

2023 LSBC 23
Hearing File No.: HE20220006
Decision Issued: June 9, 2023
Citation Issued: March 10, 2022

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

ERIC JOHN BECKER

RESPONDENT

DECISION OF THE HEARING PANEL

Written materials: March 15, 2023

Panel: Jacqueline G. McQueen, KC, Chair
Karen Ameyaw, Lawyer
Laura Nashman, Public representative

Discipline Counsel: Marsha Down

Counsel for the Respondent: Gerry Cuttler, KC

Written reasons of the Panel by: Karen Ameyaw

INTRODUCTION

- [1] The matter before the hearing panel (the “Panel”) is to make a determination and take action with respect to a citation against Eric John Becker (the “Respondent”) alleging his failure to remit payroll source deduction funds to the Canada Revenue Agency (the “CRA”).
- [2] The parties provided joint submissions to the Panel pursuant to Rule 5-6.5 of the Law Society Rules (the “Rules”).
- [3] Under Rule 5.6-5, the parties are permitted to jointly submit an agreed statement of facts, the respondent’s admission of a discipline violation and consent to a specified disciplinary action.
- [4] The joint submissions included an agreed statement of facts, dated March 6, 2023 (the “ASF”), and a letter of admission of a discipline violation (the “Admission Letter”), dated March 6, 2023, by the Respondent.
- [5] In the joint submissions, the Respondent admits that his conduct amounts to professional misconduct and consents to the disciplinary action to pay a fine of \$10,000 and \$1,000 in costs.
- [6] The Panel accepts the joint submissions and finds that the proposed specified disciplinary action is not contrary to the public interest in the administration of justice.

CITATION

- [7] The allegation against the Respondent is set out in a citation authorized by the Discipline Committee on March 3, 2022 and issued on March 10, 2022 (the “Citation”).
- [8] The Citation alleges against the Respondent the following:

For the 2017, 2018 and 2019 taxation years, you made employee payroll source deductions but failed to remit the payroll source deduction funds due to the Canada Revenue Agency in a timely way or at all, contrary to rule 7.1-2 of the *Code of Professional Conduct for British Columbia*.
- [9] The ASF confirms the Respondent admitted service of the Citation on March 10, 2022.

ISSUES

[10] The issues for the Panel on this application are as follows:

- (a) whether it is appropriate to proceed with the matter on the written record;
- (b) whether the actions of the Respondent constitute professional misconduct; and
- (c) whether the penalty proposed by the parties is an appropriate sanction.

PRELIMINARY MATTER

Whether it is Appropriate to Proceed with the Matter on the Written Record

- [11] The Law Society and the Respondent submitted an application on consent to have the hearing proceed on the written record, pursuant to LSBC Tribunal Practice Direction 8.
- [12] The parties submitted written materials that included joint submissions with an ASF and supporting documents, an Admission Letter, a joint book of authorities and a joint book of exhibits.
- [13] The Panel considered the parties' intention to proceed by admission and consent to disciplinary action pursuant to Rule 5.6-5 of the Rules.
- [14] The Panel was satisfied on the basis of the written material filed that it could make the requisite determinations under section s.38 of the *Legal Profession Act* (the "Act") and granted the order.
- [15] The Joint Book of Exhibits, which includes the Citation and ASF, will be marked as an exhibit in these proceedings.

BACKGROUND

- [16] The following facts are derived from the ASF.

Respondent's Background

- [17] The Respondent was called and admitted as a member of the Law Society of British Columbia (the "Law Society") on May 12, 1981.

- [18] He practiced in a variety of fields, including both litigation and solicitor's work, mostly under the name "Becker & Company" but more recently as "Peak Law Group." In recent years, his practice has been almost exclusively solicitor's work.

Background Facts

- [19] On December 27, 1990, the Respondent incorporated the E. John Becker Personal Law Corporation.
- [20] The Respondent has been the sole director, president, and secretary of the Personal Law Corporation since at least 2003.
- [21] The E. John Becker Personal Law Corporation did business as Becker & Company (collectively, the "Practice") until February 28, 2019.
- [22] The Respondent was the lawyer in charge of the financial management of the Practice.

Failure to Remit

- [23] The CRA requires employers to deduct certain amounts from employees' remuneration, which are called payroll source deductions.
- [24] The payroll source deductions include Canada Pension Plan ("CPP") contributions, Employment Insurance ("EI") premiums, and income tax deducted.
- [25] Employers are responsible for remitting the payroll source deduction, plus the employer's share of the CPP contributions and EI premiums (collectively, the "Payroll Remittance Amount") to the CRA.
- [26] The Respondent collected payroll source deductions from employees of the Practice in 2017 and 2018, and the months of January 2019 and February 2019.
- [27] The Respondent was responsible for ensuring the Practice's Payroll Remittance Amount was remitted on a monthly basis to the CRA.
- [28] In 2017, the Respondent deducted approximately \$127,000 in payroll source deductions from employees.
- [29] The Practice's Payroll Remittance Amount for 2017 was approximately \$166,608 (the "2017 Payroll Remittance Amount").

- [30] As of October 2021, the Respondent had remitted approximately \$19,120 to the CRA for the 2017 Payroll Remittance Amount.
- [31] In 2018, the Respondent deducted approximately \$70,133 in payroll source deductions from employees.
- [32] The Practice's Payroll Remittance Amount for 2018 was approximately \$93,574 (the "2018 Payroll Remittance Amount").
- [33] As of October 2021, the Respondent had remitted \$51,834 to the CRA for the 2018 Payroll Remittance Amount.
- [34] In January and February 2019, the Respondent deducted approximately \$7,328 in payroll source deductions from employees.
- [35] The Practice had no employees as of March 1, 2019.
- [36] The Practice's Payroll Remittance Amount for January and February 2019 was approximately \$9,774 (the "2019 Payroll Remittance Amount").
- [37] As of October 2021, the Respondent had not paid any of the 2019 Payroll Remittance Amount.
- [38] As of October 2021, the Practice owed the CRA approximately \$270,004 including interest and penalties, for the 2017 Payroll Remittance Amount, the 2018 Payroll Remittance Amount and the 2019 Payroll Remittance Amount (the "Payroll Remittance Amounts").
- [39] The Respondent was aware that at all material times he owed the payroll source deductions, and his explanation for not paying the payroll source deductions in full and on time is that beginning in 2017 the Practice had unanticipated cash flow demands which continued until the Practice ceased operating on February 28, 2019.

Admission of Misconduct

- [40] The Respondent admits that for the 2017, 2018 and 2019 taxation years, he made employee source deductions but failed to remit the payroll source deductions funds due to the CRA in a timely way, or at all, contrary to rule 7.1-2 of the *Code of Professional Conduct for British Columbia* (the "Code").
- [41] The Respondent admits that this conduct constitutes professional misconduct.

ANALYSIS

Whether the Respondent's Actions Constitute Professional Misconduct

- [42] In *Foo v. Law Society of British Columbia*, 2017 BCCA 151, the BC Court of Appeal confirmed that the Law Society carries the burden and onus of proof to establish on a balance of probabilities that the conduct of the Respondent constitutes professional misconduct.
- [43] “Professional misconduct” is not a defined term in the *Act*, Rules or *Code* that form the Law Society’s governing legislation. In *Law Society of BC v. Martin*, 2005 LSBC 16, at para. 171, the panel articulated the marked departure test for professional misconduct. The well-established test, confirmed by the panel in *Re: Lawyer 12*, 2011 LSBC 35, is “whether the facts as made out disclose a marked departure from that conduct the Law Society expects of its members; if so, it is professional misconduct.”
- [44] Lawyers have a professional duty to meet their financial obligations. Rule 7.1-2 of the *Code* requires a lawyer to promptly meet financial obligations in relation to his or her practice.
- [45] In *Law Society of BC v. Smaill*, 2020 LSBC 14, the panel recognized, at para. 31, “a heightened obligation to remit monies collected for payment to the government by or on behalf of others, such as GST, PST or payroll source deductions.” The panel added that “[f]ailure to make these remittances, particularly in such large amounts and for such prolonged periods, constitutes professional misconduct....”
- [46] Numerous panels have found the failure to remit taxes and payroll source deductions in a timely way a marked departure from the standard expected of lawyers: *Law Society of BC v. Edwards*, 2022 LSBC 27; *Law Society of BC v. Chiasson*, 2022 LSBC 16; *Law Society of BC v. Smaill*; *Law Society of BC v. Webber*, 2020 LSBC 42; *Law Society of BC v. Liggett*, 2020 LSBC 12; and *Law Society of BC v. Lo*, 2020 LSBC 09.
- [47] In *Law Society of BC v. Hammond*, 2004 LSBC 32, the panel stated at para. 35 “[i]t is not appropriate for a member of the Law Society to be seen to be using tax withholdings for private purposes and we must respond aggressively whenever such conduct comes to light.” In that matter, the panel found the respondent’s failure to remit employee payroll deductions to be a “serious breach of trust.”
- [48] Panels have been clear that when lawyers collect payroll source deductions from employees, those funds do not belong to the lawyer to be used for their own

purposes, or to meet other financial obligations of the firm: *Law Society of BC v. Ali*, 2007 LSBC 18, at para. 107; *Law Society of BC v. Edwards*, at paras. 70 and 71.

- [49] In the present case, the Respondent admitted that he was responsible for ensuring the Practice's Payroll Remittance Amount was remitted on a monthly basis to the CRA.
- [50] The Respondent has admitted in the joint submissions, ASF and Admission Letter that his failure to remit the payroll deduction funds to the CRA in a timely manner, or at all, for the taxation years of 2017, 2018 and 2019 is contrary to rule 7.1-2 of the *Code*.
- [51] The Panel accepts the Respondent's admission and we find that the Respondent has committed professional misconduct pursuant to section 38(4) of the *Act* as set out in the Citation.

Whether the Penalty Proposed by the Parties is an Appropriate Sanction

- [52] Pursuant to Rule 5-6.5(3)(b) of the Rules, a hearing panel is prohibited from imposing disciplinary action that is different from the specified disciplinary action consented to by the Respondent unless the proposed disciplinary action is contrary to the public interest in the administration of justice.
- [53] This limitation reflects the principles set out by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43, paras. 10 to 11, to give deference to joint submissions. The principles include certainty for the parties, negating the negative aspects involved in requiring witnesses to testify and creating efficiencies in the system: *Law Society of Upper Canada v. Archambault*, 2017 ONLSTH 86, at para. 15.
- [54] The *Anthony-Cook* test has been adopted by panels in numerous cases: see *Law Society of BC v. Clarke*, 2021 LSBC 39; and *Law Society of BC v. Lang*, 2022 LSBC 04. In *Clarke*, at para. 87, the panel applied the *Anthony-Cook* test in determining whether to accept a joint submission:

In sum, we conclude that the *Anthony-Cook* test should be used in determining whether to accept a joint submission made under Rule 4-30 [now Rule 5-6.5]. Accordingly, a joint submission will only be "contrary to the public interest in the administration of justice", within the meaning of Rule 4-30(6)(b) [now Rule 5-6.5(3)(b)], where it is so unhinged from the circumstances of the discipline violation and the respondent that its

acceptance would lead reasonable persons aware of all the circumstances, including the importance of providing certainty in resolution discussions, to believe that the proper functioning of the discipline system had broken down.

[55] In *Anthony-Cook*, at para. 44, the Supreme Court of Canada noted “a high threshold for departing from joint submissions” recognizing the parties “are well placed to arrive at a joint submission that reflects the interests of both the public and the accused.”

[56] The parties propose the following specified disciplinary action:

- (a) the Respondent pay a fine of \$10,000, payable in two installments, with the first installment of \$5,500 due one year after the date the decision is rendered and the second installment of \$4,500 due two years after the date the decision is rendered; and
- (b) the Respondent pay costs in the amount of \$1,000, due two years after the date the decision is rendered.

[57] The proposed disciplinary action can be assessed by applying the factors set out in the *Law Society of BC v. Ogilvie*, 1999 LSBC 17, and consolidated by the panel in *Law Society of BC v. Dent*, 2016 LSBC 05, into four broad categories:

- (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.

Nature, gravity and consequences of conduct

[58] In *Law Society of BC v. Gellert*, 2014 LSBC 05, at para. 39, the panel found that the nature and gravity of the misconduct will almost always be an important factor as it stands as a “benchmark” in assessing how to best protect the public and preserve its confidence in the profession.

[59] The Respondent was responsible for ensuring the Practice’s Payroll Remittance Amount was remitted on a monthly basis to the CRA in the 2017, 2018 and 2019 taxation years. The Respondent admitted that he failed to meet his financial

obligations under the *Code* by not remitting the payroll source deductions funds due to the CRA. As of October 21, 2021, the Practice owed the CRA approximately \$270,004 including interest and penalties.

- [60] The Panel finds the conduct of the Respondent to be serious because meeting financial obligations is an important professional duty of lawyers. The failure to promptly meet this obligation to remit the payroll source deductions to the CRA and the nature of the conduct occurring over three taxation years cannot be taken lightly.

Character and professional conduct record of the Respondent

- [61] The Respondent has practiced law in British Columbia for approximately 41 years and was admitted as a member of the Law Society of British Columbia in May 1981. In the past several years, the Respondent has undertaken almost exclusively solicitor's work.

- [62] The Respondent's professional conduct record consists of the following:

- (a) two practice standards recommendations (July 1991 to March 1994 and May 2009 to September 2009),
- (b) four conduct reviews (March 1991, September 1998, March 2007, and July 2009),
- (c) a limitation on practice (September 2014 to February 2022),
- (d) an administrative suspension (March 7, 2019 to March 11, 2019), and
- (e) findings of professional misconduct in relation to three joined citations (Citation 1 issued September 25, 2018; Citation 2 issued February 5, 2019; and Citation 3 issued February 5, 2019) with a resulting suspension of 14 months (March 1, 2021 to April 30, 2022).

- [63] Exhibit 4 at Tab 15 contains the panel decision of the three joined citations against the Respondent that resulted in the 14 month suspension: *Law Society of BC v. Becker*, 2021 LSBC 11. A summary of those citations from the panel decision are set out below:

- (a) Citation 1 contains 44 instances of misappropriation of client funds, 205 instances of misappropriation or improper handling of funds relating to charges for insurance binder disbursements during conveyances, four instances of improperly withdrawing trust funds, failing to report a trust

shortage over \$2,500, leaving blank pre-signed trust cheques accessible to employees, and one instance where the Respondent made charges to a client's credit card that the client later reported exceeded the authorized amount. These were not intentional in the sense that the Respondent did not have any malicious intent when he committed these breaches. Rather, the Respondent was grossly and culpably negligent.

- (b) Citation 2 addresses multiple instances where the Respondent represented his firm as being a registered trademark agent when it no longer was one and provided misleading communications to the Law Society regarding his firm's status.
- (c) Citation 3 addresses incidents related to the termination of the Respondent's management of Greenway Legal Centre.

[64] The conduct in Citation 1 reflects serious misconduct including the Respondent misappropriating client funds and mishandling funds held in trust.

[65] This Panel recognizes the overlapping timing of the current Citation and the joined citations that resulted in the Respondent's 14 month suspension. This raises the question of why the current Citation was not addressed as part of the previous proceedings. In the ASF at para. 53, the following explanation was provided:

The Law Society did not disclose the June 8, 2020 Investigation Report to the Respondent or his counsel before January 20, 2021, which was after the Respondent's Rule 4-30 Proposal was accepted by the Discipline Committee and the hearing panel.

[66] In the joint submissions at para. 74, the parties submit that the "professional misconduct in issue had occurred and was known to the Law Society when the Respondent and the Law Society agreed to, and the hearing panel imposed, a 14 month suspension to resolve the September 25, 2018 Citation and the February 5, 2019 Citations." The parties further submit that "[w]hether there would have been any change to the agreed global resolution of a lengthy suspension (14 months) had the professional misconduct in issue been the subject of an additional citation in 2020 is unclear."

[67] The Panel finds the Respondent's professional conduct record a significant and aggravating factor in light of the three citations that led to a lengthy suspension.

- [68] This Panel does not overlook the principle of progressive discipline. However, the context provided by the parties in the joint submission allows this Panel to accept that it is not a determinative factor in these circumstances.

Acknowledgment of the misconduct and remedial action

- [69] The Respondent has admitted the conduct in the Citation and that it amounts to professional misconduct.

- [70] The Respondent provided an explanation for his actions at para. 31 of the ASF:

The Respondent's explanation for the Practice not paying the payroll source deductions in full and on time is that beginning in 2017, the Practice had unanticipated cash flow demands, which continued until the Practice ceased operating on February 28, 2019. The Respondent was dealing with significant difficulties in his professional and personal life. The Respondent's mental health deteriorated, which led to him seeking help and receiving counselling and a prescription for anti-depressants from mid-2016 to early 2017. However, by this time, the Respondent was unable to fully recover from the financial setbacks he had and continued to suffer throughout the relevant period.

- [71] The Panel recognizes that the Respondent agreed to jointly submit an admission and consent to specified disciplinary action under Rule 5-6.5 of the Rules. The Respondent also provided an apology for his conduct in the Admission Letter.

Public confidence in the legal profession

- [72] In order for the public to have confidence in the disciplinary process, as set out in section 3 of the *Act*, it is important to uphold and protect the public interest in the administration of justice.

- [73] The panel in *Dent* held that "similar cases" is a primary factor under this factor for consideration.

- [74] In similar "failure to remit" cases the disciplinary action resulted in a fine ranging from \$2,000 to \$15,000: *Law Society of BC v. Young*, 2018 LSBC 34; *Law Society of BC v. Wittmann*, 2008 LSBC 24; *Law Society of BC v. Bonfield*, 2008 LSBC 23; *Law Society of BC v. Webber*, 2020 LSBC 42; *Law Society of BC v. Gordon*, 2018 LSBC 37; and *Law Society of BC v. Lo*, 2020 LSBC 09.

- [75] The Panel agrees that the proposed joint submission of a fine of \$10,000 will have a specific deterrent effect on the Respondent and will protect the public confidence in the disciplinary process and the legal profession.

Determination on Disciplinary Action

- [76] After reviewing and considering the relevant mitigating and aggravating factors and the range of sanctions imposed previously, this Panel finds that a \$10,000 fine is an appropriate sanction and does not find the proposed disciplinary action to be contrary to the public interest in the administration of justice. Therefore, the Panel accepts the joint submissions of the Law Society and the Respondent on the proposed penalty.

COSTS

- [77] The parties have jointly requested an order for costs in the amount of \$1,000. The Panel accepts the joint request to award costs to the Law Society in the amount of \$1,000.

ORDER

- [78] The Panel orders that:
- (a) the Respondent pay a fine in the amount of \$10,000, with \$5,500 due one year after the date the decision is issued and \$4,500 due two years after the date the decision is issued pursuant to sections 38(5)(b) and 38(7) of the *Act*; and
 - (b) the Respondent pay the Law Society \$1,000 in costs, due two years after the date the decision is issued pursuant to Rule 5-11.