2023 LSBC 42
Hearing File No.: HE20210004
Decision Issued: October 16, 2023
Citation Issued: April 28, 2021
Amended Citation Issued: November 5, 2021

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL

HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

DOUGLAS BERNARD CHIASSON

RESPONDENT

DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION

Hearing date:	July 28, 2023
Panel:	Eric V. Gottardi, KC, Chair Karen Kesteloo, Public representative Georges Rivard, Bencher
Discipline Counsel:	Gagan K. Mann
Counsel for the Respondent:	Joven Narwal
Written reasons of the Panel by:	Eric V. Gottardi, KC

BACKGROUND

[1] The facts and determination decision (the "F&D Decision") in this matter was issued on June 6, 2022 (*Law Society of BC v. Chiasson*, 2022 LSBC 16). The Respondent was found to have committed professional misconduct with respect to all five allegations contained in the amended citation, dated November 5, 2021, (the "Citation"), pursuant to s. 38(4) of the *Legal Profession Act* (the "*Act*").

[2] The proven misconduct is as follows:

1. Between approximately January 1, 2018 and September 30, 2020, the Respondent collected Goods and Services Tax ("GST") from his clients but failed to promptly remit some or all of $27,515.46 in GST, interest, and penalties to the Canada Revenue Agency, contrary to rule 7.1-2 of the *Code of Professional Conduct for British Columbia* (the *"Code"*).

2. Between approximately July 1, 2019 and November 30, 2020, the Respondent collected British Columbia Provincial Sales Tax ("PST") from his clients but failed to promptly remit some or all of $22,574.38 in PST, interest, and penalties to the provincial government, contrary to rule 7.1-2 of the *Code*.

3. Between approximately January 1, 2017 and January 31, 2019, the Respondent made employee payroll source deductions but failed to promptly remit some or all of $8,496.08 in employee payroll source deductions to the Canada Revenue Agency, contrary to rule 7.1-2 of the *Code*.

4. The Respondent failed to notify the Executive Director of the Law Society of British Columbia (the "Law Society") in writing of the circumstances of one or more of the following unsatisfied monetary judgments against Douglas B. Chiasson Law Corporation and his proposal for satisfying such judgments, contrary to Rule 3-50 of the Law Society Rules (the "Rules"):

    (a) Certificate filed in the Federal Court of Canada on October 31, 2019, under File No. ETA-7788-19, for $14,911.85, plus penalty and interest;

    (b) Certificate filed in the Federal Court of Canada on October 31, 2019, under File No. ITA-13582-19, for $12,041.22 plus interest; and

    (c) Certificate filed in the Supreme Court of British Columbia on November 15, 2019, under File No. 19-5117 (Victoria Registry) for $6,505.27.

5. The Respondent failed to immediately eliminate or make a written report to the Executive Director of the Law Society of trust shortages greater than $2,500, or

both, contrary to Rule 3-74 of the Rules, in one or more of the following instances:

(a) shortage in the amount of $3,020.15 as of March 18, 2019;

(b) shortage in the amount of $4,000 as of April 5, 2019, in connection with client file #2515;

(c) shortage in the amount of $19,782.89 as of May 31, 2019;

(d) shortage in the amount of $4,294.84 as of June 25, 2019; and

(e) shortage in the amount of $19,333.54 as of July 12, 2019.

[3] The Law Society seeks a suspension of three months, with an order of costs of $11,158.92. The Respondent argues that a fine of $8,500 plus the costs would be a sufficient disciplinary action. In the alternative, should the Panel decide that a suspension is appropriate, the Respondent submits that the suspension should commence on January 1, 2024, so to allow time for the Respondent to wind down his law practice.

[4] For the reasons that follow, the Panel rejects the Respondent's argument on the form of disciplinary action and accepts the position of the Law Society, although not in its entirety.

POSITIONS OF THE PARTIES

Position of the Law Society

[5] The Law Society submits that the appropriate disciplinary action in respect of the misconduct is a three-month suspension, commencing on the first day of the month following the issuance of the Hearing Panel's decision, or on a date mutually agreed to in writing by the parties.

[6] While the Law Society did not seek a determination that the Respondent was ungovernable, they did describe his professional conduct record ("PCR") and the current findings of misconduct as demonstrating "a wanton disregard and disrespect for the regulatory processes that govern a lawyer's conduct in British Columbia." The Law Society argued that the only reason proffered by the Respondent for the underlying misconduct was a penchant for procrastination.

[7] The Law Society also seeks costs of $11,158.92, payable within 45 days of the issuance of the disciplinary action decision or by a date mutually agreed to in writing by the parties.

Position of the Respondent

[8] The Respondent represented himself at the facts and determination hearing (the "F&D Hearing"). At this Hearing, the Respondent was represented by counsel. The Respondent filed written submissions and made oral submissions.

[9] The Respondent took the position that he had accepted full responsibility for his conduct at the facts and determination stage of the proceedings. Counsel for the Respondent also outlined his client's intention, supported by his wife, to wind down his law practice and retire from the practice of law by the end of 2023.

[10] The Respondent filed a letter from a lawyer, Marvin Stern, who had been advising the Respondent as a practice coach since February 2022. The Respondent clarified that the letter was being tendered as evidence of his efforts to rehabilitate himself rather than as a form of good character evidence. Aside from this, the Respondent did not provide any supporting materials during the disciplinary action phase of the Hearing. In particular, no evidence was presented from the Respondent in relation to his plans to retire by the end of 2023 or of his current financial circumstances.

[11] The Respondent submitted that a suspension of any length was unnecessary given his intention to retire from the practice of law by the end of 2023. The Respondent submitted that a fine of $8,500, payable within one year, was appropriate in the circumstances, taking into account the fact that the order of costs sought by the Law Society was $11,158.92. It was suggested in oral submissions that the combined amount of the proposed fine and the order of costs would be a significant specific and general deterrent. In the alternative, if the Panel deemed a suspension necessary, then the Respondent should be permitted to "provide an undertaking to wind down his practice by December 31, 2023 and that the suspension take place after this date."

[12] No submissions were made regarding time to pay in relation to costs.

ANALYSIS

General principles with respect to disciplinary action

[13] Section 38 of the *Act* provides this Panel with a broad range of sanctions it may impose when instances of professional misconduct are made out against a Respondent.

Disciplinary proceedings address the Law Society's mandate, set out in section 3 of the *Act,* 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.

[14] The non-exhaustive factors to be considered when imposing a sanction, set out in *Law Society of BC v. Ogilvie*, [1999] LSBC 17 and noted by the review panel in *Law Society of BC v. Lessing*, 2013 LSBC 29, reflect the objects and duties of the Law Society's mandate. In *Law Society of BC v. Dent,* 2016 LSBC 05, the panel consolidated these factors into four broad categories, which provide a framework to assess and determine the appropriate disciplinary action:

> (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.

[15] In *Law Society of BC v. Gellert*, 2014 LSBC 05, the panel held that a result that furthers the objective of protecting the public is best achieved by considering the "entire scope of the misconduct in issue and not to each particular wrongdoing viewed piecemeal" (at para. 37). This Panel will be guided by this global approach when determining the appropriate disciplinary action.

The *Ogilvie* Factors

Nature, gravity and consequences of the misconduct

[16] In *Gellert*, at para. 39, the panel held 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.

[17] The F&D Decision sets out the facts and circumstances that led to the Panel finding that the Respondent committed professional misconduct. Three of the proven allegations of misconduct involve a failure to remit significant required payments to government agencies for GST, PST, and payroll source deductions over a protracted period of time. Additionally, the Respondent failed to report three unsatisfied judgments to the Law Society, and failed to both eliminate and report to the Law Society five trust shortages greater than $2,500. The nature and gravity of the Respondent's misconduct is serious, both in terms of the number of findings of professional misconduct, as well as the nature of the misconduct.

[18] When considered on a spectrum of seriousness, and in the context of similar types of misconduct, each of the allegations contained in the Citation provides a representative example. In other words, the facts of this case are fairly typical of the fact scenarios that are found in the decisions relied upon by the Law Society. The Panel does not agree with the Law Society's position that the Respondent's misconduct, viewed individually or globally, falls on the high end of the spectrum compared to other cases of a similar nature. Nor is it properly characterized as "egregious". However, each instance of misconduct is serious in its own right. Viewed collectively, the misconduct calls out for a significant disciplinary action.

Character and professional conduct record of the respondent

Background and seniority

[19] The Respondent was born and raised in a small town in Nova Scotia. His mother raised him and his five siblings. His father passed away when he was seven years of age. He finished high school and went on to complete a degree in commerce and a subsequent degree in business administration. He graduated from law school in Fredericton in 1984, and began practising law in St. Johns, Newfoundland in 1985. After short stints in St. Johns and Fredericton, the Respondent moved to British Columbia with his wife in 1990 and was called to the bar that same year.

[20] At the time of the proven misconduct, the Respondent was a senior practitioner. After being called in BC, he worked as an associate and later a partner at a firm in Squamish, BC. In 1999, the Respondent left that firm to open up his own law practice. Counsel for the Respondent submitted that he "could never really find his stride" as a sole practitioner. For example, the Respondent struggled to find and maintain strong administrative support staff due to high turnover. The Panel was told that these challenges persisted to varying degrees throughout the lifetime of the Respondent's sole practice. With the onset of the pandemic, things "quickly spiralled out of control."

[21] The conduct which underpins the findings of professional misconduct occurred during a time period in which the Respondent was a 29 to 32-year call. Relying on *Law Society of BC v. Newcombe*, 2022 LSBC 14, counsel for the Law Society argues that the Respondent's experience and seniority in the legal profession is an aggravating factor that weighs in favour of a more significant disciplinary action. Counsel submits that an experienced lawyer should be fully aware of the importance of complying with the Law Society's regulatory requirements. On that point, the Panel agrees. The Respondent himself accepted that he was aware of his obligations to remit the appropriate taxes, notify the Law Society of any unsatisfied judgments and to report any trust shortages over $2,500 to the Law Society.

Professional Conduct Record

[22] The Respondent has a significant and repetitive PCR that consists of one conduct review, two prior citations, two sets of recommendations made by the Practice Standards Committee, and one set of undertakings provided to the Practice Standards Committee. As of March 2022, those undertakings restricted his practice to the duties of a solicitor, specifically in the area of: real estate, wills and estates, and corporate law.

[23] Two of the Respondent's prior citations involved elements of procrastination and neglect in relation to important client matters, including a family law brief and a civil sexual assault claim: see Law *Society of BC v. Chiasson*, 2020 LSBC 32. As noted by counsel for the Law Society, this is the Respondent's third citation. He has had three prior findings of professional misconduct for which he has paid fines. The last fine that was ordered was in the amount of $10,000. This is a significant aggravating factor. It demonstrates that the previous disciplinary action did not adequately protect the public nor deter the Respondent from continuing to commit further misconduct over a lengthy period of time. As such, the Law Society argues that, based on the concept of progressive discipline, the time has come for the Respondent to be suspended. The Panel agrees.

Acknowledgment of the misconduct and remedial action

[24] The Respondent's oral submissions before the Panel in this Hearing included: (1) that he had taken full responsibility for his conduct; (2) that he was taking steps to rehabilitate himself by speaking to the Executive Director at Lawyer Assistance Program of BC (LAPBC) and by attending counselling sessions with a psychologist; and (3) that he was working through LAPBC with Mr. Stern, a "certified Professional Co-Active Coach", to help manage and wind down his law practice.

[25] While the Respondent may have acknowledged the facts underlying his misconduct as set out in the Notice to Admit ("NTA"), the Law Society's case was proven by way of deemed admissions due to the Respondent's failure to respond to the Law Society's NTA. As such, the Respondent cannot be characterized as acknowledging the misconduct or taking responsibility for his conduct.

[26] While there is some evidence that the Respondent has taken some steps to seek support and guidance from the LAPBC, there remain aspects of his conduct that are of concern. The Respondent only paid his outstanding debts shortly before this Hearing. And, as mentioned above, he did not admit misconduct at the F&D Hearing but rather simply neglected to respond to the Law Society's NTA. The Panel finds this *Ogilvie* factor gives rise to no mitigation. It instead tracks as a neutral factor in the analysis.

Public confidence in the legal profession and its regulatory process

[27] The Law Society is mandated to uphold and protect the public interest in the administration of justice by, among other things: ensuring the independence, integrity, honour and competence of lawyers; by regulating the practice of law; and by supporting lawyers in fulfilling their duties in the practice of law.

[28] Central to that mandate is maintaining public confidence. Public confidence in the profession's self-regulation must be jealously guarded. At para. 19 in *Ogilvie*, the hearing panel stated:

> 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.

[29] When considering public confidence in the legal profession, including confidence in our disciplinary process, the Panel must consider both specific deterrence to the Respondent and general deterrence within the profession, where issues of regulatory

compliance are of constant concern. The Panel must also consider similar cases and how our decision maintains the public integrity of the legal profession.

[30] While the Panel does not view the Respondent as an ungovernable member of the profession, he is a senior member of the bar, who was aware of his obligations and his shortcomings, yet repeatedly prioritized the continued survival of his law practice over the interests of certain clients, creditors and the Law Society itself. The Panel finds this *Ogilvie* factor to be aggravating.

THE APPROPRIATE DISCIPLINARY ACTION

[31] The first question that this Panel must answer, in considering a global sanction, is what type of disciplinary action is appropriate in the particular circumstances of this case: a fine or a suspension. According to *Law Society of BC v. Lessing*, 2013 LSBC 29, the question of whether a suspension or fine should be imposed involves a global consideration of all proven allegations.

[32] The concept of progressive discipline means that a lawyer who has had prior discipline, whether for the same or different conduct, may be subject to a more significant disciplinary action than someone who has had no prior discipline. This principle accords with the Law Society's obligation to protect the public and the reputation of the legal profession, as it sends a clear message that the Law Society will not tolerate lawyers who repeatedly ignore their professional duties.

[33] Counsel for the Law Society relied upon the decision in *Law Society of BC v. Siebenga,* 2015 LSBC 44, to support the proposition that the Respondent, given his PCR, was now eligible for a suspension, citing para. 47:

> [47] Lawyers who have been found to have committed professional misconduct on two occasions and fined on both occasions, are candidates for suspension on a third citation. This does not mean "three strikes and you're out." Rather, it means three strikes and you may be out depending on the circumstances. To put it another way, lawyers who have been found to have committed professional misconduct on two occasions are put in a state of "heightened possibility" of being suspended. A hearing panel should seriously consider issuing a suspension, instead of a fine.

[34] The Law Society here asks this Panel to issue a suspension. They contend that the Respondent has demonstrated a "pattern of disregard for the Law Society's rules, and nothing less than a significant suspension will adequately address the Respondent's misconduct …" The Respondent sought instead a minimal fine.

[35] The Panel agrees that the time has unfortunately arrived when fines are insufficient and a suspension from practice is the only option. After a review of previous hearing panel decisions, the Respondent's PCR and the consolidated *Ogilvie* factors, the Panel finds that the three-month suspension proposed by the Law Society is on the high side of the appropriate range for a disciplinary action here. The small fine proposed by the Respondent, which is indeed lower than the amount of his most recent disciplinary action, is clearly insufficient to provide the necessary message to the Respondent, the profession and the public. Similarly, the Panel did not find it appropriate to accede to the Respondent's suggestion that a small fine ($8,500), when combined with the amount of costs sought by the Law Society ($11,158.92) could be viewed collectively as a *de facto* fine amount. Overall, the Panel has determined that a two-month suspension is warranted and the Panel anticipates that the suspension will give the Respondent time to continue the process of winding down his law practice and selling his law office.

[36] While the normal practice is for a suspension to take effect on the first day of the month following the issuance of a panel's decision, the Panel is persuaded, on the particular facts of this case, to accept the Respondent's submission to set the effective start date of the suspension to January 1, 2024. The Panel finds that a slightly longer period of time in which the Respondent can arrange the orderly transfer of his client files, and perhaps attend to the winding down of his law practice as was suggested by counsel, was warranted on the facts of this case.

COSTS

[37] The Law Society, pursuant to s.46 of the *Act*, and Rule 5-11 of the Rules, seeks costs and disbursements in this matter in the amount of $11,158.92. These costs were calculated based on the tariff, located at Schedule 4 of the Rules.

[38] A panel may choose not to award costs or to award costs in an amount other than that stipulated in the tariff, if it is "reasonable and appropriate", as set out in Rule 5-11(4). The Law Society suggests that there is no reason to deviate from the tariff and further that there is no evidence to suggest that the order sought would have an inordinate impact on the Respondent.

[39] The Panel disagrees for two reasons. First, while the Panel did not receive *viva voce* evidence from the Respondent, there was evidence in the record, including in the deemed facts, that the Respondent's problems all appeared to stem from an inability to appropriately manage cash flow through his law firm. Given that access to cash has been an issue over the years, the Panel finds that a large costs order is not appropriate in the circumstances. Second, in looking at the draft bill of costs, it is clear that the proposed tariff incorporated additional costs to account for several adjournments of this Hearing.

Those adjournments, however, occurred for reasons external to the Respondent and beyond his control. Specifically, the expert he hired to provide a psychological report had ongoing medical issues.

[40] In light of all of these issues, as well as the parties' submissions and the decisions relied upon, the Panel is of the view that a departure from the tariff is reasonable and appropriate in the circumstances of this case. The Panel orders that the total amount of the costs payable by the Respondent be adjusted downward to $9,000. The first $2,500 is to be paid by December 29, 2023. The remaining $6,500 is to be paid by February 28, 2024.

CONCLUSION

[41] In summary, the Panel makes the following findings and determinations:

(a) The Respondent misconduct is not egregious or at the highest end of the spectrum of seriousness.

(b) While a significant fine might be an appropriate disciplinary action for a different individual in similar circumstances, a short suspension is the most appropriate disciplinary action on the facts here.

(c) The Respondent is to be suspended for two months. The suspension is to commence on January 1, 2024.

(d) The Respondent is ordered to pay the Law Society costs and disbursements in the amount of $9,000. The first $2,500 is to be paid by December 29, 2023. The remaining $6,500 is to be paid by February 28, 2024.