is necessary;
  - d. notwithstanding the discontinuance of general Supervision, for a period of at least one year after she has been granted signing authority on any trust account, the Supervisor shall review all trust ledgers that pertain to her files no less frequently than monthly and, if necessary, take appropriate corrective action and report any significant events to the Society;
  - e. not to withdraw from the Undertaking except on 30 days' notice to the former Member and the Society unless earlier released by the Society.

12. The former Member confirmed in the hearing before the panel that she agrees with all of these conditions. Documents filed with the panel also indicate that the MMJS firm agrees to abide by the obligations of supervision as set out in the above conditions. This panel is satisfied that the public will be protected by these conditions.

13. Near the conclusion of the hearing before the panel, an August 20, 2019 medical report on the former Member was entered as an exhibit. This document was volunteered by the former Member, and was not required by the Society. The report confirms that the former Member has a medical condition, but also confirms that the symptoms have been well controlled with current medical treatment. The panel asked counsel for the Society whether a condition requiring medical updates would be appropriate, and counsel persuasively submitted that given the former Member's history and conduct since 2012, she poses no material medical risk any greater than any other member of the Society might pose. On that basis, no additional condition of this type was requested, and none is ordered.

14. In conclusion, and for the reasons stated above, this panel of the Discipline Committee orders that the former Member be readmitted to practice on the conditions outlined above. We thank counsel for the Society, who did an excellent job of providing a fair and thorough

analysis of the issues in this case, and we thank the former Member for her complete cooperation throughout.

DATED this 11<sup>th</sup> day of September, 2019.

  
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Grant Mitchell, Q.C.

  
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Lori Ferguson Sain, Q.C.

  
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Maureen Morrison