



DISCIPLINE CASE *DIGEST*

Case 19-02

Member:	Shelley Loreen Overwater
Jurisdiction:	Manitoba
Called to the Bar:	April 21, 2011
Nature of Hearing:	Reinstatement Application
Date of Hearing:	August 21, 2019
Panel:	<ul style="list-style-type: none">▪ Grant Mitchell, Q.C. (Chair)▪ Lori Ferguson Sain, Q.C.▪ Maureen Morrison (Public Representative)
Counsel:	<ul style="list-style-type: none">▪ Rocky Kravetsky for The Law Society of Manitoba▪ Member Self Represented
Dates of Decisions:	Oral Decision: August 21, 2019 Written Reasons for Decision: September 11, 2019
Disposition:	Reinstatement Granted with Conditions

Reinstatement Application

Facts

In 2015, Ms Overwater was permitted to resign as a member in the face of charges arising from events in 2011-2012. Ms Overwater was called to the Bar in Manitoba in April 2011, after articling at a Morden firm. The firm did not keep Ms Overwater on following the completion of her articles. She then opened her own firm as a sole practitioner in Morden. Her practice quickly grew and she opened a second location in Winkler, Manitoba in September 2011. By June 2012, Ms Overwater had approximately 700 active files. She was supported by a bookkeeper and three assistants.

On February 29, 2012, Ms Overwater informed the Law Society that her pooled trust account was short \$66,500.00 because she had written a cheque in that amount to a contractor who had worked on her Winkler office. She had been aware of the shortage of trust funds since at least January 2012. Ms Overwater was also indebted to RBC during this time, for the acquisition of various equipment for her practice. Ms Overwater was suspended from practice on June 13, 2012 and has not practised since. Ms Overwater repaid the entire trust account shortage by February 16, 2013.

On March 26, 2015, a Panel of the Discipline Committee of the Law Society accepted a joint recommendation and permitted Ms Overwater to resign her membership and pay \$15,000.00 in costs. The Law Society undertook not to oppose an application for reinstatement made after at least two years, if certain conditions were met, and not seek to recover costs until Ms Overwater resumed the practice of law. The Panel's decision to permit Ms Overwater to resign was made, in part, in recognition of the numerous challenges that Ms Overwater has faced and overcome in her personal life, including an alcohol and drug addiction and other health concerns.

Since leaving the practice of law, Ms Overwater has held various jobs, including a job as a long haul truck driver. She has also completed the Manitoba Real Estate Salesperson course. Recently, Ms Overwater received an offer of employment with the rural Manitoba law firm of MMJS. This job offer was the impetus for Ms Overwater's reinstatement application. The Law Society did not oppose the application.

Decision and Comments

The Panel considered whether Ms Overwater had met the required criteria for reinstatement as set out in Law Society Rule 5-102(2). It also considered whether Ms Overwater met the additional criteria for an application for reinstatement as set out in *The Law Society of Manitoba v Gutkin*, 2010 MBLS 12. In summary, the *Gutkin* criteria require that an Applicant must show:

1. by a long course of conduct, that they are persons to be trusted, who are in every way fit to be lawyers;
2. that their conduct is unimpeached and unimpeachable;
3. that a sufficient period of time has elapsed before an application for readmission will be granted;
4. that they have entirely purged their guilt;
5. by substantial and satisfactory evidence, that it is extremely unlikely that they will misconduct themselves if permitted to resume practice; and,
6. that they have remained current, or have an acceptable plan to become sufficiently current, in the law.

The Panel determined that Ms Overwater had successfully complied with the relevant criteria for reinstatement in the context of a resignation. In particular, the Panel noted Ms Overwater's persistence and resilience in continuing her education and pursuing a wide

variety of occupations, her continued commitment to her rehabilitation, and her complete candour in taking responsibility for her misconduct. The Panel also noted the time that had lapsed since Ms Overwater's misconduct, in addition to the fact that the money inappropriately paid out of her trust account was done at a time when she did not realize the payment was not permitted under the Law Society's trust account rules. With regard to the impeachability of Ms Overwater's conduct, the Panel considered the trust, confidence, and support offered to Ms Overwater by the firm of MMJS. At all times, Ms Overwater accepted full responsibility for her actions, even though her circumstances at the time made her vulnerable to error: she was left to practise on her own, in a wide-ranging practice and with a large caseload, all immediately after completing her articles. With regard to the currency of Ms Overwater's legal education, the Panel considered that Ms Overwater has successfully completed the real estate sales course and is a relatively recent graduate of the CPLED course. In addition, the Law Society's proposed conditions for Ms Overwater's reinstatement include education-related conditions that would further address this issue. MMJS also plans to limit Ms Overwater's work to real estate, with a gradual expansion into other areas of solicitor's work.

In light of the above considerations, the Panel determined to grant the reinstatement application with the following conditions that were proposed by the Law Society, accepted by Ms Overwater, and where applicable, accepted by MMJS:

1. Ms Overwater will not be issued a practising certificate until she has completed, and has provided to the Society, a Certificate that she has completed the following reading:
 - a. *The Legal Profession Act, Code of Professional Conduct and Rules of the Law Society of Manitoba*; and
 - b. The Manitoba Resource Materials.
2. For a minimum period of one year, she must:
 - a. practise as an employee in a firm, government or corporate setting approved by the Society. MMJS is an acceptable employer;
 - b. not operate or have authority over any trust account, and in particular must not have authority to issue or sign cheques or to withdraw or cause to be withdrawn any money from any trust account; and
 - c. practise under the supervision of a lawyer approved by the Society, who must be a member of the same entity by which she is employed. Mr. Johnston is proposed as her supervisor, and is acceptable.
3. There will be in place a written Undertaking of the Supervisor by which the Supervisor undertakes to supervise the former Member's practise of law and to:
 - a. report to the Society no less frequently than every three months as to his supervisory activities, including concerns that have arisen and how those concerns were dealt with;
 - b. for the first three months, no less frequently than every second week, review with her all of her files and upon such review provide such directions as may be required;

- c. thereafter, no less frequently than every second week, review with her a random representative sample of her files, but in any event no less than 10 of them, or all if there are less than 10, and upon such review provide such direction as may be required and conduct such further review and follow up as the circumstances may suggest is necessary;
- d. notwithstanding the discontinuance of general Supervision, for a period of at least one year after she has been granted signing authority on any trust account, the Supervisor shall review all trust ledgers that pertain to her files no less frequently than monthly and, if necessary, take appropriate corrective action and report any significant events to the Society; and
- e. not to withdraw from the Undertaking except on 30 days' notice to the former Member and the Society unless earlier released by the Society.