

2023 LSBC 35
Hearing File No.: HE20220031
Decision Issued: August 31, 2023
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THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

BRETT ROBERT VINING

RESPONDENT

DECISION OF THE HEARING PANEL

Hearing date: July 17, 2023

Panel: Bruce LeRose, KC, Chair
Michael Dungey, Public representative
Timothy J. Delaney, Lawyer

Discipline Counsel: Gagan K. Mann

Counsel for the Respondent: G.E. (Ted) Beaubier

Written reasons of the Panel by: Timothy J. Delaney

INTRODUCTION

- [1] The Respondent, Brett Robert Vining, was cited for making statements regarding a member of the judiciary, which were discourteous, uncivil, offensive or otherwise inconsistent with a lawyer's obligation to maintain a courteous and respectful attitude towards the court, contrary to rules 2.1-2 and 7.2-4 of the *Code of Professional Conduct for British Columbia* (the "BC Code").
- [2] The parties agreed to a statement of facts. The Respondent admitted to the discipline violation and the parties agreed to a specified disciplinary action. The disciplinary action agreed to, is a fine of \$7,500, plus the Respondent must pay costs of \$1,000.
- [3] Pursuant to Rule 5-6.5 of the Law Society Rules, if the Panel accepts the agreed statement of facts and the Respondent's admission of a discipline violation, then the Panel must find the Respondent has committed the discipline violation and impose disciplinary action. In addition, the Panel must not impose disciplinary action that is different from the specified disciplinary action consented to by the Respondent, unless: (a) each party has been given the opportunity to make submissions respecting the disciplinary action to be substituted, and (b) imposing the specified disciplinary action consented to by the Respondent would be contrary to the public interest in the administration of justice.
- [4] At the conclusion of the Hearing, the Panel advised the parties that the Panel accepted the agreed statement of facts and the specified disciplinary action. The Panel found the specified disciplinary action was not contrary to the public interest in the administration of justice. These are the Panel's reasons.

THE FACTS

- [5] The Respondent was called to the Bar of British Columbia in 1976. The Respondent practices exclusively in the area of family law.
- [6] In March 2021 the Respondent was retained by a client, TK, to represent him in a family law matter.
- [7] At a meeting with his client sometime in the summer of 2021, the Respondent told TK of an alleged rumour he had heard concerning the sexual activity of a member of the judiciary, which took place when that member of the judiciary was in university.

- [8] TK advised the Law Society that the Respondent used inappropriate and disrespectful language during this conversation and TK was uncomfortable with the conversation. TK advised the Law Society the Respondent seemed full of delight when he relayed the story and it carried on for some length of time. The Respondent said the conversation lasted a few minutes and the comment that he was “full of delight” was an exaggeration.
- [9] The Respondent admitted to the following:
- (a) the Respondent made the statements recounted by TK;
 - (b) the conversation with TK was akin to “locker room talk”;
 - (c) the Respondent’s comments were offensive and ill-advised; and
 - (d) the Respondent takes full responsibility for his comments.

ANALYSIS

Does the Respondent’s conduct constitute professional misconduct?

- [10] Professional misconduct has often been described as conduct that is a “marked departure from the conduct the Law Society expects of its members”: *Law Society of BC v. Martin*, 2005 LSBC 16, at para. 171.

- [11] Rule 7.2-4 of the *BC Code* states:

Communications

7.2-4 A lawyer must not, in the course of a professional practice, send correspondence or otherwise communicate to a client, another lawyer or any other person in a manner that is abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from a lawyer.

- [12] Rule 2.1-2 of the *BC Code* states:

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.

- [13] The hearing panel's comments in *Law Society of BC v. Israels*, [1994] L.S.D.D. No. 194, are pertinent. There the panel noted:

Many of our rules of conduct are concerned with different aspects of professionalism. It is clear that we as a profession place a high value on honesty and integrity. It is perhaps less clear, but no less important, that we must also esteem restraint and judicious commentary in the course of our daily conversations. This is not to say that lawyers may not comment to each other about judges and the justice system. We know, particularly as lawyers, that speech may take many forms and be for many purposes. But public utterances which have the effect of denigrating judges, jurors, police officers, lawyers or other members of the justice system denigrates the justice system as a whole. Where that speech is simply for the purpose of self-aggrandizement, it is particularly inappropriate.

- [14] The Respondent has admitted his conduct was inappropriate and amounted to professional misconduct. It clearly was. The comments were gratuitous and uncalled for. There was no purpose to the comments. They were nothing more than salacious gossip about a member of the judiciary.
- [15] The Respondent's conduct is contrary to rule 2.1-2 of the *BC Code* because it demonstrates a discourteous and disrespectful attitude towards a member of the judiciary. Lawyers should foster respect for the courts and the administration of justice by maintaining the authority and dignity of the courts.
- [16] The Respondent's conduct is also contrary to rule 7.2-4 of the *BC Code*, as it is inconsistent with the proper tone of a communication between a client and their lawyer. A client should expect to receive a level of service from their lawyer that is civil and professional. Instead, the client in this case was subjected to crude, undignified gossip which distracted from the client's legal case, and made the client feel uncomfortable.
- [17] The Respondent's conduct in making the discourteous, uncivil, offensive and disrespectful statements to TK falls markedly below the standard the Law Society expects of lawyers, and meets the test for professional misconduct.

Whether the proposed disciplinary action is appropriate

- [18] In *Law Society of BC v. Dent*, 2016 LSBC 5, the hearing panel listed four critical factors to consider when assessing a disciplinary action. They are:
- (a) nature, gravity and consequences of conduct;
 - (b) character and professional conduct record of the respondent;
 - (c) acknowledgement of the misconduct and remedial action; and
 - (d) public confidence in the legal profession including public confidence in the disciplinary process.
- [19] The Panel has taken these considerations into account.
- [20] The Respondent's misconduct was serious. He displayed a flagrant disrespect for the judiciary and brought the legal profession into disrepute.
- [21] The Respondent's professional conduct record consists of two conduct reviews. In 1991 he was reviewed for rudeness and lack of professional courtesy. In 2021 he was reviewed for his handling of cash receipts in relation to his Annual Report.
- [22] The Respondent acknowledged his misconduct and accepted the disciplinary action.
- [23] Regarding public confidence in the disciplinary action, incivility cases are usually (in the absence of a lengthy professional conduct record) placed at the lower end of the disciplinary action spectrum and normally warrant a fine.
- [24] It is our view the specified disciplinary action will ensure the Respondent is held accountable for his statements and will deter others from engaging in similar misconduct. The disciplinary action will maintain public confidence in the Law Society's regulation of lawyers.

CONCLUSION

- [25] Therefore, the Panel makes the following orders:
- (a) the Respondent shall pay a fine of \$7,500, payable within 90 days of the date the Panel's reasons are issued in this matter or by a date agreed to in writing by the parties; and

- (b) the Respondent shall pay costs set at \$1,000, inclusive of disbursements, payable within 90 days of the date the Panel's reasons are issued in this matter or by a date agreed to in writing by the parties.