

**THE LAW SOCIETY OF MANITOBA**

IN THE MATTER OF:

**MARGARET CATHERINE CARROLL**

- and -

IN THE MATTER OF:

**THE LEGAL PROFESSION ACT**

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**REASONS FOR DECISION**

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Hearing Date: January 26, 2022

Appearances for the Law Society of Manitoba:

Ayli Klein

Appearances for Margaret Catherine Carroll:

No one appearing for the Member

Discipline Committee Panel:

Katherine L. Bueti

Gerrit Theule

Susan Boulter (Public Representative)

## Introduction

1. This virtual hearing before a Panel of the Discipline Committee of the Law Society of Manitoba, pursuant to the provisions of *The Legal Profession Act*, was conducted in Winnipeg on January 26, 2022. The Discipline Committee Panel consisted of Katherine L. Bueti, Gerrit Theule, and the Public Representative Susan Boulter. The Law Society was represented by Ayli Klein. Despite being substitutionally served on August 18, 2021 (Exhibit 2), the member, Margaret Catherine Carroll, did not attend and no counsel appeared on her behalf.

2. This hearing was required as the result of a Citation which had been issued against Ms. Carroll which set forth 3 counts of Professional Misconduct. The Citation was issued on May 25, 2021 (Exhibit 1).

3. At the commencement of this discipline hearing receipt of the Notice of Hearing dated October 18, 2021 (Exhibit 3), and membership in The Law Society of Manitoba was dealt with in accordance with *The Legal Profession Act*, CCSM c. L107, s. 71(1). Provision 6 sets out the provisions that apply to discipline hearings in absentia. The same was applied for the lack of objections raised to the members of the Discipline Panel and the jurisdiction and authority of the Panel to proceed. The hearing was an open hearing. A non-party attendee was present for the hearing.

4. Margaret Catherine Carroll is a member of the Law Society of Manitoba (the “Society”), having been called to the bar in 2015. Ms. Carroll was also served with a Request to Admit facts on December 14, 2021 (Exhibit 4). Provision 5 of this section states that the rules of evidence applicable in civil proceedings in the Court of Queen’s Bench apply at the hearings. Rule 51 of the Queen’s Bench Rules allows a party to serve Request to Admit and a person who fails to respond to a request within 20 days is deemed to admit the facts set out in the Request. Ms. Carroll did not respond to the Request and is therefore, deemed to have admitted all of the facts detailed in the 4 pages of the Citation. The Society did not call any oral testimony at the hearing and relied on the deemed admissions as its proof.

### **Findings of Misconduct**

5. The facts of this case detail an isolated incident of conduct that occurred on one occasion, with one client, who received a partial refund.

6. Ms. Carroll’s misconduct occurred in connection with a family law matter between April 2019 and October 2020, when she failed to deposit trust money into a trust account. The funds were misappropriated for her own purposes. Further, a Statement of Account had been created which included false information.

7. In addition to the 2 counts in the Citation detailing Ms. Carroll’s misconduct in relation to the client, the Citation also contains 1 count related to ungovernability. Ms.

Carroll did not respond to 4 different items of correspondence from the Society and failed to appear before this hearing as required.

8. The evidence for the prosecution in this matter was presented by way of the filing of a Request to Admit documents (Exhibit 4), and an Affidavit (Exhibit 5) dated January 20, 2022, as sworn to by Anna Brown, an administrative assistant at The Law Society of Manitoba, which contained 10 paragraphs and 5 exhibits. The Affidavit set forth the steps taken by the Society to contact Ms. Carroll and provide the necessary documentation.

9. The Discipline Panel was also provided a Book of Authorities of The Law Society of Manitoba. The Society did not call any witnesses. The Society recommended disbarment of the member, publication, and \$4,000.00 costs (a conservative estimate). Though disbarment was recommended the Society also indicated the Panel could consider granting the member permission to withdraw from practice and/or an indefinite suspension. The presumption is for disbarment in cases of misappropriation unless there are exceptional circumstances.

10. Little is known about the member's circumstances due to her lack of attendance. There is acknowledgement on behalf of the Society that there was only one transaction of concern. A full audit has been done of the member's practice and there is a custodial order in place. There does not appear to be evidence of a widespread pattern of behaviour. The only evidence before the Panel is that it is a one-time isolated incident.

11. The amount involved is a lesser amount of \$4,500.00 of which all but \$1,000.00 has been refunded to the client. As a result, the original complaint was withdrawn by the client. It is also significant to note that the member has voluntarily withdrawn from practice. This is a key consideration in determining protection of the public.

12. There has been some tangential evidence of there perhaps being underlying mental health issues for the member. Though no evidence has been provided in that regard by way of medical reports. The Panel recognizes the importance the Society has placed on mental health issues recently.

13. Based on the deemed admissions, the Panel has no difficulty in finding Ms. Carroll guilty of 3 counts of professional misconduct. The evidence without explanation to the contrary, is overwhelming and shows a deliberate use of the client's money for the member's own benefit. The evidence also clearly proves the count of ungovernability. A conviction on all counts is required to ensure protection of the public.

14. After carefully considering and weighing all of the facts and submissions in this matter, it is the unanimous ruling of this Discipline Panel that the Society has met its onus in proving the member failed to deposit trust money into a trust account contrary to s. 5-44(1)(b) of the *Rules of the Law Society of Manitoba*. That the member failed to act with integrity contrary to s. 2.1-1 of the *Code of Professional Conduct*. Further, that the member acted contrary to s. 5-64(3) and (4) of the *Rules of the Law Society of Manitoba* and Rule 7.1-1 of the *Code of Professional Conduct* by failing to respond.

15. The purpose of the Society's disciplinary proceedings are set out in s. 3(1) of *The Legal Profession Act*, to uphold and protect the public interest in the delivery of legal services with competence, integrity, and independence. In accordance with Rule 5-96(5) the Panel of the Discipline Committee resolves:

- (a) all of the acts or omissions stated in the charge have been proven to the satisfaction of the Panel; and
- (b) the acts or omissions so proved, the member is guilty of professional misconduct.

### **Penalty**

16. The member has violated the basic tenets of the legal profession, integrity, loyalty, competence, and trust. She acted in her own self-interest and abused her position of trust. This lack or failure of integrity is contrary to the required trust which the public places in the legal profession, and which is essential to enable lawyers to represent their clients in a professional manner.

17. The Panel seeks to preserve the public's trust in the integrity of the legal profession and its faith in the ability of the profession to govern its own members. The public has the right to expect that those very few members of the profession who violate their ethical responsibilities will no longer be granted the privilege to practise law.

18. The guiding principle of sentencing in this matter are both general and specific deterrence. The purpose of the Society is to protect the public. Discipline Hearings are not meant to be punitive. Rather they must balance the personal mitigating factors while

fulfilling the mandate of the Society. Here there may be some sympathetic factors which may warrant leniency, but they must be tempered with the seriousness of the offence.

19. In this case, the failure to act with integrity brings the administration of the legal system into disrepute. This integrity affects the public's confidence and perception in the profession. The member had an obligation to not act in her best interest but rather to take the steps adverse to her personal interest.

20. For these reasons, the Panel of the Discipline Committee has unanimously determined that though the Society was appropriate to seek disbarment in the case at bar, there are enough exigencies that the Panel has not agreed to follow the recommendation put forward by counsel for the Society.

21. It is determined it is appropriate in the circumstances in accordance with s. 72(1) of *The Legal Profession Act*, that the member be granted permission to resign her membership within 30 days of this order, failure to do so will result in an indefinite suspension. This is reserved for the exceptional circumstances found in this case. The other recommendations put to the Panel, namely disbarment and a withdrawal from practice with a default consequence of disbarment if not complied with were deemed to be too heavy handed in the circumstances.

**Costs**

22. The Society seeks an order of costs against Ms. Carroll. The cost provision set out in s. 5-96(8) of the *Rules of the Law Society of Manitoba* is designed to ensure that the member of the profession whose misconduct caused the costs to be incurred bears the responsibility for payment, rather than the innocent members of the Society. There is no reason to depart from the normal rule and the Panel orders costs in the sum of \$4,000.00.

23. According to s. 5-96(8) of the *Rules of The Law Society of Manitoba* this Panel of the Discipline Committee is mindful that the member may have personal commitments. As such, we are prepared to allow the timing of the commencement of the costs to be determined by the Chief Executive Officer of The Law Society of Manitoba.

24. We note under Rule 5-100(1) of the *Rules of The Law Society of Manitoba* publication of the order is mandatory.

DATED this 11<sup>th</sup> day of February, 2022.



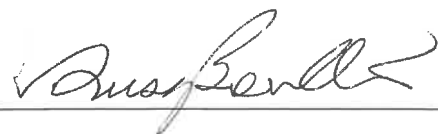
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KATHERINE L. BUETI



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GERRIT THEULE



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SUSAN BOULTER