



DISCIPLINE CASE *DIGEST*

Case 17-07

Member:	John Slawko Petryshyn
Jurisdiction:	Winnipeg, Manitoba
Called to the Bar:	June 29, 1971
Particulars of Charges:	Professional Misconduct (28 Charges): <ul style="list-style-type: none">▪ Breach of Rule 7.1-1 of the <i>Code</i> and Rules 5-64(3) and 5-64(4) of the <i>Rules</i> [failure to respond to the Law Society] [x4]▪ Breach of Rule 2.1-1 of the <i>Code</i> [breach of integrity – misappropriation] [x5]▪ Breach of Rule 2.1-1 of the <i>Code</i> [breach of integrity – devising and implementing a scheme to facilitate and conceal misappropriation of funds]▪ Breach of Rule 2.1-1 of the <i>Code</i> [breach of integrity – misleading clients]▪ Breach of Rule 6.1-1 of the <i>Code</i> [failure to supervise staff]▪ Breach of Rules 5.1-6 and 7.2-11 of the <i>Code</i> [breach of trust condition]▪ Breach of Rule 3.2-1 of the <i>Code</i> [quality of service] [x5]▪ Breach of Rule 7.2-4 of the <i>Code</i> [offensive communication]▪ Breach of Rule 5-43(1)(a) of the <i>Rules</i> [breach of trust accounting rules]▪ Breach of Rule 3.1-2 of the <i>Code</i> [incompetence] [x8]
Plea:	Guilty
Date of Hearing:	October 16, 2017
Panel:	<ul style="list-style-type: none">▪ William Gange (Chair)▪ Donald Knight, Q.C.▪ Keely Richmond (Public Representative)
Counsel:	<ul style="list-style-type: none">▪ Rocky Kravetsky for The Law Society of Manitoba▪ Member Self Represented
Date of Decision:	Oral Decision: October 16, 2017 Written Decision: November 24, 2017
Disposition:	<ul style="list-style-type: none">▪ Granted Permission to Resign▪ Costs of \$29,030.28

**Failure to Respond to the Law Society / Misappropriation /
Misleading Clients / Failure to Supervise Staff /
Breach of Trust Condition / Quality of Service /
Offensive Communication / Breach of Trust Accounting Rules /
Incompetence**

Facts

Overview

In approximately 2013, Mr. Petryshyn's conduct as a lawyer unravelled. In eight instances, he demonstrated incompetence by reason of abuse of alcohol. Mr. Petryshyn developed a scheme to facilitate and conceal misappropriation of funds and implemented that scheme so as to misapply client funds for his own benefit. He also admitted other misconduct in seven client matters. Mr. Petryshyn failed to follow client instructions and then failed to respond to client inquiries or actively misled clients as to the progress of their matters, he breached a trust condition, failed to supervise his staff, breached trust accounting rules and on several occasions, failed to respond to 14 day letters from the Law Society.

Misappropriation Scheme

Mr. Petryshyn set up a scheme whereby he maintained unofficial receipt books from which he provided receipts to clients for payments made to him. These receipts were not recorded in his accounting records. The scheme was designed to ensure that the Law Society was not able to review the receipt of all funds. Through the scheme, he took for himself funds to which he was not entitled at all, or to which he had not yet become entitled. One such receipt book recovered by the Law Society contained 51 receipts totalling approximately \$20,000.00 for which no corresponding accounting records were found. Other such books were not located.

Client No. 1

In the case of Client No. 1, two statements of account were issued to the client covering all work performed and disbursements incurred and these were paid by trust transfers. In addition, the client made four payments totalling \$900.00 that were recorded in an unofficial receipt book and that were immediately appropriated by Mr. Petryshyn to himself, with no statements of account or other accounting to the client for the funds and to which funds he never became entitled.

In the same matter, Mr. Petryshyn received settlement funds in trust that a portion of them would be held in trust until he delivered a final settlement document to the opposing lawyer. In breach of the trust condition, Mr. Petryshyn immediately paid out all of the settlement funds, including an amount transferred to his general account to pay his final statement of account. After several months, the opposing lawyer complained to the Law Society. Mr. Petryshyn received, but did not respond, to a series of letters from the Law Society concerning the complaint. Mr. Petryshyn finally provide the required document to opposing counsel approximately seven months after he had paid out the settlement funds.

Client No. 2

Mr. Petryshyn acted for the executor of an estate. He took funds from the estate to pay interim statements of account without providing a Form 74AA to the executor and the residuary

beneficiary, and without having obtained consent. After an inspection by the Law Society, Mr. Petryshyn was reminded of his obligations as to such accounts. Four months later, further fees were taken without consents having been obtained. This transfer had been done by a staff member whom Mr. Petryshyn had left to deal with the matter. The staff member was not experienced with estates and Mr. Petryshyn provided no instructions to her and did not oversee the work she did in his name.

Client No. 3

Mr. Petryshyn was retained on behalf of a resident of India who was in the process of applying for permanent residency in Canada. Mr. Petryshyn accepted instructions to review the client's immigration file and then to advise about responses to be made to certain inquiries from the Canadian High Commission. Despite accepting those instructions, Mr. Petryshyn took no steps to obtain the file and provided no input into the responses. When the client's application was denied, Mr. Petryshyn accepted instructions to make an application to Federal Court for relief against the decision. He did not, however, file any material in court and the time limit to do so passed. Mr. Petryshyn did not respond to client inquiries concerning the status of the matter. Nine months after the time limit had passed, Mr. Petryshyn sent a draft affidavit to the client ostensibly in support of the court application, but did not tell the client that no such application had been made and that the time limit had passed. Mr. Petryshyn had taken a cash retainer from the client, but did not deposit it into trust. Instead he took the funds for his own use immediately. No account was ever rendered and no meaningful work was ever done. The client only learned that no documents has been filed in court after Mr. Petryshyn was suspended from practice. A complaint was then made to the Law Society. Mr. Petryshyn failed to respond to the Law Society's initial 14 day letter and three follow up inquiries. Mr. Petryshyn did not respond at all to the Law Society until after a Citation was served charging him with failing to respond to the four letters from the Law Society.

Client No. 4

Mr. Petryshyn was retained on behalf of an applicant for permanent residency in Canada, shortly after the application was refused by the Canadian High Commission in India. Mr. Petryshyn accepted instructions to file documents in Federal Court seeking relief against that refusal. He took a \$1,000.00 retainer but did not deposit it into trust and took the money immediately for his own use. Mr. Petryshyn did not take any steps to file documents in Federal Court and the time limit to do so passed. Mr. Petryshyn did not tell the client he had missed the filing deadline. After Mr. Petryshyn was suspended from practice, the client became aware that nothing had been done by Mr. Petryshyn and made a complaint to the Law Society. Mr. Petryshyn did not respond to the Law Society's 14 day letter concerning the complaint and did not respond to two follow up letters. Mr. Petryshyn did not respond at all until after a Citation was served charging him with failing to respond to the three letters from the Law Society.

Client No. 5

Mr. Petryshyn was retained by a client involved in a family law matter. He was retained expressly to pursue litigation with the goal of achieving a result more favourable than a settlement offer that the client had rejected. Mr. Petryshyn received a retainer of \$1,100.00 from the client and deposited the funds directly into his general account without having done any work for the client beyond the initial consultation meeting. When Mr. Petryshyn was served with a notice of motion by opposing counsel, he agreed to a hearing date without consulting with his client, either as to her availability or as to what evidence was available to respond to the motion. Mr. Petryshyn then advised the client to settle the case on the same terms as those he had been instructed at the outset were not acceptable. Mr. Petryshyn's client terminated the retainer and demanded return of the funds already paid. Mr. Petryshyn and the client agreed on an amount to be refunded and arranged to meet. When the client attended at the appointed time, Mr. Petryshyn was intoxicated. Mr. Petryshyn was abusive to the client in his actions and his language, but did refund the agreed

amount in cash. The client then complained to the Law Society. Mr. Petryshyn did not respond to the substance of the 14 day letter sent to him concerning the complaint and did not respond at all to a follow up letter. The Law Society received information concerning the complaint only in a meeting after Mr. Petryshyn was suspended from the practice of law.

Client No. 6

Mr. Petryshyn was retained to act for a client in a family law matter and in a related criminal matter arising from a charge of breach of a protection order. The client paid to Mr. Petryshyn a \$5,000.00 retainer. Mr. Petryshyn deposited the retainer funds directly to his general account without having rendered any services and without having delivered a bill. He then drew the funds out of his general account. For six months after being paid the retainer, Mr. Petryshyn did not communicate with the client as required. He did not return phone calls or messages left in person and when the client was able to catch him on unannounced visits to his office, the client received no substantive information from Mr. Petryshyn. Mr. Petryshyn did not file an Answer to a petition that had been served on his client. He filed two motions on behalf of the client, but did not pursue them. One of the motions was adjourned on five occasions over several months before being struck from the court list. Mr. Petryshyn did not tell the client that the motions were being adjourned and did not otherwise report on the matter. On one occasion, the client made an appointment to see Mr. Petryshyn but when they met, Mr. Petryshyn was intoxicated and unable to communicate effectively with the client. On two occasions, Mr. Petryshyn's assistant created statements of account for an amount equal to the \$5,000.00 retainer. She did this to "paper the file". Neither account was actually sent to the client. The first of them was created when no work at all had been done. Mr. Petryshyn was aware of the statements of account and allowed them to remain on the file. One of them remained on the file during a Law Society audit, thereby misleading the auditor as to whether an account had been delivered. After the client terminated the retainer and retained other counsel an accounting of the retainer funds was demanded. Mr. Petryshyn never did provide such an accounting and never delivered any bill to the client.

Client No. 7

Mr. Petryshyn accepted instructions to act in a civil litigation matter on a contingent fee basis. No contingent fee contract was ever prepared. After the initial meeting, the clients made attempts to contact Mr. Petryshyn as to the progress of the matter, including by emails, by messages left with his assistant and by a handwritten note. On each of these occasions, the message specified what advice and information was being sought. Mr. Petryshyn did not respond. He had agreed to file a statement of claim by a certain date and did not do so. The clients then made an appointment to meet with Mr. Petryshyn, but when they arrived, Mr. Petryshyn was intoxicated and unable to recall the facts of the case or to participate in any meaningful discussions. Mr. Petryshyn became agitated, left the room and did not return. A second appointment was then arranged for a few days later. Mr. Petryshyn did not show up for that meeting. At a third meeting a few days after that, Mr. Petryshyn was again intoxicated and unable to recall the facts of the case or to participate in any meaningful way. In an attempt to move the matter along, one of the clients then sent to Mr. Petryshyn proposed wording for a statement of claim. Mr. Petryshyn put the client's draft into court form and filed it without putting his own mind to it or applying any expertise. He then sent the claim to the lawyer for the opposing party for admission of service. The opposing lawyer endorsed and returned admission of service on a trust condition that Mr. Petryshyn would undertake not to note default without reasonable notice. Mr. Petryshyn accepted the trust condition but kept no record of it and later, forgot that it had been accepted and was unable to report to the clients as to how or when service was effected.

Plea

Mr. Petryshyn entered a guilty plea to the 28 charges of professional misconduct.

Decision and Comments

The Panel accepted a joint recommendation that Mr. Petryshyn be permitted to resign his membership with The Law Society of Manitoba and his name struck from the Rolls of Barristers and Solicitors. In so doing, they accepted that such a recommendation should not be rejected unless it would bring the administration of justice into disrepute or be contrary to the public interest. In accepting the joint recommendation, the Panel noted that though disbarment is the usual outcome in cases involving misappropriation, this was not a case in which it was entirely clear that disbarment would result. There were mitigating factors in this case. Mr. Petryshyn was suffering from addiction issues during the time he misconducted himself.

The Panel also noted that Mr. Petryshyn acknowledged his misconduct and apologized for it. Prior to 2013, Mr. Petryshyn had no discipline record after many years of practise. Mr. Petryshyn had made significant contributions to the community concurrently with his long legal career.

Penalty

The Panel ordered that Mr. Petryshyn submit his resignation and be permitted to resign his membership with The Law Society of Manitoba and his name struck from the Rolls of Barristers and Solicitors and ordered to pay the sum of \$29,030.28 to the Law Society towards costs associated with the investigation and prosecution of these matters.