

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

DAVE ROBERT THOMAS BOYECHKO

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

Hearing Date: March 11, 2025

Panel: Nunziata Masi (Chair)
James Shaw
Susan Boulter (Public Representative)

Counsel: Ayli Klein for the Law Society of Manitoba
Member Self Represented

REASONS FOR DECISION

Overview

1. The Law Society of Manitoba charged Member, Dave Robert Thomas Boyechko, with professional misconduct for not responding, as required, to inquiries made by the Society about investigations they were conducting. The underlying investigations were ultimately resolved. The Society held a hearing on March 11, 2025, regarding the charges that concerned the Member's initial failures to respond.
2. The Member represented themselves at the hearing. Ayli Klein appeared as Counsel for the Society.

3. The Panel of the Discipline Committee consisted of Nunziata Masi (chair), James Shaw, and Susan Boulter (public representative).
4. No application was made to close all or part of the hearing and the Panel held an open hearing.
5. The Member entered a guilty plea. The Member and the Society recommended that the Panel impose a fine of \$1,500.00 and require the Member to pay \$2,000.00 in costs.
6. The Panel accepted the guilty plea, and the joint recommendation. These are the Panel's reasons.

Jurisdiction

7. The Member and the Society filed a Statement of Agreed Facts, which confirmed that the Member was admitted to the Society in 1989 and is not a member of the governing body of the legal profession in any other Canadian jurisdiction.
8. The Member waived the reading of the Citation, admitted that he was served with the Citation, and did not object to any of the Panel members either based on bias or conflict.

Citation

9. On February 7, 2024, the Society charged the Member with three instances of acting 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*. These rules relate to a member's obligation to reply in writing within 14 days when they receive written notice from the Society to respond to an investigation.

10. The charges relate to three separate investigations. During the hearing, Counsel for the Society confirmed that the Citation is one charge relating to three counts. The Citation alleges that the Member failed to respond in writing within the prescribed timelines and, that at the time the Citation was issued, had not yet provided a substantive response with respect to the investigations.

Guilty Plea and Conduct of the Member

11. The Member admitted that he is guilty of the professional misconduct set out in the Citation.
12. The Statement of Agreed Facts sets out a summary of the nature of the underlying issues the Society was investigating, the timeline of the investigations, and the nature of the communications between the Society and the Member leading to the Society issuing the Citation. In each instance, the Member was afforded extensions of the time to respond. After the Society issued the Citation, the Member provided substantive responses, and the Society has closed the underlying investigations. Counsel for the Society confirmed that the interests of the public are protected as it relates to the underlying investigations with no further discipline to the Member.
13. In accordance with Rule 5-96(5), of the *Rules of the Law Society of Manitoba*, the Panel accepts the Member's guilty plea and agrees that the Member breached their obligations as set out in Sub-Rules 5-64(3) and (4) and Rule 7.1-1 of the *Code of Professional Conduct* and is guilty of professional misconduct.

Joint Submission Regarding Disposition

14. The Society and the Member made a joint submission as to disposition. They proposed that the Panel order that:

- a. The Member pay a fine in the amount of \$1,500.00; and
 - b. The Member pay \$2,000.00 to the Society as a contribution to the costs of the investigation and prosecution of the charges.
15. They proposed that the Panel not set a date for payment but rather leave that issue for further discussion between the Member and the Society's CEO.
16. In advance of the hearing, Counsel for the Society provided a Book of Authorities setting out the applicable precedents for the principles the Panel must consider, including the applicable principles where there is a joint submission, and precedent authorities for the disposition that was being jointly proposed.
17. Counsel for the Society reminded the Panel that the purpose of discipline, as underscored by the purpose of the Society itself, is not punishment or retribution, but rather the protection of the public interest as balanced with member fairness.
18. To determine which of the range of sanctions available under section 72(1) of *The Legal Profession Act* is appropriate, the Panel is guided by the factors set out in *Law Society of British Columbia v. Ogilvie* (1999) LSD No 45 [1999] LBC 17. The *Ogilvie* factors are not exhaustive, and not all the factors will be applicable in every case. Counsel for the Society referred the Panel to the decision of *The Law Society of Manitoba v. Nadeau*, 2013 MBLS 4, which adopted the *Ogilvie* factors in this jurisdiction.
19. Of the *Ogilvie* factors, Counsel for the Society stressed that:
 - a. The Member has demonstrated remorse for their conduct. The charges do not have to do with the underlying issues that the Society was investigating, which have been resolved. There is no further risk to the public.

- b. The charges have to do with governability, which is an integral part of the Society's ability to fulfill its obligations to the public and ensure the public's confidence in the integrity of the profession. However, it is not among the most serious of inappropriate conduct, such as misappropriation of trust funds, or integrity.
 - c. The proposed penalty and costs are consistent with the range of penalties that have been imposed in similar cases. A fine is being recommended, as opposed to a reprimand, given the Member's previous discipline history, which discipline history is dated, and concerns conduct unrelated to the conduct the Panel is now being asked to consider.
20. The Panel found that the Member, in his submissions, demonstrated genuine remorse for his conduct. He explained that when the investigations began, he was plagued with overlapping business and health issues, including two very serious medical incidents. He identified steps he has taken to focus on his practice and make it smaller and more manageable, which contribute to a reduced likelihood of recurrence of this type of conduct in the future. The Panel was impressed by the Member taking personal ownership of his conduct, including the conduct which led to the underlying investigations. He did not pass blame on any staff that may have been involved. The Member said that he became a lawyer to help people and hopes to still do so.

Analysis of the Panel

21. A Panel should only depart from a joint submission in the rarest of circumstances. The test espoused by the Supreme Court of Canada in *Anthony-Cook v. Her Majesty the Queen*, 2016 SCC 43, which was adopted by the Discipline Committee in *The Law*

Society of Manitoba v. Sullivan, 2018 MBLS 9, is that the decision maker should only depart from a joint recommendation if accepting them “would bring the administration of justice into disrepute or would otherwise be contrary to the public interest” (see paragraph 32 of *Anthony-Cook*).

22. To depart from a joint recommendation because it is contrary to the public interest the recommendation must be “so unhinged from the circumstances” that “its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down” (see paragraph 6 of *Sullivan* quoting from the decision of the Newfoundland and Labrador Court of Appeal in *R. v. Druken*, 2006 NLCA 67).
23. The Panel found no reason to depart from the joint recommendation. They aligned with an analysis of the *Ogilvie* factors, were consistent with relevant precedent authorities, and appropriately considered the Member’s previous discipline history.
24. It is an integral part of the Society’s investigative powers that its members comply with the obligation to respond, substantively in writing and within the prescribed timeframe. There is no indication that the Member intentionally flouted their obligations because of disregard for the Society or its authority. There were personal life circumstances that caused the delay, the Member ultimately responded, and the underlying investigations are closed. The Member’s guilty plea saves the Society the expenses and resources of a lengthy hearing. The Panel finds that the proposed sanctions will serve as appropriate deterrence to the Member, and any additional sanction would be purely punitive and therefore unnecessary.


Conclusion

25. In conclusion, the Panel:

- a. accepts the guilty plea of Dave Robert Thomas Boyechko to the charge of professional misconduct arising from the February 7, 2024, Citation issued by The Law Society of Manitoba; and
- b. orders that, by such a date as is directed by the CEO of the Law Society of Manitoba, Dave Robert Thomas Boyechko pay:
 - i. a fine of \$1,500.00; and
 - ii. costs of \$2,000.00.

Dated this 10th day of April, 2025.



(Nunziata Masi (Chair))

James Shaw

Susan Boulter