

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

DAVID WOLFE WALKER

-and-

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

Date of Hearing:

January 27, 2020

Panel:

Catherine Finnbogason (Chair)

Donald Knight, Q.C.

Keely Richmond (Public Representative)

Counsel:

Rocky Kravetsky for the Law Society of Manitoba

Michael Cook for the Member

REASONS FOR DECISION

Introduction

1. David Wolfe Walker is a member of the Law Society of Manitoba (“the Law Society”). He was called to the bar on January 30, 2013. He articulated at Walsh & Company and practised as an associate there until the firm dissolved on June 30, 2014. He worked as a sole practitioner from

July 1, 2014 until March 2, 2016. From March 3 until September 15, 2016 he practised in partnership with Kate Smith at Smith & Walker LLP. He shared office space at Law Offices of Bokhari, Smith & Walker from September 16, 2016 until December 5, 2019. Since then he has shared office space while operating as a sole practitioner at Walker Law Office. According to Mr. Walker, ninety percent of his practice is criminal law work.

2. Mr. Walker has no prior discipline convictions with the Law Society. On May 4, 2016, he gave an Undertaking to the Law Society which includes the following continuing requirements:

- (i) I will adopt a “bring forward” system that ensures that all of my matters requiring action by certain dates are brought to my attention on a timely basis.
- (ii) I will reply promptly to all professional communications requiring a reply received in the course of my practice, including, but not limited to, communications from my clients, other counsel, and the Courts.
- (iii) I will ensure that, at all times, callers are able to leave messages for me when I am not personally available to answer their calls.
- (iv) I will personally attend all court dates that the Court directs me to attend, and I or my agent will attend all of my clients’ other court dates unless I receive advance written confirmation from the Crown (or opposing counsel, as applicable) that counsel is not required to attend on behalf of my client. In the event that neither I nor my agent are able to attend a scheduled court date for which an appearance by counsel is required, I will advise the Crown (or opposing counsel, as applicable) by email as far in advance as possible and I will obtain confirmation, in advance of the scheduled court dates, that my clients’ matters will be adjourned in my absence.
- (v) I will familiarize myself with all Practice Directions and Protocols for the Manitoba Provincial Court and Court of Queen’s Bench that are applicable to my practice and I will fully comply with each of those Practice Directions and Protocols. I acknowledge that I am aware that those Practice Directions and Protocols can be accessed on the Manitoba Courts website (<http://www.manitobacourts.mb.ca/>) under the “Procedure, Rules and Forms” link for the relevant court.

3. On January 27, 2020 Mr. Walker entered guilty pleas before this panel to counts 3, 6, 7 and 9 of a ten-count Citation dated April 17, 2019. Counsel for the Law Society entered stays of proceedings on the remaining counts. A Statement of Agreed Facts, including the Citation, was tendered as an exhibit in the proceedings. After hearing submissions from counsel and from Mr. Walker and adjourning to consider them, we reconvened. We advised all parties that we accepted their joint recommendation as to penalty, with reasons to follow.

4. These are our reasons.

Facts

5. This case involves four of Mr. Walker's criminal law clients, GK, CL, HN, NB and events that cover a period of approximately sixteen months.

Client GK

6. On November 9, 2017 Mr. Walker set a trial date of March 23, 2018 for his client, GK, on an impaired driving charge. On December 8, 2017 GK was charged with breaching a condition of his release on the impaired charge. On February 5, 2018 Mr. Walker received an e-mail from the Crown asking him if he would like the breach charge set over to the March 23 trial date. Mr. Walker did not respond to that e-mail.

7. The Crown had four witnesses in attendance for the March 23 impaired trial. The Crown was ready to proceed. Neither Mr. Walker nor his client GK attended court for the trial. The case had to be adjourned.

8. GK retained new counsel, Manny Bhangu. On July 13, 2018 Mr. Bhangu sent Mr. Walker an email requesting GK's file and the disclosure materials. Mr. Walker did not respond. Mr. Bhangu had to get the disclosure from the Crown and never did receive GK's file from Mr. Walker.

Client CL

9. Mr. Walker represented CL when he entered a guilty plea to charges in Manitoba Provincial Court. A pre-sentence report ("PSR") was ordered and the sentencing for CL as well

as his co-accused, was scheduled for March 2, 2018 at 2:00 p.m. The co-accused had other counsel. The PSR was due to be completed by February 26.

10. On March 2, 2018 at 2:00 p.m., the Honourable Judge Lerner, the Crown, the co-accused and co-accused's counsel were ready to proceed with the sentencing. They had all received the PSR. CL was in custody at Headingley and had been transported to court for the sentencing.

11. Mr. Walker e-mailed the Crown at 2:18 p.m. explaining that he had car trouble and requesting that the sentencing be adjourned to a later date. The Crown conveyed the request to Judge Lerner who denied the request and ordered Mr. Walker to attend court as soon as possible. By email at 3:07 p.m. Mr. Walker told the Crown that he had not received the PSR and would need to review it with his client before proceeding to the sentencing.

12. Mr. Walker arrived at court at 3:40 p.m. He told Judge Lerner that his car had a flat tire. He had slowly driven his car to his car dealership. Rather than calling for a taxi to take him to court, he made arrangements at the dealership for repair of the tire and rim and then waited for the dealership to provide him with a rental vehicle. Judge Lerner told Mr. Walker that he had fallen "far short" of his obligations to the court. Judge Lerner added, "You had a court obligation and you did not do what you needed to do to be here on time."

13. Mr. Walker told the court and this panel that he believed that the sentencing would not proceed on March 2 because he had not received the pre-sentence report. He had made no inquiries of Probation Services between February 26 and March 2 as to the whereabouts of the report. He did not notify the Crown that he did not have the report until an hour after the sentencing was scheduled to begin. The sentencing had to be adjourned to a later date.

Client HN

14. HN's charges were scheduled for disposition on September 15, 2018. Mr. Walker did not attend court for the disposition hearing nor did he take steps to ensure HN's appearance.

Client NDB

15. On March 14, 2018, in relation to NDB's criminal charges, Mr. Walker received six items of disclosure from the Crown. The disclosure was sent with trust conditions, including the condition that should NDB discharge Mr. Walker as counsel, Mr. Walker would immediately return the disclosure to the Crown. Mr. Walker agreed to all conditions.

16. On May 3, 2018 NDB discharged Mr. Walker as counsel. The Crown sent correspondence to Mr. Walker on May 3, 6 and 22, 2018, requesting the immediate return of the disclosure. Finally, on October 22, 2018 Mr. Walker returned the disclosure package to the Crown. This was after he had been informed on September 29 that a complaint had been made against him to the Law Society.

Telephone

17. On February 25, 2019 the Law Society's Complaints Resolution Counsel, Christopher Donaldson tried to reach Mr. Walker on his direct phone line. Mr. Walker did not answer. Mr. Donaldson was unable to leave a message because the voice mailbox was full. Mr. Donaldson called Mr. Walker's general office line, but no one answered.

Analysis

18. This matter proceeded on the basis of a joint submission on disposition. Experienced counsel for the Law Society and for Mr. Walker jointly submitted that the appropriate penalty in this case is an Order that:

- (i) Mr. Walker be fined \$1500.00
- (ii) Mr. Walker pay \$3000.00 to the Law Society of Manitoba as a contribution to the costs of the investigation and prosecution of the charges.

19. The purpose of disciplinary proceedings is comprehensively set out in *The Law Society of Manitoba v. Nadeau*, 2013 MBL 4. That case referred to *Lawyers & Ethics: Professional Responsibility and Discipline*, Gavin MacKenzie, Carswell 2012, Release 3 at p. 26-1: "The purposes of law society discipline proceedings are not to punish offenders and exact retribution, but rather to protect the public, maintain high professional standards, and preserve public confidence in the profession. "

20. In considering whether or not to accept a joint recommendation as to penalty we are reminded that joint submissions contribute to a fair and efficient justice system, including law society proceedings. *The Law Society of Manitoba v. Sullivan*, 2018 MBL 9 cited the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43 to emphasize the very high threshold for rejecting a joint submission. Moldaver, J. writing for the court in *Anthony-Cook* ruled that a joint

submission should only be rejected if “the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.” [para 32].

21. Moldaver, J added at paragraph 34 that “rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all of the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. This is an undeniably high threshold – and for good reason.”

22. In looking at the relevant principles to consider in imposing a penalty, the *Nadeau* decision cited with approval the factors set out in *Law Society v. Ogilvy [1999] L.S.D.D. No. 45, [1999] LSBC 17* at p. 10:

(a) the nature and gravity of the conduct proven; (b) the age and experience of the respondent; (c) the previous character of the respondent, including details of prior disciplines; (d) the impact on the victim; (e) the advantage gained or to be gained, by the respondent; (f) the number of times the offending conduct occurred; (g) whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances; (h) the possibility of remediating or rehabilitating the respondent; (i) the impact on the respondent of criminal or other sanctions or penalties; (j) the impact of the proposed penalty on the respondent; (k) the need for specific and general deterrence; (l) the need to ensure the public’s confidence in the integrity of the profession; and (m) the range of penalties imposed in similar cases.

23. The undertakings which Mr. Walker gave to the Law Society in paragraph two of these reasons are, as pointed out by counsel for the Law Society, normal obligations with which all lawyers are expected to comply. These undertakings were, among other things, meant to bring home to Mr. Walker the importance of practising law in a respectful, courteous and efficient manner. In entering into these undertakings, Mr. Walker promised the Law Society that he had changed his ways. However, in failing to attend scheduled court dates on time or at all, to reply to correspondence, to advise clients of court dates, or to have an efficiently functioning

telephone system, Mr. Walker failed in his normal obligations as a lawyer. To have conducted himself in these ways after giving his undertakings adds to the seriousness of his misconduct.

24. In *The Law Society of Manitoba v. Wang* 2015 MBL 12 the panel commented that breaching undertakings cannot be described as a victimless offence. At paragraph 67 the panel noted: "Undertakings are not just important; they are fundamental to our legal system. Failures of members to honor them must be firmly dealt with. The public has the right to expect that lawyers will keep their promises. The Law Society is charged with the responsibility of ensuring members of the legal profession do exactly that."

25. Applying the *Ogilvy* factors to this case, there are a number of points to be emphasized. Mr. Walker's misconduct cannot be described as one or two slip-ups. There were many incidents and they occurred after the Law Society deemed it necessary to have Mr. Walker enter into undertakings. The misconduct described here had a negative impact on the efficient running of the legal system as well as on individuals within the system. Members of the legal profession in general and Mr. Walker, specifically, must be made aware that misconduct of this kind will be treated seriously. In his favour, Mr. Walker has acknowledged his misconduct and takes responsibility for it. He has no formal discipline history with the Law Society. He gained no advantage for himself through his behaviour. The offences occurred over a relatively short period of time. While the panel in *The Law Society v. Nadeau*, 2005 MBL 2 found Nadeau to have behaved with a "cavalier attitude", both counsel for Mr. Walker and for the Law Society agree that Mr. Walker's behaviour was less cavalier, and more irresponsible and ill-considered. We concur.

26. We accept that in the time leading up to and during these offences, Mr. Walker was under a great deal of stress in his personal life. He was, as described by his counsel, overwhelmed. His personal situation has now stabilized. He has completed a number of professional development courses dealing with practice management. His undertakings to the Law Society remain in place. It is our hope that, through these proceedings and the imposition of the penalty, Mr. Walker recognizes and appreciates the seriousness of his obligations to all parties in the legal system.

27. Counsel referred us to several decisions which provide a framework for the types of dispositions handed down in cases involving breaches of undertakings to the Law Society (*Wang, The LSM v. Palmer*, 1994 MBL 8) and charges of failure to be courteous and civil (*The LSM v. Alghoul*, MBL 17, *The LSM v. Stienstra* 2016 MBL 13, *The LSM v. Guttman* 1990 unreported, *The LSM v. Nadeau* 2005 MBL 2). The penalties range from reprimands to fines

and costs. The jointly recommended disposition in this case falls within the framework of the cited decisions.

Conclusion

28. We have no difficulty in concluding that the joint submission in this case meets the public interest test set out by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43.

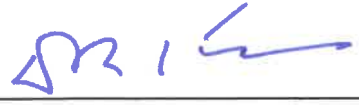
57. We accept the joint submission and we make the Order set forth in paragraph 18 of these reasons.

58. We thank both counsel for their helpful submissions.

Dated this 7th day of February, 2020



Catherine Finnbogason



Donald Knight, Q.C.



Keely Richmond