

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

**ADELINE LORRAINE DEGNER
(the “member”)**

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

Hearing Date: September 25, 2019

Panel: Wendy A. Stewart (Chair)
Gerrit M. Theule
Marston Grindey

Counsel: Rocky Kravetsky for the Law Society of Manitoba
Member Self-Represented

REASONS FOR DECISION

Introduction:

1. This is a decision by a panel of the Discipline Committee of the Law Society of Manitoba following a hearing as to sentence. We were informed in advance of the hearing that Ms. Degner was entering pleas of guilty to the two counts of the Citation.
2. Adeline Lorraine Degner is a member of The Law Society of Manitoba, (“the Society”), having been called to the Bar and admitted as a solicitor on June 15, 2000. Ms. Degner, in the Statement of Agreed Facts with which we were provided, acknowledged her membership in the Law Society of Manitoba, acknowledged service of the Citation, and indicated that she had no objection to any member of the panel.
3. Ms. Degner was charged in a Citation (“the Citation”) dated April 17, 2019 with two counts of professional misconduct for
 - i) failing to provide service that was competent, timely, conscientious, diligent, efficient and civil; and
 - ii) failing to answer with reasonable promptness to communications from another lawyer.
4. Specifically, Ms. Degner is charged with i) failing to respond to email messages from her clients over the course of two months in an estate matter and also failing to respond to an email from the Society; and ii) failing to respond to two emails and three voice mails from another lawyer on another estate matter.

5. Ms. Degner entered a guilty plea to both of the two counts of professional misconduct set out in the Citation. The panel was presented with an Agreed Statement of Facts and a joint recommendation that had been negotiated by counsel for the Society and Ms. Degner. The joint recommendation asks the panel to make an Order that Ms. Degner:

- a) Pay a fine to the Society of \$3,000.00;
- b) Pay the sum of \$3,000.00 as a contribution to the Society's costs; and
- c) At her own expense, within three months of it becoming available, take and successfully complete a Practice and Time Management Course set by the Society.

6. Ms. Degner has a prior Discipline record from 2017 for similar offences. At that time she entered guilty pleas to five counts of professional misconduct and was fined \$1,500.00 and required to pay costs to the Society in the amount of \$6,500.00. She was also required to successfully complete a Time Management Course of her own choosing but which was acceptable to the Society.

Submissions:

7. The panel heard submissions as to disposition by both Mr. Kravetsky for the Society and by Ms. Degner on her own behalf.

8. The panel accepts Ms. Degner's guilty pleas and finds that she is guilty of two counts of professional misconduct. For the reasons which follow, we find that the joint recommendation presented by counsel and the member is appropriate.

9. The Supreme Court of Canada case of *Anthony-Cook v. Her Majesty the Queen*, 2016 SCC 43, deals with circumstances in which a judge (or a tribunal such as this one) can depart from a joint recommendation as to sentence. Writing for the court, Moldaver J. writes that the applicable test is the public interest test, explaining that "under the public interest test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest".

10. In *Anthony-Cook*, Moldaver J. quoted the case of *R v. Druken*, 2006 NLCA 67, 261 Nfld. & P.E.I.R. 271, which provided that to be contrary to the public interest means that the joint submission is so "markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning of the criminal justice system" and then added, colourfully, "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 – and for good reason."

11. This test has been followed in Manitoba in such cases as *The Law Society v. Orlikow*, 2018 MBL 1, and *The Law Society of Manitoba v. Sullivan*, 2018 MBL 9.

12. Counsel for the Society also referred us to the factors outlined in *The Law Society of British Columbia v. Ogilvie* [1999] L.S.D.D. No. 45, [1999] LSBC 17, Discipline case Digest 99/25, in which

a Discipline panel of the Law Society of British Columbia set out a number of factors to be considered at disciplinary hearings:

- (a) The nature and gravity of the conduct proven;
- (b) the age and experience of the respondent;
- (c) the previous character of the respondent, including details of prior disciplines;
- (d) the impact upon the victim;
- (e) the advantage gained or to be gained, by the respondent;
- (f) the number of times the offending conduct occurred;
- (g) whether the respondent had acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;
- (h) the possibility of remediating or rehabilitating the respondent;
- (i) the impact on the respondent of criminal or other sanctions or penalties;
- (j) the impact of the proposed penalty on the respondent;
- (k) the need for specific and general deterrence;
- (l) the need to ensure the public's confidence in the integrity of the profession; and
- (m) the range of penalties imposed in similar cases.

The Ogilvie decision has been followed in Manitoba in the case of *The Law Society of Manitoba v. Nadeau*, 2013 MBL 4.

13. Mr. Kravetsky analyzed the *Ogilvie* factors, pointing out that

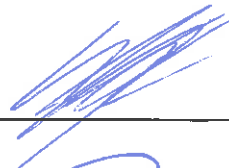
- (a) the nature and gravity of Ms. Degner's offences are at the lower end of severity as compared to other matters which come before Discipline panels.
- (b) Ms. Degner is an experienced lawyer, but these instances of misconduct arose when she left practice with a firm after a very difficult time and set up practice on her own.
- (c) This is a second offence, and therefore the penalty being suggested is more severe than that imposed by the panel which sentenced Ms. Degner in 2017. The fine is higher and the remedial provision of the penalty is stricter this time, which, it is hoped, will correct what failed after the last disposition.
- (d) The issue of victim impact is minimal in this case. Mr. Kravetsky pointed out that the clients of Ms. Degner are disappointed in the legal profession, but there is no evidence that any actual harm was done to them.
- (e) No advantage was gained by Ms. Degner and in fact, as she lost a client, she suffered an economic loss.
- (f) The conduct was repeated in a series of offences.
- (g) Ms. Degner has acknowledged the misconduct by her guilty plea. There is nothing to be done in terms of redressing any wrong done.
- (h) The joint recommendation has a remediating aspect to it in the education program that Ms. Degner will be required to complete. She has indicated a willingness to complete the program and wishes and intends to manage her practice well in future.
- (i) and (j) There is a significant financial impact upon Ms. Degner. With the fine, costs and the price of the education program, this matter will cost Ms. Degner something in the range of \$7,000.00.
- (k) Specific and general deterrence are met with this disposition, as Ms. Degner will feel the impact of the financial penalty, and members generally will review the Discipline Case Digest and these reasons and thus be deterred from similar conduct.

- (l) the guilty plea, financial penalty and remedial education requirement should ensure the public's confidence in the integrity of the profession.
- (m) Mr. Kravetsky pointed out a few cases with similar facts, including *The Law Society v Stienstra*, 2016 MBLs 13, *The Law Society of Manitoba v Mayer* 2011 MBLs 10 and *The Law Society of Manitoba v Mayer*, 2015 MBLs 4, and submitted that the joint recommendation in this case is within an acceptable range for misconduct of this sort, bearing in mind that this is a second offence, the nature of the charges, the remedial aspect of the disposition and the circumstances of Ms. Degner's practice.


Disposition

14. Mr. Kravetsky submitted that this joint recommendation meets the public interest test from the *Anthony-Cook* case, and we agree. We therefore order that a penalty be imposed upon the member in accordance with the joint recommendation set out in paragraph 5 above.
15. We were advised that there was no need to address the issue of time to pay.
16. Our thanks to counsel for their submissions and for the obvious cooperation involved in this matter.

DATED this 28th day of October, 2019.



Wendy A. Stewart



Gerrit M. Theule

Marston Grindey