



DISCIPLINE CASE *DIGEST*

Case 19-04

Member: Jonathan Andrew Richert

Jurisdiction: Brandon, Manitoba

Called to the Bar: December 13, 2005

Particulars of Charges: Professional Misconduct (3 Charges):

- Breach of Rule 7.1-1 of the *Code* and Rules 5-64(3), (4) and (5) of the *Rules* [failure to respond promptly and completely to the Law Society] [x2]
- Failure to comply with a condition imposed on him by Order of the Discipline Committee

Plea: Not Guilty

Dates of Hearing: August 13, 2019 and September 20, 2019

Panel:

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

Counsel:

- Rocky Kravetsky for The Law Society of Manitoba
- Member Self Represented

Date of Decision: Written Reasons for Decision: September 25, 2019

Disposition:

- Mr. Richert will provide a personal undertaking to the Society that he shall, among other actions, voluntarily withdraw from practice effective October 31, 2019 and acknowledge he will not be allowed to resume practice until he has satisfied the Society that he is medically fit to practise law.
- On or before October 4, 2019, Mr. Richert shall provide to the Society:
 - A list of names, contact information, and important dates for all of his active files; and
 - A list of names and contact information, and signed authorizations, for all medical professionals and

institutions whom he has consulted or from whom he has received medical treatment or advice on any occasion from February 13, 2019.

- Mr. Richert shall be suspended for a period that shall last until the later of either 60 days or the day on which he has: 1) properly responded to all then outstanding information requests from the Society; and 2) satisfied the Society that he is medically fit to practise law, if any of the following occur:
 - If Mr. Richert fails to provide or comply with his personal undertaking to the Society; or,
 - If Mr. Richert's list of open files is materially longer than the list of Client Matters and he has not provided a satisfactory explanation for the difference.
 - Costs of \$2,400.00
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Failure to Respond to the Law Society / Failure to Comply with a Condition of an Order

Facts

On June 19, 2019, Mr. Richert was charged with three separate counts of professional misconduct. Two of the charges occurred in the context of investigations into two complaints against Mr. Richert, during which he failed to respond promptly or within the prescribed time to the Law Society. The third charge related to Mr. Richert's failure to comply with a condition imposed upon him by an Order of the Discipline Committee dated March 14, 2019 (the "**March 14th Order**"). The Order required Mr. Richert to provide written acknowledgement within 24 hours after receiving an email communication from the Law Society. Mr. Richert failed to provide such written acknowledgement to an email sent May 29, 2019.

Mr. Richert was diagnosed with major depression with symptoms of anxiety on July 31, 2019. He had been experiencing symptoms prior to receiving the formal diagnosis, which he states was the cause of his failure to respond to the Law Society. Mr. Richert stated that although he was able to keep his court dates and client appointments, he had been sleeping excessively and had been struggling in his daily professional life. Mr. Richert described himself as a "member in crisis."

Mr. Richert has a previous discipline history for similar misconduct. On September 6, 2018, Mr. Richert pled guilty to a charge of professional misconduct for failing to respond to two "14-day letters" from the Law Society. He received a reprimand for this offence. On January 8, 2019, he pled guilty to three counts of failing to respond to communications from the Law Society. For this second offense, he received a fine and an Order from the Discipline Panel

(the March 14th Order) which imposed several conditions on his practising certificate, including that he have a practising member of the Law Society act in a monitoring role (the “**Monitoring Member**”) to ensure his compliance with the remainder of the Order.

The current matter was scheduled for a hearing on August 13, 2019. That morning, Mr. Richert emailed Law Society counsel and advised that he could not attend due to medical reasons and requested the matter be adjourned for one month. The Panel ordered the matter be adjourned to September 20, 2019. The Panel’s order also required Mr. Richert to provide certain information to the Law Society concerning his open files, hearing dates and real estate closings, and authorizations and information related to his medical condition. As of the hearing on September 20, 2019, Mr. Richert had not complied with any of those conditions. On September 17, 2019, Mr. Richert emailed Law Society counsel and requested a further adjournment of the proceedings. On September 19, 2019, Mr. Richert asked the Panel to grant the adjournment, or in the alternative, to allow him to attend the September 20, 2019 hearing by telephone to address his adjournment request. The Panel declined both requests and directed Mr. Richert to appear in person if he wished to seek an adjournment. Mr. Richert attended the hearing on September 20, 2019 and made his submissions regarding an adjournment. The Panel denied the adjournment request and the hearing proceeded as scheduled.

Plea

Mr. Richert pled not guilty to the three charges of professional misconduct. He did not deny his failures to respond and did not offer any evidence to refute the evidence of the Law Society. However, he argued that he was not responsible for his actions due to his depression.

Decision and Comments

The Panel determined that the facts of the misconduct occurred as alleged by the Law Society and that such conduct constitutes professional misconduct. It therefore found Mr. Richert guilty of three counts of professional misconduct.

In determining the appropriate sentencing, the Panel considered the Law Society’s legal obligation to regulate the practice of law in Manitoba and its purpose of upholding and protecting the public interest in the delivery of legal services. In order to protect the public interest, the Law Society must be able to effectively regulate its members. This means that the Law Society must have the ability to ensure that its members are cooperating fully with the Law Society. As such, the sentencing factors of both general and specific deterrence are significant in this case, particularly given Mr. Richert’s history of similar misconduct. The Panel found that a suspension would be the next logical step in responding to the repeated misconduct. However, the Panel also considered Mr. Richert’s mental health and his diagnosis of depression. Although Mr. Richert did not provide any objective medical evidence to prove the severity of his depression, the Panel was satisfied that he is someone who is struggling greatly with his medical condition. The Panel determined that its disposition needed to take into account his personal health issues as well as the seriousness

of the misconduct, the fact that it was part of a repeated behaviour, and the message the decision would send to the profession and the public.

Penalty

The Panel directed that:

- a. Within two business days of his receipt of the 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 Mr. Richert 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 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 practising 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, provide satisfactory confirmation to the Society that 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 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 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 \$2,400.00 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 the Monitoring Member as soon as possible.