

The panel took into consideration that Lang has 25 years of experience as a lawyer and her professional conduct record is nearly without blemish.

## DISCIPLINARY ACTION

The panel issued a reprimand and ordered that Lang pay \$5,820 in costs.

## DONALD ROY MCLEOD

Victoria, BC

Called to the bar: July 10, 1981

Discipline hearings: February 18, 19 and December 15, 2014

Panel: Jan Lindsay, QC, Chair, Satwinder Bains and Peter Warner, QC

Decision issued: April 19, 2014 ([2014 LSBC 16](#)) and January 27, 2015 ([2015 LSBC 03](#))

Counsel: Susan Coristine for the Law Society; William G. MacLeod for Donald Roy McLeod

## FACTS

Donald Roy McLeod was retained to act for the same two clients in two Supreme Court actions, one for personal injuries arising from a motor vehicle accident and the second for damages arising from an alleged misrepresentation concerning their purchase of a house. He had also acted for these clients in two earlier motor vehicle accident claims.

McLeod entered into written retainer agreements with the clients in the personal injury action but did not have a written retainer agreement with them in the misrepresentation action.

The clients ultimately retained new counsel on the personal injury action. McLeod concluded that the clients did not intend to compensate him in accordance with the retainer agreements in the personal injury action and that there would be a dispute over his fees. In addition, they had not paid two accounts that he had issued in the misrepresentation action.

McLeod determined that he could not continue to represent his clients in the misrepresentation action while involved in a dispute with them over compensation in another matter, as it would place him in a conflict of interest. When McLeod informed his clients that he wished to withdraw as counsel in the misrepresentation action, they indicated that they wished him to continue to represent them. He then brought an application to be removed from the record, which disclosed confidential information.

The clients filed a complaint with the Law Society alleging that McLeod had filed an affidavit that they claimed contained confidential and privileged material regarding the personal injury action.

At the hearing of McLeod's application to be removed as solicitor,

the clients consented to the relief sought, but complained about the alleged breach of confidentiality and opposed the claim for costs. McLeod told the judge that he had a "written consent to release any information that in my view is necessary for purposes such as this," and both parties submitted that further proceedings arising out of the complaint to the Law Society would take place. The judge granted McLeod his orders plus costs and said nothing about the alleged breach of confidentiality.

## DETERMINATION

The panel found that McLeod was not legally entitled to disclose the confidential client information, and that this breach of the rules constituted professional misconduct.

McLeod submitted that he was authorized to disclose confidential information by way of a retainer agreement, although he did not actually have a retainer agreement on the misrepresentation action. He was relying on the retainer agreement executed by the clients in two earlier motor vehicle accident claims. He submitted that he was entitled to disclose the confidential information in support of his application to be removed from the record.

Although McLeod was awarded costs on the application to remove himself from the record, the panel did not agree that the hearing judge was specifically ruling on the propriety of McLeod's affidavit. It was more likely that the hearing judge knew that the Law Society was investigating the disclosures made by McLeod in the affidavit and on the application.

As a practising lawyer since 1981, McLeod should have known about, and used, well-established procedures for bringing applications to get off the record, and for serving applications on parties who are not entitled to disclosure of confidential client information. A lawyer's obligation to preserve client confidentiality is an integral and vital part of our justice system.

McLeod's prior disciplinary record was an aggravating factor. He was the subject of prior conduct reviews on issues including client confidentiality and, more specifically, inappropriately disclosing client information in pursuit of his own fees. He had been directed to take counselling and remedial courses, which should have clarified the importance of client confidentiality for him.

McLeod's clients were affected by his disclosure and they complained of it to the court. At the hearing to determine disciplinary action, McLeod finally apologized to his clients and the profession.

## DISCIPLINARY ACTION

The panel ordered that McLeod:

1. be suspended for one week;
2. pay a \$2,500 fine; and
3. pay \$5,000 in costs.

## ANDREW CHRISTOPHER LEE

Vancouver, BC

Called to the bar: January 14, 2011

Ceased membership: November 25, 2013

Counsel: Carolyn Gulabsingh for the Law Society and Ravi Hira, QC for the Respondent

### FACTS

In 2011, after Andrew Christopher Lee started working for a law firm, he began submitting claims to the firm for reimbursement for out of pocket expenses that were fraudulent. Between November 2011 and September 2013, he was reimbursed by the firm for the fraudulent expenses totalling about \$15,000, including claims submitted for:

- expenses that were never incurred;
- taxi and meal expenses that were never incurred or that Lee was not entitled to claim reimbursement for because the expenses were personal in nature;
- expenses that he was also later reimbursed in whole or in part directly by the service provider;
- reimbursement for refreshments for the office, where he used duplicate receipts to be reimbursed twice for the same expense; and
- client disbursements, where the amount he was reimbursed exceeded the amount of the expense actually incurred.

### ADMISSION

Lee admitted that his conduct constituted professional misconduct and gave an undertaking. His admission was made to the Discipline Committee under Law Society Rule 4-21. This rule provides for a process whereby a respondent can admit misconduct and the citation is resolved without a hearing.

The Discipline Committee accepted Lee's admission and his undertaking for a period of seven years, commencing on January 29, 2015, to:

1. not apply for reinstatement to the Law Society;
2. not apply for membership in any other law society (or like governing body regulating the practice of law) without first advising the Law Society; and
3. not permit his name to appear on the letterhead of, or otherwise work in any capacity whatsoever for, any lawyer or law firm in BC, without obtaining the prior written consent of the Law Society.

Lee was a former member and had no professional conduct record.

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## DOUGLAS EDWARD DENT

100 Mile House, BC

Called to the bar: September 14, 1976

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Review: October 16, 2014

Review board: Jan Lindsay, QC, Chair, Don Amos, Dennis Day, Dean Lawton, Elizabeth Rowbotham, Donald Silversides, QC and Sandra Weafer  
Decision issued: February 5, 2015 ([2015 LSBC 04](#))

Counsel: Carolyn Gulabsingh for the Law Society; Ravi Hira, QC and Peter Waldkirch for Douglas Edward Dent

### BACKGROUND

In 2011, Douglas Edward Dent was retained to act for the husband in a matrimonial dispute. He was given funds to be held in trust and to be released to the wife on certain conditions and at certain times. He was also given some funds to pay his accounts. Dent applied \$2,000 of the funds held for the wife, and not yet released to her, to pay outstanding accounts for his fees and disbursements. Dent said he did so acting on the mistaken but honest belief that he had obtained the express consent of the client.

Dent admitted that he improperly withdrew funds from trust to pay fees and disbursements, contrary to the rules, and that his conduct constituted professional misconduct.

The hearing panel suspended Dent from the practice of law for 45 days and ordered him to pay costs of \$4,720 ([2014 LSBC 04](#); [discipline digest: 2014 No. 1 Spring](#)).

Dent sought a review of the decision and obtained a stay of the suspension ([2015 LSBC 12](#)).

### DECISION

There was no dispute that Dent's improper taking of monies from trust was professional misconduct. Professional misconduct can encompass a wide range of circumstances and penalties. The most egregious professional misconduct will attract the most significant disciplinary action.

The proper handling of trust funds is at the heart of the fiduciary duties that lawyers owe to their clients, but it does not follow that every case of improper handling of trust funds should result in a suspension.

The review board concluded that Dent's conduct in improperly taking funds from trust to pay fees and disbursements while acting on an honestly held but mistaken belief that he had secured his client's consent did not warrant a 45-day suspension.

Dent admitted that he did not have his client's clear consent to take the funds from trust. He should have recorded what he believed to be his client's consent and, if he had, the outcome may have been different. He should have been more careful in how he handled the funds held in trust. His conduct was a marked departure from the conduct the Law Society and the public expects of lawyers.

Dent said that he believed he was entitled to transfer funds from trust to pay his fees. There was no suggestion that he did not hold that belief. He was wrong, but he was not dishonest.

The hearing panel had expressed some concern about Dent's "honest belief." If the panel did not accept the fact of his honest belief, then they should have said so in clear terms, and should have given reasons. The only conclusion to be drawn is that the fact was accepted.

The panel made reference to Dent's professional conduct record and specifically to a citation resulting in an adverse finding and a one-month suspension in 2001. The panel discussed that earlier misconduct, but decided not to apply the concept of progressive discipline, determining a suspension to be the appropriate penalty in this case. There were many distinguishing circumstances between the earlier misconduct and the current matter. The review board agreed with the panel that the concept of progressive discipline should not be applied

in this case.

The review board found that the panel's decision was not correct, because the 45-day suspension was significantly outside the appropriate range of disciplinary action for conduct that, although wrong, was made based on a mistaken belief honestly held by the lawyer. His actions constituted professional misconduct but did not warrant a suspension.

The review board ordered that the suspension ordered by the panel be set aside and that Dent pay:

1. a \$5,000 fine; and
2. \$4,720 in costs. ❖

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## *Conduct reviews ... from page 20*

payout to the credit union. It was clear to a conduct review subcommittee that the lawyer had improperly delegated to his legal assistant the task of dealing with his failure to comply with his undertakings. The lawyer recognized his mistakes, and the subcommittee was satisfied that he appreciated the gravity of his transgressions, not only to his reputation and to the credit union's counsel, but to the profession as a whole. The subcommittee was satisfied that the lawyer has taken steps to ensure that he will not repeat the same error and that he is aware of his responsibilities when giving a solicitor's undertaking. The lawyer has developed a network of solicitors locally that discuss such issues on a monthly basis and share their experiences. (CR 2015-02)

In another matter, a Law Society compliance audit revealed that a lawyer breached his undertakings on two personal injury files. He paid his fees out of settlement proceeds prior to returning executed releases to the insurer and, when the breaches were brought to his attention, he failed to act in a timely manner to remedy one of the breaches. The lawyer acknowledged that the firm's system for dealing with settlement funds and releases was not adequate, and he and his firm have changed their procedures. A conduct review subcommittee accepted that the breaches occurred as a result of a systemic problem and steps had been taken to minimize breaches in the future. The lawyer readily admitted his misconduct, accepted responsibility, and expressed remorse and an appreciation of the importance of undertakings. (CR 2015-03)

## QUALITY OF SERVICE

A lawyer failed to provide the quality of service at least equal to

that expected of a competent lawyer in a similar situation, contrary to Chapter 3, Rule 3 of the *Professional Conduct Handbook*, then in force. His failure included an unreasonable amount of time from the date he was first retained to sending out an initial demand letter and then filing the lawsuit. He was also unprepared for two court applications, failed to respond to emails from his client, was often late and did not attend scheduled appointments. The lawyer agreed that he was dilatory in providing services to the client, there were frequent delays in pursuing the litigation, and his conduct resulted in the award by two separate judges of costs against his client. A conduct review subcommittee explained to the lawyer that his conduct in handling this file was unacceptable. The lawyer readily admitted and took responsibility for his conduct and has taken numerous steps to improve his practice, including limiting his areas of practice, consulting with senior practitioners and entering into a mentorship agreement. (CR 2015-04)

## FAILURE TO MEET FINANCIAL OBLIGATIONS RELATED TO THE PRACTICE

A lawyer failed to meet two financial obligations in a timely manner, contrary to Rule 7.1-2 of the *Code of Professional Conduct for British Columbia*. For eight months, he failed to pay two invoices from a company for services related to title searches, despite the company's frequent requests for payment. A conduct review subcommittee advised the lawyer that his handling of this matter was unacceptable. The lawyer recognized that the systems he had in place did not identify smaller accounts payable and the accounts should have been paid in a timely manner. He has taken steps to correct the inadequacies in his practice. (CR 2015-05) ❖

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