THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

ORVEL LARRY CURRIE

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

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 Friday, March 18, 2022 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. Wendy Stewart, both members of the Society, and Ms. Susan Boulter, a public representative appointed by the Society.

3. The Society was represented by Mr. Rocky Kravetsky.

4. The member, Mr. Orvel Currie, was present and was represented by Mr. Faron Trippier.

5. In accordance with two amended Citations and an Agreed Statement of Facts, Mr. Currie admitted to creating false documents and engaging in secret billing practices in late 2016 and in 2017 that had the effect of hiding from his partners' billings accrued in 2016 on 55 matters. Further, he admitted that prior to being interviewed in December 2014 on behalf of a Court Monitor regarding billings by his firm with respect to residential school claimants, he made no inquiries of the firm's associates and staff, or any adequate inquiry, such that answers he gave to certain questions put to him misled

the Court Monitor. Misleading the Court Monitor in this fashion amounted to a failure to treat the Court with candour, fairness, courtesy and respect. The panel found the foregoing conduct to be professional misconduct.

6. The parties jointly recommended that Mr. Currie be suspended from the practice of law for a period of thirty days beginning no later than May 15, 2022 and that he be ordered to pay $12,500.00 as a contribution to the costs of the investigation and prosecution of the charges. After considering the submissions of counsel and their respective responses to questions and hearing directly from Mr. Currie, the panel advised the parties on March 18, 2022 that the joint recommendation was accepted and the order, as recommended, was pronounced with written reasons to follow.

Relevant Facts

7. In January 2009 Mr. Currie joined the firm of D'Arcy & Deacon LLP as a partner. D'Arcy & Deacon LLP was a well-known and respected Winnipeg firm that had existed, in one form or another, for over a century. In the fall of 2014 due to the departure of six partners, the remaining partners became concerned that the firm was no longer financially viable.

8. The partners held a number of meetings with a view to either dissolving the partnership or continuing it in some revised form. Mr. Currie and the Society agree that there was enormous stress and a degree of animosity between some of the partners regarding the unfolding situation through the late autumn of 2016. The panel was provided with a number of documents related to the discussions that took place between the partners but it was not our task to determine what the precise obligations of the partners were in and about December 2016. In the event, two groups of partners and associates formed two new firms and some partners chose to carry on the existing partnership. For the first six months of 2016, the existing accounting system of D'Arcy & Deacon LLP was utilized by the several firms that now existed as the firms looked for new premises and the partners saw to the discharge of the outstanding liabilities as of December 31, 2016.

9. Mr. Currie claimed entitlement to his work in progress accrued in late 2016 and in support of that claim drew attention to some statements in memoranda to the partners that arguably might have been a bit confusing. Evidently, this claim of his was vigorously rejected by many of his partners at D'Arcy & Deacon LLP who insisted that all partners were obligated to bill their work in progress and outstanding disbursements to the credit of the partnership which had significant liabilities to discharge through December 31,2016. The panel was provided with some documentation that is consistent with the conclusion that partners were being asked to bill their work for the partnership through December 2016. However, it was not our task to determine whether Mr. Currie's position was viable. Indeed, the parties advised us that an arbitration had taken place between Mr. Currie and his former partners at D'Arcy & Deacon LLP covering this issue and that the matter had been resolved and releases had been exchanged between the parties.

10. Mr. Currie admitted that with respect to 35 client matters covering work done in 2016, he created two sets of bills. One set accurately showed the work as having been done in 2016. The other set falsely showed the work as being done in 2017 (when Mr. Currie's newly created firm would be entitled to the payments of the accounts). Both sets of accounts were entered into the D'Arcy & Deacon LLP accounting system but the panel was told it would not be apparent from a casual look at the accounting system that there had been duplicate accounts created for the same matter. In the event, the partners of D'Arcy & Deacon LLP discovered the false accounts and, as noted above, they were the subject of an arbitration now concluded.

11. On a further 19 matters covering work done in November and December 2016, Mr. Currie did not enter the work as having been done in 2016 but kept a secret record of it and billed it to the clients in 2017 to the credit of the new firm of which he was a member. It appears that the partners of D'Arcy & Deacon LLP likely did not know of this deception at the time of the arbitration but, again, the panel was told that in light of the exchange of releases and the conclusion of the arbitration it was not being pursued. On one further matter covering work done in November 2016, Mr. Currie arranged for the client to pay $1,200.00 on a bill from D'Arcy & Deacon LLP and a further $7,000.00 pursuant to a new bill issued by his new firm in 2017.

12. In early 2009 Mr. Currie began receiving "files" from a business known as "A Inc", one of whose principals, Ms. K.L. was a former client or acquaintance of Mr. Currie. A Inc. was in the 'business' of visiting Reserves and communities with a view to introducing itself, or meeting with, residential school survivors and "assisting" them to fill out required forms for advancing claims for benefits to which they were entitled from the federal government. Those who were "assisted" by A. Inc. were asked to sign a simple form purporting to be an "irrevocable letter of direction" giving to A. Inc. 15% of whatever amount they received in due course. A Inc. referred to Mr. Currie at least 280 'files'.

13. Mr. Currie did not do the work on any of the residential school claim files. An associate lawyer was hired and he did much of the work. Other associates also handled some of the files. A paralegal was hired to assist. Most files, in addition to communications and preparation with the individual clients required an appearance before an administrative adjudicator and the presentation of the pertinent facts related to the client's history at a residential school. Awards, based upon the factual history, ranged from $5,000.00 to $275,000.00. Amounts awarded were sent to D'Arcy & Deacon LLP. In addition to the award to the client, the law firm was entitled to a counsel fee of 15% of the amount awarded and reimbursement of certain disbursements. No part of any award was allocable to A Inc. or to anyone else to cover any assistance in filling out the claim forms.

14. When the original 280 'files' were delivered to Mr. Currie, the firm opened them in the name of A. Inc, not the individual claimants and this practice continued for about three years. In early October 2009, the associate hired to handle the files advised Mr.

Currie that the "irrevocable letters of direction" given by the individual claimants to A. Inc. were not enforceable. The Financial Administration Act, RSC 1985, c.F-11 prohibits the assignment of Crown debts. Obviously, in light of the legislation (and a 2007 BC trial court decision that reviewed a similar effort to divert awards received in trust by a law firm) the awards sent to Mr. Currie's firm had to be disbursed to the individual claimants. In December 2010, Mr. Currie was present at a meeting with the associate lawyer and the paralegal handling the files and a decision was made to issue two cheques upon receipt of a claimant's award, one for 85% of the award and the other for 15% of the award, both payable to the claimant but with the expectation that the claimant would be persuaded, or would be agreeable, to endorsing the cheque for 15% of the award to A. Inc. In effect, this amounted to a scheme to facilitate A. Inc. receiving payment for the "irrevocable letters of direction". For some period of time, the firm, after obtaining the claimant's endorsement on the "15% cheque" would send it directly to A. Inc. With respect to one of these, Mr. Currie was copied via an email on July 5, 2011 sent by A Inc. Within months, those administering the federal claims process learned of the "two-cheque" scheme and wrote to the firm expressing the view that the practice was "unethical".

15. In 2012 the Society wrote to the firm regarding the 'two-cheque' scheme. A letter was drafted in reply to the Society's enquiries which draft suggested that individual claimants wanted the firm to prepare the second cheque for 15% of the award as this made it easier for them to pay A. Inc. Upon review of the draft letter prepared by Mr. Currie, the associate handling the files told him in writing that he was not aware of any claimant ever asking that this be done.

16. In early 2014, the Manitoba trial division determined that most of the "irrevocable letters of direction" or "assignments" that were used by businesses such as A. Inc. were not valid contracts and thus not enforceable.

17. Evidently, by 2014, there was significant concern on the part of the federal government employees administering the residential school claims and the Court that some of the awards were not being received in full by the claimants. These concerns resulted in Mr. Currie being asked to attend in December 2014 to answer questions on the subject posed on behalf of a Court Monitor. The transcript of the questions and Mr. Currie's answers was provided to the panel.

18. In response to many questions regarding the files his firm handled, Mr. Currie advised that he did not know what had occurred and he would have to ask others because he did not handle the files himself. However, when asked about the two-cheque process, he advised that claimants were putting "pressure" on the firm to pay A. Inc. Two years earlier, in 2012, he had been told by the associate who actually handled the files that there were no such instances of this. Four years earlier, he participated in an internal meeting where the two-cheque scheme was proposed, in response, it seems to the recognition that the firm could not simply set aside in its trust account the 15% "irrevocably directed" to A. Inc. by claimants. He also stated that upon receipt of the files, all ties with A. Inc. were "severed". This was untrue. The firm for some period of time after 2009 sent, after

endorsement by claimants, cheques to A. Inc. and on at least one occasion, July 5, 2011, Mr. Currie had been included in an email exchange on the subject.

The Member's Record

19. Mr. Currie was called to the Bar in Manitoba on June 28, 1990. Subsequently, he became a member of the Law Society of Ontario, the Law Society of Alberta and the Law Society of Saskatchewan, though he currently is not an active member of the latter Society. Mr. Currie has been in active practice since his call to the Bar and, as stated above, in January 2009 he joined D'Arcy & Deacon LLP as a partner. Since at least 2001 Mr. Currie has worked for parts of each year in Calgary, Alberta.

20. In the 32 years he has practiced law, Mr. Currie has not had any discipline history with any of the law societies of which he has been a member.

Analysis

21. Creating false documents that are likely to mislead one's partners and giving answers to a Court Monitor without making any effort to verify such answers are accurate, indeed, giving an answer that one was told two years earlier was not at all consistent with the facts, are serious transgressions. And, notwithstanding that Mr. Currie has to this date an unblemished record, require the imposition of a serious penalty. We are certainly in agreement with counsels' joint recommendation that a period of suspension is warranted.

22. The challenge is to determine an appropriate period of suspension. We were presented with a number of precedents, none of which matched closely the facts to which Mr. Currie has admitted. For example, in the very recent decision or *The Law Society of Manitoba v Bauman,* 2021 MBLS 14, Mr. Baumann was suspended for six months after he admitted to facts arising out of the representation of residential school claimants and acting in a conflict of interest in a matter unrelated to residential school claims. Unlike Mr. Currie, Mr. Bauman lent money to "form fillers" and after personally soliciting the endorsement of a cheque payable to the form filler, endorsed it to his firm with a view to recovering some of the money he had lent. Further, he swore a false declaration to the Court regarding his firm's relationship with the "form filler". And, in an unrelated matter, he involved a client in an investment in a hotel venture in which he was personally involved without adequately disclosing to the client the latter's financial exposure on a significant loan. Mr. Bauman's misconduct was more serious and more extensive than Mr. Currie's and his intent in the misconduct not debatable.

23. In another "conflict of interest" case, *The Law Society of Manitoba v Oakes,* 1999 MBLS 8, Mr. Oakes took advantage of his retainer acting for an Estate and did not advise the beneficiaries that the Estate was solvent, after initially it appeared otherwise, nor that he himself was behind the purchase of a significant Estate asset. In addition to a four

months suspension, Mr. Oakes was fined $10,000.00 and ordered to pay costs of $13,000.00. The facts of Mr. Currie's case are distinguishable from the foregoing. Although there are elements of conflict of interest on Mr. Currie's part in creating false documents intended to benefit his new firm, there were at least some arguable, if tenuous, reasons for him proceeding as he did. There is no suggestion, moreover, that he or his firm drew any benefit from the 'two-cheque' scheme whose origins and implementation he did not properly explain to the Court Monitor. The scheme in question seems to us to have been designed in an effort to assist the initial 'client' of the firm, A. Inc., in circumstances where the firm ought to have divorced itself completely from any steps to 'enforce' the "irrevocable letters of direction" A. Inc. was given by claimants. Again, there is evidence that lawyers acting on the files recognized this and, on some occasions, told A. Inc. it had to fend for itself if it wished to pursue claims for amounts it sought. We are mindful, too, that what Mr. Currie has admitted to doing is failing to make inquiries he could easily have made before attending an interview with the Court Monitor and such neglect amounted to a failure to treat the Court with candour, fairness, courtesy and respect. This is different than knowingly giving false answers to questions posed on behalf of a Court Monitor.

22. Mr. Troniak was suspended for 60 days in *The Law Society of Manitoba v Troniak,* 1996 MBLS 1. He was found to have taken fees before rendering an account, to have taken fees in excess of a contingency agreement and, somewhat similarly to Mr. Currie, to have misled the Income Security program regarding the settlement his client had received. The distinction is that Mr. Troniak made false statements knowing they were false with a view to his client obtaining a benefit through the deception. His client revealed the truth. Mr. Currie made statements that likely misled the Court Monitor but, given the facts before us, were at best made recklessly without prior inquiry or subsequent verification and which were surprising in light of information given two and three years earlier to Mr. Currie. However, there is no admission by Mr. Currie that he intended to mislead the Court Monitor.

23. Indeed, through his counsel's submissions, Mr. Currie was adamant that he never intended to mislead his partners when he created false billing documents and he never intended to mislead the Court Monitor in answering questions regarding how his firm handled residential school claims. We find no difficulty in making an inference that the creation of the false billing records was most certainly intended to divert the fees and disbursements to Mr. Currie's new firm and in the absence of any notice to his partners that he was doing this leads to the inevitable conclusion that there was certainly a hope that the diversion of monies would go unnoticed. Mr. Currie's motive, as distinct from his intention, may have been to secure for his new firm what he genuinely believed was his, but it was nonetheless wrong. With respect to the answers, he gave to the Court Monitor, his "intent" may have been to answer truthfully and not to mislead, but in the absence of making any effort to inform himself or to refresh his memory, yet nonetheless showing up for the interview and hence implying that he was the appropriate party to be questioned, he most certainly demonstrated a lack of respect for the Court and its process. As the panel said in *Law Society of Alberta v Ingimundson,* 2014 ABLS 52 at paragraph 48: "Integrity is not just the absence of deceitful conduct. Nor is it cutting a fine line with

providing minimal or inexact information. Integrity means open transparent dealings, complete and full communication and standing by your word and being seen to do so." Mr. Ingimundson gave inaccurate information to another lawyer regarding the purchase price in a real estate transaction in circumstances where he knew the correct price and ought to have been accurate. The panel was not required to determine what his intent was in providing inaccurate information. He was reprimanded and given a fine of $2,500.00 and ordered to pay costs of $5,000.00. Clearly, Mr. Currie ought to have prepared for the interview with the Court Monitor by speaking to the associate lawyer who handled the files and the paralegal who worked on them and by reviewing some of the files. Then, upon being asked, he should have forthrightly advised that the firm developed the two-cheque scheme in order to facilitate payments to A. Inc., that for a period of time it obtained the endorsement on the 15% cheques from claimants and sent those cheques directly to A. Inc. and that there was no instance of a claimant requesting the firm to do this but some complied with the process.

24. One-month suspensions have been ordered in cases where lawyers have accepted totals of $2,500.00 and $1,700.00 from clients and have not deposited the money in their trust accounts. See, respectively, *The Law Society of Manitoba v Johnson,* 2014 MBLS 6 and *The Law Society of Manitoba v Taylor,* 2008 MBLS 13. At best, these decisions reflect that serious transgressions that call into question a lawyer's integrity merit something more than a reprimand and/or a fine. In the foregoing cases, the motive of the lawyers was obviously to obtain a personal benefit at the expense of their firm and, perhaps, to avoid taking the funds into income. As we have observed, we did not have to determine what Mr. Currie's "intent" was in doing what he did but we are certainly persuaded in the case of the false billing records that the purpose was to ensure that billings he claimed as his ended up with his new firm.

25. We were advised that this matter was expected to be contested and would have been had there not been agreement to amend the original citations served upon Mr. Currie. Mr. Currie is entitled to some consideration for admitting what he has, albeit after amendments to the citations, and thus avoiding the necessity of what was expected to be a two-week hearing with several witnesses subject to cross-examination touching on their credibility. Also, we recognize that Mr. Currie has successfully practiced now for over 30 years with no blemishes on his record and, with respect to the billing records, was faced with what both parties agree was a very tense and stressful period of his practice. Mr. Currie addressed the panel directly and admitted that with respect to both matters, he "could have done better". Given his previously unblemished record and the somewhat unique background to the matters before us, we do not see that there is concern that Mr. Currie will find himself again before a panel.

26. As stated, this matter was presented to us through the submission of an Agreed Statement of Facts and a joint recommendation as to penalty. We are mindful of the oft cited direction from the Supreme Court of Canada that a panel such as this "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". (See *Anthony-Cook v. Her Majesty the Queen,* 2016 SCC 43 at paragraph 32.)

A suspension is warranted. While one could debate, based on the precedents, whether it ought to be more than one month, we are satisfied that a one-month suspension for Mr. Currie is not out of line nor is it contrary to the public interest.

Conclusion

27. Accordingly, for the foregoing reasons we conclude that Mr. Currie be suspended for a period of one month beginning no later than May 15, 2022 and he is ordered to pay a contribution in the amount of $12,500.00 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. We observe that the Society is obligated to publish a notice of the suspension.

These written reasons signed the 26th day of May, 2022.

Douglas A. Bedford, Chairperson

Wendy Stewart., Panel Member

Susan Boulter, Panel Member