

**THE LAW SOCIETY OF MANITOBA**

IN THE MATTER OF:

**BONNIE LYNNE GEMBEY**

- and -

IN THE MATTER OF:

**THE LEGAL PROFESSION ACT**

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**REASONS FOR DECISION**

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**REASONS FOR DECISION**

1. This matter was heard in the offices of The Law Society of Manitoba (the “Society”), 200 – 260 St. Mary Avenue, Winnipeg, Manitoba on Friday, June 25, 2021 commencing at 9:30 a.m. The hearing was a “virtual” hearing, the panel members and parties attending from remote locations.
2. The panel consisted of Douglas Bedford, Chairperson and Mr. Dean Scaletta, both members of the Society, and Ms. Anna Maria Magnifico, a Lay Bencher of the Society and a public representative appointed by the Society.
3. The Society was represented by Mr. Rocky Kravetsky.
4. The member, Ms. Bonnie Lynne Gembey, was present and was represented by Mr. J. Richard Wolson, Q.C.
5. Ms. Gembey admitted to 18 charges of acts of professional misconduct.
6. The parties jointly recommended that Ms. Gembey be entitled to resign her membership in the Society effective on the 16<sup>th</sup> day after an order to that effect and that, upon doing so, her name be struck from the Roles. In the event that she did not within 15 days submit her resignation, the joint recommendation stipulated that she be disbarred. Further, the parties jointly recommended that she make a contribution to costs in the amount of \$5,000.00. After considering the submissions of counsel and their respective responses to questions, the panel advised the parties on June 25, 2021 that the joint

recommendation was accepted and the order, as recommended, was pronounced with written reasons to follow.

### Relevant Facts

7. The 18 charges for which Ms. Gembey accepts responsibility are set out in two citations attached to an Agreed Statement of Facts presented to the panel, the first dated September 11, 2017 which sets out four charges, one of failing to file an Annual Member's Report, and three of failing to respond to the Society regarding that failure and regarding a number of enquiries about her trust account.

8. The second citation is dated June 15, 2021. It sets out the remaining 14 charges. They include charges of removing money from her trust account without rendering an account on a number of occasions, failure to maintain trust records, failing to deposit money in trust as soon as practical, failure to maintain a 'General Book of Entry', misleading the Society with respect to its investigation of the facts that led to the charges, failures to comply with undertakings, failures to provide competent and conscientious service to clients, failures to discharge her responsibilities as a lawyer honestly, and, on one occasion, receiving and appropriating a retainer in the amount of \$2,500.00 from a client, Ms. M., without performing any meaningful service for Ms. M. Upon Ms. Gembey acknowledging her responsibility for the foregoing 18 charges, the Society withdrew a third citation dated December 10, 2017.

9. Ms. Gembey was suspended by Order of the Complaints Investigation Committee on September 22, 2017. She has not practiced since that date. As of June 15, 2021, she had not completed an outstanding suspension of 15 days. Accordingly, the joint recommendation provided that her resignation be effective 16 days from the date of pronouncement of this panel's order so as to allow for the completion of the outstanding 15 days.

10. Ms. Gembey became a member of the Society upon her call to the Bar on June 15, 2000. At some point, she also became a member of the Law Society of the Northwest Territories. As of June 25, 2021, she was an inactive member of that law society.

11. For about half of the 17 years that Ms. Gembey practised, she did so as a sole practitioner, practising almost entirely in the fields of criminal law and family law.

12. Ms. Gembey began having significant difficulties in her practice sometime in 2013, though her failure to maintain a General Book of Entry began in 2010. These problems escalated in the last year she practiced, from September 2016 to September 2017. Throughout this period she was a sole practitioner, save and except for a short and apparently unhappy, sojourn from January to early May 2016 as an employee of Legal Aid NT in Yellowknife.

13. The parties agreed that Ms. Gembey has a history of both “painful physical conditions” and very challenging mental health conditions, specifically Attention Deficit Disorder, Depression, Anxiety and Hypertension. She had left and right knee replacement surgery in 2019 and 2020. Ms. Gembey’s counsel advised that she suffers from “severe osteoarthritis”. She has sought medical help for her mental health challenges. She was in treatment in 2017 with a psychologist and began seeing a psychiatrist in 2018. The parties agreed that her physician says she is benefiting from treatment and has been receptive to recommendations for treatment.

#### The Member’s Record

14. Ms. Gembey pled guilty on two previous occasions to charges of professional misconduct. On September 6, 2016, she admitted to three charges of failing to respond to the Society. She was reprimanded on the first charge, fined \$1,000.00 on the other two charges, ordered to pay costs of \$2,500.00 and for two years was directed to practice pursuant to an Undertaking to be provided by a lawyer acceptable to the Society whose responsibility was to accept communications from the Society to Ms. Gembey and to confirm that she had received them and was responding to them.

15. On December 5, 2016, Ms. Gembey admitted to a further three charges of professional misconduct which arose from the same complaint that was the basis of the foregoing disposition of September 6, 2016. She admitted to a further failure to respond to the Society and failures to provide courteous, diligent and prompt service to a client, to take care of client property and to comply with her duties upon termination of a retainer. This time Ms. Gembey was fined \$1,000.00, ordered to pay costs of \$2,500.00 and directed to take a time management course.

#### Analysis

16. The option for lawyers facing serious charges of misconduct to resign from membership in the Society has existed for over 20 years now. To do so, section 17(4) of the *Legal Profession Act* stipulates that the lawyer in question requires the permission of this Committee. A panel of this Committee, in *The Law Society of Manitoba v. MacIver*, 2003 MBL 4 explained the rationale for permitting a resignation as an alternative to disbarment by citing Gavin MacKenzie, *Lawyers and Ethics: Responsibility and Discipline* (Carswell 1993) at 26-49:

Cases in which lawyers have been permitted to resign are usually those in which the misconduct is sufficiently serious to justify disbarment, but in which mitigating circumstances persuade the benchers that the stigma of disbarment in addition to the withdrawal of the lawyer’s right to practice law would be unfair. The practical result of the penalty is the same, except to the extent that an admission committee may give more favourable consideration to an application

for readmission brought by a former lawyer who has been given permission to resign.

17 The panel in *MacIver* rejected the lawyer's request that he be allowed to resign. Indeed, *MacIver* is a rare example of a panel of this Committee rejecting a joint recommendation. The panel grounded its decision on the fact that no explanation was given as to why serious misconduct had taken place and no remorse was offered by the member. Mr. MacIver was 71 years of age and at the time of the hearing was in jail serving a sentence for income tax evasion, making false statements, perjury and fabricating evidence. The panel concluded that a resignation did not adequately set an example of general deterrence nor did it adequately address the public confidence in the legal profession in light of Mr. MacIver's very serious breaches of his duties of honesty and integrity. The case was not one where some "compassion" was warranted in sentencing. Disbarment was neither "harsh" nor "excessive" in the circumstances.

18. Two other decisions of the Society dealing with the issue of resignation versus disbarment were provided to us. In *The Law Society of Manitoba v. Petryshyn*, 2017 MBL 15, a member who had practised for over 40 years admitted to 28 charges of professional misconduct including misappropriation of retainers, abusive treatment of clients, meeting with clients while intoxicated and incompetence in the handling of certain files. On a joint recommendation, the panel permitted the member to resign. In particular, counsel for the Society conceded that disbarment was not inevitable given the mitigating circumstances presented to the panel including the member's addiction to alcohol. In effect, disbarment in the circumstances could be seen by some as "harsh" and "excessive". Accordingly, the panel distinguished the *MacIver* case and accepted the joint recommendation, concluding, presumably, that resignation where disbarment was not a certain alternative would not raise overriding concerns about general deterrence and public confidence. Some "compassion" was warranted.

19. In *The Law Society of Manitoba v. Persad*, 2018 MBL 2, the panel reviewed over 30 charges against a member affecting 13 clients. The charges included failures to prepare documents, misleading clients, double booking court appearances, breaching trust account rules and misappropriating retainers. The lawyer asked to be permitted to withdraw from practice. The Society sought disbarment. The panel concluded that disbarment was appropriate and grounded its decision on the absence of "powerful" evidence in mitigation. A one-page medical report touching upon anxiety and depression and revelations regarding unhappy personal circumstances of the member was not considered sufficient mitigation. Accordingly, disbarment was not "harsh" nor "excessive" in the circumstances and the exercise of "compassion" was not warranted.

20. Mr. MacIver offered no explanation for his conduct nor did he show remorse. He was disbarred. Mr. Persad offered very little in the way of mitigation or explanation for his misconduct. He was disbarred. Mr. Petryshyn did offer a significant explanation for his conduct and, as well, the Society conceded in his case that disbarment was not otherwise certain in the absence of a joint recommendation. He was permitted to resign.

21. Ms. Gembey offers a significant explanation for her conduct. She has struggled with very challenging mental health conditions which, we believe, does warrant the exercise of compassion. Ms. Gembey's record and the admissions made to us show a clear pattern of repeated failures to respond to simple requests of the Society for explanations and documents relevant to complaints and, certainly in the last several years of her practice, failures to adhere to necessary and uncomplicated trust accounting rules. We accept that these otherwise inexplicable transgressions are understandable in light of Ms. Gembey's history of Attention Deficit Disorder, Depression, Anxiety and Hypertension. Her positive response to treatment is a welcome indication that she can manage her mental health challenges though we observe that it appears it was only after her interim suspension in September 2017 that she chose to seek psychological and psychiatric help. And, while we recognize that her physical ailments have no doubt exacerbated her challenges, we do not believe that those, in themselves, offer an adequate explanation for her acts of professional misconduct.

22. Mr. Wolson read to us a statement prepared by Ms. Gembey in which she acknowledged her transgressions and the impact they necessarily had on her clients and the legal profession. At the conclusion of counsels' submissions, Ms. Gembey spoke to us. She said she accepted full responsibility for her conduct and acknowledged that she had harmed her clients. She said she was genuinely sorry for what she had done. We conclude that Ms. Gembey does have insight into the consequences to her clients, the profession and the public of her misconduct.

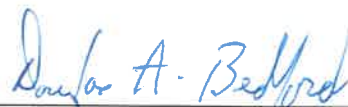
23. Counsel for the Society advised that while there had been one clear case of misappropriation, that involving the \$2,500.00 retainer of Ms. M., there was evidence with respect to the other sums taken by Ms. Gembey, either without rendering an account or even placing funds in her trust account, that some work had been done for the clients. So, while Ms. Gembey's transgressions were serious and included misappropriation, there were sufficient facts to suggest that in her case, had she contested the citations served on her, disbarment was not inevitable. And, while indeed serious, Ms. Gembey's transgressions are not of the same magnitude as those of Mr. McIver nor those of Mr. Persad.

24. Our primary concern must be the public interest. The proposed penalty quite clearly protects the public as Ms. Gembey will no longer be permitted to practice law. Further, in accepting the joint recommendation we believe that we are respecting the public's interest, generally, in recognizing the importance of accepting joint recommendations made by senior and experienced counsel unless they manifestly tarnish the administration of justice, which this recommendation does not.

Conclusion

25. Accordingly, for the foregoing reasons we concluded on June 25, 2021 that Ms. Gembey be permitted to resign her membership in the Society effective 16 days after pronouncement of that decision and upon so resigning her name is to be struck from the Rolls. If she fails to submit her resignation, in writing, within 15 days, she is to be disbarred. Ms. Gembey is to pay to the Society a contribution to the costs of the investigations, inspections and prosecution of the charges before us in the amount of \$5,000.00.

These written reasons signed the 23<sup>rd</sup> day of July 2021.



Douglas A. Bedford, Chairperson



Dean Scaletta, Panel Member



Anna Maria Magnifico, Panel Member