

**THE LAW SOCIETY OF MANITOBA**

IN THE MATTER OF:

**JOSEPH JULES ALAIN HOGUE**

- 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 Thursday, November 18, 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 Ms. Lori Ferguson Sain, Q.C., both members of the Society, and Ms. Carmen Nedohin, a public representative appointed by the Society.
3. The Society was represented by Ms. Ayli Klein.
4. The member, Mr. Alain Hogue, was present and was represented by Mr. David Hill.
5. In 2019 Mr. Hogue acted for the purchaser of residential property in Winnipeg and the purchaser’s mortgagee, a credit union. The purchase closed in January 2019. Over the course of the following year, the credit union wrote four times requesting a final report but a satisfactory final report was not received by it until March of 2020. The file in question was assigned to a paralegal in Mr. Hogue’s office. The paralegal concealed from Mr. Hogue the correspondence from the credit union. Mr. Hogue accepted responsibility for failing to ensure that the paralegal was adequately supervised.

6. The parties jointly recommended that Mr. Hogue be reprimanded and directed to pay \$1,500.00 as a contribution to the costs of the investigation and prosecution of the charge. After considering the submissions of counsel and their respective responses to questions and hearing directly from Mr. Hogue and his responses to questions, the panel advised the parties on November 18, 2021 that the joint recommendation was accepted and the order, as recommended, was pronounced with written reasons to follow.

### Relevant Facts

7. According to an Agreed Statement of Facts filed by the parties and marked as Exhibit No.1 to this proceeding, real estate conveyancing constitutes approximately 10 per cent of Mr. Hogue's practice.

8. Mr. Hogue advised that at the time this particular purchase closed in January 2019, his real estate files were all entrusted to a paralegal who had worked for him for some 10 years and who had been trained in his office by a "good paralegal". He said that all of the correspondence from the credit union on the file was received in his office via email transmissions to an 'in-box' that was monitored by the paralegal in question; he advised that he rarely, if ever, looked at the in-box in question.

9. For 14 months after the closing in January 2019, the parties agreed that the paralegal in question "concealed" from Mr. Hogue correspondence received from the credit union asking for a final report, including a complaint made in November 2019 that a final report provided earlier that month, by the paralegal in question, was incomplete.

10. Mr. Hogue first learned of the paralegal's failure to complete the work in timely fashion for the credit union in January 2021 when he was served with the Citation filed in this proceeding.

11. Mr. Hogue advised that he immediately spoke to the paralegal in question. He says that the paralegal admitted that she had concealed the credit union's correspondence from him. He says, further, that she revealed to him that she was experiencing medical problems and was under a doctor's care. Mr. Hogue was given permission to speak to the treating physician and did so on two occasions.

12. Mr. Hogue advised that he continues to employ the paralegal, a single mother. Upon learning what had happened with the completion of this particular file, he reviewed all of the active files being handled by the paralegal and found no other problems. He now receives all of the emails sent to his office and reviews them personally. The paralegal has been "downgraded" and he now supervises her "directly". He says he "feels terrible" regarding what occurred.

13. The Society stayed other charges advanced in the Citation following Mr. Hogue's admission of responsibility for failing to supervise his paralegal with respect to this

matter. In addition, the Society with the consent of Mr. Hogue amended the Citation so that it cites the correct address of the residential property that was the subject of the purchase.

### The Member's Record

14. Mr. Hogue has been a member of the Society since June 28, 1972. In addition, he has been a member of the Law Society of Saskatchewan since March 27, 1987.

15. On three previous occasions, Mr. Hogue has been convicted of professional misconduct or conduct unbecoming a lawyer. Forty years ago, in 1981, he received a fine of \$1,500.00 and was ordered to pay costs in the amount of \$5,000.00. The details of the professional misconduct are not recorded in the Society's records. In 1995, some 26 years ago, Mr. Hogue was reprimanded for showing a lack of courtesy in a telephone conversation with a witness. He was ordered on this occasion to pay costs of \$1,000.00. And, in 2000, Mr. Hogue was fined \$1,500.00 after it was determined that on nine personal injury files, following completion of the files and the disbursement of settlement funds to his clients, he continued to retain in his trust account the amounts the clients had authorized him to apply to his accounts. On this occasion he was ordered to pay costs of \$5,000.00.

### Analysis

16. Chapter 6.1 – 1 of the Code of Professional Conduct of the Society stipulates that a “lawyer has complete professional responsibility for all business entrusted to him or her and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions.” Accordingly, notwithstanding that Mr. Hogue was not aware for two years of the credit union's repeated requests for a final report nor of the unsatisfactory report sent to it by his paralegal in November 2019, in the absence of any meaningful effort to supervise the paralegal's work and periodically inspect the file, he failed in his responsibility and committed professional misconduct.

17. Counsel submitted to us that Mr. Hogue's misconduct in this case fell at the “lower end” of the range of professional misconduct and was “not the most serious”. We recognize that inevitably in the cases that are presented to panels of this Committee, counsel will have to make comparisons with the conduct of lawyers in other cases and there is always a “low end” and a “high end” to a range. However, while we acknowledge that this is inevitable, we wish to note that from the perspective of clients whose affairs have been impaired by a lawyer's misconduct, it is generally not of any comfort to hear that the lawyer's misconduct was not as “serious” as it could otherwise have been. We can with little speculation conclude that having to write four times, having to review an unsatisfactory final report and write to complain and having to maintain an incomplete mortgage file for 14 months resulted in the credit union incurring additional time on the part of its employees to monitor and follow up with Mr. Hogue's office. Such delays in

completing what was an otherwise routine transaction contribute to the jaundiced view many citizens have of the legal profession.

18. Counsel provided us with two cases in which the primary allegations against the lawyer amounted to failures to supervise staff or junior lawyers. In both cases the penalties meted out to the lawyers were more severe than what counsel has recommended to us. In both cases, the lawyers in question were suspended for 30 days and were ordered to pay costs in amounts exceeding \$20,000.00. In the Alberta case of *Law Society of Alberta v. Hodgson*, 2017 ABLS 11, Mr. Hodgson admitted to failures on nine files to carry out instructions properly, to advise his clients in some cases of material facts and to complete reports to mortgagees in timely fashion, failures which, it seems from the report of the case, were sometimes failures committed by his employees whom he did not supervise properly and sometimes failures by him to record accurately instructions his clients gave him. In the Ontario case of *Law Society of Ontario v. Polisuk*, 2018 ONLSTH 114, Mr. Polisuk admitted that he had failed to supervise his staff regarding two real estate transactions which involved considerable sums of money and which took place over a considerable period of time. Material facts in each transaction were not disclosed to the lawyer's lender client and the lawyer's failure to exercise proper supervision of his staff facilitated, without the lawyer's knowledge, the fraudulent activities of another client involved in the transactions.

19. Our primary concern must be the public interest. As counsel quite rightly observed, the purpose of this process is not to punish lawyers who admit, or are found responsible, for professional misconduct. Here, while Mr. Hogue is certainly responsible for failing to supervise in any meaningful way the work of his paralegal, the failure resulted in a problem on a single file and there is no suggestion that the failure to respond in timely fashion to the credit union's correspondence was coupled, as in the foregoing cases, with failures to communicate material facts to the credit union or that the delay placed its loan for a time in jeopardy. Indeed, based on Mr. Hogue's explanation and the Agreed Statement of Facts, the problem originated through a combination of the impact on the paralegal of her medical issues and a lack of understanding on her part of what the credit union required for a satisfactory final report. Hence, the cases cited to us suggest that a less severe penalty, a reprimand, is appropriate. We also note the steps Mr. Hogue has taken now to supervise directly the paralegal, particularly that he now reads, each day, all email communications sent to his office. This practical step should ensure that there will not be a recurrence of what took place in 2019.

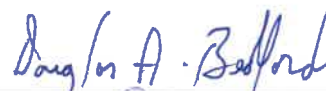
20. We acknowledge Mr. Hogue's sincere expression of regret for what took place. We further acknowledge that through his admission of responsibility, the time and expense of a contested hearing was avoided. A hearing, no doubt, would have required the testimony of the paralegal who we were told submitted a statement to the Society, though that statement was not before us. Given her apparent medical circumstances, we conclude that testifying would likely have been an ordeal for her. As for Mr. Hogue's previous convictions, we agree with his counsel that these were truly long ago and the facts in those cases, to the extent that they have been provided, are distinguishable from those before us. Finally, in accepting the joint recommendation we believe that we are

respecting the public's interest, generally, that joint recommendations made by experienced counsel ought to be accepted unless they manifestly tarnish the administration of justice, which this recommendation certainly does not.

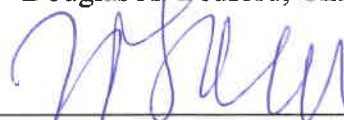
Conclusion

21. Accordingly, for the foregoing reasons we conclude that Mr. Hogue be reprimanded and he is ordered to pay a contribution in the amount of \$1,500.00 to the costs of the investigation and prosecution of this matter, the timing of which payment is to be as the Chief Executive Officer of the Society determines.

These written reasons signed the 10<sup>th</sup> day of December, 2021.



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Douglas A. Bedford, Chairperson



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Lori Ferguson Sain, Q.C., Panel Member



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Carmen Nedohin, Panel Member