

**THE LAW SOCIETY OF MANITOBA**

IN THE MATTER OF:

JOSEPH GEORGE FIORINO

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

HEARING DATE:

March 30, 2022

PANEL:

Jacob P. Janzen (Chair)

Roberta Campbell, Q.C.

Maureen Morrison (PR)

APPEARANCES:

Ayli Klein for the Law Society of Manitoba

Saul Simmonds, Q.C. for Joseph George Fiorino

## DECISION AND REASONS

### **Introduction**

1. Joseph Fiorino is a member of the Law Society of Manitoba (“the Society”), having been called to the Manitoba bar on December 7, 2017. He has been practicing as a sole practitioner since April 22, 2018. He is also a member, albeit inactive, of the State Bar of California where he has been a member since April 22, 2009, and where he practiced before his call to the Manitoba bar. He had no discipline conviction record prior to this matter.
2. Mr. Fiorino is charged with three counts of professional misconduct. One count alleged a failure to respond promptly and completely to inquiries from the Society. A second count alleged that he had engaged in sharp practice. A third count alleged that he had failed to be courteous, civil and act in good faith to persons with whom he had dealings in the course of litigation.
3. These matters came before this panel for hearing on March 30, 2022. The hearing proceeded by the parties filing an Agreed Statement of Facts, Mr. Fiorino pleading guilty to the three counts, and the parties making a joint submission as to disposition.

### **Decision**

4. After hearing submissions and adjourning to consider the matters placed before it, the panel accepted the joint submission. We ordered that and hereby confirm that:
  - (a) as to the count alleging a failure to respond to the Society, Mr. Fiorino be reprimanded;
  - (b) as to the counts alleging sharp practice and a failure to be courteous, civil and act in good faith, Mr. Fiorino pay a fine in the amount of \$3,000, and
  - (c) Mr. Fiorino pay to the Society \$2,500 as a contribution to the costs of investigation and prosecution.

Payment arrangements can be made with the Chief Executive Officer of the Society.

### **The Facts**

5. The charges arose from Mr. Fiorino’s handling of a particular civil litigation file. He filed a Statement of Claim on behalf of a Manitoba resident client against out-of-province resident Defendants. The Defendants retained out-of-province counsel. The Defendants filed and served a Notice of Motion to dismiss the Claim. Over the following several months, Mr. Fiorino improperly obstructed and frustrated reasonable efforts by Defendants’ counsel to set a contested hearing date on their Motion to dismiss the Claim. He provided information he knew

to be inaccurate to the Court when out-of-province counsel was not in attendance and improperly sought Court orders based on that inaccurate information, he misled opposing counsel as to the status of instructions he had received from his own client, he refused to attend the Court registry to obtain hearing dates despite having been instructed by the Court to do so, he initiated further Court proceedings without disclosing the existence of the extant Notice to Dismiss.

6. The Society received a complaint on January 31, 2020 from one of the Defendants and from counsel for the Defendants. The Society provided the complaint to Mr. Fiorino on February 6, 2020. After an exchange of communications, on April 23, 2020 the Society requested a review of Mr. Fiorino's file. Further communications followed. The file was eventually produced on January 21, 2021 and only after the Society had charged Mr. Fiorino with a failure to respond promptly and completely to inquiries from the Society.

## Analysis


7. It is in our view settled law in Manitoba that a discipline committee panel, when presented with a joint submission on disposition, is to apply the public interest test as articulated in *R. v. Anthony-Cook*, 2016 SCC 43. This is, in the Court's own words at para. [34] "an undeniably high threshold -- and for good reason". Under the public interest test, the Court noted at para. [34], "Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down."
8. We also accept the decision in *Law Society of Manitoba v. Nadeau* 2013 MBL 4 as a useful guide in describing the factors a discipline panel should weigh in reaching a disposition determination. *Nadeau* listed these factors: "(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."
9. We regard as mitigating factors that Mr. Fiorino has no prior record. He is a relatively junior and inexperienced counsel who, as a sole practitioner, did not have colleagues he could readily

consult. He disposed of this matter by guilty pleas when a contested hearing would have presented complexities for the Society. Both counsel submitted, and we accept, that his guilty pleas were indicative of contrition and remorse. The complainants did not suffer any permanent loss as a result of his conduct, nor did he gain any advantage. It is likely that, in his circumstances, the financial penalties imposed will be a hardship. Both counsel in their submissions expressed the view that Mr. Fiorino has the potential to do better. Mr. Simmonds in particular said Mr. Fiorino had connected to a network of other lawyers, himself included, who could provide assistance and support to him.

10. These mitigating factors are offset to some degree by other factors. The unprofessional conduct at issue here reflected not an isolated event but a worrisome pattern. As a matter of general deterrence, sharp practice brings the legal profession into public disrepute and reinforces a not uncommon negative stereotype about lawyers. Zealous advocacy cannot, and cannot be seen to be, a licence to practice law without heed to the duty to act with courtesy, with civility and in good faith.
11. We were provided with a number of like cases. It is clear that the joint submission made in this matter is consistent with decisions made by other discipline tribunals in those like cases. This important factor, combined with the other factors considered, persuade us that the joint submission in this case is a fair and reasonable one. There is simply no basis, legal or evidentiary, to reject it.
12. We thank counsel for their able submissions. Mr. Simmonds described his client as “having had his cage rattled”. We conclude by expressing the hope for Mr. Fiorino that this will not again be necessary.

Dated this 19<sup>th</sup> day of April, 2022.

  
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(Jacob P. Janzen, Chair)

  
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(Roberta Campbell, Q.C.)

  
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(Maureen Morrison, Public Representative)