

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

RISHI GANESH BHARATH

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

Hearing Date: November 7, 2024

Panel: Vivian E. Rachlis (Chair)
Timothy Kurbis
Miriam Browne (Public Representative)

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

REASONS FOR DECISION

Introduction and Overview

1. The Complaints Investigation Committee of the Law Society of Manitoba (the "Society") charged Rishi Ganesh Bharath (the "Member") with multiple counts of professional misconduct that will be later detailed. The charges were contained within two citations, dated October 24, 2023 (the "Citation 1") and March 19, 2024 (the "Citation 2"). The citations contained various charges of professional misconduct regarding the Member's billings to Legal Aid Manitoba (sometimes referred to as "LAM"), representation of clients associated with these billings, and the Member's dealings with the Society during the investigation of these matters. The professional conduct matters raised by the two Citations touched on expectations involving breaches of integrity, charging and accepting fees that were not fair and reasonable, improper withdrawal of representation, breach of trust accounting rules, and failure to respond promptly and completely to the Society.

2. The Member initially participated in the Society's investigation of these matters, but at a critical point, the Member became incommunicative. By Order of the Society's Discipline Committee Chair dated June 4, 2024 (the "Order for Substitutional Service"), the Society was permitted to employ specified substitutional service arrangements (email) to serve the Citations and the associated hearing materials relating to the Citations. The Order for Substitutional Service was provided to the Member in accordance with its specified arrangements. The Member was provided with the Citations by the same means.
3. By email dated August 21, 2024, the Member was advised that both Citations had been set down for a hearing before a panel of the Discipline Committee (the "Panel"), and of the hearing details. The Member was later informed of the constitution of the Panel. The affidavit material was also provided to the Member in due course. No response was ever received from the Member or legal counsel on his behalf.
4. The Panel duly appointed was composed of Vivian E Rachlis, Chair, Timothy Kurbis, Member and Miriam Browne, Public Representative.
5. Despite the Member having been fully informed of the charges, the evidence to be relied on, and that if convicted, the Society would be seeking disbarment, the Member did not appear and on November 7, 2024 the hearing proceeded in the Member's absence.
6. The Panel considered the Citations, all the evidence submitted to it by the Society's legal counsel, and carefully considered the submissions made.
7. The Panel's decision herein was to convict the Member on 5 of the 6 the charges included in the Citations. The Panel also determined that the appropriate disposition was disbarment. The Panel ordered costs payable forthwith in the amount of \$9,200.00.
8. The Panel's Reasons for Decision follow.

Background and Process Matters

9. Counsel for the Society filed copies of Citation 1 as Exhibit 1 and Citation 2 as Exhibit 2. Counsel filed the Order for Substitutional Service stating that Citation 1 be effected on the Member by email sent to the Member's last known email address provided to the Society and that Substitutional Service of any other such

documents in this matter be effected in the same manner and to the same email address.

10. The Society's Counsel established jurisdiction at the hearing by advising that:
 - a) The Member was Called to the Bar of Manitoba on November 24, 2016.
 - b) According to the records of the Society, the Member practised as a sole practitioner under the name Bharath Law Office starting in May of 2018.
 - c) On February 28, 2024, the Member submitted an Application to Withdraw from Active Practice to the Society.
 - d) The Member's status with the Society is now non-practising.

The Panel was not provided with any information as to whether the Member is a member of the Bar in any other Canadian jurisdiction.

11. In submissions at the hearing, the Society's counsel referenced:
 - a) the Member's interactions with the Society's investigator up to January 2, 2024 when the Member became uncommunicative;
 - b) the necessity of obtaining the Order for Substitutional Service in connection with hearing materials; and
 - c) that in her communications with the Member in connection with the hearing of these charges, the Society's counsel notified the Member that if proven, the Society would be seeking disbarment.
12. At the hearing, the Panel asked for additional particulars of the Society's efforts to notify the Member about the hearing and the penalty sought. The Panel received further explanation about the email communications sent to the Member, including that the Society's IT system had received no notifications that such communications had failed to reach the Member.
13. Section 71(1) of *The Legal Profession Act*¹ ("LPA") states:

If the member charged has been given notice of the hearing in accordance with the rules, the hearing may proceed in the member's absence, and the Panel may, without further notice to the member,

¹ *The Legal Profession Act* C.C.S.M. c. L107.

take any action it could have taken with the member present at the hearing.

14. The Panel concluded that all appropriate efforts had been made to notify the Member of the hearing, the evidence that would be considered, and the serious penalty being sought by the Society.
15. Filed by the Society in support of these proceedings were the following affidavit materials:

Affiant	Date sworn/affirmed	Reference in Reasons
Client A	July 12, 2024	Client A Affidavit
Jennifer Houser	September 13, 2024	Houser Affidavit
Christopher Donaldson	August 13, 2024	Donaldson Affidavit
Peter Kingsley K.C.	July 18, 2024	Kingsley Affidavit
Sandra Bracken	August 13, 2024	Bracken Affidavit

16. Society counsel advised that although duly served, she had received no communication from the Member in response to the affidavits, no request to cross-examine, and no affidavits from the Member in reply. She advised that the affiants were not being called to give verbal evidence and that the Society was relying on s. 71(1)(5) of *The Legal Profession Act*² (the "LPA"), which provides for the admission of affidavit evidence as *prima facie* proof of its contents.
17. The Member did not respond to the service of the hearing materials, nor did he participate in the hearing either in relation to the charges or in relation to penalty (see *post*). His last contact with any member of the Society's staff was during a telephone conversation with the Society's investigator on January 2, 2024.
18. On the day of the hearing, the Panel waited for the conventional period of time (15 minutes past the appointed start time), and then proceeded with the hearing in the absence of the Member.
19. Section 71(1)(5) of the LPA states that an affidavit is admissible in evidence in a Discipline Committee matter and, in the absence of evidence to the contrary, is proof of the statements made therein. The Panel accepted the evidence in the affidavits listed in paragraph 11 as proof of the statements made therein.

² C.C.S.M. c. L107

The Citations

Citation 1

20. Citation 1 arose from Client A's November 3, 2022 complaint to the Society. Citation 1 contains four counts arising from the Member's representation of Client A³:
1. The Member acted contrary to Rule 2.1-1 of the *Code of Professional Conduct* in by failing to discharge responsibilities to their client, tribunals, the public and other members of the profession honourably and with integrity.
 2. The Member charged and accepted a fee that was not fair or reasonable and therefore acted contrary to Rule 3.6-1 of the *Code of Professional Conduct*.
 3. The Member improperly withdrew representation and therefore acted contrary to Rule 3.7 of the *Code of Professional Conduct*.
 4. The Member failed to deposit or cause to be deposited trust money into a pooled trust account as soon as practicable after receipt of the money, therefore acting contrary to obligations under Rule 5-44(1)(b) of the *Rules of the Law Society of Manitoba*.

Citation 2

21. Citation 2 contains two counts arising from a Law Society complaint by Legal Aid Manitoba regarding six client matters⁴:
1. In connection with invoices and other communications sent to Legal Aid Manitoba, and the Society's investigation into same, the Member acted contrary to Rule 2.1-1 of the *Code of Professional Conduct* by failing to discharge all responsibilities to the client, tribunals, the public and other members of the profession honourably and with integrity.
 2. In the course of an investigation by the Society into a complaint made by Legal Aid Manitoba against the Member, the Member acted contrary to Sub-Rules 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 promptly

³ In these Reasons, the Citations have been paraphrased for brevity and anonymity.

⁴ Citation 2 refers to "at least six client matters." The Panel found that the evidence was confined to six client matters and made no further inferences from the evidence that there may have been additional conduct relating to other than the six clients.

and completely to the substance of inquiries contained in correspondence and communications from the Society.

The Evidence

Citation 1 – Client A

22. On August 18, 2022, LAM issued and the Member accepted a Legal Aid Certificate to represent Client A in certain family law matters.
23. Client A spoke to or met with the Member on the following dates:

Date (all 2022)	Type
August 19	Telephone call initiated by Client A
August 29	Meeting
September 9	Meeting
September 30	Meeting
October 2	Telephone call initiated by Client A

During these interactions, the Member took instructions in relation to a passport application for Client A's child including the preparation of an affidavit.

24. On September 17, 2022, the Member wrote to LAM, provided a statement of account, and indicated that as the Member had lost contact with Client A **between August 25 and September 5, 2022**⁵, the Member would therefore be closing Client A's certificate.
25. During the Society's investigation into this matter, the Member provided to the Society letters to Client A dated August 25 and September 3, 2022. The August 25th letter, dated mere days after LAM issued its certificate, and prior to the Member's first meeting with Client A stated:

"I have not heard from you in a while..."

26. The Member told the Society's investigator that the August 25th letter "went unanswered."

⁵ The Member made the same claim to the Society during the Society's investigation.

27. Client A denied that the August 25th letter was ever received, stating that the letter was first seen when it was shown to Client A by the Society's investigator. As stated in the Houser Affidavit, the suggestion that the Member hadn't seen Client A "for awhile" makes no sense given the timing of other events.
28. According to the invoice submitted to LAM, the Member charged LAM for 90 minutes of his time to prepare the August 25th letter.
29. Information obtained from Client A about the August 25th letter was put to the Member during the Society's investigation. The Member's response included the following discourteous and intemperate commentary about Client A:
 - Client A was an "unhinged" liar;
 - Client A had tampered with emails included in Client A's Law Society complaint.
 - Client A seemed to be on substances when the Member spoke to Client A.
 - The Member called Client A "aggressive", "agitated", "belligerent" and "hateful."
 - "... such is [Client A's] arrogance and sense of entitlement that [Client A] plays the victim claiming [to be a single parent] of three children, in an attempt to manipulate ... [Client A] made "bizarre and unhinged claims" and had "mental health issues compounded by drug use."
 - Client A had "gang tattoos all over [the] arms/upper body" and was the [partner] of a gang associate; and
 - Client A had "an extensive criminal record". (There was no criminal record in the client file materials).
30. There was no evidentiary support in the Member's file materials for any of these intemperate and *ad hominem* remarks made by the Member about Client A when responding to Client A's complaint and the Society's investigation.
31. The Society does not believe that the Member sent the August 25th letter to Client A and found that the letter was fabricated in an attempt to mislead the Society during its investigation (see *post*).
32. The September 17, 2022 invoice submitted to LAM was for the maximum

amount allowable under the LAM tariff relating to Client A's legal matter.

33. The evidence submitted to this Panel about the September 17th invoice disclosed:

September 17, 2022 invoice item	Evidence
30 minutes to draft correspondence on August 18, 2022.	The Member had never communicated with Client A until Client A called the Member the following day.
60 minutes to review documents on August 20, 2022.	As of that date there were no materials on the Member's client file.
60 minutes to check QB family registry on August 21, 2022.	In fact, the only file at the registry at that time relating to Client A was an unrelated small claim
60 minutes of legal research on August 29, 2022.	No legal research material on the Member's client file.
30 minutes to photocopy documents on September 2, 2022.	No documents were received from Client A until September 30, 2022 (income tax returns).
120 minutes to prepare "email and letters to client" on September 3, 2022.	The Member did not communicate with Client A on that date.

34. The September 17, 2022 invoice submitted to LAM was for the maximum amount allowable under the tariff.
35. During the Society's investigation on the Client A matter, the Member amended some of the items within the September 17th invoice, however not in a material way, and the total invoice submitted to LAM remained the maximum tariff amount.
36. Client A says that at each of the September 9 and 30, 2022 meetings, Client A provided \$100.00 in cash to the Member. The Member's trust account records show that funds were not deposited into his trust account. The Member's file does not show that any statement of account was issued in relation to the \$200.00 cash.

37. On or about October 2, 2022, Client A called the Member seeking an update to the child's passport application (which was incomplete). The Member told Client A in this conversation that:
- a) he was too busy to deal with the matter;
 - b) he would only be able to assist further if Client A paid the Member \$1,500.00; and
 - c) if Client A couldn't pay the Member, Client A would need to find another Legal Aid lawyer to assist.
38. Client A then contacted LAM. Client A learned that the Member had on September 17, 2024 submitted an invoice and closed Client A's Legal Aid Certificate, advising LAM that he had lost contact with Client A.

Citation 2 – Withdrawal from representation and billing concerns

39. Citation 2 arose from the Member's representation of six clients. The matter originated with a complaint to the Law Society from LAM about a pattern, detailed in the Bracken Affidavit:
- a) an abrupt closure of certificates;
 - b) an associated withdrawal of representation, claiming loss of contact with the client shortly after the issuance of the Legal Aid certificate;
 - c) a number of apparent billing irregularities on the six certificates;
 - d) invoices remitted to LAM for the full tariff amount associated with the Certificate; and
 - e) time inputs on the invoices out of proportion to the length of representation before the closure of the Certificate.
40. LAM had felt that it was unlikely that the Member could have done sufficient work for the client to bill LAM for the full tariff amount, while also losing contact with the client in such a short period of time. LAM commenced its own investigation, including engaging with the Member beginning in January 2023 (the "LAM Investigation").
41. Over the course of the LAM Investigation of the invoices in question, the Member provided some limited information, undated or unexecuted work product, the

issuance of new invoices by the Member containing minor amendments (changed dates, amended references to activities and additional time) while holding fast to the invoice amounts in the maximum tariff amounts in each case.

42. One of the six clients was Client A. The evidence in relation to Client A has already been referred to above in connection with Citation 1. The others are referred to below as Clients B through F.
43. The evidence in relation to Clients B through F, detailed in the Donaldson and Bracken affidavits, is summarized on the table below.

Client name/ Certificate date (all dates 2022 unless noted)	Letters, meetings and other activity	Withdrawal and invoice date and other commentary
Client B Fall 2022	Letters and emails: September 25 – client requesting a meeting. October 5 – Member requesting further info December 2022 – email chain included commentary about a plan to set up a meeting. Meetings: Sometime between September 25 and Oct. 5	November 2 - Certificate closed, invoice to LAM issued.
Client C Fall 2022	November 1 and November 13 – Member seeks tax returns November 29 – Opposing party files a petition No correspondence between Client C and the Member between November 13 and December 8.	December 8 – Member advises LAM he has lost contact with Client C, closes the certificate, invoice to LAM issued.

Client name/ Certificate date (all dates 2022 unless noted)	Letters, meetings and other activity	Withdrawal and invoice date and other commentary
	<p>December 31 – Client C provides requested tax information to the Member.</p> <p>January 17, 2023 - Member files Answer to Petition and Financial Statement</p> <p>March 13, 2023 – Email from opposing counsel.</p>	
<p>Client D</p> <p>May 11</p>	<p>May 12 – Member writes to Client D, appears from file materials the two have an ensuing conversation.</p> <p>June 2 – Member letter to Client D with questions.</p> <p>June 3 and 22 – Client responds by email to questions.</p>	<p>June 12 – Member advises LAM he has lost contact with the client “despite best efforts to contact her”; invoice to LAM issued.</p>
<p>Client E</p> <p>July 21</p>	<p>July 25 – Member letter to Client E; it appears the two have already had a telephone conversation and Member proposes a longer one. It appears there was a second meeting or discussion.</p> <p>August 2 – Member letter to Client E.</p>	<p>August 8 - Member advises LAM he has lost contact with the client “despite best efforts to contact him”; invoice to LAM issued.</p> <p>Member advised during LAM’s investigation that he charged 90 minutes to draft August 2nd letter because Client E “... suffers from severe illness, addiction, and destitution ... he was intoxicated on occasions and gave wrong information and was</p>

Client name/ Certificate date (all dates 2022 unless noted)	Letters, meetings and other activity	Withdrawal and invoice date and other commentary
		<p>incoherent and became ill. I had to wait for lucid moments as he overcame his mental trauma ..."</p> <p>August 2nd letter did not touch on matters requiring Client E's input.</p>
<p>Client F</p> <p>September 12</p>	<p>Sometime before September 21 - Telephone conversation.</p> <p>September 21 - Member letter to client referencing conversation, requesting tax returns.</p> <p>October 3 - Member email to opposing counsel introducing himself.</p> <p>October 4 - Member court attendance on behalf of Client F.</p>	<p>October 6 - Member advised LAM he has lost contact with the client "despite best efforts to contact him"; issues invoice to LAM.</p> <p>Member advised during LAM's investigation that he charged 30 minutes to draft September 21st letter because Client F "...had addiction to methamphetamines and would be incoherent and inconsolable when giving information, he would breach his parole conditions, be in and out of jail and would be booted out of John Howard ..." requiring the Member to draft and re-draft the letter.</p> <p>September 21st letter did not touch on matters requiring Client F's input.</p>

Citation 2 – Failure to Respond

44. Beginning in November 2022, the Society investigated the matters raised in Client A's complaint which are the subject matter of **Citation 1**. The interactions between the Society's investigator and the Member are detailed in the Houser Affidavit. As previously described and as detailed in the Houser Affidavit under the heading "Offensive Communications," these interactions culminated in the Member's January 14, 2024 letter making a variety of *ad hominem* remarks about Client A's character, emotional regulation, expectations on the file, and alleged gang affiliations and criminal record.
45. The Society's investigation of the matters raised in **Citation 2** is described in the Donaldson Affidavit. There was some engagement between the Member and the Society's investigator between October 2023 and early January 2024. The Member provided client files at the investigator's request. In response to a question about his activities on the Client F matter, the Member provided a September 13, 2022 letter he said he had sent to opposing counsel. The letter was not included on the Client F file.
46. The Society's investigator noted that the contents of the September 13, 2022 letter seemed inconsistent with emails exchanged between counsel three weeks later.
47. In an October 31, 2023 letter, the Society's investigator asked the Member about the September 13, 2022 letter. The Society's investigator included the ongoing notice that a response was requested within 14 days.
48. In subsequent follow-up, the Society's investigator:
 - a) encountered repetitive claims that the investigator's October 31, 2023 letter had not been received;
 - b) provided further copies of the October 31, 2023 letter; and
 - c) encountered missed 14 day deadlines.
49. Further requests were made by the Society's investigator in a January 2, 2024 phone call confirmed in a couriered January 3, 2024 letter in which a final 14 day deadline, January 17, 2024 (the "final deadline") was imposed with the stipulation that failure to respond may result in a charge of professional misconduct.

50. The Member did not respond by the final deadline; in fact, the Member has not responded to any of the Society's further communications and correspondence, including the communications and processes associated with the current charges.

Submissions of the Society

51. The Society's counsel explained at the outset that whether or not the Member has withdrawn from practice has no impact on the Society's obligation to protect the public.
52. The Society's counsel reviewed the standard of proof that relates to this proceeding. As stated in *The Law Society of Manitoba v Black-Branch*,⁶ ("Black-Branch Conduct decision"), the standard of proof is the civil standard: a balance of probabilities. The standard remains the civil standard regardless of how "serious or even scandalous the allegations may be." (*F.H. v. McDougall*⁷), cited at para. 53, Black-Branch Conduct decision.
53. The Society's counsel invited the Panel to find make findings of fact in the six client matters before the Panel in accordance with the evidence described in the previous section; and then on the basis of these findings, find that the Member's conduct in these matters was "akin to" misappropriation. The Member had misled the Society in its investigation, and further had ceased to respond to the Society's investigator. Counsel submitted that the Member is ungovernable.
54. The Society described a pattern whereby the Member was assigned a LAM certificate, rendered some service but did not complete the matter, soon afterwards communicating with LAM that he had lost contact with the client, when he had not. At the same time, the Member invoiced LAM for the full tariff amount associated with the certificate matter. In several cases, the Member continued to have contact with his client following this communication to LAM. As explained in the Bracken and Kingsley Affidavits, in its own investigations, LAM found multiple examples where the Member included time inputs on his invoices which were out of proportion to the work actually done, were clearly not done at all, or were fabrications in other respects.
55. The charges related to breach of integrity arising from the LAM billing improprieties (the "billing scheme"). The billing scheme included associated professional misconduct improprieties such as abrupt withdrawals from

⁶ 2023 MBL 13 (CanLII), <https://www.canlii.org/en/mb/mbls/doc/2024/2024mbls1/2024mbls1.html>

⁷[2008] S.C.J. No. 54, <https://www.canlii.org/en/ca/scc/doc/2008/2008scc53/2008scc53.html>

representation under false pretenses, inflated or outright fraudulent time inputs, and at least two pieces of correspondence fabricated during the Society's investigation.

56. The Society stated that the Member's conduct in this case went to the heart of the Society's public protection role and the purpose of discipline. Counsel referred to the impacts of the Member's conduct on his clients, LAM institutionally, and the public as the funder of Legal Aid Manitoba.
57. The Society acknowledged that the monies wrongfully appropriated were not client funds. The Society said that the Member's steps were "on par" with misappropriation and that the money taken by the Member using the billing scheme were as "sacred" as client trust funds. The Society reminded the Panel that although the term misappropriation is not specifically used in the *Code of Professional Conduct*, it is trite to say that the prohibition on misappropriation is included in the overall duty of a lawyer to practice law and discharge responsibilities "... to client, tribunals, the public and other members of the profession honourably and with integrity."⁸
58. A further aggravating factor is that LAM is a public body charged with providing legal services to Manitobans who have limited access to justice and cannot otherwise afford legal representation.⁹ LAM already has resource challenges meeting the needs of its existing clients.
59. The Society submitted that quite apart from the fact that the six clients received curtailed and/or inadequate service, the LAM as funder and the public were victims of misappropriation.
60. The Society invited the Panel to enter conviction in relation to all of the charges contained in Citation 1 and Citation 2.
61. The Society then moved to the penalty requested, disbarment. The Society referenced Section 72(1)(a) of the LPA as well as the case law. Although the dollars involved were lower than in some (but not all) of these cases, disbarment is not reserved for the most "serious offender." Further, argued the Society, the financial misconduct involved in this case has to be combined with the other evidence of fraudulent conduct and ungovernability.
62. Given the Member's apparent retreat from practice and the penalty sought, the Society acknowledged that *specific deterrence* was not an element to be

⁸ *Code of Professional Conduct*, Rule 2.1 and associated Commentaries.

⁹ Also see Kingsley Affidavit, para. 2.

considered in relation to penalty. *General deterrence* was the factor weighing heavily in the balance. The circumstances called out for denunciation.

63. The Society sought costs in the amount of \$9,200.00, explaining that the lower costs amount sought reflected that LAM compiled a great deal of information.
64. The Society relied on the following authorities:

Legislation and Rules

The Legal Profession Act, CCSM c.L107

Code of Professional Conduct

Rules of the Law Society of Manitoba (the "Law Society Rules")

Professional Discipline

Gavin MacKenzie, *Lawyers & Ethics: Professional Responsibility and Discipline* (Toronto: Thomson Reuters, 2020 – "MacKenzie")

Case Law

The Law Society of Manitoba v Nadeau, 2013 MBLS 4

The Law Society of Manitoba v Griffin, 2005 MBLS 5

The Law Society of Manitoba v Fisher, 2012 MBLS 15

The Law Society of Manitoba v Salmon, 2013 MBLS 13

The Law Society of Manitoba v Richert, 2023 MBLS 5

The Law Society of Manitoba v Badahal, 2023 MBLS 14

Costs

The Law Society of Manitoba v MacKinnon, 2010 MBLS 5

Decision on Conduct

65. The Society has the statutory obligation to regulate the practice of law in Manitoba; in this regard, s. 3(1) of the LPA expresses the purpose of the Society as being "to uphold and protect the public interest in the delivery of legal services with competence, integrity and independence." Rule 2.1 of the Code deals with Integrity.
66. The Panel finds that over the course of six matters, the Member created a fraudulent billing scheme whereby he:
- accepted LAM certificates;
 - provided limited and/or truncated service;

- lied to his clients about the service provided and his availability to provide service;
- subsequently lied to LAM about the nature of the service provided and that he had lost contact with the clients; while simultaneously
- presenting invoices to LAM containing concocted activities and time inputs in amounts that (not coincidentally) represented the full eligible amount under LAM's tariff.

67. The Panel finds that the elements of the billing scheme put the Member's conduct at the same level of severity as the misappropriation cases cited by the Society's counsel. On the matter of whether a member's financial conduct is to be viewed as "misappropriation," even when it is not the client's own funds that have been received by the lawyer, the broad definition of "trust money" in Rule 5-41 of the Law Society Rules includes money received by a lawyer not only from the client but also from another person, or a body, such as LAM, to pay a lawyer's fees in relation to legal services provided to the client:

"trust money" means

- (a) all money received by a member or law firm in connection with the legal practice that
 - (i) belongs in whole or in part to a client; or
 - (ii) is received on a client's behalf or to the direction or order of a client ...

68. The Panel further notes that these charges require the Society to prove, on a civil standard, not "misappropriation," but whether the Member failed to discharge his responsibility to his clients, the public, and LAM honourably and with integrity.

69. The Panel finds that the following additional conduct by the Member further aggravated the seriousness of the billing scheme:

- on at least two occasions, the Member created fraudulent documentation during LAM's and the Society's investigations in an apparent effort to evade responsibility;
- when asked about specific items in his invoices, the Member adjusted his descriptions of the billed activities while continuing to misrepresent, overall, the work done and the time inputs, apparently with the goal of maintaining his eligibility to invoice for the full tariff amount;
- disparaged Client A in extreme terms in an apparent effort to convince the Society's investigator that it was Client A, not the Member, who was proceeding in a dishonest manner; then ultimately
- ceasing to respond to the Society, contrary to Rule 7.1-1 of the *Code of Professional Conduct* and Rule 5-64(3) through (5) of the Law Society Rules. The

Panel notes that the Member ceased communications at a critical point in the investigation when it must have been clear that the Society's investigator was "on to" the billing scheme and that the Member had apparently generated fraudulent documentation to conceal his actions.

70. Citation 1, Charge 3 expressly raises Rule 3.7-1 of the *Code of Professional Conduct* in relation to the Member's withdrawal from representation of Client A.
71. Under Rule 3.7-1 of the *Code of Professional Conduct*, a lawyer must not withdraw from representing a client except for good cause and on reasonable notice to the client. There is no evidence that the Member purported to withdraw from representing Client A as may be appropriate under Rule 3.7-1. In fact, the evidence is clear that the Member purported to LAM that the lawyer/client relationship had come to an end because he had "lost contact" with Client A, falsely blaming Client A for bringing the professional relationship to an end before he had an opportunity to complete Client A's matter. The Panel finds Charge 3 of Citation 1 charge proven.
72. Although not specifically the subject of a charge in Citation 2 under Rule 3.7-1 of the *Code of Professional Conduct*, the evidence is clear that in relation Clients B through F, following the same pattern, the Member ceased representation without good cause and without notice to these 5 clients, in aid of the billing scheme and invoices submitted to LAM.
73. Citation 1, Charge 4 deals with the allegation that on each of September 9 and September 30, 2022 the Member accepted \$100 in cash from Client A (Houser Affidavit, paras. 31 – 32; Client A Affidavit, paras. 9 – 10), did not issue a statement of account, and did not deposit the \$200 in cash into his trust account, contrary to the requirements for handling trust money under Rule 5-44(1), and for recordkeeping of cash receipts under Rule 5-45(2) of the Law Society Rules. The Houser Affidavit details that upon review of the Member's file, the Society's investigator found no receipts for such payments, no statements of account and no record of deposits to the Member's trust account, as would have been required had such funds been received.
74. In order to establish that the Member ran afoul of the requirements for the handling and recordkeeping of trust monies, the Society must first establish that the Member received the \$100 in cash on the two occasions described. There is no documentation or other evidence, other than the recollection of Client A, that the two cash payments of \$100 each were paid to the Member. The Panel

acknowledges that the purpose of the requirement in the Law Society Rules for rigorous recordkeeping of cash receipts is to prevent the very mischief alleged to have occurred in these examples. At the same time, tracking cash in small amounts is difficult to establish based on verbal evidence alone, even on a civil standard. The Panel finds that there is insufficient evidence, on a balance of probabilities, to prove the 4th charge in Citation 1 relating to the payment of cash by Client A to the Member.

75. The Panel finds that with the exception of Charge 4 in Citation 1, the remaining 5 charges in Citation 1 and Citation 2 have been proven on a balance of probabilities and that the Member is guilty of professional misconduct as particularized in Citation 1 and Citation 2.

Decision on Consequences

76. The LPA states that:

72(1) If a panel finds a member guilty of professional misconduct or conduct unbecoming a lawyer or student, it may do one or more of the following:

(a) if the member is a lawyer, disbar the member and order his or her name to be struck off the rolls ...

(e) order the member to pay all or any part of the costs incurred by the society in connection with any investigation or proceedings relating to the matter in respect of which the member was found guilty;

77. The Society seeks disbarment in relation to the professional conduct matters in the two Citations.
78. The Panel considered the factors to be taken into account in a disciplinary disposition as expressed in *Law Society of British Columbia v. Ogilvy*¹⁰ and other authorities supplied.
79. The “misappropriation” authorities referred to by the Society reveal a range of dollar amounts involved. The amounts in the six client cases here were less than in *some* of the cases. For the Panel, of particularly aggravating impact was that the Member’s billing scheme was repeated six times within a short period of time (summer through late fall, 2023), required planning and deliberation, was directed to low income and/or vulnerable clients (by definition, given the income

¹⁰ [1999] L.S.D.D. No. 45, [1999] LSBC 17, Discipline Case Digest 99/25.

eligibility requirements for Legal Aid), and left these client matters incomplete. The Panel accepts the Society's submission that the Member demonstrated a lack of integrity on par with the most serious cases that have resulted in disbarment by previous Manitoba discipline Panels.

80. The Panel accepts the approach of the discipline panel in *Law Society of Manitoba v. Douglas Melvin Griffin*¹¹. The discipline panel in *Griffin* dealt with a member with no previous discipline history and a misappropriation amount smaller than in other cases where disbarment had occurred. The *Griffin* panel adopted the proposition that as the primary objective of the discipline process is public protection and the maintenance of public confidence in the profession, in cases of lawyer fraud and theft, disbarment will be imposed unless there are exceptional extenuating circumstances.
81. On the charge of ungovernability (Citation 2, Charge 2), the Panel carefully considered the evidence contained in all of the affidavits, in particular the Donaldson Affidavit. In some, but not all of the cases, there is a discipline history that reveals a Member pattern of refuting Law Society regulation. Although this Member had no previous discipline record, the Panel carefully considered whether apart from the integrity matters, there are public protection considerations arising from the manner in which the Member expressed himself about his clients, particularly Client A; concocting evidence in the face of the Society's investigation; and his failure to respond to the Society's investigator when it was clear that the investigator was not being deceived.
82. Added to the mix, this Member ceased communications with the Society before and throughout service and arrangements for these discipline processes. There were no guilty pleas to the charges and no courtesies or cooperation in facilitating service (which would have assisted the Society and the Panel members leading up to and on the day of the hearing). In *Richert*, the member made restitution of misappropriated funds; given the gravity of the conduct, disbarment was nonetheless the result. Here, there was no evidence of any restitution being made to LAM.
83. The Panel recognizes that the Member submitted an Application to Withdraw from Active Practice and that his status currently is non-practising. Adopting non-practising status is no excuse for being discourteous to the Society or for otherwise refuting a discipline process. In a nutshell, there was a total repudiation by the Member of this process.

¹¹ Discipline Case Digest, Case 05-03, (decision delivered June 3, 2005).

84. As a result of the Member's repudiation of this process, the Panel had no evidence that could potentially be applied in mitigation of a presumptive penalty of disbarment (eg. personal or mental health considerations) or remorse.
85. The Panel concluded that to protect the public interest and to maintain public confidence in the integrity and standards of the legal profession, it had no alternative other than to disbar the Member. This Panel orders that Rishi Bharath be disbarred and struck off the Rolls of the Society pursuant to s. 72 of the LPA.
86. The Panel accepts the Society's submission that its actual costs were in the lower range than they may have otherwise been because of the thorough information gathering, audit, and other investigation done by LAM. Noting that there is precedent for a higher award of costs given similar complexity of investigation, this Panel orders costs against the Member in the amount requested by the Society, \$9,200.00, payable forthwith.
87. The Panel notes that under Rule 5-100(1) of the Law Society Rules, publication of this Panel's decision is mandatory and therefore leaves the matter of publication to the Society. Should further input or decision be required from the Panel, the Panel will make itself available to counsel.
88. The Panel thanks the Society's counsel for her careful approach and balanced submissions in what was no doubt a challenging process. The Panel also wishes to acknowledge the staff of Legal Aid Manitoba for their work investigating the matter in furtherance of LAM's trusteeship of public funds and access to justice mandate in the province.

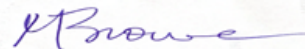
DATED this 3rd day of February, 2025.



Vivian E. Rachlis



Timothy Kurbis



Miriam Browne