

**THE LAW SOCIETY OF MANITOBA**

**IN THE MATTER OF:**

**DEAN COURTNEY GEORGE RICHERT  
(the “Member”)**

**- and -**

**IN THE MATTER OF:**

**THE LEGAL PROFESSION ACT**

**Hearing Date:** January 16, 2023

**Panel:** Wendy Stewart (Chair)  
Kenneth Mandzuik  
Keely Richmond (Public Representative)

**Counsel:** Ayli Klein for the Law Society of Manitoba  
No Appearance for the Member

**REASONS FOR DECISION**

**Introduction**

1. Dean Courtney George Richert is a member of The Law Society of Manitoba (“the Society”), having been called to the Bar and admitted as a solicitor on June 22, 1995.
2. Following an investigation, six Citations (dated December 1, 2021, January 5, 2022, April 19, 2022, April 20, 2022, April 22, 2022 and April 26, 2022) were prepared and served on Mr. Richert by the Society and will be referred to below.
3. Ms. Klein, counsel for the Society, advised the panel that Mr. Richert attended a Pre-Hearing Conference with the Chair of the Discipline Committee and at that hearing he indicated that he would be entering guilty pleas to his charges. A date for a virtual consequences hearing before a panel of the Committee was then set for January 16, 2023 at 9:30 a.m.

4. Mr. Richert did not appear for the virtual hearing. Ms. Klein, counsel for the Society, submitted that Mr. Richert had been properly served with the Citations, that he was present in person at the Pre-Hearing Conference when the date was set and further indicated that Mr. Richert was provided with written confirmation of the January 16, 2023 hearing date at an address he had previously confirmed with her. She then asked that the hearing proceed despite Mr. Richert's failure to attend.
5. Section 71(1)(6) of *The Legal Profession Act* permits a panel of the Discipline Committee to proceed in the absence of the member where the member charged has been given notice of the hearing in accordance with the rules. The rule provides that the panel may, without further notice to the member, take any action it could have taken had the member been present at the hearing.
6. At 9:45 a.m., based on Ms. Klein's submission that Mr. Richert had been properly notified of the charges against him and of the date of the hearing, the hearing convened in the absence of Mr. Richert and a quorum was declared pursuant to sub-Rule 5-93(7) *Rules of the Law Society of Manitoba* ("the Rules"). Ms. Klein also indicated that she had sent Mr. Richert a text at 9:35 a.m. reminding him of the hearing and had not received a response from him.
7. Ms. Klein entered each of the six Citations as Exhibits. She then amended one count of the Citation dated April 26, 2022 to include a range of dates rather than asking for multiple convictions over several dates, and indicated which charges she submitted should have guilty findings recorded.
8. The convictions requested were as follows:
  - I) December 1, 2021, the A.A. matter – Failure to Act with Integrity and Failure to Provide Quality of Service;
  - II) January 5, 2022, Estate 1 – Failure to Act with Integrity;
  - III) April 19, 2022, Estate 2 – Failure to Act with Integrity and Failure to Provide Adequate Quality of Service;
  - IV) April 20, 2022 – B.B. – Failure to Act with Integrity;
  - V) April 22, 2022 – C.C. – Failure to Act with Integrity;
  - VI) April 26, 2022 – various matters – Failure to Act with Integrity and one amended count of Failure to Respond to the Law Society to cover all instances which occurred between April 13, 2021 and January 28, 2022.
9. Finally, Ms. Klein indicated that stays of proceedings would be entered on the remaining charges once guilty findings were made by the panel.
10. The affidavits of service were entered as exhibits to confirm that Mr. Richert had indeed been properly served.

11. No Statement of Agreed Facts was filed, but counsel for the Society submitted that the facts of these matters are not in dispute. The Citations had been reviewed by Mr. Richert who later advised her that he was not intending to contest any of the charges.
12. Counsel for the Society also advised that Mr. Richert had been made aware of the three members of the panel and had indicated that he had no objection to the composition of the panel for any reason. She also confirmed that Mr. Richert is not a member of a Law Society in any other jurisdiction.

### **Evidence Tendered by the Society**

13. An Affidavit affirmed on January 9, 2023 by Christopher Donaldson, Legal Counsel in the Complaints Resolution Department of the Society ("Mr. Donaldson") was tendered, and Ms. Klein submitted that the affidavit contained sufficient evidence for the panel to find Mr. Richert guilty of the various offences with which he had been charged.
14. Mr. Donaldson had included some hearsay evidence in his affidavit, but was available in person for cross-examination the morning of the hearing if required. Section 7(1) of the *Law Society Act* provides that an affidavit is admissible as evidence in a hearing of a panel of the Discipline Committee and, in the absence of evidence to the contrary, is proof of the statements in it.
15. As Mr. Richert did not contest the affidavit by cross-examining Mr. Donaldson or by providing evidence to contradict it, the contents of the affidavit were therefore admitted as evidence and the affidavit was entered as an exhibit to the proceedings.
16. In his affidavit, Mr. Donaldson provided background information regarding Mr. Richert, noting that the Society's records indicated that Mr. Richert was called to the Bar in Manitoba in 1995, withdrew from practice on April 8, 2021 and remained an inactive member from that date. At the time he withdrew from practice, Mr. Richert was an associate at Duboff Edwards Schachter Law Corporation practising in the areas of family law, estate planning and administration, disability rights and criminal law.
17. On January 2, 2020 the Society received a complaint about Mr. Richert from a former family law client. Complaints Resolution counsel Susan Billinkoff reviewed the complaint, noticed some trust accounting irregularities and requested that the Society's audit department become involved in the investigation.
18. The Society's audit department reviewed client files, trust ledgers and other trust accounting records and concluded that Mr. Richert had appropriated trust funds from a variety of matters and in various ways between approximately July of 2014 and December of 2020. Significant integrity and quality of service concerns were also identified.

I. December 1, 2021 Citation – The A.A. Matter

19. A.A. retained Mr. Richert in May of 2017 with respect to her separation and the refinancing of her mortgage.
  - a) Integrity
20. A.A. provided Mr. Richert with two cheques each in the amount of \$5,000 as retainer funds. The cheques were made out to him personally and were deposited into Mr. Richert's personal bank account.
21. During the course of the Law Society's investigation Mr. Richert was asked to provide copies of his client file for A.A. including billing information and trust ledgers. The client file did not match the Statements of Account Mr. Richert provided, and the trust ledger obtained from the law firm did not match the one provided by Mr. Richert.
  - b) Quality of Service
22. Quality of service and integrity issues were also identified in the review of A.A.'s file. An Order of costs was made against A.A. on December 11, 2018 in the amount of \$3,500 for Mr. Richert's failure to provide A.A.'s financial disclosure to the opposing party as previously directed to do.
23. Mr. Richert was then advised that A.A. was terminating their solicitor-client relationship and he was asked to provide her client file to new counsel. Mr. Richert took six weeks to provide the file and it was incomplete when he did provide it.
24. Review of the A.A. file by Mr. Donaldson led him to believe that the matter, which was scheduled for trial two months after Mr. Richert was discharged by the client, had not been adequately prepared for this upcoming hearing. Medical evidence was necessary but had not been obtained, other expert evidence was necessary but had not been obtained, and historical information from Canada Revenue Agency was required but had not been requested. No witnesses had been contacted and no examinations for discovery had been scheduled. Responses to Interrogatories were owed to opposing counsel but had not been prepared.

II. January 5, 2022 Citation – Estate 1

25. Mr. Richert was counsel for the executrix of Estate 1. Estate 1 died on June 30, 2011. The executrix of the estate was the deceased's daughter.
  - a) Integrity

26. Review of this estate file revealed that funds had been misappropriated between April of 2015 and February of 2019. Some funds were transferred to Mr. Richert personally and others were transferred to other recipients including other clients who had in turn been affected by misappropriations. It appeared that Mr. Richert was moving trust funds from one client to another to cover shortfalls created by his misappropriations.
27. On approximately December 18, 2020, Mr. Richert provided the executrix with client trust ledgers which he claimed represented the trust deposits and transfers for the estate files. The ledgers had been altered to exclude all of the unauthorized withdrawals from the estate.
28. On December 23, 2020, \$59,000 was deposited into the Estate 1 account by an individual believed by Mr. Donaldson to be Mr. Richert's cousin. Mr. Donaldson believed that the deposit was made at Mr. Richert's request and in order to partially address the shortfall in the estate's trust fund.

b) Quality of Service

29. In October of 2016, Mr. Richert brought the estate matter before a Master of the Court of Queen's Bench (as it then was styled) to address the passing of accounts. Mr. Richert filed an affidavit which did not reflect disbursements that had been made from trust and did not accurately state the amount held in trust for the estate.
30. The Master found that the materials were incomplete and the matter was repeatedly adjourned until January 25, 2017, at which time she adjourned the matter to no date and directed that Mr. Richert file materials showing all accounts in the estate and all legal bills relating to the estate.
31. Mr. Richert filed additional materials which were again incomplete and was then directed to appear before the Master on July 27, 2017 to address the outstanding issues.
32. The executrix advised Mr. Donaldson that during this time, Mr. Richert told her that the Master was working on her decision on the matter and that the Master was causing the delays. He did not disclose to her that his materials were insufficient or inaccurate and needed to be filed again.
33. On July 27, 2017, the Master advised Mr. Richert that she could not complete the accounting for the estate until she received further information from him. Mr. Richert did not provide any further information and the matter did not progress to completion.
34. From July of 2017 through late 2020, Mr. Richert continued to advise the executrix that the court proceeding was ongoing but that court dates had been set and then cancelled and to blame the Master for failing to deliver her decision. Mr. Richert went so far as to discuss the possibility of filing a complaint against the Master for causing this unreasonable delay.

35. On December 18, 2020, Mr. Richert appeared before another Master who advised that the matter had been stagnant for three years waiting for information from Mr. Richert. Mr. Richert claimed that he had filed an affidavit some time previously, which was not true. The new Master wrote to Mr. Richert in January of 2021 with a review of the file's history and the outstanding issues which needed to be addressed before the estate's accounts could be passed. Mr. Richert took no further action.

### III. April 19, 2022 Citation – Estate 2

36. In 2012 Mr. Richert was retained by D.D. in an action to become the administrator of Estate 2.

#### a) Integrity

37. D.D. paid a number of retainers to Mr. Richert between March of 2013 and February of 2014. Shortly after the deposit of each retainer, Mr. Richert prepared Statements of Account and removed the money from trust but did not deliver the Statements of Account to D.D.

38. Mr. Richert obtained a payment for the estate from an outside source and deposited those funds into trust on July 20, 2015. Shortly thereafter, he began misappropriating funds from the estate, transferring money to other clients' trust funds. In late 2016 and again in September of 2017, other funds were transferred into the estate account from another, unrelated, estate account in an effort to reduce the shortfall in Estate 2. Estate 2 remained in a shortfall.

#### b) Quality of Service

39. Mr. Richert filed a Request for Administration on Estate 2 on May 2, 2014. The documents were rejected by the court registry staff on May 7, 2014 with a Notice of Rejection detailing the deficiencies needing correction.
40. Mr. Richert did not correct these deficiencies but over the course of almost seven years advised the client that the matter was progressing. D.D. was never granted administration of the estate.

### IV. April 20, 2022 Citation – B.B. Divorce File

41. In March of 2017 B.B. retained Mr. Richert to assist with her divorce. Between March of 2017 and December of 2018, B.B. provided three cheques made out to Mr. Richert personally and one made out to his law firm. All of the cheques were filled out using a rubber ink stamp to indicate the payee.
42. Mr. Richert deposited the three cheques made out to him personally into his personal bank account rather than into his firm's trust account. The cheque made out to the firm was

deposited into the firm's trust account. Most of the funds in trust were immediately transferred out with the issuance of a Statement of Account.

V. April 22, 2022 Citation – The C.C. Family Law File

43. In early 2018 Mr. Richert took over conduct of C.C.'s family file from another lawyer in the same firm. C.C. had approximately \$3,000 in trust with the firm when Mr. Richert assumed conduct of the file. On February 28, 2018, Mr. Richert had \$2,500 transferred from C.C.'s trust fund to pay court costs for another, unrelated, family law client of Mr. Richert's.
44. C.C. advised Mr. Donaldson that Mr. Richert came to his home on three occasions to pick up sums of cash for additional retainer funds and to pay for a home appraisal. None of these funds were deposited into trust and a receipt was not provided.

VI. April 26, 2022 Citation – Assorted Charges and Failure to Respond to the Society

a) Assorted Charges

45. In a number of matters, Mr. Richert received retainer funds from clients but did not deposit those funds into a trust account. On other matters, Mr. Richert received retainer funds from clients, soon thereafter preparing Statements of Account which were never delivered to the clients. Money was then transferred out of trust without the file indicating the client's knowledge or consent.
46. On still other matters, Mr. Richert removed money from his trust account and used those funds for his personal benefit. Examples cited by Mr. Donaldson in his affidavit of January 9, 2023 include payments made by Mr. Richert toward his personal credit cards, banking accounts, property taxes and other debts.
47. On some occasions, Mr. Richert transferred trust money from one client's to another client's matters.

b) Failure to Respond to the Society

48. Mr. Richert withdrew from active practice on April 8, 2021. At that time, he provided an Undertaking to the Society that he would fully cooperate with the Society's investigation and provide all records requested of him.
49. On 12 occasions between April 13, 2021 and January 28, 2022 the Complaints Resolution Department wrote to Mr. Richert requesting his response within 14 days pursuant to Law Society Rule 5-64(4) (commonly known as a "14 day letter"). Mr. Richert did not provide a response to any of these letters. Regardless of the undertaking provided by Mr. Richert, members of the Society are required to respond to "14 day letters" within that time frame.

## Submission by the Society

50. On behalf of the Society, Ms. Klein submitted that the matters before the panel were exceptionally serious as they involved significant misappropriations, dishonesty and failure to serve. She further submitted that there was more than enough evidence contained within the affidavit sworn by Mr. Donaldson to establish the guilt of Mr. Richert on the above-noted charges and therefore to order that he be disbarred.

51. She referred to the case of *The Law Society of Manitoba v Nadeau*, 2013 MBL 4 which also involved the misappropriation of funds held in trust, and in which the panel noted:

In *Lawyers & Ethics: Professional Responsibility and Discipline*, Gavin MacKenzie ("MacKenzie"), Carswell 2012, Release 3, comments on the purpose of discipline proceedings, at p. 26-1:

The purposes of law society discipline proceedings are not to punish offenders and exact retribution, but rather to protect the public, maintain high professional standards, and preserve public confidence in the legal profession.

52. Ms. Klein referenced MacKenzie's emphasis that a panel of the Discipline Committee must consider parity, proportionality and deterrence when assessing the seriousness of a lawyer's conduct and determining an appropriate penalty:

Factors frequently weighed in assessing the seriousness of a lawyer's misconduct include the extent of injury, the lawyer's blameworthiness and the penalties that have been imposed previously for similar misconduct. In assessing each of the factors the discipline hearing panel focuses on the offence rather than on the offender and considers a desirability of parity and proportionality in sanctions and the need for deterrence. The panel also considers an array of aggravating and mitigating factors, many of which are relevant to the likelihood of recurrence. These aggravating and mitigating factors include the lawyer's prior discipline record, the lawyer's reaction to the discipline process, the restitution (if any) made by the lawyer, the length of time the lawyer has been in practice, the lawyer's general character and the lawyer's mental state. (MacKenzie, beginning on page 26).

53. The *Nadeau* case is the leading authority in Manitoba relating to disciplinary consequences for lawyers and provides a summary of the legal principles involved. The panel in *Nadeau* referred to the case of *the Law Society of British Columbia v. Ogilvy* [1999] L.S.D.D. No. 45, [1999] LSBC 17, Discipline Case Digest 99/25. The *Ogilvy* decision sets out a series of factors which might be taken into account in disciplinary dispositions, a number of which were highlighted by Ms. Klein:

a) The nature and gravity of the conduct: Ms. Klein submitted that Mr. Richert demonstrated the most serious type of misconduct that can be committed by a lawyer.



She noted MacKenzie's general principle that in instances of fraud or theft law societies must send an "unequivocal message" and that disbarment is the only possible outcome that can adequately convey this message.

- b) Impact upon the victims: The Society submits that the impact upon the victims in this case is significant. Although Mr. Richert's clients will be reimbursed for their financial losses by the Society, this cost is borne by the members of the profession as a whole, all of whom are also affected by the public's perception of the legal profession when an offence of greed is committed by a lawyer. It is also unlikely that the Society will recover all of the cost of the investigation into Mr. Richert's conduct and the prosecution of these offences. Further, it can be assumed that the clients in the cases where quality of service was lacking suffered from the failure to advance their proceedings.
- c) The number of times the offending conduct occurred: Mr. Richert took money to enrich his own interests and lied to conceal his conduct over a period of six years. This is not a case where only a very small number of defalcations occurred.
- d) Any steps taken to disclose and redress the wrong or other mitigating factors: the panel did not have the benefit of any submissions made by or on behalf of Mr. Richert. However, Ms. Klein spoke about her knowledge of Mr. Richert's circumstances based on information he had provided to her. She submitted that he had mentioned volatility in his family relationships and issues with his mental health. She also pointed out that Mr. Richert had indicated to her that he would not contest the charges against him, but noted that his failure to appear at the consequences hearing weakened that as a mitigating factor. Finally, Ms. Klein noted that Mr. Richert had caused \$59,000 to be deposited into his firm's trust account to the credit of Estate 2 which appeared to be an acknowledgement by him that the money had been taken wrongfully and an attempt to repay some of the missing funds.
- e) The need for specific and general deterrence and the need to ensure the public's confidence in the integrity of the profession – in the submission of Ms. Klein, this case cries out for a denunciatory message both to Mr. Richert and to lawyers as a profession.
- f) The range of penalties imposed in similar cases: Ms. Klein referred the panel to a number of Manitoba discipline cases where the member was disbarred under similar circumstances, including:
  - i) *The Law Society of Manitoba v Gorlick*, 2015 MBL 5 which held: "Since integrity is such a fundamental attribute of a lawyer, it follows that breaches of integrity must be treated very seriously. Thus disbarment is the presumptive penalty in cases of misappropriation".

The panel in *Gorlick* said of the *Nadeau* case "where a member misappropriates funds they must be disbarred unless exceptional circumstances are present" and

later added “There is no value in seeking to try to define the concept of “exceptional circumstances” in any more particularity. The phrase is intentionally broad so as to allow for a common sense interpretation of the facts of individual cases”.

- ii) *The Law Society of Manitoba v. Salmon*, 2013 MBL 13 held that “The public provides lawyers with thousands upon thousands of dollars every year. Lawyers in the Province of Manitoba are entrusted to use their client’s money in accordance with their client’s instructions, and to ensure that that money is safely handled.

The Society must protect the public, and any lawyer who chooses to participate in actions that misappropriate funds must be disbarred. There is no other appropriate penalty. It is the only way that the Society can ensure that the public is protected, and that the public knows that if they give lawyers money, that money will be safely handled”.

- iii) In *The Law Society of Manitoba v Fisher*, 2012 MBL 15, the member committed a number of misappropriations, some of which were factually similar to the offences committed by Mr. Richert. The panel noted that “The nature of the charges involving misappropriation almost invariably lead to disbarment, and that the member’s name be struck from the rolls”, noting the lack of any mitigating or extenuating circumstances in the case”.

- 54. No evidence was provided by the Society to establish that Mr. Richert has any record of previous discipline convictions.
- 55. With respect to costs, Ms. Klein submitted that the Society was asking that costs be awarded against Mr. Richert in the amount of \$25,000 to partially recover the Society’s costs in investigating, auditing and prosecuting the charges against Mr. Richert. She indicated that the actual costs incurred amounted to slightly over \$32,000, \$14,000 of which reflected the cost of the audit. In fairness to Mr. Richert, who had not participated in the usual negotiation regarding the quantum of costs to be awarded where large amounts are involved, Ms. Klein indicated that the Society would be satisfied with the \$25,000 figure she requested.

## **Analysis**

- 56. Elements of dishonesty run throughout the facts of these offences. Mr. Richert took client trust money that was not his to use, and he took steps to cover up his misappropriations. He failed to take steps to advance client files properly and then lied to his clients and to the court to cover up his errors and omissions. When the Society began to investigate his conduct, he provided false information to the auditors in an attempt to cover up what he had done.
- 57. In the case of *The Law Society of Manitoba v. MacKinnon*, 2010 MBL 5 the panel noted:


Integrity is the foundation of the legal profession. It is (the) first rule in the *Code of Professional Conduct* and every other rule is based upon it. Clients must have faith that their lawyers are totally trustworthy. They must know that their money is safe, that their instructions will be followed and that they will be kept informed as to exactly what is happening with their matter. Without this level of trust, the profession cannot function.


58. There is no doubt that Mr. Richert's conduct in this matter constitutes misappropriation of his clients' trust funds extending over a period of years and clearly warrant convictions for breaches of integrity on each count. The facts that make out the convictions for quality of service offences are also very serious, and of course the lack of cooperation and candour in his dealings with the Society compounds these offences and is itself a serious offence affecting the Society's ability to fulfill its mandate of public protection as a self-governing body.
59. The Society has made out a *prima facie* case for the disbarment of Mr. Richert, but the panel must consider whether there are exceptional circumstances which would mitigate the seriousness of the conduct to the extent that another penalty should be imposed.
60. Mental health issues and family relationship problems are quite common among members of the legal profession and, although these issues certainly cause lawyers to feel stress and pressure as they maintain what is often a very heavy workload, in this case we have no detailed evidence of the types of problems experienced by Mr. Richert or how they affected him. Absent any such details or medical information, there is simply no basis for the panel to determine that there are exceptional circumstances in this case.
61. We have considered the attempt made by Mr. Richert to reduce the shortfall in his trust account by having a family member deposit \$59,000, but although a partial repayment of misappropriated funds is a mitigating factor, whatever good intentions are shown by this action are not sufficient to affect the outcome of this case.
62. Mr. Richert knew that a consequences hearing had been set, and that he would be given an opportunity to make a submission at the hearing. He knew that this was an opportunity for him to tell the panel about the factors and circumstances which led him to the point where he committed these offences. He chose not to appear at the hearing and in doing so he gave up his opportunity to try to convince us that his circumstances were extraordinary to the extent that the penalty for his misappropriations should be something other than the otherwise expected disbarment.
63. We are in agreement with counsel for the Society's submission that there is only one appropriate consequence in this case. Disbarment is required.

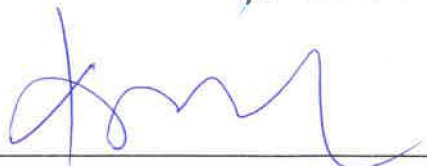
**Disposition**

64. This panel finds Mr. Richert guilty of nine counts of professional misconduct, including six counts of failing to act with integrity, two counts of failure to provide quality service and one count of failing to respond to the Society. Pursuant to s. 72 of *The Legal Profession Act* we direct that he be disbarred and that his name be struck off the rolls.
65. We note that under Rule 5-100(1) publication of this finding is mandatory.
66. The Society asks for costs in the amount of \$25,000 although the Society's actual costs were over \$32,000. This panel finds that Mr. Richert's conduct directly caused the cost of the Society's investigation to be higher than it might have been had he cooperated more fully. His failure to respond to 14 day letters and his lack of candour with the investigators and auditors necessitated additional investigation to uncover the truth.
67. Costs in excess of those recovered from Mr. Richert will be borne by the membership of the Society as a whole. We order costs in the amount of \$30,000. If Mr. Richert wishes, he may apply to the Chief Executive Officer of the Society pursuant to Rule 2-91 to make arrangements for time to pay the costs.
68. The panel would like to thank Ms. Klein for her careful and balanced submissions.

Dated this 24<sup>th</sup> day of March, 2023

  
\_\_\_\_\_  
Wendy Stewart, Chair

  
\_\_\_\_\_  
Kenneth Mandzuik

  
\_\_\_\_\_  
Keely Richmond