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THE LAW SOCIETY OF MANITOBA and
DOUGLAS ALBERT MAYER
REASONS

PANEL MEMBERS: R. Campbell, Q.C. (Chair)
 A. Kavanagh
 C. Nedohin

COUNSEL FOR THE LAW SOCIETY OF MANITOBA:
 A. Klein

COUNSEL FOR MEMBER: G. Wood

Hearing held at The Law Society of Manitoba,
200-260 St. Mary Avenue, Winnipeg, Manitoba, October 21,
2020.

FOUR SEASONS REPORTING
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ORIGINAL

1 THE CHAIR: I would just note for the record
2 that the panel members are present, as well as Ms. Klein
3 for the Society. This afternoon I am going to be providing
4 you with an oral decision and the reasons for the conduct
5 hearing that we have held on Mr. Mayer.

6 Douglas Albert Mayer is a member of The Law
7 Society of Manitoba. He was called to the bar on June 30,
8 1988. He works as a sole practitioner in Winnipeg,
9 primarily in the area of family law.

10 By citation dated September 4, 2020, Exhibit 1
11 in these proceedings, Mr. Mayer is charged with five counts
12 of professional misconduct. The rules allege --

13 We just lost one of our panel members, so maybe
14 I will just hang on to see if Mr. Kavanagh --

15 MS. NEDOHIN: I think it is fair to say, Madam
16 Chair, that the panel did review what you're reading from
17 beforehand, so if you do lose one of them we're --

18 THE CHAIR: Okay to go ahead? And I am just
19 wondering, Mr. Wood, if you are okay with that, if we get
20 muted?

21 MR. WOOD: Yes.

22 THE CHAIR: We had some significant issues over
23 the last while here or so of people getting knocked off as
24 we were trying to do it.

25 So I can say for the record that both members

1 of the panel and myself have reviewed the information I am
2 going to be giving to you and Mr. Mayer, and they are in
3 agreement with the comments that I am going to make, so
4 that way we will not have to get -- well, I am still
5 concerned that Mr. Kavanagh goes missing, but we can
6 continue on with the hearing in any event.

7 Just continuing on with respect to that, as I
8 indicated, Mr. Mayer is charged with five counts of
9 professional misconduct.

10 The rules alleged breach were 2.1-1, failing to
11 act with honesty and integrity, 3.2-1, failing to provide
12 service, 7.2-11, failing to fulfil your undertaking, 5.1-5,
13 failure to be courteous, civil, and act in good faith with
14 the tribunal, and 7.2-4, sending correspondence that was
15 abusive, offensive or otherwise inconsistent with a proper
16 tone of professional communication.

17 Further, by citation dated September 30, 2019,
18 Exhibit 2 in these proceedings, Mr. Mayer is charged with
19 two counts of professional misconduct.

20 The rules alleged breach are sub-rules 5-64(3),
21 (4) and (5) of the rules of The Law Society of Manitoba,
22 and rule 7.1-1 of the *Code of Professional Conduct*, in that
23 he failed to respond promptly and completely to the
24 substance of the correspondence from the Society.

25 The hearing before this panel began on

1 October 19, 2020, with Mr. Gavin Wood representing the
2 member, and Ms. Klein appearing for the Society.

3 The Society presented its case by way of
4 documentary evidence, and Mr. Mayer testified that he was
5 not guilty of the offences outlined in the citations.

6 It is noted that on May 9, 2019 Mr. Mayer
7 signed an undertaking for The Law Society of Manitoba
8 agreeing to the following clauses that are pertinent to
9 these proceedings, and this is Exhibit 3, tab 9 of
10 Exhibit 3, and the three clauses that I am going to
11 indicate for the record that we determined were pertinent.

12 Number 1, I will attend to all of my clients'
13 legal matters in a timely and reasonable manner.

14 Number 2, I will acknowledge receipt of all
15 communications received during the course of my practice in
16 a timely and reasonable manner and, in any event, within
17 three business days of my receipt of such communications.

18 Number 3, I will respond in substance to all
19 communications received during the course of my practice in
20 a timely and reasonable manner in the given circumstance
21 and, in any event, unless I have made alternate
22 arrangements within 10 calendar days of my receipt of such
23 communications.

24 The facts. On April 28, 2019 Mr. Mayer
25 accepted a certificate from Legal Aid Manitoba that

1 required him to represent L.H. in family proceedings.

2 As a result of being appointed Mr. Mayer opened
3 a file, searched the Court Registry, wrote to opposing
4 counsel to confirm the upcoming April 30th court
5 appearance, and that that court appearance would be
6 adjourned without his attendance.

7 In addition, he wrote to L.H. enclosing
8 documents that needed to be completed by L.H. and returned
9 to him.

10 On May 1st opposing counsel emailed Mr. Mayer
11 confirming that the matter had been adjourned to June 4th
12 at 9:30. The email indicated that L.H. had stated that he
13 had tried to contact Mr. Mayer, and that Judge McBride
14 stated that if he had not, being Mr. Mayer, had not
15 received instructions by June 4th, he should attend court
16 on that date, as L.H. was always present. There was no
17 response to this email by Mr. Mayer.

18 No further activity occurred on the file until
19 opposing counsel sent an email on May 23, 2019, requesting
20 that Mr. Mayer confirm whether or not he had received
21 instructions from L.H.

22 There was no email response to this email;
23 however, Mr. Mayer testified that he spoke to opposing
24 counsel around the end of May. Mr. Mayer's timesheet to
25 Legal Aid is instructed and outlines all of the calls or

1 contacts on L.H.'s file.

2 Located at tab 3 of Exhibit 3, the book of
3 documents, there are entries from, if I can just review
4 them, May 29th, a voicemail from S.H., a second voicemail
5 from S.H. on May 29th at Mr. Mayer's home office, May 30th,
6 a voicemail from S.H., an indication that Mr. Mayer phoned
7 S.H., but there was no answer.

8 There is no indication before the panel that
9 Mr. Mayer spoke to his client or his client's mother during
10 the month of May.

11 On June 4th Ms. Moffit, Portage la Prairie
12 trial coordinator, left a voice message for the member.
13 There is no evidence of any response to this voice message.

14 Additionally, on June 4th, Mr. Mayer phoned
15 L.H. and left a message with S.H., and he testified the
16 message was passing on the importance of L.H. contacting
17 Mr. Mayer.

18 Mr. Mayer also emailed opposing counsel at
19 7:00 p.m. on June 4th, indicating that he was still trying
20 to confirm his representation of L.H.

21 On June 5th an email was sent by Ms. Moffit
22 attaching a letter from Judge McBride. That email and
23 letter are in Exhibit 3 at tabs 12 and 13.

24 Mr. Mayer testified that he did not see this
25 email or attachment until June 21st, when his intention was

1 directed to it by Chief Judge Wiebe. During the period
2 between June 5th and June 21st S.H. had left a voicemail on
3 June 18th with Mr. Mayer, and Mr. Mayer placed two calls to
4 S.H. on June 19th.

5 The first was unanswered, with no voicemail
6 system, and the second was a message was left indicating
7 that L.H. should attend to an appointment June 20th at
8 Mr. Mayer's office in Winnipeg. There is no evidence of
9 whether or not this message was received by L.H.

10 On June 21st the member received an email from
11 Michelle Bacon attaching corresponding from Chief Judge
12 Wiebe requesting Mr. Mayer's immediate attention to the
13 matter. This email and letter are located at Exhibit 3 at
14 tabs 14 and 15.

15 Mr. Mayer responded that day, indicating he had
16 not seen the previous letter and, further, that he had not
17 established a solicitor/client relationship with L.H.

18 On June 24th opposing counsel requested
19 confirmation of whether Mr. Mayer is acting for L.H. There
20 is no indication this letter received a response. That is
21 located at tab 16.

22 On June 25th Mr. Mayer wrote to L.H. and
23 indicated that he would only attend court for L.H. if he
24 had received the form sent on April 28th and, further, that
25 if he had not heard from him by July 2nd he would close his

1 file.

2 On June 26th Chief Justice Wiebe sent further
3 correspondence located at tab 20 prompting Mr. Mayer's
4 response on June 28th, located at tab 21. Mr. Mayer's
5 position that he was not counsel of record in any
6 communications, or lack thereof, between him and his client
7 were privileged.

8 Unfortunately, Mr. Mayer's response was not
9 quite as succinct as I have summarized it, nor as tactful,
10 and Chief Judge Wiebe reported him to The Law Society on
11 July 19th, and that complaint is located at tab 1 of
12 Exhibit 4.

13 The panel is now going to deal with the
14 citation dated September 4, 2020 marked as Exhibit 1 in
15 these proceedings.

16 Count 1 stipulates that the conduct of the
17 member was contrary to rule 2.1-1 of the *Code of*
18 *Professional Conduct* in short, failing to act with honesty
19 and integrity. The panel is not satisfied that this charge
20 has been proven.

21 Mr. Mayer testified under oath that he was not
22 aware of the correspondence from Judge McBride until
23 June 21st. We are not prepared to say that he is being
24 dishonest.

25 With respect to the suggestion that the

1 member's correspondence was a ruse to deflect from his
2 conduct as a lawyer, we simply say this charge has not been
3 laid out.

4 Count 2 of that citation. The panel finds that
5 the steps taken by the member in the month of April, after
6 having been appointed by Legal Aid, were appropriate, and
7 met the requirements of section 3.2-1 of the *Code of*
8 *Conduct*.

9 Subsequent conduct, however, was neither
10 diligent nor conscientious. The member was aware that the
11 court wanted a substantive update on the June 4th
12 appearance.

13 The efforts by the member specifically, one
14 call to S.H. on May 31st, for which there was no answer,
15 and a call to S.H. on June 4th at an undetermined time to
16 pass a message to L.H. that he must contact the member, is
17 not sufficient for the code requirements.

18 Emailing opposing counsel in the evening after
19 court falls far short of what is required from the member.
20 It is clear from his conduct in April that minimally
21 arrangements had to be made with opposing counsel if he was
22 not going to attend court on June 4th. The member simply
23 did nothing, and on count 2 the panel finds him guilty.

24 Count 3. The member signed an undertaking with
25 the Society on May 9th addressing, amongst other issues,

1 quality of service by the member.

2 The undertaking is located at tab 9 of
3 Exhibit 3, and given the panel's comments on count 2 of the
4 citation it is clear that the member acted contrary to rule
5 7.2-11 of the *Code of Professional Conduct* between
6 approximately April of 2019 and July of 2019, in that he
7 failed to fulfil his undertaking to the Society.

8 The panel finds that he breached the
9 undertaking specifically as outlined in section 3(b) of the
10 citation, and if you can just give me a moment, 3(b) of the
11 citation, in that you failed to respond to communications
12 received as following, starting with 2, voicemail June 4th
13 from Deputy Registrar Sherry Moffit; 3, letter June 5th
14 from Judge McBride; 4, email June 24th from Ms. Desrochers;
15 and, 5, letter July 5th from Ms. Desrochers.

16 I will note for the record that we accept that
17 Mr. Mayer did not see the email and letter from Judge
18 McBride on June 5th, when it was sent to him. However, he
19 was aware of it as of June 21st, according to his evidence,
20 and still did nothing in response to that communication to
21 Judge McBride.

22 Counts 4 and 5 of the citation. The panel
23 finds that counts 4 and 5 of the citation are similar in
24 nature, and the panel will be addressing our comments to
25 count 5 only.

1 We find that you acted contrary to rule 7.2-4
2 of the *Code of Professional Conduct*, in that the
3 correspondence that you sent to Chief Judge Wiebe was
4 ill-advised, to be generous, and inconsistent with the
5 proper tone of a professional communication from a lawyer.
6 We do not find it to be abusive or offensive.

7 There will be no finding of guilt on count 4,
8 given the previous comments.

9 With respect to the interactions with The Law
10 Society of Manitoba, the facts of those are as follows. On
11 July 19, 2019 Chief Judge Wiebe made a complaint to The Law
12 Society, in part, outlining the conduct for which we have
13 determined Mr. Mayer's guilt in this ruling.

14 Susan Billinkoff wrote to the member on
15 July 26th enclosing Chief Judge Wiebe's complaint, and
16 asked him for a response to specific questions. That is
17 contained in the affidavit of Susan Billinkoff, which is
18 Exhibit 4, and at tab 1. The member was required to
19 respond in 14 days.

20 Ms. Billinkoff sent further correspondence on
21 August 14th, as the member had not responded. The member
22 responded August 18th, indicating that his contact with his
23 client L.H. was privileged information, and he did not
24 respond to the Society's questions on this issue, and that
25 is in Exhibit 4 at tab 4.

1 On August 22nd Ms. Billinkoff writes to the
2 member enclosing a further email from Chief Judge Wiebe
3 that enclosed the email and attachment dated June 5th from
4 Sherry Moffit, and the letter from Judge McBride.

5 The Society informed the member that his
6 response regarding his representation of L.H. was
7 inadequate under the rules, and provided the member with
8 further direction on a response required. That is
9 Exhibit 4, tab 5.

10 Mr. Mayer responded on September 4th, and in
11 giving his response imposed inappropriate trust conditions
12 on the Society.

13 Mr. Mayer was advised of the inappropriateness
14 of these conditions in correspondence from Ms. Billinkoff
15 dated September 9th. He was told to remove the conditions
16 and respond by September 11th. Mr. Mayer responded by
17 email September 12th, indicating that he did not see merit
18 in the Society's position.

19 On September 18th the member was advised that
20 charges of professional misconduct were being laid against
21 him.

22 Turning now to the second citation dated
23 September 30, 2019, Exhibit 2 in these proceedings, this
24 two count citation has been summarized in the facts I had
25 just outlined, and it alleges that the member is guilty of

1 professional misconduct as a result of acting contrary to
2 sub rules 5-64(3), (4), (5) of the rules of the Society,
3 and contrary to rule 7.1-1 of the *Code of Professional*
4 *Conduct*.

5 The panel finds that the member did not respond
6 within the 14 days required by the rules and, further, that
7 the member's response up to and including the response by
8 email September 12, 2019, was not responsive to the
9 Society's specific requests.

10 A member's obligation to respond within 14 days
11 is strict for good policy reasons, as the public needs to
12 be protected. In all likelihood, the member would never
13 have been charged with a 14-day violation had he responded
14 substantively to the Society's queries.

15 The member's response on September 12th that he
16 did not see the merit of the Society's position concludes
17 the panel's finding of a guilt on both counts in the
18 citation.

19 These are the oral reasons of the panel's
20 decision in the matter of Douglas Albert Mayer, and the
21 Legal Professional Act on the conduct phase of this
22 inquiry.

23 MS. KLEIN: Madam Chair, just a point, that the
24 transcript of this will form the report?

25 THE CHAIR: Yes.

1 MS. NEDOHIN: Thank you very much, Madam Chair.

2 THE CHAIR: Mr. Kavanagh, you had a question?
3 You will have to unmute yourself.

4 MR. KAVANAGH: There we go. I hope everybody
5 can hear me. I just wanted to advise that I was present
6 for all of the video of Ms. Campbell's decision. Just, my
7 own video was locked out, but I could hear everything.

8 THE CHAIR: Thank you, Mr. Kavanagh.

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10 (REASONS CONCLUDED)

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CERTIFICATE OF REPORTER

I, TIFFANY REAGH, Court Reporter, do hereby
certify that the foregoing pages, numbered 1 to 14, are a
true and accurate transcript of the reasons herein as
recorded by me to the best of my skill and ability.



Tiffany Reagh
Court Reporter

THE PRECEDING 15 PAGES CONSTITUTE THE DECISION AND REASONS FOR DECISION OF THE PANEL OF THE DISCIPLINE COMMITTEE OF THE LAW SOCIETY OF MANITOBA RENDERED THE 21st DAY OF OCTOBER, 2020, IN THE MATTER OF:

DOUGLAS ALBERT MAYER



Roberta Campbell, Q.C., Chair



Anthony Kavanagh



Carmen Nedohin