

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

GISELE RITA CHAMPAGNE

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

Date of Hearing: December 16, 2020

Panel: Grant Mitchell, Q.C. (Chair)
Garth Smorang, Q.C.
Anna Maria Magnifico (Public Representative)

Appearances: Rocky Kravetsky, Counsel for the Law Society of Manitoba
Gisele Rita Champagne, Self Represented

REASONS FOR DECISION

1. GISELE RITA CHAMPAGNE appeared before a panel of the Discipline Committee of the Benchers of The Law Society of Manitoba on Wednesday, December 16, 2020 pursuant to Citations dated May 22, 2019 and March 4, 2020. Members of the panel were Grant Mitchell, Q.C., Chair; Garth Smorang, Q.C.; and Anna Maria Magnifico. Mr. Rocky Kravetsky appeared as counsel for The Law Society of Manitoba and Ms Champagne represented herself. The hearing was conducted virtually using Zoom technology, and only the panel and Mr. Kravetsky and Ms Champagne and the Court Reporter and one Law Society staff member attended for the entire hearing.
2. A Statement of Agreed Facts and Joint Submission was filed as Exhibit 1, and attached to it were the two Citations.
3. Ms Champagne confirmed orally that she did not object to the appointment of any of the panel members. She confirmed orally as well, that she was a Member of The Law Society of Manitoba and not of any other Law Society. She admitted service of the Citations and waived the formal reading of both Citations and admitted to the

allegations contained in Charge 1 of the 2019 Citation and Charges 2 and 3 of the 2020 Citation.

4. Ms Champagne admitted that the facts admitted concerning all three of the admitted charges constitute professional misconduct. With these admissions, the Law Society withdrew Charge 2 of the 2019 Citation and Charges 1, 4 and 5 of the 2020 Citation.

Facts

5. The 2019 Citation involved criminal law services Ms Champagne provided to GC, who was facing three serious criminal charges. She entered guilty pleas on his behalf as a result of a plea bargain negotiated with Crown Attorney #1. The Provincial Judge who received the pleas sentenced GC to 6 months in jail. The sentence failed to take into account five (5) days of pre-trial custody. Ms Champagne filed a sentence appeal on GC's behalf. Through negotiations with Crown Attorney #2, they agreed to file a joint Factum in which GC withdrew his appeal except as to the credit for pre-trial custody, and the Crown consented to that aspect of the appeal. Ms Champagne was to draft the joint Factum for the approval of Crown Attorney #2.
6. Ms Champagne drafted a Factum and delivered it to Crown Attorney #2, who felt that the Statement of Facts in the draft did not accurately reflect the facts as presented to the trial Judge. She revised the Factum, signed it and provided it to Ms Champagne for signature and filing. At that time, Crown Attorney #2 stated that she was going on vacation and that Ms Champagne should deal with Crown Attorney #3 on the matter in her absence.
7. Ms Champagne was not satisfied with the changes and exchanged emails with Crown Attorney #1 concerning the facts presented to the trial Judge. Crown Attorney #1 did not agree with the further changes that Ms Champagne wanted made to the revised Factum. As a result, Ms Champagne provided to Crown Attorney #3 the revised Factum as drafted by Crown Attorney #2. However, she met with Crown Attorney #3 and requested further changes to the Factum. Crown Attorney #3 did not agree to those changes but suggested alternate wording that Ms Champagne noted down.
8. Without the knowledge or consent of Crown Attorney #3, Ms Champagne made changes that had not been agreed to in the Statement of Facts portion of the Factum and inserted them in the signed document, which she then filed with the Court using the previous Crown's signature. She did not provide a copy of the altered Factum to the Crown.
9. Crown Attorney #3 subsequently discovered that the Factum had been altered and filed without her confirming the revisions, and the Court rejected the joint Factum on the basis that it was not properly agreed to by the Crown. The Registrar informed Ms

Champagne of this and she retrieved the document. One week later, she met with Crown Attorney #3 to discuss the Factum. She provided the filed Factum but with the Crown's signature line blank, but Crown Attorney #3 did not accept Ms Champagne's revisions to the Statement of Facts. Ms Champagne then agreed that the initial Crown revision to the Factum was accurate and had Crown Attorney #3 sign that edition for filing and return.

10. Despite having agreed to the Crown's initial draft, Ms Champagne persisted in seeking changes and did not file that document. Crown Attorney #3 ultimately prepared a further revision to the Factum which Ms Champagne signed. It was filed and the joint appeal was granted without an oral hearing.
11. In her oral submission at the hearing before this panel, Ms Champagne provided a different explanation for what happened concerning the revisions to the Factum and its submission to the Court of Appeal office, claiming inadvertence, but Mr. Kravetsky correctly pointed out that where there is any discrepancy between what is said in the hearing and what appears in the Agreed Facts, the latter prevails. The panel had concerns that Ms Champagne may have been intending to mislead us as to her intentions in filing the false Factum, but noted that Mr. Kravetsky did not withdraw his consent to the joint submission as a consequence.

The 2020 Citation

12. Ms Champagne represented MS concerning both criminal charges from 2013 and an MPI insurance claim for injuries in a motor vehicle accident. On September 4, 2014, MS was sentenced to 39 months in jail and restitution in the range of \$9,000.00. An appeal on August 20, 2015 did not alter the sentence.
13. While MS was in jail, Ms Champagne received from MPI payments on account of MS's Permanent Impairment Benefit and deposited them to her trust account as follows:
 - a. September 4, 2014 \$2,972.92
 - b. September 30, 2014 \$11,901.39
14. Ms Champagne issued bills for services rendered in the MPI matter and transferred funds from trust to pay those accounts as follows:
 - September 19, 2014 \$448.00 – Trust transfer September 19, 2014
 - October 1, 2014 \$448.00 – Trust transfer October 1, 2014
 - October 3, 2014 \$448.00 – Trust transfer October 3, 2014
 - October 10, 2014 \$448.00 – Trust transfer October 10, 2014

October 14, 2014 \$500.00 – Trust transfer October 14, 2014

November 18, 2014 \$1,000.00 – Trust transfer November 18, 2014

December 19, 2014 \$224.00 – Trust transfer December 19, 2014

January 7, 2015 \$224.00 – Trust transfer January 7, 2015

15. Other than receiving two letters from MPI on October 6, 2014 advising that the appeals filed on October 1, 2014 were premature, there was no activity on the MPI matter after October 3, 2014. Such time as was spent after that time was limited to responses to inquiries and to non-legal matters.
16. In about November 2014, Ms Champagne agreed to do shopping for MS for personal items and to bring them to him at the jail. For that purpose, on November 12, 2014 Ms Champagne issued an account for disbursements in the amount of \$2,000.00, and transferred that amount from trust funds held for MS to her general account. As at November 12, 2014, there had been no such disbursements incurred. Thereafter, between November 13, 2014 and January 5, 2015, Ms Champagne expended funds for purchases for MS (though the payments are incorrectly entered on her General Account Ledger as having been made on November 12, 2014).
17. As a result of returns made to various stores, Ms Champagne received in the form of cash or credits, a total of \$1,764.02 belonging to MS. Ms Champagne did not deposit the refunded amounts to her trust account. She made a note of a "credit" to MS in her general ledger for his file dated January 6, 2015, after the last of the returns had been made.
18. As at January 7, 2015, there remained \$926.55 in Ms Champagne's trust account to the credit of MS. In addition, as at that date, Ms Champagne's general account ledger for MS's matter recorded a credit balance of \$1,376.32. MS made complaints to Ms Champagne about some accounts rendered both in respect of the appeal of the criminal sentence and the MPI matter. Ms Champagne met with MS on February 5, 2015 at Stony Mountain Penitentiary and after reviewing the accounts, including the purchases and returns of personal items, Ms Champagne agreed to refund a total of \$7,020.55 to MS, including the balance shown on the trust ledger, the credit balance shown on the general ledger and a portion of the fees previously charged. On February 7, 2015, Ms Champagne deposited \$7,020.55 to the Inmate's Trust Fund to the credit of MS of which \$7,000.00 was paid by a general cheque, and \$20.55 from personal funds.

Submission on Behalf of The Law Society

19. Mr. Kravetsky began by reminding the panel that in the case of a joint submission on penalty, as long as the proposed disposition passes the public interest test, the panel is obliged to accept the recommendation (*R. v. Anthony-Cook*, 2016 SCC 43; *The Law Society of Manitoba v Sullivan*, 2018 MBL 9). To refine that public interest test, he submitted that unless accepting the joint recommendation would bring the administration of the discipline process into disrepute, or would otherwise be contrary to the public interest, we were bound to accept it. He then presented the Society's rationale for the joint recommendation of a fine of \$4,000.00 and costs of \$4,000.00.
20. Mr. Kravetsky pointed to the cooperation of Ms Champagne in agreeing to plead guilty and avoiding unnecessary costs for witnesses and the Society, factors which the cases have recognized. He said that the purpose of discipline was not to punish the Member but to protect the public and to maintain confidence in the profession.
21. Mr. Kravetsky referred to the facts of these cases as "strange" in both instances. In the GC case from 2019, the conduct was a breach of integrity, as now admitted, but caused no harm to the client and resulted in what was an almost inevitable result in the appeal. In the MS charges, these were breaches of accounting rules but did not result in any actual loss to MS. The charging for time spent doing non-legal work (shopping) but charged at lawyer's rates was not fair or reasonable, but the improper charges had been rectified. The accounts billed for services that were not rendered concerning the MPI claim (when that claim was dormant due to MS's incarceration), were improper but were charged for other work that was actually performed.
22. The misuse of the general and trust accounts is always significant, but Mr. Kravetsky pointed out that Ms Champagne has no previous convictions involving breaches of accounting rules in 27 years of practise, much of which has been as a sole practitioner. The Society views these breaches as a "one-off." There was no misappropriation and no loss to the client.
23. Mr. Kravetsky noted that Ms Champagne had recently undertaken formally to refrain from practising criminal law, which had formed half of her practice, for the next 2 years and to take further continuing education prior to resuming her criminal law career, and to work with mentors and supervisors, and that this voluntary arrangement obviated the need for what otherwise would have been a requested order for supervision, and potentially for a suspension. He also said that the quantum of the fine and costs took into account past penalties that Ms Champagne had received and her modest financial circumstances. The costs are just less than half of the actual costs incurred, by the Society's calculation.

Member Submission

24. Ms Champagne explained how she had met BC criminal defence lawyer, Richard Peck, in 2010 and had been consulting him about her practice and about these charges. She said she would do whatever was in her power to become a better lawyer and more like Mr. Peck. She also referred to helpful advice she had received from Anthony Kavanagh of the Manitoba criminal bar. She did not dispute anything Mr. Kravetsky said, but as noted earlier, she explained the Factum misconduct in a way that conflicted with the Statement of Agreed Facts. In answer to a question from the panel, she said that she believed that with the Undertaking she had signed and the mentorship she would be receiving, she would be much less likely to face future Law Society charges. She said that she had done extensive child protection work early in her career and that children she had successfully reunited with their parents had come to her in later years for her to provide representation on criminal charges.

Past Record


25. Ms Champagne has been disciplined by the Law Society on three (3) prior occasions, in 2001, 2012 and 2018. In 2001, there were 2 charges and these followed 2 formal cautions (June 1999 and December 2000). The charges involved breach of integrity and professional misconduct. Nevertheless, the panel accepted the joint recommendation of a fine of \$1,000.00, costs of \$1,000.00, a reprimand, and an order that she practise under supervision for one (1) year.
26. In 2012, Ms Champagne gave bad sentencing advice to a youth criminal client with significant intellectual limitations and failed to ensure that he had appropriate advice from a third party adviser. She pleaded guilty to giving poor service and received a reprimand and an order to pay \$2,500.00 costs, and an order to practise under supervision. Again, the panel followed a joint recommendation. Ms Champagne's comments to that panel were very similar to what she told the current panel, about doing whatever she could to become a better lawyer through working with mentors and supervisors. She was also already receiving advice from Mr. Peck at that time.
27. In 2018, the charge again involved inappropriate advice to a mentally challenged youth criminal client. It also involved a dispute with a Crown Attorney over the facts of the case. It was through the intervention of a social worker that the situation was rectified. Again, Ms Champagne pleaded guilty to a charge of professional misconduct and again, there was a joint recommendation. She had given an undertaking not to practise youth criminal law in the future. The panel accepted the joint recommendation and imposed a penalty of a \$1,500.00 fine, \$2,500.00 in costs and an undertaking not to practise youth criminal law. The decision was issued on November 5, 2018.

Decision

28. This panel is obliged, pursuant to Law Society Rule 5-96(5), to make and record a resolution stating which, if any, of the acts or omissions stated in the charge have been proven to the satisfaction of the panel and further, whether or not, by the acts or omissions so proved, the member is guilty of professional misconduct. In this case, upon review of the evidence before it, the panel is of the view that all of the acts or omissions stated in the Citations on which the Society is proceeding have been proved and constitute professional misconduct.
29. As to disposition, the panel is prepared, albeit reluctantly, to accept the joint submission as contained in the Statement of Agreed Facts and set out above. In so doing, however, the panel felt itself bound by the principles in the *Anthony-Cook* and *Sullivan* cases cited above that oblige a panel to follow a joint recommendation except in the most exceptional circumstances. In the absence of a joint recommendation, the panel would unanimously have chosen a suspension as the next step of progressive discipline, given the extent and recency of the past discipline, and the seriousness of these breaches. In part, our willingness to follow the joint submission relies upon Ms Champagne complying on an ongoing basis with the Undertaking she has made not to practise criminal law for two years and to take additional education as directed by the Society before resuming her criminal law practice, which will then be under supervision as directed by the Society. Ms Champagne should clearly understand that if she should ever face discipline from the Society again, she should expect a disposition more severe than a fine.
30. Accordingly, this panel hereby orders that: a) Ms Champagne be fined \$4,000.00; and b) Ms Champagne pay costs to the Law Society in the amount of \$4,000.00.

DATED this 12th day of January, 2021.


 Grant Mitchell, Q.C. (Chair)


 Garth Smorang, Q.C.


 Anna Marie Magnifico