



DISCIPLINE CASE *DIGEST*

Case 15-18 (AMENDED)

Member:	Louay Rustom Alghoul
Jurisdiction:	Winnipeg, Manitoba
Called to the Bar:	June 15, 2006
Particulars of Charge(s):	Professional Misconduct (1 Count): <ul style="list-style-type: none">▪ Breach of Rule 5.1-1 of the <i>Code</i> [failure to treat tribunal with fairness, courtesy and respect]
Plea:	Not Guilty
Date(s) of Hearing:	March 1, 2016, April 21, 2016, June 8, 2016, October 21, 2016 and April 6, 2017
Panel:	<ul style="list-style-type: none">▪ Garth Smorang, Q.C. (Chair)▪ Ellen Leibl, Q.C.▪ Lorne Gibson (Public Representative)
Counsel:	<ul style="list-style-type: none">▪ Rocky Kravetsky for The Law Society of Manitoba▪ Member Self Represented at Conduct Hearing▪ Kevin Toyne for the Member at Penalty Hearing
Date of Decision(s):	Written Decision: December 22, 2016 (Conduct) Written Decision: April 17, 2017 (Penalty)
Disposition:	<ul style="list-style-type: none">▪ Reprimand▪ Costs of \$28,000.00
Appeal:	<ul style="list-style-type: none">▪ Notice of Appeal filed in the Court of Appeal on May 11, 2017▪ Appeal to the Manitoba Court of Appeal dismissed with costs on March 8, 2018

Duty to Tribunal

Facts

Mr. Alghoul acted for a claimant under the Indian Residential Schools Independent Assessment Process. The evidence portion of the Independent Assessment Process hearing took place on June 12, 2012 and submissions were heard on March 18, 2013. Mr. Alghoul's client passed away between the two hearings. The Adjudicator's decision was released on May 7, 2013.

After the conclusion of the evidence hearing, the Adjudicator requested and received a copy of Mr. Alghoul's Contingency Fee Agreement. After making her decision on the claim, the Adjudicator was required to conduct a Legal Fee Review, for which purpose she required Mr. Alghoul's time records and information as to whether there were any "form fillers" involved in the case who might be claiming a separate fee. On August 22, 2013 the Adjudicator sent an email to Mr. Alghoul requesting, by September 3, 2013, his time records and information about the involvement of form fillers. The Adjudicator received no response and sent follow up emails on September 4, September 9 and October 1, 2013. Mr. Alghoul did not respond to any of those emails and therefore, the Adjudicator could not complete her Legal Fee Review. No response at all was received until after the Adjudicator directed a request to another member of Mr. Alghoul's firm in March 2014. The Adjudicator then received the time records, but did not receive an answer as to the form fillers. As of the time of the Discipline Hearing, the Legal Fee Review had still not been concluded.

Plea

Mr. Alghoul entered a plea of not guilty to the charge of professional misconduct.

Decision and Comments

The Panel considered Mr. Alghoul's evidence that he had not received any of the Adjudicator's 2013 emails. Mr. Alghoul asserted that the emails had been directed to a "junk" email folder and did not come to his attention. The Panel considered evidence from Mr. Alghoul and from expert witnesses in light of Mr. Alghoul's responses to the Society in the course of the investigation. The Panel did not accept that Mr. Alghoul did not see the emails.

The Panel did not find that Mr. Alghoul's failure to respond was dishonourable. They found that he failed in his duty as advocate to act honourably while treating the Adjudicator with "candour, fairness, courtesy and respect and in a way that promotes the party's rights to a fair hearing in which justice can be done."

Penalty

The Panel noted that Mr. Alghoul had been found guilty of behaviour that was at the lower end of the spectrum of misconduct and that Mr. Alghoul had no prior discipline record. The Panel considered that a reprimand was, in the circumstances, the appropriate penalty. They noted that a reprimand has serious consequences for a lawyer. The Panel commented that a reprimand would remind Mr. Alghoul in the future of the expectations the Society has of him as a member and that Mr. Alghoul's reprimand will remind the profession generally, and the public, of the Society's expectation of how lawyers in Manitoba will behave.

In regards to costs, the Panel endorsed the principle that wherever possible, costs are to be borne by those who are perpetrating the bad lawyering and not by the profession as a whole. The Panel noted also, that the hearing was extended due to the extensive evidence put forward by Mr. Alghoul that was not persuasive and did not establish the facts he sought to be established.

In the result, Mr. Alghoul was reprimanded and ordered to pay the sum of \$28,000.00 to the Society towards the costs associated with the investigation and prosecution.

Appeal

Mr. Alghoul appealed both the finding of professional misconduct and the penalty to the Manitoba Court of Appeal. A Notice of Appeal was filed in the Court of Appeal on May 11, 2017. The appeal was dismissed with costs pursuant to a decision rendered on March 8, 2018.