

**THE LAW SOCIETY OF MANITOBA**

**IN THE MATTER OF:**

**GARY SAMUEL STERN (the “member”)**

**- and -**

**IN THE MATTER OF:**

**THE LEGAL PROFESSION ACT**

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**REASONS FOR DECISION**

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**Hearing Date:** May 11, 2022

**Panel:** Helga D. Van Iderstine (Chair)  
James McLandress, Q.C.  
Sandra Oakley (Public Representative)

**Appearances:** Ayli Klein for the Law Society of Manitoba  
Gary Samuel Stern, Self Represented

## **DISPOSITION OF THE DISCIPLINE COMMITTEE**

The Panel convened on May 11, 2022, a virtual hearing, to consider the charges of professional misconduct, guilty plea and joint recommendation on consequences made by the Member, Gary Stern, and the Law Society of Manitoba. The Panel advised the parties at the conclusion of the submissions that they accepted the Members guilty plea of professional misconduct and the joint recommendation on consequences with Reasons to follow. These are the Reasons.

### **Background and Submissions**

Mr. Stern was called to the Bar in the Province of Manitoba on June 25, 1987. He has been in practice in Manitoba since 1989, practising in a variety of practice arrangements. His practice consists of approximately 90% family law and 10% immigration law. He comes before the Discipline Committee on this occasion as a result of complaints arising from two matters, both of which relate to charges that contrary to Rule 3.2-1 of the *Code of Professional Conduct* that he failed to provide service that was thorough, prompt, timely diligent and efficient.

In 2016, Mr. Stern represented TM in a family matter. In 2018, a final order was pronounced extending custody and child support to TM. Unfortunately, Mr. Stern failed to have the final order endorsed by the Court and this remained outstanding for over three years. During that time, TM repeatedly contacted Mr. Stern to seek updates. After TM complained to the Law Society, Mr. Stern attended to drafting the final order. In drafting and submitting the final order, he made errors with respect

to it and had included provisions for which he had no specific instructions from the client.

In the second matter before the Panel, Mr. Stern began representing HG in a family law matter. The Panel was advised that there was mutual difficulty in communicating between the client and Mr. Stern. HG's legal issues related to a petition for custody and child support, for which Mr. Stern did not do any work to advance the matter for over a year. During that time frame, HG had repeatedly attempted to contact Mr. Stern to seek updates without receiving a reply. Mr. Stern finally did prepare to file the petition and financial statement for the client's review, which was filed in Court. Mr. Stern continues to act for HG.

The Panel was advised that in both cases the clients' interests, while delayed, were not impacted.

### **Discipline History**

Mr. Stern has one previous complaint with the Law Society. It included five charges of professional misconduct relating to quality of service he had provided on two client matters. In that complaint, Mr. Stern accepted responsibility, was reprimanded and ordered to pay costs of \$2,400.00.

As such, this is the second time Mr. Stern has appeared before the Law Society within the last five years for substantially similar issues.

**Joint Submission**

Mr. Stern pleaded guilty to professional misconduct as outlined in the Citation and admitted to the facts as outlined in the Agreed Statement of Facts.

The Parties jointly submitted that the conduct set out in the Agreed Statement of Facts constituted professional misconduct, as alleged in Counts 1 and 2 of the Citation. He thereby admitted to two counts of having breached Rule 3.2.-1 of the *Code of Professional Conduct*, by failing to provide service that was thorough, prompt, diligent and efficient.

The Parties jointly agreed to and submitted that the appropriate consequences in accordance with *Section 72 (1) (d) and (e) of The Legal Profession Act, CCSM c L107* for those breaches is for:

1. Mr. Stern to pay a fine in the amount of \$3,000.00;
2. Mr. Stern to pay \$1,500.00 to the Society as a contribution to the costs of the investigation, prosecution of the charges.

The Panel reviewed the written submissions of the Parties and the case law submitted. It considered the oral submissions of the Law Society Discipline Counsel, explaining why it believes this to be an appropriate disposition. The Panel considered the comments made by Mr. Stern.

Mr. Stern accepted responsibility for his actions. He identified that he was embarrassed and ashamed to be before the Law Society on a second occasion on substantially similar issues. He offered no excuses and accepted that it was his

responsibility to communicate and follow up with the client. He acknowledged his failure to provide quality of service as alleged in the Citation. The Law Society Discipline counsel submitted that Mr. Stern had throughout the complaint investigation stage of the process, cooperated with the Law Society, accepted responsibility and had demonstrated remorse for his actions. The Discipline Panel heard the same explanations and remorse from Mr. Stern in his submissions to the Panel.

The Law Society Discipline Counsel submitted that a failure to respond to clients, and to finalize their matters in a timely way is a requirement of good practice. The failure to meet this standard is an issue that directly impacts the public's confidence in the legal profession. While it is not the most serious of infractions it nevertheless warrants a finding of misconduct and consequent disciplinary action. The Panel agrees with this submission.

The Law Society Discipline Counsel explained that they had applied the principle of progressive discipline in reaching the recommended consequences. Mr. Stern's past discipline had resulted in a reprimand. The imposition of a fine represented an escalation of the discipline being recommended. The Panel agrees with this submission.

### **Case Law and Analysis**

The Panel were referred to and considered the decision of the Discipline Committee in *The Law Society of Manitoba v Sullivan, 2018 MBL 9* for consideration of the role of

the Law Society and for what must be taken into account when considering joint submissions on Penalty.

In *Sullivan* the Panel referred to and followed the decision of the Supreme Court of Canada in *Anthony-Cook v. Her Majesty the Queen, 2016 SCC 43*. The Court had considered the circumstances in which a judge (and by analogy a Discipline Panel) can depart from a joint submission on penalty. The Panel noted that a tribunal should consider the public interest when considering the joint submission. In doing so, the Panel “should not depart from a joint submission unless the proposed penalty would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.” This is a stringent test and reflects the benefits that joint submissions have and promotes certainty in the discussions surrounding resolutions. A joint submission should not be rejected unless it is “markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning of the criminal justice system.” (*Anthony-Cook v. Her Majesty the Queen, 2016 SCC 43* paras. 31 and 33, and referenced in *Sullivan* at paras. 5- -9.)

In both *The Law Society of Manitoba v. Nadeau, 2013 MBL 4* and *Sullivan* decisions the Panels considered and applied the factors for considering penalty or disposition as outlined in *Law Society of British Columbia v. Ogilvie (1999) LSDD No 45 [1999] LBC 17 Discipline Case Digest 99/25*. While these factors are to be considered they are not exhaustive, nor will all apply to each case. These include:

- “(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."

The role of the Law Society is set out in *The Legal Profession Act, CCSM c L107 s. 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." In *Nadeau* the Panel noted that in upholding these provisions, the goal is not to punish the offender but maintain high standards and public confidence.

Having reviewed the purpose and duties of the Law Society and the law with respect to joint submissions, it was apparent to the Discipline Panel that the joint submission on consequences made by the parties addressed the factors in sentencing to be considered and reached a recommendation on those consequences that addressed these considerations. Mr. Stern had cooperated with the investigation, pleaded guilty to the charges, and took responsibility. The impact on the individuals involved

had fortunately been minimal. The impugned actions were at the lower end of the scale of breaches of conduct. The penalty took into account Mr. Stern's practice history of thirty plus years during which he has had limited discipline history with the Law Society. However, Mr. Stern's discipline history does include prior charges for failures in providing quality of service in the relatively recent past. The consequences submitted are in line with other cases submitted by the Law Society.

The Panel noted the progressive nature of the discipline being recommended. Progressive discipline is an appropriate consideration, even where the infractions of the member are not of the most serious nature. Progressive discipline reflects the necessity for members to learn and improve on past behaviour. It reflects the role of the Law Society in upholding standards and it supports the Law Society's duty to govern its members in the public interest. It represents and supports the necessary balance of consequences providing both specific and general deterrence to the member and the profession as repeated offences, regardless of the nature of them, may be subject to increasingly severe consequences.

The Panel was concerned about the repeated nature of Mr. Stern's failure to respond to the clients and that he had no explanation for how or why this had occurred or reoccurred. The repeated nature of the behaviour is something he must address and be vigilant in ensuring doesn't reoccur. We are hopeful that the remorse and embarrassment he demonstrated will serve as reminder to him.



**Conclusion**

We find public interest is served by the finding of misconduct accompanied by a consequence jointly agreed to by the parties.

The Panel therefore accepts the guilty plea and finds Mr. Stern guilty of two counts of professional misconduct pursuant to *The Legal Profession Act* and having violated Rule 3.2-1 of the *Code of Professional Conduct* and that he failed to provide service that was thorough, prompt, timely and diligent. The Panel accepts the joint submission with respect to consequences, namely that Mr. Stern will pay a fine in the amount of \$3,000.00 and pay \$1,500.00 to the Law Society as a contribution to the costs of the investigation and prosecution of the charges. Arrangements for payment of the fine and costs can be made with and at the discretion of the Chief Executive Officer of the Law Society.

SIGNED THIS 2<sup>nd</sup> day of June, 2022.



Helga D. Van Iderstine (Chair)



James McLandress, Q.C.



Sandra Oakley (PR)