

Credentials hearing

Law Society Rule 2-69.1 provides for the publication of summaries of credentials hearing panel decisions on applications for enrolment in articles, call and admission and reinstatement.

For the full text of hearing panel decisions, visit the [Hearing decisions](#) section of the Law Society website.

DONALD DUKE MAINLAND

Vancouver, BC

Called to the bar: September 10, 1980

Ceased membership: June 18, 1986

Hearing (application for reinstatement): June 11, 2014

Panel: Maria Morellato, QC, Chair, Carol Gibson and Richard Lindsay, QC

Decision issued: November 18, 2014 ([2014 LSBC 56](#))

Counsel: Gerald Cuttler for the Law Society; Henry Wood, QC for Donald Duke Mainland

BACKGROUND

This application is Donald Duke Mainland's third attempt to be reinstated as a lawyer in BC in the past 24 years. His first application for reinstatement was filed with the Law Society in 1990 and his second in 1994.

On June 18, 1986, after misappropriating legal fees and disbursements, Mainland relinquished his membership in the Law Society and undertook not to practise law again unless authorized to do so.

The circumstances leading up to Mainland's resignation from membership involved 14 occasions between October 1985 and May 1986 in which Mainland took a total of \$8,950 in payments that had been made by clients of his law firm for fees and disbursements; he wrongfully retained these monies for his own use. Mainland's law firm discovered his theft, reported the matter to the Law Society, and sued Mainland. Mainland made full restitution for the money he took and the lawsuit was settled.

During the period leading up to and surrounding the thefts, Mainland was under considerable stress in his personal life and had assumed financial obligations in excess of his means.

Since 1989, Mainland has been employed as a paralegal with the same law firm.

On July 24, 1990, Mainland applied for reinstatement and disclosed that, due to financial difficulties, he had failed to obey a court order regarding maintenance payments that were due to his ex-wife and daughter. He had subsequently paid the money owed and was in

compliance with the court order. His application for reinstatement was unsuccessful.

On February 3, 1994, Mainland made a second application for reinstatement and this application was also rejected.

On April 22, 1999, Mainland made a Consumer Proposal under the *Bankruptcy and Insolvency Act*. He fully satisfied the provisions of his Consumer Proposal in September 2002.

On August 15, 2013, Mainland made a third application to the Law Society for reinstatement. That application was the subject of this hearing.

DECISION

Clearly, Mainland did not have the prerequisite character in 1985 and 1986 – by his own admission – nor during his attempts at reinstatement in 1990 and 1994, as determined by the previous panels that dismissed his applications.

Mainland made extremely serious mistakes in stealing funds almost 30 years ago. However, it was obvious to the panel that he had accepted full responsibility for those mistakes, made full restitution, and worked extremely hard to rehabilitate and redeem himself. He has been a responsible husband, father, employee and professional for well over two decades.

Mainland has been financially sound and responsible for over a decade, and the panel was satisfied that he had fulfilled his legal obligations to pay his debts.

Mainland's application was strongly supported by three lawyers in the law firm where he has been employed for 25 years. They were unequivocally supportive of his reinstatement, and each was also aware of his prior wrongdoings that led to his departure from the profession.

Based upon the evidence, the panel was of the view that Mainland is extremely unlikely to misconduct himself in the future. His employer is, in large measure, responsible for his rehabilitation, and it appears certain that the employment relationship will continue.

The panel determined that Mainland met the evidentiary burden of proving, on a balance of probabilities, that he is a person of good character. The panel decided that Mainland should be reinstated and permitted to practise law when he meets all conditions imposed by the Credentials Committee.

The panel ordered that Mainland pay \$2,500 in costs. ❖

Discipline digest

BELOW ARE SUMMARIES with respect to:

- Sebastian Nejat
- Bradley Darryl Tak
- Georgialee Alida Lang
- Donald Roy McLeod
- Andrew Christopher Lee
- Douglas Edward Dent

For the full text of discipline decisions, visit the [Hearings reports](#) section of the Law Society website.

SEBASTIAN NEJAT

Vancouver, BC

Called to the bar: June 1, 2010

Discipline hearing: August 26, 2014

Panel: A. Cameron Ward, Chair, Patrick Kelly and David Layton

Decision issued: November 3, 2014 ([2014 LSBC 51](#))

Counsel: Carolyn Gulabsingh for the Law Society; Sebastian Nejat on his own behalf

FACTS

On March 16, 2011, Sebastian Nejat was retained by a client to act for him in a matrimonial matter. Another lawyer acted for him and his wife on the sale of their home, and \$175,000 of the sale proceeds had already been paid out to the spouse by court order dated March 4, 2011. The balance of proceeds of sale were being held in trust by the other lawyer.

On March 17, Nejat brought an application without notice seeking an order restraining the spouse from disposing of the funds that were paid out to her pursuant to the March 4 order.

On March 23, Nejat received a cheque from the other lawyer in the amount of \$80,952.70, being the balance of the net sale proceeds, and deposited it into his trust account.

On March 29, Nejat brought an application without notice before the court seeking an order compelling the spouse to pay \$175,000 into court. Nejat advised the court that he had not been able to serve the spouse with the March 17 order and had been unable to contact her. The court granted the requested order.

On May 5, at the request of his client, Nejat provided him with a trust cheque for \$78,952.70, which was the balance of the net sale proceeds he held in trust, less legal fees. He also included a cover letter advising his client of the potential ramifications of requesting this sum and disposing of it.

On June 28, the spouse's lawyer appeared in court to set aside the orders made on March 17 and 29. The court attempted to clarify the status of the net sale proceeds from the family residence. An order was made that the funds held in Nejat's trust account be frozen pending final determination of the issues between the parties. Nejat did not disclose that he no longer held any funds in trust on behalf of his client.

Subsequently, Nejat failed to correct the record and continued to leave the impression that he held the funds in trust when he wrote opposing counsel and the spouse on three occasions.

At a trial management conference on April 12, 2012, the court ordered Nejat to advise the spouse's lawyer of the amount he held in trust on behalf of the parties. Nejat wrote to the spouse's lawyer and advised that he no longer held any funds in trust on behalf of the parties, as \$78,952.70 had been released to his client on May 5, 2011. Nejat also stated in this letter that he was going to withdraw as his client's lawyer.

On August 24, Nejat obtained a court order removing him from the record as his client's lawyer. The spouse's lawyer did not appear on the application.

On September 28, Nejat appeared in court and was questioned about the trust funds and how he had obtained an order removing himself from the record without proper notice to the spouse's lawyer. The judge was highly critical of Nejat's lack of candour in his earlier dealings with the court, opposing counsel and his client's spouse, and directed that his reasons for judgment be transcribed and forwarded to the Law Society.

ADMISSION AND DISCIPLINARY ACTION

Nejat's uncertainty regarding the status of the trust monies at certain points was partly the result of his inexperience, combined with the fact that he had no control over his law firm's trust account. While he did not intend to mislead the court or opposing counsel, the panel found that his failure to disclose constituted gross culpable neglect.

There were five occasions, over a span of ten months, on which Nejat failed to disclose material information or failed to correct the record. The benefit accruing to Nejat was not significant, but he was able to pay his modest account sooner than if he had kept the funds in his trust account as required. These were aggravating factors.

The panel also considered a number of mitigating factors. Nejat had no relevant professional conduct record, he did not intend to mislead the court or opposing counsel, and he was a fairly new call to the bar at that time. He admitted his misconduct to the Law Society from the outset of disciplinary proceedings. He has deep contrition

and indicated that he had taken steps to ensure that he would never commit such errors again.

The panel accepted Nejat's admission of professional misconduct and ordered that he pay:

1. a \$5,000 fine; and
2. \$1,000.00 in costs.

BRADLEY DARRYL TAK

Port Moody, BC

Called to the bar: February 15, 1991

Ceased membership: January 1, 2011

Discipline hearing: March 12 and September 11, 2014

Panel: Lee Ongman, Chair, Anna Fung, QC and John Lane

Decisions issued: June 16 ([2014 LSBC 27](#)) and November 27, 2014 ([2014 LSBC 57](#))

Counsel: Carolyn Gulabsingh for the Law Society; no one on behalf of Bradley Darryl Tak

FACTS

Bradley Darryl Tak was suspended from practice from July 16 to August 30, 2010 as ordered by a discipline hearing panel. He was suspended from December 7, 2010 to January 1, 2011 for failing to file a trust report. His membership ceased from January 1 to February 17, 2011 for non-payment of fees, and he was suspended from February 17 to June 16, 2011. Tak's membership was not reinstated after January 1, 2011 and he became a former member.

Misappropriation of client funds

Tak received retainer funds from nine clients and did not deposit the funds in his firm's trust account, as required. He misappropriated these funds by making personal use of them when he was not entitled to do so.

Misleading and/or attempting to mislead the Law Society

In a Law Society investigation of a complaint, Tak represented that he deposited the retainer funds to his general account when he knew, or ought to have known, that he did not deposit the funds to his general account.

Tak made a statement to the Law Society that his practice had paid all GST remittances to the government when this was not true.

Failure to respond to the Law Society

Tak did not provide a substantive response to the Law Society's inquiries on eight different issues, including his obligations to file GST returns, the handling of retainer funds provided to him by clients, and the investigation of a complaint from the Ministry of the Attorney General that he was practising law while suspended.

Failure to respond to another lawyer

Tak failed to respond to letters and telephone messages from two other lawyers.

Failure to report charges under a federal statute to the Law Society

Tak was charged under the *Income Tax Act* and the *Excise Tax Act* with failing to file income tax returns for three years and for failing to file a completed GST return for certain quarterly periods. He did not report these charges to the Law Society.

Failure to report a certificate of judgment to the Law Society

The Canada Revenue Agency filed a certificate against Tak for unpaid GST in the amount of \$49,181.97. Tak did not notify the Law Society of the certificate or of its filing in the Land Title Office.

Failure to remit GST collected

Auditors found that the GST collected was not maintained as a form of trust, but was used by Tak for drawings and to pay expenses.

Failure to follow trust accounting rules

Tak failed to keep accounting records in compliance with the rules between September 2008 and March 2010.

DETERMINATION

Tak did not appear at the hearings or send anyone on his behalf. The panel exercised its discretion to proceed in his absence.

The panel found that Tak had committed professional misconduct in respect of 26 allegations.

Tak's misappropriation had an obvious impact on his client victims, who were facing criminal court proceedings. He took retainers from clients and their families and then misappropriated the funds for his own personal use. He failed to communicate with clients on many occasions and did not attend fixed court dates that he contracted to attend, leaving his clients to suffer the consequences.

Tak made little effort to compensate his clients for his misconduct. His failure to provide any assistance when transferring client files to other counsel made the transition more difficult.

In addition to misappropriating client funds, Tak was found to have committed multiple other types of professional misconduct, including misleading the Law Society. The panel's finding that his misrepresentations were intentional elevated the seriousness of this element of his misconduct.

The Law Society's ability to carry out its regulatory responsibilities is significantly compromised if lawyers are permitted to ignore accounting rules and requirements of communicating with clients, colleagues and the Law Society, and the requirement to report judgments and charges to the Law Society. The Law Society would have been in a better position to seek immediate measures to protect the

public and may have been able to detect and prevent some of the misappropriation if Tak had been forthright with the Law Society.

DISCIPLINARY ACTION

The panel ordered that Tak:

1. be disbarred; and
2. pay \$10,350 in costs.

At the conclusion of the hearing, counsel for the Law Society made an oral application for a non-disclosure and sealing order for the purpose of preventing third-party access to solicitor-client confidential information. Certain exhibits must be redacted or anonymized prior to disclosure to the public.

TRUST PROTECTION COVERAGE

In every profession, there are occasionally members who are dishonest. Although not all professions or industries protect victims of their dishonest members, the legal profession in BC has, since 1949, provided financial protection to members of the public whose money has been stolen by their lawyer. If a claim is made against a lawyer relating to the theft of money or other property, Trust Protection Coverage (TPC) is available under Part B of the lawyer's insurance policy to reimburse the claimant, on the lawyer's behalf, for the amount of the loss. Based on the circumstances described in paragraphs [47], [77], [90] and [109] of *Law Society of BC v. Tak*, 2014 LSBC 27, four TPC claims were made against Bradley Darryl Tak and the amounts of \$2,700, \$3,500, \$7,200 and \$1,750 paid respectively. Tak is obliged to reimburse the Law Society in full for the amounts paid under TPC. For more information on TPC, including what losses are eligible for payment, see [Trust Protection Coverage on the Law Society's website](#).

GEORGIALEE ALIDA LANG

Vancouver, BC

Called to the bar: November 17, 1989

Discipline hearing: June 25 and November 20, 2014

Panel: Ken Walker, QC, Chair, Dr. Gail Bellward and Peter Warner, QC

Oral reasons: November 20, 2014

Decisions issued: August 25 (2014 LSBC 35) and December 10, 2014 (2014 LSBC 60)

Counsel: Carolyn Gulabsingh for the Law Society; Geoffrey Cowper, QC for Georgiale Alida Lang

FACTS

Georgiale Alida Lang acted for her client, who was a long-time friend, in an estate litigation matter. Lang had no retainer agreement with the client, but during the solicitor-client relationship, two sizeable accounts were sent to her client. The first account was paid; the second was disputed.

The dispute resulted in a review of the accounts before a deputy registrar of the Supreme Court. Lang represented herself at this proceeding, and her client was represented by another lawyer. Lang spent two days on the witness stand in her capacity as a "party" to give evidence and be cross-examined.

On her way to court on the third day of the hearing, Lang commented to her assistant that she intended to discuss settlement with her former client and his lawyer when they arrived at the courthouse.

Lang saw the opposing lawyer in the courtroom and noted to him that his client had not yet arrived. Lang and her assistant left the courtroom and waited out in the hall, without speaking to the lawyer about a settlement.

When her former client arrived, Lang asked if she could speak to him. He agreed and they went into a private interview room. The opposing lawyer was not present and was unaware of this meeting.

Lang had a very brief conversation, including an exchange of comments on the relative merits of each side's case, and she offered to settle the accounts at a discount. Her former client said he needed to speak to his lawyer concerning the offer before he would agree to settle.

Lang responded that she believed the lawyer would not agree to the proposed settlement. Her former client repeated his desire to speak to his lawyer and, at this point, the conversation ended.

The former client and his lawyer spoke privately and then Lang met them both. The settlement offer was rejected.

Lang apologized for speaking to her former client about the settlement without his lawyer being present. She told them she would self-report her conduct to the Law Society. She wrote a letter that day to disclose and apologize for her error. Lang also disclosed and apologized to the Deputy Registrar who conducted the hearing. The matter was settled later that day.

DETERMINATION

The panel determined that Lang had committed professional misconduct when, in the course of representing herself in a review of her bill before a deputy registrar, she had settlement discussions with the opposing party in the absence of his nearby lawyer and without that lawyer's consent.

Lang's conduct was serious but did not arise from any overt intention to breach the rules. There was no adverse impact upon the other party and Lang gained nothing from the conduct.

The conduct happened only once during three to ten minutes of contact between Lang and her former client. Lang immediately apologized for her conduct and self-reported to the presiding registrar and to the Law Society.