

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

JONATHAN ANDREW RICHERT

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

Hearing Dates: August 13 and September 20, 2019

Panel: James E. McLandress (Chair)
Carmen Nedohin (Public Representative)
Ellen Leibl, Q.C., (Member)

Counsel: Rocky Kravetsky, for the Law Society of Manitoba
The Member, Self-represented

LSM File No.: 19-002/003-DIS

REASONS FOR DECISION

Introduction

1. American novelist James Baldwin once said, “Not everything that is faced can be changed, but nothing can be changed until it is faced.”
2. This case is yet another example of a legal career placed at risk by a member’s inability or unwillingness to deal with the personal health issues that appear to prevent them from meeting the practice standards expected of all lawyers in Manitoba.
3. Jonathan Andrew Richert (“**Mr. Richert**”) is 45 years old. He became a member of The Law Society of Manitoba (the “**Society**”) on December 13, 2005. He had been called to the bar of British Columbia in 2003 and advises he worked for a number of years before that with Baker McKenzie in Thailand and the Netherlands and then with another major international

law firm in Japan. That is the foundation for a promising career. Unfortunately that is not how things have turned out – so far.

4. Mr. Richert suffers from depression. It seems obvious there is a link between that condition and the troubles in which he now finds himself. Yet, it was not until this summer that he began to take the first tentative steps toward addressing his mental health challenges. He is bright and articulate and has the potential to be a contributing member of the legal profession in western Manitoba. Whether that happens is up to him.

The Charges

5. On June 19, 2019 Mr. Richert was charged with three counts of professional misconduct:
 - a. Two counts of failing to respond promptly and completely to the substance of inquiries contained in correspondence and communications with the Society, contrary to sub-Rules 5-64(3), (4) and (5) of the *Rules of the Law Society of Manitoba* (the “**Rules**”) and Rule 7.1-1 of the *Code of Professional Conduct* (the “**Code**”); and
 - b. One count of failing to comply with a condition imposed upon him by an Order of the Discipline Committee dated March 14, 2019 (the “**March 14th Order**”).
6. The Citation was marked as **Exhibit 1** in the proceedings.

Discipline History

7. This is not Mr. Richert’s first dealing with the Society’s Discipline Committee:
 - a. On September 6, 2018 he pled guilty to a charge of professional misconduct for failing to respond to two “14-day letters” from the Society. It was his first offence. He received a reprimand and an order to pay \$2,000 in costs.
 - b. On January 8, 2019 he pled guilty to three counts of failing to respond to communications from the Society. In a decision dated March 14, 2019 he received a fine of \$1,500 and was ordered to pay costs of \$4,500. In addition the March 14th Order placed a number of conditions on his practicing certificate including the condition (described below) that forms the basis of one of the charges we are dealing with in this case.

Procedural History

8. This matter was set down on the “Fast Track” Discipline panel process. That process is intended to enable a speedy resolution of complaints and related matters in the appropriate cases. Particularly when dealing with matters such as those before us in this case, the idea is to get to the heart of the matter quickly and to deal with them in the appropriate way.

9. We were to hear the case on August 13, 2019. On the morning of the hearing Mr. Richert emailed Society counsel, Mr. Kravetsky, to say that for medical reasons he couldn't attend and asked the matter be adjourned for one month. Following submissions from Mr. Kravetsky the panel ordered the matter be adjourned to September 20, 2019. That order contained a number of conditions related, among other things, to Mr. Richert having to provide the Society with certain information relating to his open files, hearing dates and real estate closings and authorizations and information related to his medical condition. Certain of those conditions were to be met within 48 hours of receipt of the order; others did not have a specific time limit.
10. As of the hearing on September 20th Mr. Richert had yet to fulfill any of the conditions set out in our August 13th order.
11. On September 17th Mr. Richert emailed Mr. Kravetsky to request a further adjournment of the proceeding. In the early afternoon of the 19th Mr. Richert asked the panel to grant the adjournment in advance of the 20th failing which he be allowed to attend the hearing by telephone to address his request. The Society opposed the request. On the afternoon of the 19th we declined both requests and directed he appear in person if he wished to seek an adjournment.
12. The first half of the hearing on the 20th involved Mr. Richert's submissions in support of his request for an adjournment. We denied the request without having to hear from counsel for the Society.
13. Mr. Richert pled not guilty to the charges.

The Evidence

14. The Society's case is made up of:
 - a. Two affidavits from Mr. Christopher Donaldson, legal counsel in the Society's Complaints Resolution Department dated August 6th and September 20th, 2019 and marked as **Exhibits 2** and **5** respectively; and
 - b. Two affidavits from Ms. Jennifer Houser, also legal counsel in the Complaints Resolution Department dated August 7th and September 20th, 2019, marked as **Exhibits 3** and **8** respectively.
15. At the outset of the hearing the Society filed three additional affidavits (from Ms. Alleyne, Ms. Bernardo and Ms. Brown) sworn that morning. Mr. Kravetsky advised these were provided in respect of the adjournment issue only and in anticipation of evidence Mr. Richert might provide. He indicated they did not form part of his case on the merits.

16. For the record, although we reviewed these affidavits prior to the hearing and they were marked as **Exhibits 6, 7 and 9** respectively, we have disregarded them entirely and whatever evidence they contain has formed no part of this decision.
17. The Society had both Mr. Donaldson and Ms. Houser available for cross-examination. In addition, Mr. Robert Fabbri was available for cross-examination. Mr. Fabbri became involved in this matter as a result of the March 14th Order. That Order required Mr. Richert “at all times to have in place a practising member of the Society” who had given the Society an undertaking to do a variety of things which can generally be described as playing a monitoring role to ensure Mr. Richert complied with the remainder of the Order.
18. We pause briefly to say the record shows, and both Mr. Richert and Mr. Kravetsky attested, that Mr. Fabbri did an exemplary job, going “above and beyond” what was required of him by his undertaking. His service and dedication under the circumstances are to be commended.
19. Mr. Richert declined to cross-examine any of the Society’s witnesses. Their evidence therefore stands unchallenged.
20. As for Mr. Richert’s case, we had allowed him considerable latitude in how he presented his arguments in favour of the adjournment. Those submissions were a mix of evidence and argument. Although he was neither sworn nor affirmed he told us he appreciated the need for veracity in everything he said during the hearing.
21. Mr. Richert frankly admitted his submissions on the adjournment related more to an explanation of the reasons for his failure to respond and to the appropriate disposition rather than to why the matter should be adjourned. Most notably, he did not deny his failures to respond or offer any evidence to refute the material contents of the Donaldson and Houser affidavits. He requested and we agreed to treat his submissions regarding the adjournment as his case on the merits.
22. Mr. Richert told us he pled “not guilty” because he had a legal argument to say he was not responsible for his actions due to his depression. Mr. Richert did not provide any support for his position that these charges have an element of *mens rea* rather than being strict liability offences. But, even assuming for the sake of argument that *mens rea* has a legal role to play in charges such as these, Mr. Richert would have to establish his medical condition prevented him from responding to the Society. Further, it would be logical to suppose he would also have to satisfy the panel he was unable to do so despite being able, for example, to conduct a two-week trial in Dauphin and attend to the various other matters he described himself doing during the relevant times.
23. The only medical evidence Mr. Richert provided was a four-sentence letter from his doctor dated August 30, 2019, saying:

“Mr. Richert is a patient of mine. He has recently been started on medication for the treatment of major depression. He has had some side effects with the medication particularly with sedation. Because of this I would recommend he be given further time for the side effects to ease and for him to achieve further positive effects of the medication.”

24. The letter formed part of exhibit (Tab) 2 to Mr. Donaldson’s September 20th affidavit (Exhibit 5).
25. We are satisfied the doctor’s letter establishes Mr. Richert suffers from major depression. However, that fact alone is insufficient to draw a medical connection between Mr. Richert’s depression and his failure to respond to the Society. Even if proof of *mens rea* does form a part of these sorts of charges – a proposition the Panel doubts but upon which it makes no finding – Mr. Richert has not presented the medical evidence needed to establish his depression made him incapable of responding to the Society.

The Facts of the Misconduct Charges

Count 1

26. On January 22, 2019 while investigating a complaint by one of Mr. Richert’s clients (the “**K Complaint**”) Ms. Houser sent Mr. Richert a “14-day letter” seeking his response to a letter from the complainant.
27. Mr. Richert requested and received an extension to February 28th to provide his response. He didn’t respond as required.
28. On May 16th Ms. Houser wrote requiring Mr. Richert’s response within *seven* days to the January 22nd letter and an explanation as to why he failed to respond to that letter by February 28th.
29. When the Citation (Exhibit 1) was issued in June Mr. Richert had not responded to the substance of either letter. That remains the case to this day.
30. Also of note, the K Complaint involves the same client whose complaint was the genesis of one of the charges dealt with in the March 14th Order.

Count 2

31. On May 29, 2019, while investigating a complaint by a lawyer (the “**D Complaint**”) Mr. Donaldson sent Mr. Richert a “14-day letter” seeking his response to the D Complaint. Mr. Donaldson sent it by email using the process set out in the March 14th Order.
32. The March 14th Order is set out in detail at paragraph 59 of the decision of the same date. That decision was attached as Tab 2 to Mr. Donaldson’s affidavit of August 6th [Exhibit 2]. It is also available on the Society’s website.

33. Pursuant to the March 14th Order Mr. Richert was to acknowledge receipt of Mr. Donaldson's email within 24 hours. Mr. Richert did not do so.
34. On June 3, 2019 Mr. Donaldson sent Mr. Richert a letter reminding him his response to the May 29th letter was due June 12th and also requiring that at the same time he provide his explanation as to why he had failed to acknowledge receipt of the May 29th letter within 24 hours as required by the March 14th Order.
35. On June 3rd and 4th Mr. Richert acknowledged receipt of the June 3rd letter but Mr. Richert failed to respond to either the May 29th letter or the June 3rd letter. That remains the case to this day.

Count 3

36. This relates to Mr. Richert's failure to comply with the March 14th Order. One of the conditions of the Order was that within 24 hours of receiving an emailed communication from the Society Mr. Richert was to provide written acknowledgment of that receipt. The Order also established a protocol designed to ensure Mr. Richert in fact received and checked his emails.
37. Mr. Donaldson had emailed the May 29th letter (as described above) yet Mr. Ritchert failed to acknowledge receipt within the required 24 hours. In failing to do so he breached the March 14th Order.

Findings

38. As previously noted, Mr. Richert did not deny his failures to respond nor did he challenge the Society's evidence. Under the circumstances a finding of guilt was inevitable.
39. We confirm for the record we are satisfied the facts as alleged by the Society have been clearly established and that they amount to professional misconduct. And again for the record we confirm as we indicated at the hearing on the 20th, that Mr. Richert is guilty of the three counts of professional misconduct set out in Exhibit 1.

Mr. Richert's Circumstances

40. Mr. Richert suffers from medically diagnosed depression. He says he now realizes he's suffered from depression his entire adult life.
41. As part of his submission Mr. Richert provided a number of documents not as evidence but more in the nature of supports to enable him to illustrate his position. They were marked as **Exhibits A, B and C for Identification**.
42. He referred to one document in particular [Exhibit A] to describe how he felt and how he feels his depression has affected him over the years. The document describes three "zones of depression": a green zone where the individual suffers mild symptoms and has a high

capacity to function effectively; a yellow zone with moderate symptoms and moderate capacity; and a red zone with severe symptoms and low capacity.

43. In the earlier years of his professional life he felt he was operating in the green zone, as he put it, “at 80 to 100 percent of full capacity.” As the years passed he moved further down the scale until by 2015 he was “squarely in the red zone” though still able to function somewhat until around 2017.
44. He told us that at that point he began to experience physical symptoms but still wasn’t seeking medical attention and didn’t recognize the mental or emotional aspect of his issues. He said this led to his first issue with the Society for failing to respond.
45. If we look at the record in this case and consider the information contained in the two previous discipline decisions (September 6, 2018 and March 14, 2019), it’s clear pressures have been mounting on Mr. Richert for some time:
 - a. Prior to his guilty plea to a charge of failing to respond in September 2018 he was the subject of a complaint by another lawyer that led to that charge.
 - b. In the spring of 2018 the events leading to the March 14, 2019 panel decision began to unfold. The Society was seeking his response to complaints filed in June and August of 2018.
 - c. On September 6, 2018 he took the first step in building his discipline record when he received a reprimand on that charge.
 - d. On October 30, 2018 he was charged with failing to respond to follow up communications related to the June complaint.
 - e. On December 4, 2018 he was again charged with failing to respond to the Society.
 - f. On January 8, 2019 he entered his guilty plea to the October and December citations.
 - g. The events leading to the charges we are dealing with began to unfold with the January 22, 2019 letter from Ms. Houser regarding the K Complaint.
 - h. On March 14, 2019 he took the next step in building his discipline record when the March 14th Order was made.
 - i. He says he first sought medical attention after he had a “serious panic attack” on May 22, 2019. That attack scared him greatly.

- j. On May 29, 2019 he received Mr. Donaldson's communication regarding the D Complaint.
 - k. On June 19, 2019 he was charged under the citation we are dealing with (Exhibit 1).
 - l. In July he was dealing with the Society's auditors and in particular with respect to a problem he was having with his accounting software.
 - m. He tells us he was – and remains – under pressure from both his residential and business landlords regarding late rent payments.
 - n. He first saw his current doctor in the first two weeks of July and received a diagnosis of “major depression with symptoms of anxiety” on July 31, 2019.
 - o. He began taking the prescribed medication on August 12th, the day before the initial hearing in this case. Mr. Richert attributes the delay in picking up the medication to his financial difficulties.
 - p. He says he has been sleeping “excessively” lately, 16 to 20 hours a day. He says he has trouble keeping up with his emails and voicemail but has been keeping his court dates and client appointments; though he says he has had to reschedule appointments on occasion.
 - q. He admits to there being a degree of “avoidance” when it comes to matters related to the Society. Communications of any sort from the Society have become a source of “high anxiety”.
 - r. He describes his current state as, “If there isn't a specific reason to get out of bed [like a court date or client meeting], I'm struggling to get out of bed and attend to the million things we all have to do in daily professional life.”
46. Of particular significance for this case Mr. Richert described his current state of mind as to his priorities:
- a. His first priority is to look after his health.
 - b. His second priority is to keep up with his client matters.
 - c. His third priority is to deal with his financial problems.
 - d. His fourth priority is to deal with the Society. He said he'd been thinking the Society issues should rank third but the financial problems have “loomed large” so he has felt he needs to deal with them first.

47. Mr. Richert told us earlier in his submission that “at all times [he is] operating at some sort of deficit.” He later described himself as “a member in crisis” and said he feels that if this treatment is successful he can get back into the “green zone” and get on top of everything. However, as he said, “If I can’t get a handle on it, I can’t function as I need to.”

Arguments on the Appropriate Disposition

48. The Society seeks the following disposition:

- a. A suspension to begin immediately and to continue until the later of 60 days and the day on which Mr. Richert has properly responded to all of the information requests set out in the charges;
- b. An amendment to one of the conditions of the March 14th Order to enable the Society to revoke the required undertaking (Mr. Fabbri’s at the moment) if satisfied it has become ineffective in ensuring Mr. Richert responds to information requests from the Society.
- c. Costs in the amount of \$4,800.

49. Mr. Kravetsky provided a number of authorities in support of his position. We will deal with some of them below. For current purposes we can summarize the Society’s position with reference to the *Ogilvy* factors. These stem from a 1999 decision from the Law Society of British Columbia¹ and are well recognized as the appropriate but not definitive list of factors to consider in determining disciplinary dispositions. Those factors, together with the Society’s position on them in this case are:

- a. *The nature and gravity of the conduct proven* – Mr. Kravetsky notes this is very serious conduct that goes to the very heart of the Society’s ability to govern its members.
- b. *The age and experience of the respondent* – Mr. Richert is “not a child”. He’s been practicing in Manitoba for over 13 years and has a discipline history with the Society for the same misconduct.
- c. *The previous character of the respondent, including details of prior disciplines* – His prior discipline record is set out above and, Mr. Kravetsky notes the K Complaint is common to this case and the one resulting in the March 14th Order.
- d. *The impact upon the victim* – The victims in this case are the Society in its ability to discharge its obligation to govern the profession in the public interest, the other lawyers and clients whose complaints about Mr. Richert have not yet been dealt with, and all of the other members of the profession who pay for the resources expended to deal with this matter.

¹ *Law Society of British Columbia v. Ogilvy* [1999] L.S.D.D. No. 45, [1999] LSBC 17, Discipline Case Digest 99/25

- e. *The advantage gained or to be gained, by the respondent* – Not relevant here.
 - f. *The number of times the offending conduct occurred* – These charges represent three separate instances of failing to respond to communications from the Society. They also show a continuing pattern of the same conduct.
 - 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* – Mr. Kravetsky says there is no indication of remorse on Mr. Richert’s part but rather we have only continued excuses for his failure to cooperate with the Society.
 - h. *The possibility of remediating or rehabilitating the respondent* – Mr. Kravetsky didn’t offer specific comment on this factor.
 - i. *The impact on the respondent of criminal or other sanctions or penalties* – Not relevant here.
 - j. *The impact of the proposed penalty on the respondent* – A suspension will have an effect on Mr. Richert’s clients. However, Mr. Kravetsky urges us not to allow that to impact our decisions because:
 - i. The people depending on Mr. Richert to protect their interests are some of the very people the Society is seeking to protect.
 - ii. The Society will step in immediately to deal with all of his client matters. This is something the Society has experience with and is well-equipped to do.
 - k. *The need for specific and general deterrence* – Mr. Kravetsky cited a number of cases to emphasize the need for both specific and general deterrence. We will discuss some of them below.
 - l. *The need to ensure the public’s confidence in the integrity of the profession* – Again we will address this issue below.
 - m. *The range of penalties imposed in similar cases* – Mr. Kravetsky provided a number of decisions suggesting an appropriate range.
50. The Society is not seeking a declaration that Mr. Richert is ungovernable at this time. As Mr. Kravetsky said, “We’re not there yet and hopefully we won’t ever be.” However, as he noted, a declaration a member is “ungovernable” leads to disbarment *no matter how good the lawyer may be*, which indicates just how serious these charges are.

51. Mr. Richert asked for a “less punitive disposition”.

- a. He described an immediate suspension as being tantamount to disbarment since, in a small community like Brandon he would have no practice left to come back to after his suspension ended and would, in addition, suffer the stigma of Law Society discipline making it that much harder to rebuild a practice. He said relocation and declaring personal bankruptcy might be his only options.
- b. He asked instead that he be able to deal with the six court appearances (including two sentencings on October 2nd and 4th respectively) and the real estate closing he has over the next month, advise his clients of his situation and then voluntarily withdraw from practice while he attends to his own well-being. He advised the panel of these seven matters while reviewing his diary. We understood him to be giving us a complete list of the matters he had in his diary between the hearing and the end of October. We will refer to these seven matters collectively as the “**Client Matters**”.
- c. He also advised he was not in a position to pay a costs order and that it may push him to or over the brink of bankruptcy.
- d. He was most concerned about any change to the March 14th Order as it related to the undertaking. He said “the fact he let Mr. Fabbri down does not mean Mr. Fabbri wasn’t being effective.” Rather he said Mr. Fabbri was as effective as any member could be in helping him. He described Mr. Fabbri as having become more like a mentor and as he put it, “If someone is willing to assist a member in crisis why should the Law Society have the power to pull the support pillar out from under me?”

Analysis & Disposition

52. The Society has a legal obligation to regulate the practice of law in Manitoba. As set out in the *Legal Profession Act*, its purpose “is to uphold and protect the public interest in the delivery of legal services with competence, integrity and independence”.
53. The Society cannot protect the public interest if it cannot effectively regulate its members. It cannot effectively regulate its members if its members do not cooperate fully in all of their dealings with it.
54. That means when the Society asks a member for information or assistance to enable it to carry out its obligations to the public, the member has only one choice – to cooperate fully with the Society and to do so in a timely manner. There is no middle ground. There is no other option. As Mr. Kravetsky quoted from the *Wang* case:²

“The authorities clearly recognize that it is important for professional societies to have the ability to investigate their members. Societies should not be required to go on fishing expeditions to find the facts. They should be entitled to expect the

² *The Law Society of Manitoba v Wang*, 2015 MBLS 12 (CanLII)

full co-operation of members so that the profession can be adequately governed by the professional society. Failure to do so clearly puts the public at risk. Otherwise the public cannot have confidence that the legal profession is being effectively governed by the Law Society.”

55. That also means when determining the appropriate disposition on charges like this general deterrence plays a particularly important role. Even more so when dealing with a member where the record shows specific deterrence may well prove ineffective. Mr. Richert has twice before been found guilty of the same misconduct with increasingly severe penalties each time. It is a legitimate question to ask whether he’s “getting the message.”
56. The need for general deterrence was recognized in the *Poole* case where the panel stated “a sanction for breach of this rule is to be a deterrent for both the member who has failed to reply to the Law Society and for other members of the Law Society.”³
57. It is also important to send the message to the profession as to the appropriate priority they should place on their dealings with the Society. In this case Mr. Richert placed the Society fourth on his list after his health, his clients and his finances. He was profoundly mistaken in doing so.
58. A lawyer’s obligations to the Society are every bit as central to the practice of law as his obligations to his clients. A lawyer cannot practice safely and effectively without placing their duties to the Society on an equal footing with those to their clients. The two go hand in hand. A lawyer cannot be heard to say I’m capable of dealing with my clients and their matters but not capable of dealing with the Society. Yet, that is exactly what Mr. Richert would ask us to accept. We cannot do so. And certainly not without medical evidence to satisfactorily explain how the public could still be safe despite his inability to attend to his obligations to the Society.
59. The penalties imposed for repeat offences tend to increase in severity with each subsequent offence. In this case Mr. Richert received a reprimand for his first offence and a fine for his second. A suspension is the next logical step. But is it appropriate in this case?
60. A brief review of the cases filed by the Society shows:
 - a. Ms. Wang received an “unusually high fine” of \$5,500 though the panel accepted suspension was within the range of appropriate dispositions. Hers was a second offence.
 - b. The *Von Sengbusch* case from Ontario resulted in an immediate two month suspension for a first offence where the lawyer had not complied with the obligation to respond prior to the disposition hearing.⁴

³ *The Law Society of Manitoba v Poole*, 2009 MBL 5 (CanLII)

- c. In *Poole*, the lawyer received a \$1,500 fine for a second offence.
 - d. In *Gemby* the lawyer received a 15 day suspension for a fifth offence. The suspension was to commence at a day fixed by the CEO of the Society.⁵
 - e. In *Walker*, an Ontario lawyer received a three month suspension for breaching an undertaking to the Law Society of Upper Canada and for failure to respond. The suspension was to commence from the conclusion of an administrative suspension he was then serving. The panel in that case placed far greater emphasis on the lawyer's failure to comply with a personal undertaking and indicated that for the failure to respond alone, a one month suspension would have been appropriate.⁶
 - f. In *Wilmot*, the one-month suspension of an Ontario lawyer was upheld on appeal. The suspension was to commence 15 days after the release of the appeal panel's reasons.⁷
61. Obviously the specific circumstances of each case vary and none are perfectly applicable to this case. However, they do indicate a range of appropriate dispositions and while we are satisfied a two month suspension would fall on that range we are not satisfied it is appropriate in this case.
62. A driving factor in this case is Mr. Richert's depression. Depression is a recognized and serious medical illness. The mental health of the members of the legal profession has become a matter of increasing concern for regulators across the country, including the Law Society of Manitoba.
63. Mr. Richert describes himself as "a member in crisis." The Society suggests there is no objective evidence to support that statement. We disagree. Mr. Richert presented medical evidence he suffers from "major depression". It appears he practiced successfully and without incident from 2005 until the events leading up to his September 2018 conviction for failing to respond. The record itself (outlined above) shows steadily mounting pressures that led to his second set of charges, his conviction for a second time and these charges. All to say nothing of the other pressures in his life related to his personal health and his precarious financial situation.
64. And those pressures show no sign of abating. He has yet to comply with the original response requests from the Society and to date he has not complied with any of the requirements of this panel's order of August 13, 2019.

⁴ *The Law Society of Upper Canada v Von Sengbusch*, 2015 ONLSTH 47 (CanLII)

⁵ *The Law Society of Manitoba v Gemby* 2017 MBLS 12 (CanLII)

⁶ *The Law Society of Upper Canada v Walker*, 2010 ONLSHP 49 (CanLII)

⁷ *The Law Society of Upper Canada v Wilmot*, 2011 ONLSAP 18 (CanLII)

65. Despite the absence of objective *medical* evidence to prove the severity of his situation, we are satisfied Mr. Richert is someone who is struggling greatly with his medical condition.
66. The disposition we impose must take into account Mr. Richert's personal issues. However, we also can't ignore the seriousness of this sort of misconduct, the fact it is part of a repeated pattern of behaviour, or, the message our decision will send to the profession and the public.
67. We have carefully considered the respective proposals regarding disposition and concluded:
- a. An immediate suspension is not required.
 - b. It isn't necessary to amend the condition of the March 14th Order.
 - c. Mr. Richert has requested he be given an opportunity to voluntarily withdraw based on the representations he made at the September 20th hearing. He understood the importance of being truthful with the panel at that hearing and we are taking him at his word. Should his representations regarding the number and nature of the Client Matters prove to have been untrue he risks immediate suspension should he not be able to satisfy the Society there is a reasonable explanation for any discrepancy.
 - d. We are not satisfied he should deal with the two sentencing matters he identified as part of the Client Matters. They should be referred to other counsel. We appreciate in saying so there is a risk the matter involving the client in custody may be delayed. With that in mind, if the Society is satisfied Mr. Richert can competently represent that individual, we would not want this decision to interfere with that client's right to a speedy disposition of his or her matter with counsel of their choice.
 - e. We are mindful of the distinction drawn in the *Walker* case between a failure to respond to an information request from the Society and a breach of a personal undertaking given to the Society. We agree the latter is markedly more serious and therefore deserving of a harsher disposition. We hope a requirement for Mr. Richert to give his personal undertaking to the Society may be the additional push necessary for him to change his behaviour.
 - f. We fully agree with the Society's position that the costs to the Society and to the profession of having to deal with matters like this are real. On the other hand we are mindful of the reality that Mr. Richert already has previous cost orders to pay as well as a fine. Adding more to a debt he already can't pay may achieve little; but, the award of some amount of costs is appropriate. We are exercising our discretion to award less than the full amount requested by the Society.
 - g. But for his medical issues a suspension would have been immediate. The panel is prepared to give him a chance to put his practice on hold while he deals with his

medical issues. Our order is intended to give him the opportunity to promptly put his professional affairs in short order but under strict conditions.

- h. Whether and how effectively he chooses to address his struggles with depression is up to him. However, as he himself has acknowledged, if he doesn't face these issues he won't be able meet the standards required of all members of the profession and he won't be able to practice law.
- i. Mr. Richert appears to be well along the road toward a declaration he is ungovernable. He must understand this is almost certainly his last opportunity to change his behaviour.

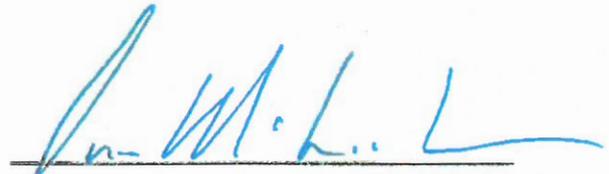
68. Balancing all of these factors we have determined the following to be the appropriate disposition in this case and we so order:

- a. Within two (2) business days of his receipt of this order Mr. Richert shall provide his personal undertaking to the Society that:
 - i. He shall voluntarily withdraw from practice effective October 31, 2019 and shall not take on any new clients in the meantime.
 - ii. He shall cooperate with the Society promptly and in all respects in ensuring his current clients' interests are protected.
 - iii. As soon as practicable he shall refer the Client Matters and any other matters with respect to which he is subject to trust conditions to other lawyers and shall advise the Society of all such referrals within 24 hours of their occurrence. The only exception to this is where the Chief Executive Officer of the Society (the "CEO") gives express written authorization for Mr. Richert to deal with a specific Client Matter himself.
 - iv. He shall thereafter make appropriate arrangements to refer his remaining clients to other lawyers for the period during which he will not be practicing law and shall advise the Society of all such referrals within 24 hours of their occurrence.
 - v. With respect to subparagraphs (a)(iii) and (iv) he agrees the Society may, on notice of not less than 24 hours, fix a deadline by which any such referral arrangements shall be completed, either in whole or in part.
 - vi. On or before October 4, 2019 he shall provide satisfactory confirmation to the Society he is under the care of a qualified medical professional for the treatment of his depression.

- vii. He shall thereafter comply with any treatment program proposed by his doctor.
 - viii. He acknowledges he will not be allowed to resume practice until he has satisfied the Society's Director of Admissions that he is medically fit to practice law.
 - ix. On or before October 31, 2019 he shall satisfy all outstanding information requests from the Society and shall satisfy any new information requests within such time as the Society may direct.
- b. On or before October 4, 2019 Mr. Richert shall provide to the Society:
- i. A list of all of his open files, including for each file the name and contact information of the client and a description of the matter;
 - ii. A list of the dates and times of all hearing dates and other court and tribunal appearances scheduled from July 31, 2019 to December 31, 2019;
 - iii. A list of the dates and times of all closings in real estate and commercial transactions scheduled from July 31, 2019 to December 31, 2019;
 - iv. A list of the names and contact information for all medical professionals and institutions whom he has consulted or from whom he has received medical treatment or advice on any occasion from and after February 13, 2019 to the present; and
 - v. A signed authorization (in a form to be proved by the Society) for each and every such medical professional and institution to disclose to the Society all such information as the Society may request, including copies of records, clinical notes, test results and consultation reports and to provide to the Society such narrative reports as the Society may request.
- c. Mr. Richert shall be suspended at a day to be fixed by the CEO for a period that shall last until the later of 60 days and the day on which he has (1) properly responded to all then outstanding information requests from the Society and (2) satisfied the Society's Director of Admissions that he is medically fit to practice law in the event any of the following occur:
- i. Mr. Richert fails to provide the undertaking required by Subparagraph (a) above (the "**Undertaking**") within the required time;
 - ii. Mr. Richert fails to comply with any of the specific requirements of the Undertaking within the time limits contemplated;

- iii. Mr. Richert fails to provide any of the information or authorizations required under Subparagraph (b) by October 4, 2019; and
 - iv. If the list of open files with closings or appearances is materially longer than the list of Client Matters and Mr. Richert has not provided an explanation for the difference that is satisfactory to the CEO.
- d. Costs of \$2,400 to be paid on a schedule and at a rate to be set by the CEO. Provided however, that any payment shall not be required until at least two months after Mr. Richert has been allowed to resume practice.
- e. This decision shall be provided to Mr. Fabbri as soon as possible.

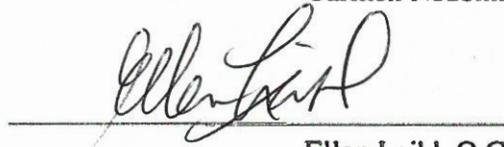
Dated this 25th of September, 2019



James E. McLandress (Chair)



Carmen Nedohin



Ellen Leibl, Q.C.