THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

GREGORY LLOYD BAUMAN

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

Date of Hearing:	November 25, 2021
Panel:	Sarah A. Inness (Chair) Gerrit Theule Anna Maria Magnifico (Lay Bencher/PR)
Counsel:	Rocky Kravetsky for the Law Society of Manitoba Thomas Frohlinger for the Member

REASONS FOR DECISION

Background

Mr. Bauman is a member of the Law Society of Manitoba (hereinafter "LSM"), having been called to the Bar on June 24, 1982. He is also a member of the Law Society of Saskatchewan, where he was admitted on September 16, 1985. He is an active member of each Society and has no formal disciplinary history in either jurisdiction. Since July 1, 1985 Mr. Bauman has practised as a partner, and now voting shareholder, with the firm now known as Ginnell Bauman Watt Law Corporation ("GBWLC") in Flin Flon, Manitoba.

Mr. Bauman was served with the Citations from the LSM dated March 12, 2020 (the "First Citation") and December 2, 2020 (the "Second Citation"). He has admitted the validity of each Citation and has entered admissions of guilt to each Citation. An extensive, twenty-five page Agreed Statement of Facts, to which a list of documents was appended, was provided to the appointed panel of the LSM's Discipline Committee in advance and marked as Exhibit "1" at the oral hearing of the matter, which took place on November 25, 2021 by Zoom, in accordance with the Virtual Hearings Protocols as set by the LSM.

At the conclusion of the oral hearing the panel recessed to discuss the matter. When the hearing re-convened the panel delivered its decision orally, endorsing the joint recommendation of a six month suspension from practice (to commence on a date as set by the CEO of the Society) and costs of $7,500.00. These consequences apply "globally" to both Citations. The panel indicated that written reasons would follow. These are the panel's reasons.

Summary of Facts on Citation 1 – IAP/L.G.

Mr. Bauman's representation of L.G. commenced on July 12, 2009 in the context of an Independent Assessment Process (IAP) created to settle claims against the Government of Canada for wrongdoing and harm experienced by Residential School Survivors. L.G. was a member of Opaskawayak Cree Nation, near The Pas, Manitoba who had attended an Indian Residential School in Dauphin, Manitoba. In the course of representing L.G. as a claimant for compensation, Mr. Bauman was paid legal fees by the Government of Canada, in addition to the compensation monies paid to L.G.

When L.G. retained Mr. Bauman in 2009, the practise of lawyers arranging for claimants to provide fees from their settlement money to "form fillers" was commonplace. Companies acting as "form fillers" would assist claimants in putting together the documentation required for their claim. In this matter, Mr. Bauman had L.G. authorize him to pay Sakastew, a form filing service, the amount of $11,250.00, which was payable out of the compensation monies L.G. received. In confirming those instructions, however, Mr. Bauman failed to advise L.G. about the nature of his and his firm's relationship with Sakastew. L.G. was unaware of the fact that Mr. Bauman and the law firm loaned Sakastew $150,000.00 in anticipation of repayment from the form filler fees that would be paid to Sakastew from the large number of referrals that would be sent by Sakastew to Mr. Bauman's firm. By September, 2010, it was well-known and known to Mr. Bauman's law firm that the practise of assigning monies to form fillers from compensation monies was being viewed unfavourably by Adjudicators acting in the IAP proceedings. Any suggestion as to the legality and enforceability of such arrangements were put firmly to rest by Justice Schulman in *Fontaine v. Canada, 2014 MBQB 113*.

L.G.'s compensation monies were received in trust for L.G. on August 31, 2010. On September 3, 2010, Mr. Bauman drove 140 k.m. from his office in Flin Flon to meet with L.G. and his daughter in The Pas, where he took L.G. to the bank to have him deposit his cheque. He then arranged for L.G. to make a bank draft payable to Sakastew for $11,250.00 for the form filler fees. Without L.G.'s knowledge or consent, Mr. Bauman endorsed the bank draft payable to Sakastew to himself and deposited it into his personal bank account. He paid Sakastew a portion of the monies (just over $8,000.00) and kept the remaining amount. Again, this was unknown and not authorized or directed by L.G.

The investigation into the unauthorized payments to form fillers continued when, pursuant to an Order of the Court of Queen's Bench dated June 4, 2014, all counsel involved in IAP claims were required to provide solemn declarations to the Court Appointed Monitor as to their financial and retainer arrangements with IAP clients. Mr. Bauman submitted to the Court Monitor his Solemn Declaration dated July 2, 2014, in which he declared that:

(a) His firm made no deductions from any IAP Client's IAP funds other than to pay approved or authorized legal fees and taxes where applicable;

(b) His firm made no deductions from any IAP Client's IAP funds to pay any form filler or form filling agency;

(c) His firm made no deductions from any IAP Client's IAP funds in accordance with any assignment or direction to pay;

(d) Any form fillers that had anything to do with client IAP files whatsoever, received payment of monies directly from the law firm, and no monies whatsoever from IAP Client's settlement monies; and

(e) That specifically related to L.G.'s file, an amount of $72,432.76 was paid to L.G., which represented the IAP settlement amount of $86,294.76, minus legal fees and a $2,000.00 advance paid to L.G. for a family emergency. Mr. Bauman affirmed, "Our trust records are also enclosed to confirm that L.G. received all of the funds that he was entitled to."

Included in the solemn declaration were reporting documents to L.G. that had been altered by Mr. Bauman so as not to reflect the payment of $11,250.00 to Sakastew which was contained in the original reporting letter sent to the client.

In June 2015, GBWLC refunded $11,250.00 to Mr. L.G.

Findings on Citation 1

Mr. Bauman admits that his conduct, as alleged in Counts 1 and 2 of the First Citation, breached Rule 2.2-1 of the *Code of Professional Conduct*, 1992 ("the *Code*") in that he failed to discharge his professional responsibilities honourably and with integrity, and that he acted contrary to Rule 3.4-1 of the *Code* in that he acted while in a conflict of interest.

Based upon the agreed facts, acknowledged by the member, the panel has no hesitation in finding Mr. Bauman's actions were a breach of his professional duty to act with integrity and avoid conflicts of interest. His relationship with Sakastew was clearly a conflict of interest, undeclared to his client L.G., and the deceit exhibited by material omissions of relevant facts and misleading statements he made both to his client and the Court monitor, without doubt, amount to professional misconduct.

Summary of Facts on Citation 2 – Flin Flon Hotel Project/CEDF Loan/T.S.

Mr. Bauman, along with another business partner, through a numbered company, purchased the Flin Flon Hotel in 1998 with the idea of restoring it to a thriving business. In 2001, a CEDF (Communities Economic Development Fund) loan was obtained in the amount of $400,000.00 for renovations (the "2001 loan"). By 2004, $480,000.00 was due and owing on the loan and no renovations had been completed. Mr. Bauman's business partner withdrew from the project. Despite what some might regard as wishful thinking, Mr. Bauman's optimism for the successful completion of the project remained.

In 2004, Mr. Bauman approached his long-term client, T.S., a business person in Flin Flon for whom Mr. Bauman had done various personal and business-related legal work over the years. Mr. Bauman proposed to T.S. that he invest in the Flin Flon hotel project through a numbered company ("466"). T.S. understood that he was being asked to become a non-active equity participant, taking a minority financial interest. T.S. invested $75,000.00 for which he received a 12.5% interest in the hotel, through shares in 466.

On June 14, 2004, a loan was obtained by 466 from the same lending organization in the amount of $829,632.02 to 466 (the "2004 loan"). Under the Guarantee Agreement, when signed, Mr. Bauman and T.S. jointly and severally guaranteed 466's obligation under the loan, including interest and costs, which guarantee was expressed as joint and several to the full amount of the indebtedness. T.S. signed the Guarantee Agreement without reading it. In doing so, he relied on Mr. Bauman as his counsel. T.S. erroneously believed that his risk was limited to the loss of his $75,000.00 investment and 12.5% of the amount that may be due if the resulting loan fell into arrears. Mr. Bauman failed to inform T.S. of all the relevant circumstances of these transactions, including that he was not acting as his lawyer in relation to his investment in 466 or the 2004 loan, the accurate and true circumstances of the risk/liability T.S. was agreeing to, and the requirement for him to seek/obtain independent legal advice.

Hope didn't spring eternal. The hotel restoration project didn't materialize. No payments were made under the terms of the loan. The lender finally demanded payment from 466 by letter dated April 27, 2010, at which point the amount that had accrued due with interest to March 31, 2010 was $1,296,024.36. Formal demand was made of the guarantors on May 17, 2010 and a Statement of Claim was subsequently filed. Attempts to settle the litigation failed. Judgments issued, including one that was granted against Mr. Bauman in the amount $1,642,505.07, plus costs of $3,500.00 and interest at 7.41% per annum from June 7, 2016.

In a decision that was rendered on July 10, 2019 by Justice Edmond, he determined that Mr. Bauman was acting as the lawyer for T.S. throughout the transactions and was in a conflict of interest when he did so. He further ordered that Mr. Bauman indemnify T.S. to the extent of his loss.

Findings on Citation 2

Mr. Bauman admits that his actions, as alleged in Counts 1 and 2 of the Second Citation amount to professional misconduct by him entering into and continuing in a business relationship with a client, contrary to Chapter 6 of the *Code*, and by failing to serve his client in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to that which lawyers generally would expect in a like situation, contrary to Rule 2(a) of the *Code*.

The panel finds that the conduct of Mr. Bauman throughout his business dealings with T.S. was clearly a conflict of interest. Furthermore, as counsel for T.S., Mr. Bauman failed to serve his client in a conscientious, diligent and efficient manner. Instead, he put T.S.'s financial circumstances at risk to benefit his own, all the while without informing T.S. as to the true state of affairs with respect to the outstanding loan already owed to CEDF, the risks involved in the project, and his liability should the project fail. Furthermore, he acted in his capacity as lawyer for T.S. during the business dealings and never referred T.S. for independent legal advice.

Consequences of Professional Misconduct or Conduct Unbecoming

The Act sets out the following possible consequences for breaches of the Act/Rules:

72(1) If a panel finds a member guilty of professional misconduct or conduct unbecoming a lawyer or student, it may do one or more of the following:

(c) for any period the panel considers appropriate, (ii) suspend the member from practising law;

(e) order the member to pay all or any part of the costs incurred by the society in connection with any investigation or proceedings relating to the matter in respect of which the member was found guilty.

Protection of the Public

The legal profession is self-regulating. The purposes underlying disciplinary proceedings against a lawyer are fortified by the purpose of the Society described in *The Legal Professional Act* C.C.S.M. c. L107, section 3: 3(1) The purpose of the Society is to uphold and protect the public interest in the delivery *of legal services with competence, integrity and independence*: See *R. v. Nadeau*, supra, at p.1. It cannot be overstated: protection of the public interest is paramount.

In *Lawyers & Ethics: Professional Responsibility and Discipline, Gavin MacKenzie ("MacKenzie"), Carswell 2012, Release 3,* the author comments on the purposes of discipline proceedings, at

p. 26-1: *It is recognized that the purpose of law society discipline proceedings are not to punish offenders and exact retribution, but rather to protect the public, maintain high professional standards, and preserve public confidence in the legal profession. In cases in which professional misconduct is either admitted or proven, the penalty shall be determined by reference to these purposes.* These purposes were accepted as applicable to LSM proceedings in *The Law Society of Manitoba v. Nadeau*, 2013 MBLS 4 (p.1); *The Law Society of Manitoba v. Sullivan*, 2018 MBLS 9 (para.8).

Joint Recommendations

The panel has been presented with a joint recommendation as to consequences. Joint recommendations of experienced counsel are to be respected. In *Anthony-Cook v. Her Majesty the Queen*, 2016 SCC 43, the Supreme Court held that a judge (and by analogy a tribunal such as here) "*should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.*" The test is not whether the judge/tribunal would have imposed the same disposition. The *Anthony-Cook* test has been adopted as applicable to joint recommendations presented in the context of LSM disciplinary hearings: *The Law Society of Manitoba v. Sullivan*, 2018 MBLS 9 (paras. 7-9).

Submissions at the Hearing

During the oral hearing, counsel made submissions in reference to the "Ogilvy factors" and the rationale for the joint recommendation, including: (a) The nature and gravity of the conduct proven; (b) the age and experience of the respondent; (c) the previous character of the respondent, including details of prior disciplines; (d) the impact upon the victim; (e) the advantage gained or to be gained, by the respondent; (f) the number of times the offending conduct occurred; (g) whether the respondent had acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances; (h) the possibility of remediating or rehabilitating the respondent; (i) the impact on the respondent of criminal or other sanctions or penalties; (j) the impact of the proposed penalty on the respondent; (k) the need for specific and general deterrence; (l) the need to ensure the public's confidence in the integrity of the profession; and (m) the range of penalties imposed in similar cases." Application of the "Ogilvy factors" has been adopted in prior L.S.M. disciplinary cases: See *R. v. Nadeau*, supra, at p.4; and *R. v. Sullivan*, supra at para. 9.

In each of the two Citations, Mr. Bauman's actions were serious breaches of some of the most important professional responsibilities – to act with integrity and avoid conflicts of interest. The conflicts of interest in each case involved preferring his own interests over that of the client, which is certainly an aggravating factor where conflicts are concerned. Mr. Bauman had no prior discipline record at the time and the misconduct occurred in a timeframe of 10-15 years ago, since which time Mr. Bauman has continued in practise. The

offending conduct involved specific clients and specific incidents. There was no evidence the conduct amount to a "pattern" of misconduct or represented his general approach to practise. He accepted responsibility for his misdeeds, saving the Society the time and expense of proving the matters. This acceptance of responsibility was also expressed by Mr. Bauman himself when he personally addressed the panel and apologized for his actions. Mr. Bauman delivered a personal apology to L.G. and his repayment to L.G. in 2015 in the amount of $11,250.00 was restorative. With respect to the Flin Flon hotel litigation, the amount of debt Mr. Bauman owes is enormous. The indemnification of T.S. through those proceedings will hopefully go a significant way towards restoring T.S. Finally, while no two cases are the same, counsel utilized prior precedents as guidance for where they situated the joint recommendation along the continuum of suspensions previously imposed.

Disposition

The panel is satisfied based upon consideration of all of the facts, including the aggravating and mitigating circumstances, as well as similar sentencing precedents provided to the panel, the joint recommendation proposed is not contrary to the public interest, nor would it bring the administration of justice into disrepute.

The panel hereby finds the member guilty of all counts in both Citations and imposes the following consequences:

1) Mr. Bauman is suspended from the practice of law for a period of six (6) months beginning on a date to be fixed by the Chief Executive Officer of the Society;

2) Mr. Bauman must pay $7,500.00 as a contribution to the costs of the investigation and prosecution of the charges.

DATED this 20th day of December, 2021.

Sarah A. Inness (Chair)

Gerrit Theule

Anna Maria Magnifico (Lay Bencher/PR)