

2023 LSBC 22  
Hearing File No.: HE20210023  
Decision Issued: June 6, 2023  
Citation Issued: July 23, 2021

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL  
HEARING DIVISION

BETWEEN:

**THE LAW SOCIETY OF BRITISH COLUMBIA**

AND:

**WILLIAM JAMES HEFLIN**

RESPONDENT

**DECISION OF THE HEARING PANEL  
ON DISCIPLINARY ACTION**

Written materials: March 8, 2023

Panel: Cheryl D'Sa, Chair  
Brendan Matthews, Public representative  
Krista Simon, Lawyer

Discipline Counsel: Kathleen M. Bradley

Appearing on his own behalf: William J. Heflin

Written reasons of the Panel by: Cheryl D'Sa

## BACKGROUND

[1] A citation was issued against William James Heflin (the “Respondent”) on July 23, 2021. The citation read as follows:

- (a) On or about October 1, 2020, in relation to your client or former client X in a family law matter, you sexually harassed and/or sexually assaulted X, including through unwelcome comments, advances, and physical contact, contrary to one or more of rules 2.2-1 and 6.3-3 of the *Code of Professional Conduct for British Columbia* [the “BC Code”] and your fiduciary duties.

This conduct constitutes professional misconduct or conduct unbecoming the profession, pursuant to s. 38(4) of the *Legal Profession Act*, [SBC, 1998, c.9 (the “Act”)].

- [2] The hearing on Facts and Determination (“F&D”) proceeded in writing.
- [3] The decision of the Panel on F&D, in *Law Society of BC v. Heflin*, 2022 LSBC 41, issued November 7, 2022, found that the Respondent’s acts constituted sexual harassment contrary to the *BC Code*. Further, the Respondent’s conduct occurred while he was engaged in a solicitor-client relationship with X. The Panel found that the Respondent’s conduct amounted to professional misconduct pursuant to the *Act*.

## ISSUES

1. What is the appropriate disciplinary action?
2. What is the appropriate costs order?

### **Issue 1: What is the appropriate disciplinary action?**

- [4] The parties agree that the appropriate disciplinary action is a suspension of six months.
- [5] The Respondent is a former member of the Law Society and is not currently seeking reinstatement. Accordingly, the Law Society submits that the suspension should begin on the first business day after the Respondent is reinstated as a member of the Law Society if the Respondent applies and his application for reinstatement is granted.

[6] The starting point for determining the appropriate disciplinary action is section 3 of the *Act* and a consideration of the factors set out in *Law Society of BC v. Ogilvie* [1999] LSBC 17 (“*Ogilvie*”).

[7] Section 3 of the *Act* states:

It is the object and duty of the society to uphold and protect the public interest in the administration of justice by

- (a) preserving and protecting the rights and freedoms of all persons,
- (b) ensuring the independence, integrity, honour and competence of lawyers,
- (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,
- (d) regulating the practice of law, and
- (e) supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.

[8] *Ogilvie* sets out the factors to consider in disciplinary dispositions.

- (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 discipline;
- (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 has 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 upon 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.

[9] The review panel in *Law Society of BC v. Lessing*, 2013 LSBC 29, indicated that all *Ogilvie* factors would not be applicable to every matter.

[10] In this matter, the Panel finds the following factors are applicable:

- (a) the nature and gravity of the conduct proven;
- (b) the previous character of the respondent, including details of prior discipline;
- (c) the impact upon the victim;
- (d) whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;
- (e) the need for specific and general deterrence; and
- (f) the need to ensure public confidence in the integrity of the legal profession.

[11] The Respondent was in a fiduciary relationship with X and the conduct that resulted in a finding of sexual harassment was serious and a breach of trust.

[12] The Respondent acknowledges his previous conduct record. In his submissions, the Respondent states that his "conduct record supports a heavier penalty". The Respondent's record includes four conduct reviews for a broad range of issues, including breaches of undertakings and improper withdrawal as counsel. The Respondent also previously received a set of recommendations from Practice Standards. Additionally, the Respondent entered into supervision agreements.

- [13] The Panel has reviewed the victim impact statement provided in evidence and notes that it is in the form of an email and not a sworn statement, however, the Panel acknowledges the magnitude of the impact of the Respondent's conduct on X.
- [14] The Respondent submits that "[w]hether or not I accept responsibility for the conduct is irrelevant...Nonetheless, there was a clear lapse of judgment on my part." However, the Respondent's submissions in their entirety do not indicate an acknowledgement of the misconduct.
- [15] The Panel agrees with the decision of the hearing panel in *Law Society of BC v. Davison*, 2022 LSBC 46, that lawyer misconduct arising from sexual harassment is serious and in order to protect the public interest and public confidence in both the profession and the disciplinary process such conduct must be strongly denounced.
- [16] Upon consideration of the Law Society's mandate from section 3 of the *Act*, the applicable factors set out in *Ogilvie*, and the position of the parties, the Panel agrees that a period of six months is the appropriate suspension.
- [17] Further, the Panel agrees that the suspension should begin on the first business day after the Respondent is reinstated as a member of the Law Society, in the event that the Respondent applies and his application for reinstatement is granted.
- [18] The Panel notes that section 19 of the *Act* includes the following with respect to reinstatement:

Applications for enrolment, call and admission, or reinstatement

19(1) No person may be enrolled as an articulated student, called and admitted or reinstated as a member unless the benchers are satisfied that the person is of good character and repute and is fit to become a barrister and a solicitor of the Supreme Court.

(2) On receiving an application for enrolment, call and admission or reinstatement, the benchers may

(a) grant the application,

(b) grant the application subject to any conditions or limitations to which the applicant consents in writing, or

(c) order a hearing.

(3) If an applicant for reinstatement is a person referred to in section 15 (3) (a) or (b), the benchers must order a hearing.

[19] Therefore, the Respondent will not be reinstated unless the credentials committee (the benchers' delegate under section 8 of the *Act*), or a hearing panel, is satisfied that the Respondent is of good character and repute and is fit to become a barrister and a solicitor of the Supreme Court. See *Law Society of BC v. Chaudhry*, 2023 LSBC 17.

**Issue 2: What is the appropriate costs order?**

[20] The Panel has reviewed the draft Bill of Costs of the Law Society which totals \$7,648.57.

[21] In his submissions on disciplinary action and costs, the Respondent made unsworn statements respecting his poor health, financial circumstances and his expectation that the Law Society would seek significantly less costs because of a reduction in expenses as a result of the hearing proceeding as a hearing in writing.

[22] While the Panel acknowledges that the Respondent's statements in his submissions were not sworn, as this was a hearing in writing on disciplinary action, the Panel will give some weight to the Respondent's statements about his health and his financial circumstances in determining when costs are payable.

[23] The Panel has produced a table below which sets out the units claimed by the Law Society and the units assigned by the Panel. In determining the units to assign to each item, the Panel considered the complexity of the Citation itself, the fact that this was a hearing in writing, the length of the Notice to Admit and the number of issues to be dealt with in written submissions. The result was a reduction in the units claimed by the Law Society, as set out below.

Item	Description	Range	Units Claimed by LSBC	Units Assigned by Panel	Amount
1.	Preparation/amendment of Citation, correspondence, conferences, instructions, investigations or negotiations after the authorization of the Citation to the completion of the discipline hearing, for which provision is not made elsewhere	1 to 10	5	3	\$300
3.	Disclosure under Rule 5-4.6	5 to 20	5	5	\$500

6.	Pre-Hearing Conference: March 10, 2022	1 to 5	1	1	\$100
9.	Preparation of Notice to Admit	5 to 20	15	8	\$800
16.	Written Submissions, where no oral hearing held <ul style="list-style-type: none"> <li>• F &amp; D: March 16, June 23, 2022 (30)</li> <li>• DA: February 21, 2023 (15)</li> </ul>	5 to 15	45	21	\$2100
				Subtotal:	\$3,800

[24] The Panel accepts the disbursements as presented which total \$548.57. Therefore, the total amount payable for costs and disbursements ordered is \$4,348.57.

[25] Costs are to be paid within one year of the date of issuance of this decision on disciplinary action.

## CONCLUSION

[26] The Respondent is suspended from the practice of law in British Columbia for six months; the suspension will commence on the first business day following the Respondent's reinstatement as a member of the Law Society of British Columbia.

[27] The Panel orders that the Respondent pay costs and disbursements in the amount of \$4,348.57, payable within one year of this decision.