

IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice Christopher J. Mainella
Madam Justice Jennifer A. Pfuetzner
Madam Justice Janice L. leMaistre

BETWEEN:

<i>BRIAN ATTWOOD LANGFORD</i>)	<i>B. A. Langford</i>
)	<i>on his own behalf</i>
)	
<i>Appellant</i>)	<i>R. H. Kravetsky</i>
)	<i>for the Respondent</i>
<i>- and -</i>)	
)	<i>Appeal heard:</i>
<i>THE LAW SOCIETY OF MANITOBA</i>)	<i>August 24, 2021</i>
)	
<i>Respondent</i>)	<i>Judgment delivered:</i>
)	<i>October 14, 2021</i>

On appeal from 2020 MBLS 5; and 2021 MBLS 3

PFUETZNER JA

[1] The appellant appeals his convictions by a panel of the Discipline Committee (the panel) of the Law Society of Manitoba (the LSM) for three charges of conduct unbecoming a lawyer and one charge of professional misconduct. He also appeals the penalty of disbarment imposed by the panel.

Background

[2] The appellant was a lawyer who had practiced law in rural Manitoba from his call to the bar in 1980 until he was disbarred. Between the years 2002 and 2010, the appellant filed income tax returns declaring that he earned no income, despite the fact that he had income from his law practice. The

total federal income tax that he owed on his undeclared income was \$99,053. The appellant was charged under the *Income Tax Act*, RSC 1985, c 1 (5th Supp) (the *ITA*), with nine counts of making false statements in an income tax return and two counts of unlawfully and willfully evading the payment of income tax.

[3] The appellant also failed to report and remit the required Goods and Services Tax (GST) for the years 2004 to 2009. Although he was initially charged with offences under the *Excise Tax Act*, RSC 1985, c E-15, he reached a civil settlement with the federal Crown and the criminal charges were stayed.

[4] At his trial in the Provincial Court on the *ITA* charges, the appellant admitted both that he had filed false income tax returns and the amount of tax owing. However, he denied guilt on the basis of his claim that the *ITA* is unconstitutional pursuant to the *Constitution Act, 1867*. In comprehensive reasons, the trial judge noted that it is “settled law” that the *ITA* is validly enacted federal legislation pursuant to the *Constitution Act, 1867*. The appellant was convicted of all offences, and sentenced to a 15-month conditional sentence and a fine in the amount of the unpaid income taxes.

[5] The appellant appealed his *ITA* convictions to the Court of Queen’s Bench. In his factum, he continued to assert that the *ITA* is unconstitutional—arguing that only the provinces have the power to impose direct taxation under section 92(2) of the *Constitution Act, 1867*. He submitted that the Government of Canada had breached the rule of law and compared it to the actions of Adolf Hitler (Hitler). His appeal was dismissed. He unsuccessfully applied for leave to appeal to this Court.

Current Proceedings

[6] The appellant's charges before the panel related to filing false income tax returns (charge 1—conduct unbecoming), evading income tax (charge 2—conduct unbecoming), failing to encourage public respect for the administration of justice while representing himself in the Court of Queen's Bench (charge 3—conduct unbecoming), and failing to report truthfully on GST returns and to remit the GST owing (charge 4—professional misconduct).

[7] The conduct phase of the hearing proceeded on a statement of agreed facts. Before the panel, the appellant again asserted that the *ITA* is unconstitutional, he justified his references to Hitler as being his way of arguing that the federal government does not respect the rule of law, and said he simply made an error in not reporting and remitting GST. He maintained that, despite having been convicted and sentenced for *ITA* offences, he had done nothing wrong.

[8] In its conduct decision (see 2020 MBLS 5), the panel convicted the appellant, stating (at p 14):

...

We have carefully reviewed the arguments made by both the LSM and [the appellant] We have also reviewed the authorities submitted . . . [and] all documentation provided We also relied heavily on the agreed statement of facts summarizing the conduct of [the appellant].

The Panel unanimously finds [the appellant] guilty of all of the charges against him and is of the opinion that the LSM has provided ample evidence in support of all of the charges.

...

[9] At the consequences stage of the hearing, the appellant submitted that he should not be disbarred and sought a reprimand. In imposing the penalty of disbarment, the panel noted “that [the appellant] still continues to espouse the position that the federal government imposed an unconstitutional income tax upon him, even though that argument failed at every level of Court he was involved in” (2021 MBL 3 at para 7). The panel also referred to the fact that, in his submissions to it, the appellant continued to accuse the federal and provincial governments of breaching the rule of law, while saying of himself, “My integrity is intact” (at para 8). The panel acknowledged that the appellant had no formal discipline history. However, it accepted and endorsed the submissions of the LSM that, “[p]ut bluntly, [the appellant’s] refusal to pay taxes was irresponsible. His repeated lying was dishonourable. His disregard for the reputation of the profession was selfish. His later attacks on the legislative branches of Government were unfounded and reprehensible” (at para 12).

Issues

[10] The appellant raises several issues. He asserts that the panel made factual errors when it found that he filed false GST returns, failed to remit GST, and “[l]ied and cheated for [his] own benefit.” The appellant argues that the panel erred in law in holding that his personal beliefs and his actions taken in furtherance of those beliefs are properly subject to discipline. He maintains that the panel’s decision as a whole, as to both conduct and consequences, is unreasonable.

Analysis

[11] This appeal is brought pursuant to the appellant's right to appeal to this Court under section 76(1) of *The Legal Profession Act*, CCSM c L107. As a statutory appeal, this Court applies the appellate standards of review described in *Housen v Nikolaisen*, 2002 SCC 33 to the panel's decisions (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 37; and *Histed v Law Society of Manitoba*, 2021 MBCA 70 at paras 34-37).

[12] Turning to the first issue raised, I am not persuaded that the panel made any palpable and overriding errors of fact. All of its factual findings and factual inferences are reasonably supported by the statement of agreed facts.

[13] Nor am I convinced that the panel made any reversible errors in finding the appellant guilty of conduct unbecoming a lawyer for filing false income tax returns and committing income tax evasion, and in finding him guilty of professional misconduct for filing false GST returns and failing to remit GST. The evidence, as set out in the statement of agreed facts, was overwhelming in respect of those three charges.

[14] More difficult though is the conviction for conduct unbecoming a lawyer in respect of the manner in which the appellant represented himself in the Court of Queen's Bench. The conclusory reasons given by the panel provide no insight into the analysis, if any, it undertook in respect of this charge. One is left to speculate as to whether the conviction was based upon the appellant's unrepentant criticism of the government, whether it was based

on the appellant's continued references to Hitler, or whether it was based on other considerations.

[15] Having said that, I am of the view that these issues can be left for another day—in particular, the standard as to when speech or other expression by a lawyer can be conduct unbecoming. This is because, even if the appellant had been acquitted of this charge, the panel would surely have imposed disbarment as the penalty for the other three charges—and properly so.

[16] The seriousness of the charges, in particular, those related to the *ITA* offences, is aptly described by the panel: “[The appellant] knowingly filed false income tax returns for nine years. He never attempted to file a formal and legal dispute as to the constitutionality of the income tax system. Rather, he simply waited to see if he would ever be caught” (2021 MBLS 3 at para 11).

[17] As has been demonstrated throughout these proceedings, the appellant has no insight into the egregious nature of his conduct and no remorse. Put simply, the appellant is incorrigible.

[18] At the end of the day, there is no merit to the appeal of the penalty of disbarment and no basis to interfere with the panel's consequence decision.

[19] For all of these reasons, I would dismiss the appeal with costs.

I agree: T. Pfeiffer JA

I agree: C.J. Mainville JA

I agree: J. L. Mainville JA