

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

RICHARD MAURICE ALCOCK

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

Date of Hearing: February 9, 2021

Panel: Sacha Paul (Chair)
Irene Hamilton, Q.C.
Carmen Nedohin (Public Representative)

Appearances: Ayli Klein, Counsel for the Law Society of Manitoba
Richard Maurice Alcock, Self Represented

REASONS FOR DECISION

Introduction

This case is about the appropriate discipline to impose on a lawyer who did not adequately provide service to a client, and expresses remorse for his conduct.

Richard Maurice Alcock ("Alcock") is a member of the Law Society of Manitoba ("LSM"). He was admitted as a member on June 29, 1989. In a Citation dated August 25, 2020 (the "Citation"), the LSM charged Alcock with one count of professional misconduct in that Alcock failed to provide service to a client that was "competent, timely, conscientious, diligent, efficient and civil."

On February 9, 2021, a Discipline Hearing Panel (the "Panel") heard this case. The LSM and Alcock submitted a Statement of Agreed Facts dated February 9, 2021 (the "Agreed Facts"). In the Agreed Facts, Alcock plead guilty to the one count in the Citation.

At the hearing, the LSM and Alcock made a joint submission on penalty.

Simply put, the LSM and Alcock submitted that Alcock be reprimanded and pay costs to the LSM in the amount of \$4,000.00. Further, on the day of the hearing, the LSM and Alcock further agreed that Alcock would complete three educational programs available to Alcock on DVDs from the LSM within 60 days of February 9, 2021. The three educational programs are:

1. Files Gone Wild: Top Ten Pitfalls to Avoid;
2. Mental Health and Lawyers: Real Life Lessons; and
3. You are Not Alone: The Lawyer's Guide to Dealing with Anxiety.

At the February 9, 2021 hearing, the Panel decided to accept the joint recommendation with written reasons to follow.

These are those written reasons.

Facts

Alcock has been practising law as a member of the LSM for roughly 31.5 years. For the past 17 years, Alcock has practised as a sole practitioner.

Alcock's discipline history is essentially unremarkable. There was one formal entry to his discipline record in 1996 (some 25 years ago) in which he received a reprimand and a cost award of \$1,270.00.

The facts underlying the Citation arise from Alcock's handling of a family file. A husband (the "Client") retained Alcock in June 2016 to address a Petition for Divorce and Demand for Financial Information. Alcock took the usual step of asking opposing counsel for the wife not to note his client in default soon thereafter. Alcock then provided some incomplete financial disclosure to opposing counsel.

While opposing counsel told Alcock that the wife was keen to have matters proceed, Alcock took no further steps on the file from August 2016 to September 2017. In this period, opposing counsel wrote twice to Alcock on the family matter, but he did not reply.

In September 2017, the wife retained new counsel. The new counsel indicated the wife's desire to move matters forward. Ultimately, the wife noted the husband in default. Opposing counsel advised Alcock of same on November 14, 2017, but Alcock did not advise his Client of this important development at this time.

On December 7, 2017, the Court of Queen's Bench made an order which, amongst other things, granted primary care of the children to the wife as well as ordered the husband to pay both child support and spousal support.

The Client became aware of the Court's order on December 8, 2017, when the wife told the husband of the order. The Client contacted Alcock and Alcock advised he would look into it.

Alcock did not have further contact with the Client until February 2018, when the Client contacted Alcock after being served with the Final Order of the Court. Alcock told his client he would look into matters, but did not provide further information to the Client.

The Client advised that after his further attempts to contact Alcock, Alcock told the Client to seek new counsel. New counsel took steps to address the December 8, 2017 order and to vary it. The new counsel for the Client was able to reach agreement with the wife's counsel to vary the order. The varied order, amongst other things, increased the time the husband could have care and control of his children, reduced the husband's child support obligation and terminated the husband's spousal support obligation. However, the husband remained responsible to pay costs.

During the February 9, 2021 hearing, Alcock helpfully advised that contrary to the Agreed Facts (specifically paragraph 6.2), he had not completed remedial training. The Panel proceeded to consider this matter based upon Alcock's correction to the Agreed Facts.

Decision

As outlined in *The Law Society of Manitoba v. Degner*, 2019 MBL 12 at para 9-10 ("*Degner*"), there are limited grounds to depart from a joint recommendation. The Panel is satisfied with the joint recommendation and sees no reason to depart from the joint recommendation.

Counsel for the LSM justified the joint recommendation with reference to the factors in the case of *Law Society of British Columbia v. Ogilvie* (1999) LSDD No. 45 ("*Ogilvie*"). This case has been applied in Manitoba, including in *Degner*, when considering the appropriate penalty to be imposed. The Panel considered the submissions of the parties and concludes:

1. The nature and the gravity of Alcock's conduct is on the lower end of seriousness. Alcock did not profit personally from his conduct.
2. Alcock's prior discipline history is essentially clean as outlined above.
3. The impact on the Client is such that the harm caused by Alcock to the Client was substantially addressed by new counsel. Of course, the Client did have to endure being surprised by a final order of the court when he reasonably believed his counsel was protecting his interests.
4. Alcock apologized to the LSM and the Client at the hearing for his actions. Alcock showed remorse at the hearing and of course accepted responsibility by pleading guilty. He also advised the Panel that he does not have any contested family files. He advises that should any of his few family files become contested, he is prepared to

refer those clients to other family lawyers. This demonstrates Alcock's ability to grapple with the issues he is facing and plan a reasonable way to address same.


The Panel considered the *Degner* decision in which the member received a fine of \$3,000.00, a cost award and an order to complete a practice and time management course. In *Degner*, the lawyer failed to respond to her client and opposing counsel. In this way, the case is similar to the case before us. However, *Degner* had a discipline history arising from related offences occurring in the recent past (namely 2 years before the hearing at issue). In our case, Alcock does not have such a recent discipline history.

As such, the joint recommendation is appropriate in this case. The Panel orders:

1. Alcock be reprimanded for the professional misconduct.
2. Alcock pay \$4,000.00 to the LSM in costs.
3. Alcock complete three educational programs available to Alcock on DVDs from the LSM within 60 days of February 9, 2021; namely:
 - a. Files Gone Wild: Top Ten Pitfalls to Avoid;
 - b. Mental Health and Lawyers: Real Life Lessons; and
 - c. You are Not Alone: The Lawyer's Guide to Dealing with Anxiety.

The Panel thanks Alcock and counsel for the LSM for their submissions in this matter.

DATED this 19th day of February, 2021.



Sacha Paul (Chair)



Irene Hamilton, Q.C.



Carmen Nedohin