

2023 LSBC 50
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Decision Issued: December 6, 2023
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THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

**MARC ANDRE SCHEIRER
(AKA “MARC ANDRE ECKARDT”)**

RESPONDENT

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

Written materials: September 22, 2023

Panel: Sandra Weafer, Chair
Kim Carter, Bencher
David Dewhirst, Public representative

Discipline Counsel: Mandana Namazi

Appearing on his own behalf: Marc Andre Eckardt
aka Marc Andre Scheirer

Written reasons of the Panel by: Sandra Weafer

INTRODUCTION

- [1] On May 25, 2023 this Panel determined that the Respondent had committed professional misconduct in relation to a sexual assault of a prospective client. The Respondent had previously been criminally convicted for this same assault. For the reasons that follow, this Panel finds that the appropriate disciplinary action, taking into account all of the relevant factors, is disbarment.

BACKGROUND

- [2] The specific circumstances of the sexual assault are set out in this Panel's decision on facts and determination (*Law Society of BC v. Scheirer*, 2023 LSBC 18 (“*F & D decision*”)), which relies in part on the reasons of the court in finding the Respondent guilty of sexual assault in criminal proceedings. The Panel does not need to repeat all of the details again here. The Panel can summarize the salient facts as follows in our reasons below.
- [3] On February 28, 2018, the Respondent took a call from a prospective client, X. X needed legal advice as she wanted to get the terms of her husband's bail varied to allow him to resume cohabitation with her. X's husband had been charged with domestic assault.
- [4] X came to see the Respondent at his place of business late that afternoon. The Respondent appeared disheveled. During the interview the Respondent asked X if she was married and X told him that she had been married for 29 years. X showed the Respondent some photos with respect to her business. He then moved closer to her, putting his head on her chest, rubbing her leg and moving his hand towards her crotch. She tried to stand up; he pushed her down and said, “Nicer you are to me now, the sooner we get your husband home.”
- [5] The assault lasted approximately 60 seconds. It was, understandably, very distressing for X, who was in a very vulnerable state. She told a friend about it on her way home from the Respondent's office. Later that evening, she called the police. The ensuing police investigation resulted in the charge of sexual assault against the Respondent. The incident had a profound negative impact on X's mental health, and has caused her to distrust not only lawyers, but other professionals.
- [6] The Respondent was convicted on November 27, 2020 and on March 8, 2021 was sentenced to a suspended sentence and two years' probation.

- [7] On May 25, 2023 this Panel determined that the Respondent had committed professional misconduct (*F & D decision*).
- [8] On June 2, 2023 the Respondent became a former member of the Law Society.
- [9] This Hearing to determine the appropriate disciplinary action took place in writing. The Respondent submitted some evidence with respect to his financial circumstances and his health, but filed no submissions with respect to the appropriate disciplinary action.
- [10] The Law Society filed evidence with respect to the Respondent's prior dealings with the Law Society, including his professional conduct record. The Law Society also entered a draft bill of costs.

GENERAL PRINCIPLES REGARDING SANCTION

- [11] Hearing panels are bound by the principles set out in the *Legal Profession Act*, SBC 1998, c. 9 (the "*Act*"). Hearing panels further the duty and object of the Law Society to uphold and protect the public interest in the administration of justice. Protection of the public interest extends beyond ensuring the integrity and competence of lawyers, although that is of course an important function. Protection of the public encompasses the need to maintain the public confidence in the administration of justice, in the legal profession as a whole, and public confidence in the ability of the Law Society to regulate, and where necessary, appropriately sanction the conduct of its members.
- [12] In this case, the Respondent is now a former member of the Law Society as of June 2, 2023. The *Act* authorizes a hearing panel to discipline a former member of the Law Society for misconduct that took place when the lawyer was a member of the Law Society: s. 1 and 38 of the *Act*. The Law Society has referred the Panel to a number of decisions where former members have been disciplined for conduct which occurred when the lawyer was a member of the Law Society, including where former members have been ordered disbarred (see *Law Society of BC v. McLean*, 2015 LSBC 30; *Law Society of BC v. Lau*, 2023 LSBC 15; *Law Society of BC v. Smail*, 2021 LSBC 6; and *Law Society of BC v. Mckinley*, 2020 LSBC 8). Neither the Respondent's resignation nor the Law Society's acceptance of that resignation impacts this Panel's ability to sanction the Respondent, including to order him disbarred.
- [13] In determining an appropriate disciplinary action, a non-exhaustive set of factors was set out in *Law Society of BC v. Ogilve* 1999 LSBC 17. In *Law Society of BC v.*

Dent, [2016 LSBC 5](#) the *Ogilvie* factors were consolidated under four headings as follows:

- (a) nature, gravity and consequences of conduct;
- (b) character and professional conduct record of the respondent;
- (c) acknowledgment of the misconduct and remedial action; and
- (d) public confidence in the legal profession including public confidence in the disciplinary process.

[14] Each of these consolidated factors will be considered in turn.

a) Nature, Gravity and Consequences of Conduct

[15] This case involved extremely serious conduct for which the Respondent was criminally convicted. That the crime was committed against a vulnerable person who sought him out to provide legal advice makes the conduct even more egregious.

[16] Previous decisions in other jurisdictions emphasize the serious nature of crimes such as the one in this case which impact and undermine the victim's sense of personal dignity and integrity.

[17] In *Adams v. Law Society of Alberta*, 2000 ABCA 240 at par. 26, ("*Adams*") the Alberta Court of Appeal confirmed that these types of personal boundary violations by lawyers are at least as serious as misappropriation, stating:

... The minority expressly contended that Adams' misconduct was less serious than a case of misappropriation of trust funds, which 'in virtually every case ... calls for disbarment.' This suggestion is troubling, as it implies that the integrity of the person is somehow less important than the integrity of the dollar. We do not diminish the seriousness of the offence of absconding with a client's trust funds. However, we have surely come to a point in our understanding of individual respect where the violation of a person's dignity is at least as important as the value of a bank account. ...

[18] Similarly, in *Law Society of Upper Canada v. Sinukoff*, 2012 ONLSHB 12, at para. 42, the hearing panel commented on the gravity of misconduct such as unwanted touching by a member of the bar:

...Lawyers must act with integrity and they do not do so if they propose payment by sexual favors or if they commit unwanted sexual touching. The requirement of integrity is a foundation of the legal profession. In the twenty-first century, it must be understood by all lawyers that conduct such as this is utterly reprehensible and that it will attract serious consequences from the regulator.

- [19] In this case the Respondent's conduct was indeed utterly reprehensible. A potential client came to see him in a vulnerable state looking for professional assistance. Instead, the Respondent preyed on the victim, X, and intimated that his assistance was dependent on her cooperation with his sexual advances. As the Panel has noted that these events have had a devastating impact on X, requiring medication, and has made her fearful of not just lawyers, but other professionals where there is a power imbalance.
- [20] For the public to have confidence in the legal profession, and confidence in the ability of the profession to govern itself, conduct such as this must attract disciplinary action that reflects how serious and reprehensible this conduct is.

b) Character and Professional Conduct Record of the Respondent

- [21] The Respondent's professional conduct record was entered into evidence in this proceeding. It is lengthy, and includes a prior citation for alarmingly similar circumstances – inappropriate and offensive behaviour towards a female client.
- [22] The Respondent was called to the BC Bar in 2015, after having practiced in California and Washington State. Although the Respondent had not practiced long in BC before this Citation was issued, he amassed a very concerning professional conduct record. The Respondent's professional conduct record consists of various practice standards recommendations, including a monitored recovery agreement for alcohol or substance abuse. He has had to enter into undertakings not to practice criminal law, not to practice family law, and not to meet with any person under 19 or any female unless there is another person over 19 present in the room.
- [23] Most significantly, the Respondent was the subject of a citation resulting in a finding of professional misconduct from his dealings with a female client that he arranged to meet at his home (*Law Society of BC v. Scheirer*, 2021 LSBC 51).
- [24] In submissions, the Law Society summarized the circumstances leading up to the previous citation as follows:

In December 2021, a hearing panel made findings of professional misconduct in relation to the Respondent's failure to act honourably and with integrity when meeting with his family law client at his home. In particular, he had consumed alcohol prior to the meeting. The Respondent offered his client a martini, which she declined. Subsequently, he poured one for himself and changed from his business suit into shorts and an unbuttoned shirt. The Respondent was unable to find the client file. Then, he sat in close proximity to his client on the couch where she was seated and placed his arm behind her. The client was uncomfortable and offended by the lawyer's actions. There were also quality of service issues.

[25] As a result of this misconduct, in November 2022 the Respondent was given a six-month suspension and ordered to pay costs in the amount of \$24,084.86 (*Law Society of BC v. Scheirer* 2022 LSBC 46).

[26] It is clear that the Respondent's professional conduct record is troubling. Particularly troubling is the fact that this is not the only time that the Respondent has engaged in predatory behavior towards a female client. As the protection of the public is the objective of lawyer discipline, this Panel must consider the Respondent's past conduct record as a significantly aggravating factor.

c) Acknowledgement of Misconduct

[27] The Respondent has failed to acknowledge any misconduct. It is significant that even though the Respondent had recently been suspended for predatory conduct towards a female client, at the facts and determination Hearing of this matter the Respondent not only failed to acknowledge his misconduct (despite his criminal conviction), he attempted to introduce evidence that the sexual assault did not occur.

[28] The Respondent has had several opportunities to acknowledge his misconduct - at his criminal sentencing and at this disciplinary action Hearing. At no stage did the Respondent acknowledge his misconduct or the impact that the misconduct had on the victim or on the reputation of the legal profession. His lack of acknowledgment raises concerns about the possibility of his rehabilitation.

d) Public Confidence in the Legal Profession

[29] In *Ogilvie*, the hearing panel stated, at para. 19:

The public must have confidence in the ability of the Law Society to regulate and supervise the conduct of its members. It is only by the

maintenance of such confidence in the integrity of the profession that the self-regulatory role of the Law Society can be justified and maintained.

- [30] As stated throughout this decision, the Respondent's conduct was predatory, reprehensible and should be given the highest possible sanction. Anything less would impact the confidence of the public in the legal profession and cast doubt on the ability of the Law Society to govern itself.
- [31] The public, clients and potential clients have the right to expect that lawyers will conduct themselves with honour and integrity, and treat a client's problems with skill and professionalism. The circumstances of this case are so far removed from honour, integrity and professionalism that they cry out for the strongest possible rebuke. Anything short of disbarment in these circumstances, including with the Respondent's professional conduct record, would negatively impact public confidence in the legal profession and the ability of the profession to supervise and regulate lawyers.

DECISION

- [32] Taking into account all of the relevant factors, the only appropriate sanction in this case is disbarment. This takes into account the seriousness of the misconduct, the impact on the victim, the Respondent's previous conduct record (including a six-month suspension for predatory conduct towards a client albeit without a criminal charge and conviction), and the absolute lack of any acknowledgement or remorse by the Respondent raises concerns about the Respondent's potential for rehabilitation.
- [33] Disbarment is also the only sanction that gives appropriate consideration to the protection of the public. The public interest must always be paramount when considering the appropriate sanction against a member of the Law Society. It is necessary that the appropriate sanction not only protect the public from unscrupulous members, but also protect the reputation of the legal profession, and the public's confidence in the ability of the profession to regulate and discipline itself.
- [34] Disbarment is also consistent with the range of penalties imposed in other cases. Thankfully, there are no other cases of a lawyer in BC criminally convicted of sexual assault against a client. There are cases where penalties short of disbarment have been imposed in other jurisdictions where a lawyer sexually touched a client. *Law Society of Saskatchewan v Hale*, 2021 SKLSS 5, is one such case. The case

has some similarities as the lawyer touched his client in a sexual manner without her consent. There are however important differences. There was no criminal charge or conviction, the lawyer admitted his misconduct and he had no previous professional conduct record. The sanction in that case, which was a joint proposal from the member and the Law Society, was a six-month suspension.

- [35] In *Adams*, a lawyer appealed his disbarment to the Alberta Court of Appeal. The Law Society of Alberta had found that disbarment was the appropriate penalty where the lawyer had sexually exploited a sixteen year old client. The lawyer had admitted his misconduct, and pled guilty to the criminal charge, but argued that disbarment, which had been ordered by the hearing committee and upheld by the benchers, was an unreasonable penalty. He argued that the penalty overemphasized protection of the reputation of the legal profession, and failed to take into account his previous good behavior and evidence that there was little risk of reoffending. The Alberta Court of Appeal dismissed the appeal, holding that disbarment was not a manifestly unreasonable penalty. Of note, the court dismissed the proposition that sexual exploitation was less serious than converting trust funds. As discussed in our reasons above, the court found the violation of a person's dignity to be at least as important as the value of a bank account.
- [36] Taking into account both the sanctions imposed in previous cases and all of the relevant factors as set out in *Ogilve*, this Panel orders the Respondent disbarred pursuant to s. 38(5)(d) of the *Act*.
- [37] The Law Society is seeking an order for costs in the amount of \$13,732.50, an amount calculated in accordance with the tariff. While these costs are reasonable and would normally be recoverable by the Law Society, the Respondent has submitted evidence of his financial circumstances and medical issues. Upon considering the evidence of his dire financial circumstances, including his limited income, a period of time on social assistance and receiving food from the food bank, his outstanding debt and significant health issues, this Panel exercises its discretion under Rule 5-11(4) to order no costs against the Respondent.