2024 LSBC 16
Hearing File No.: HE20200064
Decision Issued: March 19, 2024
Citation Issued: September 1, 2020

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL

HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

LINDSAY ADAM CHRISTOPHER ROSS

RESPONDENT

DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION

Hearing dates:	January 19, 2024
Panel:	Gillian M. Dougans, Chair Linda Berg, Public representative Gavin Hume, KC, Bencher
Discipline Counsel:	David A. Jardine, KC
No one appearing on behalf on the Respondent	
Written reasons of the Panel by:	Gillian M. Dougans

BACKGROUND

[1] The facts and determination decision in this matter was issued on September 15, 2023 (*Law Society of BC v. Ross*, 2023 LSBC 39) with respect to a citation issued September 1, 2020 (the "Citation"). The Respondent was found to have committed professional misconduct pursuant to section 38(4) of the *Legal Profession Act*, SBC, 1988, c.9 (the "*Act*") on the grounds that he had:

(a) misappropriated trust funds from a client, MT;

(b) misappropriated trust funds from a client, GP;

(c) misled clients MT and AH, lawyer KJ, and the Law Society regarding trust funds received from MT;

(d) acted in a conflict of interest with respect to clients JR, AH and MQ;

(e) facilitated a breach of a trust agreement; and

(f) misled clients AH and MQ in relation to a purchase of real estate ("Sproat Lake #2").

[2] The Respondent was called and admitted as a member of the Law Society of British Columbia in 1989. Prior to that time, he was called to the bar of Alberta in 1988. The Respondent retired on June 5, 2020. On July 13, 2020, he was suspended from practice and on January 1, 2021, he became a former member of the Law Society.

[3] The Law Society has the authority and responsibility to investigate and pursue the disciplinary process through to the disciplinary action phase even where a lawyer has ceased to be a member of the Law Society. This is to assure the public and the profession that the consequences of misconduct cannot be avoided simply by resigning from the Law Society. It also provides a record in the event that a member applies to renew their membership or to practise law in another jurisdiction. The *Act* in section 1 defines a "lawyer" in Part 4 – Discipline as including a former member. Section 38 in Part 4 of the *Act* provides for the hearing of a citation with respect to a lawyer's conduct. Accordingly, the Panel has the jurisdiction to proceed with disciplinary action under s. 38 of the *Act* when the lawyer is a former member.

PROCEEDING IN THE ABSENCE OF THE RESPONDENT

[4] The Respondent represented himself at the hearing on facts and determination but failed to respond to any communications from the Law Society or the Tribunal regarding the disciplinary action hearing (the "DA Hearing").

[5] The Law Society filed as an exhibit, an Affidavit of Service showing that the Respondent was sent a Notice of Hearing on October 25, 2023 to his last known email address in accordance the Rule 10-1(1)(b)(iii) of the Law Society Rules (the "Rules"). The DA Hearing started at 9:30 a.m. and the Panel adjourned briefly for 15 minutes in case the Respondent was delayed. The Respondent did not attend and the DA Hearing proceeded in his absence.

[6] The applicable provisions provide the following directions:

(a) Rule 5-6(2.2) of the Rules states that: "If a respondent fails to attend or remain in attendance at a hearing, the panel may proceed under section 42."

(b) Section 42(2) of the *Act* states that if a hearing panel is satisfied that the respondent has been served with notice of the hearing, the panel may proceed with the hearing in the absence of the respondent and make any order that the panel could have made in the presence of the respondent.

(c) Practice Direction 5.7 of the LSBC Tribunal's Directions on Practice and Procedure state that: "Where notice of an appearance has been given to a party and the party does not attend or does not participate, the panel may proceed in the absence of the party or without the party's participation."

[7] This Panel was satisfied that the Respondent was properly notified of the DA Hearing date, that he had not provided any explanation for his non-attendance, that the DA Hearing might proceed in his absence and that it was appropriate and in the public interest to proceed with the DA Hearing in the Respondents absence pursuant to section 42(2) of the *Act*.

POSITION OF THE PARTIES

[8] The Law Society submits that the appropriate disciplinary action is disbarment pursuant to section 38(5) of the *Act*.

[9] The Law Society seeks costs in the amount of $49,075, calculated in accordance with the Tariff in Schedule 4 of the Rules and payable within 30 days of the issuance of the Hearing Panel's decision on disciplinary action.

[10] The Respondent did not provide submissions nor attend the DA Hearing.

GENERAL PRINCIPLES

[11] The primary purpose of these disciplinary proceedings is to protect the public and maintain its confidence in the legal profession. That is accomplished not only by addressing the professional misconduct of the Respondent but also by clearly denouncing unethical behaviour so that the public knows what standards to expect from lawyers in British Columbia and lawyers know what to expect from their regulator if they do not live up to those standards.

[12] The appropriate disciplinary action is often determined by reference to what have become known as the "*Ogilvie* factors". This is a non-exhaustive list of factors for panels to consider set out in *Law Society v. Ogilvie*, 1999 LSBC 17 ("*Ogilvie*"). The list was consolidated in the decision in *Law Society v. Dent*, 2016 LSBC 5 ("*Dent*") to the following four general categories:

(a) nature, gravity and consequences of the conduct,

(b) character and professional conduct record of the respondent;

(c) acknowledgment of the misconduct and remedial actions; and

(d) public confidence in the legal profession including public confident in the disciplinary process.

[13] The use of *Ogilvie* factors and the consolidated *Dent* factors are not the only way for a panel to determine the appropriate disciplinary action. Panels are permitted to take a global approach that considers the nature of all of the misconduct found. This is useful when the citation covers a number of separate incidents of professional misconduct, as in the case here.

[14] Disbarment is the presumptive disciplinary action for intentional misappropriation. The panel in *Law Society of BC v. McGuire*, 2006 LSBC 20, stated the following at paragraph 24:

> … Wrongly taking a client's money is the plainest form of betrayal of the client's trust. In our view, the public is entitled to expect that the severity of the

> consequences reflect the gravity of the wrong. Protection of the public lies not only in dealing with ethical failures when they occur, but also in preventing ethical failures. In effect, the profession has to say to its members, "Don't even think about it." And that demands the imposition of severe sanctions for clear, knowing breaches of ethical standards. …

ANALYSIS USING A GLOBAL APPROACH

[15] The Respondent's misconduct included misappropriating trust funds and misleading clients, a fellow lawyer, and the Law Society. He misled clients who were also his friends and took advantage of their trust in him. The Respondent's testimony to this Panel in the facts and determination hearing was found not to be credible. The Respondent has disregarded the most basic requirements of being a lawyer. The public expects lawyers to be honest, not to deceive them and not to take their money and use it for their own purposes. No other remedy except disbarment could properly address this misconduct and assure the public that the Law Society places the public interest first.

ANALYSIS USING THE CONSOLIDATED *OGILVIE* FACTORS

The nature, gravity and consequences of conduct

[16] The Respondent misappropriated trust monies; misled his clients, the lawyer he shared an office with and the Law Society; acted in a conflict of interest; and facilitated a breach of a trust agreement. He did all of these for his own personal benefit and to conceal his misconduct. His misconduct falls at the most serious end of the scale.

[17] The panel in *Dent* asked the following questions to determine the severity of the professional misconduct:

> [20] … For how long and how many times did the misconduct occur? How did the conduct affect the victim? Did the lawyer obtain any financial gain from the misconduct? What were the consequences for the lawyer? Were there civil or criminal proceedings resulting from the conduct?

[18] The Respondent's conflict of interest when representing his wife, JR, his cousin, MQ, and her husband, AH, in the purchase and sale of properties on Sproat Lake began in 2003 with the purchase of the first of the two properties ("Sproat Lake #1"). The Respondent's conflict of interest did not appear to affect AH and MQ until the sale of Sproat Lake #1 and the use of those proceeds to purchase Sproat Lake #2 in 2005. At that time, AH and MQ were misled as to the purchase amount for Sproat Lake #2. The conflict of interest continued when Sproat Lake #2 was sold in 2012 and the Respondent

paid the net sales proceeds to a financial institution to pay out his wife's mortgage and line of credit and to his wife directly. At that time, AH and MQ did not receive the sale proceeds to which they were entitled and the conflict of interest continued until AH finally collected the amount owed to him and MQ, in July 2015, after hiring a lawyer and starting an action and garnishment proceedings.

[19] The misappropriation of trust funds began in May 2012 when the Respondent deceived MT into giving him $100,000 by telling him it was "good faith money" as part of the TL project. That money was not accounted for until July 2013.

[20] The Respondent obtained a financial benefit regarding the purchase of Sproat Lake #2 by misleading AH and MQ and failing to correct misinformation as to the true purchase price so that AH and MQ contributed more than half the true purchase price. He also benefitted by: failing to advise AH and MQ that a mortgage and line of credit had been placed against Sproat Lake #2; continuing to act for all three clients in circumstances where he knew that his wife had breached her duties as trustee to AH and MQ; facilitating a breach of the Trust Agreement by signing, as personal covenantor, his wife's mortgage on Sproat Lake #2 and; by distributing the sale proceeds from Sproat Lake #2 entirely to JR (after paying out the mortgage and line of credit) when he knew that the net proceeds were not enough to pay MQ and AH their share. The Respondent and his wife used those monies gained through his misconduct for other projects.

[21] The Respondent obtained a financial benefit regarding the misappropriation of trust funds as he was able to use MT's money to help another client purchase a property and to equalize an investment the Respondent's wife had made with that client. The Respondent misappropriated $100,000 from GP to give to MT which had the effect of concealing the first misappropriation. The Respondent had the use of MT's money for 13 months and paid no interest to MT.

[22] The consequences for the Respondent were almost nothing as he nearly got away with the misappropriation. By providing false and misleading responses to any enquiries about the $100,000 from MT and the use of $100,000 from GP the Respondent managed to avoid accounting for the $100,000 until AH's investigations revealed the missing funds. Those investigations determined that MT had paid $100,000 to the Respondent, in relation to the TL project, but those funds had not been deposited to the benefit of the TL project. The $100,000 the Respondent directed KJ to return to MT was actually from the PS project leaving MT in a deficit position on that project. In July 2013, a bank draft for $100,000 payable to the PS project appeared under AH's doormat. The Respondent testified that he had no recollection of how that happened. This was how the $100,000 from MT was finally accounted for.

[23] Misappropriation is the most serious misconduct that a lawyer can commit. The hearing panel in *Law Society of BC v. Tak*, 2014 LSBC 57, put it very succinctly:

> [35] Misappropriation of client trust funds is perhaps the most egregious misconduct a lawyer can commit. Wrongly taking clients' money is the plainest form of betrayal of a client's trust and is a complete erosion of the trust required for a functional solicitor-client relationship. The public is entitled to expect that the severity of the consequences reflect the gravity of the wrong. In the absence of multiple, significant mitigating factors, public confidence in the profession and its ability to regulate itself would be severely compromised if anything short of disbarment is ordered for misappropriation of client funds.
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> …
>
> [38] There should be no doubt that a strong message of general deterrence should be sent to other members of the Law Society in respect of misappropriating funds, and it should be unequivocal that such misconduct will almost certainly result in the revocation of the right to practise law.

[24] The Panel has been presented with no evidence of any extraordinary mitigating factors that exist to deviate from the expected consequence of disbarment.

Character and professional conduct record

[25] The Respondent is a senior lawyer who is very experienced in complex commercial transactions. His misconduct did not occur as a result of him practising law in new or unfamiliar areas. In fact, the Respondent clearly used his clients' trust and reliance on him and his expertise to mislead them and hide the use he was making of their money. This is a highly aggravating factor.

[26] This Panel can consider the Respondent's professional conduct record ("PCR") which included the following:

(a) Report of the Conduct Review Subcommittee dated December 5, 2019. This review considered two issues: one, that the Respondent had given his assistant his Juricert password in order to complete real estate transactions in his absence and two, signing blank trust cheques that he left with staff for the same reason. The Respondent admitted his behaviour was "inexcusable" and he revised his office procedures. The conduct review subcommittee was satisfied that no further action was needed.

(b) Report of Conduct Review Subcommittee dated June 23, 2020. The Respondent filed a case plan proposal with the Supreme Court of British Columbia containing statements that were not true in a proceeding in which he was acting for himself, his wife, and his former law corporation. Opposing counsel considered that the Respondent had tried to mislead the court and made a complaint to the Law Society. The Respondent admitted to the subcommittee that he should not have filed a case planning proposal with untrue statements. His explanation was that he did not consider the case planning proposal to be a "significant court document" and that he was planning to do the things he told the court he had done. The subcommittee accepted the Respondent's acknowledgment and his advice that he had "learned from his error and has since applied his otherwise detail-oriented approach to anything he files in court." The subcommittee also noted that the Respondent was retired from practice. No further action was taken.

[27] The Respondent's PCR is a mildly aggravating factor. The first Conduct Review involved serious lapses of responsibility regarding the use of the Respondent's Juricert, a digital signature for use in the Land Title Office; and, in his trust accounting processes. The second Conduct Review was concerning as an example of the Respondent not respecting that all lawyers are officers of the court and owe an ethical duty to the court as set out in the Canons of Legal Ethics in the *Code of Professional Conduct for British Columbia*:

> 2.1-2 to courts and tribunals
>
> (a) A lawyer's conduct should at all times be characterized by candour and fairness. The lawyer should maintain toward a court or tribunal a courteous and respectful attitude and insist on similar conduct on the part of clients, at the same time discharging professional duties to clients resolutely and with self-respecting independence.
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> …
>
> (c) A lawyer should not attempt to deceive a court or tribunal by offering false evidence or by misstating facts or law and should not, either in argument to the judge or in address to the jury, assert a personal belief in an accused's guilt or innocence, in the justice or merits of the client's cause or in the evidence tendered before the court.

[28] This Panel notes that the Respondent's conduct in filing a case planning proposal with false information was done to serve his own interests, and those of his wife and his

former law practice. All of the misconduct in this proceeding was also done for the Respondent's or his wife's benefit.

Acknowledgement of the misconduct and remedial action

[29] The third consideration concerns a respondent's acknowledgement of their actions. The panel in *Dent* gave the following guidance:

> [22] Does the respondent admit his or her misconduct? What steps, if any, has the respondent taken to prevent a reoccurrence? Did the respondent take any remedial action to correct the specific misconduct? Generally, can the respondent be rehabilitated? Are there other mitigating circumstances, such as mental health or addiction, and are they being dealt with by the respondent?

[30] The Respondent has not acknowledged any wrongdoing with respect to any allegations in the Citation. At the facts and determination hearing he presented a completely different version of the facts which this Panel found to be not credible. He blamed his staff, his clients, his wife, and another lawyer. He claimed to have no memory of documents that he had signed. He actively misled the Law Society in its investigation leading up to the Citation.

[31] The Respondent did not take any remedial action until he was forced to as follows:

(a) AH pursued the missing $100,000 investment contribution by MT. Eventually, more than 13 months after the Respondent deceived MT into giving him $100,000, a bank draft for $100,000 was placed under AH's doormat.

(b) The Respondent's conflict of interest and facilitation of a breach of the Trust agreement led to AH and MQ not receiving their share of the sale proceeds of Sproat Lake #2 until nearly three years later, after they sued the Respondent's wife on a promissory note and instituted garnishment proceedings. The Respondent and his wife used AH and MQ's share of the sale proceeds for renovations and other projects of their own.

[32] The Respondent is entitled to defend himself in this proceeding and that is not an aggravating factor. The Respondent has not acknowledged his misconduct or taken any remedial steps, which might have been mitigating factors. Since the facts and determination hearing, the Respondent has not responded to the Law Society or the Tribunal and he did not attend the DA Hearing. There is no evidence before the Panel to suggest that the Respondent could be rehabilitated.

[33] This is neither an aggravating nor a mitigating factor.

Public confidence in the legal profession including public confidence in the disciplinary process.

[34] This factor considers both specific and general deterrence. Specific deterrence is what is required to protect the public from the Respondent. General deterrence protects the public from lawyers who might engage in the same misconduct.

[35] The disciplinary action of disbarment addresses both specific and general deterrence. The Respondent should not be allowed to practise law. No other sanction – a fine, suspension, supervision, education etc. – would protect the public from a lawyer who has shown himself to be dishonest and untrustworthy. All other lawyers will see that the disciplinary action for this type of conduct will be severe and will result in the loss of the privilege of practising law in British Columbia.

COSTS

[36] Costs are awarded to address the costs of the hearing. They are not intended to address the misconduct itself. The Law Society has succeeded in proving the allegations in the Citation and is entitled to seek costs for the facts and determination hearing and the DA Hearing. The Respondent did not provide submissions on the costs sought.

[37] The Law Society seeks an order for costs in the amount of $49,075 which has been calculated in accordance with Schedule 4 – Tariff for Discipline Hearing and Review Costs of the Rules.

[38] This Panel has reviewed the Bill of Costs presented by the Law Society. Costs are claimed at the tariff rates for an ordinary case and this Panel finds the costs sought to be fair and reasonable in all of the circumstances.

CONCLUSION

[39] This Panel makes the following orders that the Respondent:

(a) is disbarred immediately, pursuant to section 38(5)(e) of the *Act*; and

(b) must pay costs of $49,075, within 30 days of the date this decision is issued, pursuant to Rule 5-11 of the Rules.