



DISCIPLINE CASE *DIGEST*

Case 15-06

Member:	Barry Lee Gorlick, Q.C.
Jurisdiction:	Winnipeg, Manitoba
Called to the Bar:	June 26, 1980
Particulars of Charges:	Professional Misconduct (15 Counts): <ul style="list-style-type: none">▪ Breach of Chapter 2 of the former <i>Code of Professional Conduct</i> [quality of service]▪ Breach of Chapter 16 of the former <i>Code of Professional Conduct</i> [duty to lawyers (conduct)]▪ Breach of Rule 2.1-1 of the <i>Code of Professional Conduct</i> [integrity-including misappropriation] [x10]▪ Breach of Rule 3.2-1 of the <i>Code of Professional Conduct</i> [quality of service]▪ Breach of Rule 3.4 of the <i>Code of Professional Conduct</i> [conflict of interest] [x2]
Plea:	Guilty
Preliminary Motion:	October 22, 2014
Dates of Hearing:	March 10, 11, 12, 13 & 27, 2015 and May 15, 2015
Panel:	<ul style="list-style-type: none">▪ Heather Leonoff, Q.C. (Chair)▪ Wendy Stewart▪ Lorne Gibson (Public Representative)
Counsel:	<ul style="list-style-type: none">▪ Rocky Kravetsky for The Law Society of Manitoba▪ Gavin Wood for the Member
Date of Decision:	June 29, 2015
Disposition:	<ul style="list-style-type: none">▪ Disbarment▪ Costs of \$40,000.00

QUALITY OF SERVICE / DUTY TO LAWYERS (CONDUCT) / INTEGRITY (MISAPPROPRIATION) / CONFLICT OF INTEREST

Facts

Mr. Gorlick was retained in 1994 by M.C. in a medical malpractice matter. He issued a statement of claim in 1996 naming a hospital and 3 doctors as defendants. One of the doctors was not served

within the time required by the rules. No motion to extend time was ever made and despite being given information from time to time that would have assisted in effecting service on that doctor, he was never served. Expert evidence obtained by Mr. Gorlick indicated that the doctor who was not served may have been negligent. The matter proceeded through a number of pre-trial conferences and trial dates were scheduled for 2003 and then for 2004 but they were cancelled. Mr. Gorlick did not communicate with his client from January 2005 until 2010 and took no steps to advance the case after September 2005. He did not respond to communications from opposing counsel over a period of 3 years. In 2011 the client's action was dismissed for delay.

Mr. Gorlick acted for D.H. in a family law matter. He was first retained by her to provide independent legal advice as to a settlement agreement. The settlement agreement was signed in 2000 and the parties were divorced in 2001. D.H. then consulted Mr. Gorlick in 2003 as to issues arising from the child support provisions of the settlement agreement. In 2004 she raised with him the possibility of seeking to set aside a pre-nuptial agreement. In 2007, D.H. raised the issue of whether the settlement agreement could be set aside on grounds including lack of disclosure and undue influence. Mr. Gorlick agreed to seek to set aside the settlement agreement even though he had provided her with advice at the time it was signed. Though he had D.H. sign affidavits in 2005, 2009 and 2011, none were ever filed in court and Mr. Gorlick did not commence proceedings on her behalf except that in December 2009 he delivered a notice to arbitrate under the settlement agreement and in December 2012, he delivered notice of application seeking to set aside the agreement. He did not proceed on either the notice to arbitrate or the notice of application. In the meantime, beginning in 2007 Mr. Gorlick told a series of lies to his client in which he asserted that the case was being actively pursued at all levels of court, that other lawyers had been involved in advocating on her behalf, that experts had been retained and that orders had been pronounced setting aside both a pre-nuptial agreement and the settlement agreement, that her former spouse had been ordered to pay large amounts of support payments and to post security for child support and had been found in contempt. He made false representations as to the court process and that court registry records had been improperly altered and so as to explain why D.H. could not attend certain proceedings and could not find records on the court registry. He told his client that a further hearing was scheduled for a specific date and the reasons for decision were to be released on another specific date when that was not the case.

By 2010 D.H. was in severe financial difficulty. In the course of dealing with her responses to this difficulty, Mr. Gorlick misled lenders and a creditor. In 2010 D.H. applied for a bank loan. In support of the application, Mr. Gorlick wrote to the bank saying that he anticipated she would receive in excess of \$200,000.00 by a specified date. There was no basis for that statement. Also in 2010, Mr. Gorlick wrote to Canada Revenue Agency asking that it forebear collection activities. He told Canada Revenue Agency that D.H.'s claim for support and a property settlement would be decided in 2011. There was no basis for this statement. In 2012, Mr. Gorlick approached a private lender on behalf of D.H. He told that lender that D.H. was then involved in court proceedings in which she was seeking millions of dollars. This was a fabrication. He then approached a second lender, who was also his client, on behalf of D.H. He told this lender/client that D.H. was pursuing a meritorious claim and would receive several million dollars. As a result a total of \$200,000.00 was advanced to D.H. by the other client. Mr. Gorlick represented both D.H. and the lender/client in the loan transaction.

Between March 2012 and January 2014 Mr. Gorlick lent his own money to D.H., advancing a total of over \$135,000.00, of which she repaid some, but in total by 2014 Mr. Gorlick's net advances to D.H. were just over \$100,000.00.

Mr. Gorlick acted for M.G. dealing with issues arising from a marital breakup including a family business. In November and December 2013 Mr. Gorlick misappropriated a total of \$87,329.75 from M.G., some of which was then advanced for the benefit of D.H. He misappropriated \$9,200.00 and paid it directly for the benefit of D.H. He misappropriated \$44,129.75 which was used to pay for work done on the Gorlick family home. A further \$9,000.00 was paid into a bank account in the name of Mr. Gorlick's mother over which he had signing authority and \$25,000.00 into a joint account he held with his then wife. Out of the last two payments, \$19,000.00 was later advanced

for the benefit of D.H. In addition, Mr. Gorlick caused his firm to draw two other cheques against M.G.'s trust account totalling \$20,000.00 and against the trust account of another client, WCS Ltd., in the amount of \$10,060.00. These cheques were not used. To cause the cheques to be drawn against the trust funds of M.G. and of WCS Ltd. (both used and unused), Mr. Gorlick prepared documents, including letters and notes so as to make it appear that cheques were for the legitimate purposes of the client against whose trust funds the cheques were written.

Preliminary Motion

The hearing of the Citations regarding the M.C. matter and the misappropriation charges involving M.G. and WCS Ltd. was scheduled for November 5 and 6, 2014. On October 15, 2014 a third Citation arising from the D.H. matter was issued. The Law Society applied to adjourn the hearing into the first two Citations to allow all three to be heard together. The application was opposed by the member and was heard on October 22, 2014 by the Chair of The Discipline Committee, Honourable Richard J. Scott. Mr. Scott granted the motion. He noted first, that the Society's agreement to the hearing dates had not been unequivocal, secondly that the D.H. charges could not readily be separated from the M.G. and WCS Ltd. matters in that there was bound to be a good deal of overlapping evidence. There was no prejudice to the member in granting an adjournment. In particular, the adjournment would not realistically hinder the prospect of obtaining early relief from the interim suspension to which the member was then subject. While allowing the application the Chair undertook to case manage the 3 Citations so as to facilitate the earliest possible hearing.

Plea

Mr. Gorlick entered a guilty plea to all charges except for the charge of failing to respond to the Society. That charge was stayed at the conclusion of the presentation of evidence.

Decision and Comments

The Panel accepted Mr. Gorlick's plea of guilty. A statement of agreed facts was filed in which he admitted the particulars of his misconduct. A book of agreed documents was also filed. Mr. Gorlick testified at length and presented oral evidence from 11 witnesses as well as over 60 reference letters, all on the issue of penalty. Included was the evidence of Mr. Gorlick's treating psychologist and from a psychiatrist.

Penalty

The Panel ordered that Mr. Gorlick be disbarred. The Panel considered the offences and the evidence tendered as to Mr. Gorlick's circumstances. They noted that it is well accepted in Manitoba that absent exceptional circumstances the penalty for misappropriation of trust funds is disbarment. This is because integrity is the fundamental attribute of a lawyer. They considered, however, whether the evidence put forward was sufficient to find exceptional circumstances and concluded that it was not. They noted that in the D.H. matter there was a pattern of ever escalating unethical conduct over a ten year period. The decision to misappropriate funds was deliberate and it was carried out by the deliberate creation of false documents. While the psychological evidence helped to explain the misconduct it did not justify it.

Even though the evidence made it appear that Mr. Gorlick was unlikely to repeat these actions and that the public could be protected by appropriate supervisory conditions, the penalty of disbarment was required for the preservation of the public's trust in the integrity of the profession and in its ability to govern its members. It is the only penalty that addresses the seriousness of the conduct.

The parties were invited to address costs. A written joint submission was accepted by the Panel and Mr. Gorlick was ordered to pay costs to the Society of \$40,000.00.