

with his former firm, Mussio agreed to return the \$22,000 overpayment he had received.

In April 2013 the managing partner of the former law firm made a complaint to the Law Society regarding Mussio's conduct in this matter.

## ADMISSIONS AND DISCIPLINARY ACTION

Mussio admitted that he committed professional misconduct involving a number of discrete and serious improprieties: breach of an implied undertaking, failure to comply with the Law Society Rules, and misappropriation of funds belonging to the law firm. On the other hand, it arose out of a single matter and does not involve intentional dishonesty. While Mussio has a disciplinary record, the most pertinent entries predate the events at issue here, and the record includes no findings of professional misconduct.

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

1. a \$14,000 fine; and
2. \$2,000 in costs.

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## JOHN ROBERT SANDRELLI

Vancouver, BC

Called to the bar: September 4, 1997

Discipline hearings: July 21 to 23 and December 15, 2014

Panel: Lee Ongman, Chair, Lance Ollenberger, Brian J. Wallace, QC

Decision issued: September 17, 2014 ([2014 LSBC 44](#)) and April 10, 2015 ([2015 LSBC 17](#))

Counsel: Kieron Grady for the Law Society; William Smart, QC and Rebecca Robb (disciplinary action only) for John Robert Sandrelli

### FACTS

In October 2012, in the course of representing a corporate client, John Robert Sandrelli instructed his firm's bank to stop payment on a trust cheque payable to a third party.

According to the *Professional Conduct Handbook*, which was in effect at the time, by authorizing the withdrawal of funds from a trust account by cheque, a lawyer undertakes that the cheque will be paid. When Sandrelli stopped payment on the trust cheque without sufficient reason, he committed professional misconduct. Furthermore, in spite of subsequent correspondence from counsel representing the intended recipient requesting a replacement cheque, no cheque was issued until a month later.

### DETERMINATION

The panel determined that Sandrelli knew that stopping payment on the cheque was unprofessional, but wrongly allowed himself to be persuaded that there may be an argument that it was not, noting that he had considered and refused to stop payment on this cheque for his client on

three previous occasions.

By ordering the stop payment, Sandrelli's client gained an advantage, which was exploited by Sandrelli to try to negotiate better terms for his client before providing a replacement cheque. This conduct violates the promise that a trust cheque will be honoured.

The panel found this to be a serious incident of professional misconduct.

## DISCIPLINARY ACTION

Sandrelli had no prior discipline record and had provided exemplary service to the community. The panel felt these were important mitigating factors to be considered in arriving at sanctions that would best protect the public and ensure confidence in the profession.

The panel ordered that Sandrelli:

1. be reprimanded;
2. pay a \$10,000 fine; and
3. pay \$15,210 in costs.

## DISSENTING DECISION

Panel chair Lee Ongman, however, had a dissenting opinion. Ongman felt that the seriousness of Sandrelli's misconduct merited a heavier sanction. To date, there had never been an incident reported to the Law Society in which a lawyer unilaterally stopped payment of a trust cheque. Ongman felt that a more substantial penalty, including a one-month suspension, would make it clear that this kind of misconduct would not be tolerated.

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## WILLIAM TERRANCE FAMINOFF

Vancouver, BC

Called to the bar: August 1, 1985

Discipline hearing: March 12, 2014 and March 26, 2015

Panel: Nancy Merrill, Chair, William Everett, QC and Graeme Roberts

Decision issued: May 9, 2014 ([2014 LSBC 22](#)) and April 28, 2015 ([2015 LSBC 20](#))

Counsel: Susan Coristine for the Law Society; Henry Wood, QC (facts and determination) and Geoffrey Gomery, QC (disciplinary action) for William Terrance Faminoff

### FACTS

Between January 2007 and June 2010, eight allegations of professional misconduct were directed against William Terrance Faminoff, primarily focused on accounting and administrative matters. The allegations included backdating clients' statements of account with the intention of misleading the Law Society, improper handling of trust funds, withdrawing funds from trust when there were insufficient funds in the client's account at the time, failure to maintain accounting records, and breaches of undertakings he made to the Insurance Corporation of British Columbia.

## Backdating statements of account

In January 2009, Faminoff backdated 44 statements of account and, in doing so, misrepresented to the Law Society that those statements had been issued and delivered to clients on the date set out on the statement.

## Improper handling of trust funds

On numerous occasions in 2007 and 2008, Faminoff improperly handled client funds held in trust. These included:

- 10 occasions where he received funds from clients in trust and deposited them directly into his general account, purportedly in payment of fees for services that had not been completed. He also failed to deliver a bill or issue a receipt containing details;
- withdrawing client funds from a trust account and depositing them into his general account, without completion of services or delivering a bill;
- 33 occasions of receiving funds from clients and depositing them into his general account, purportedly in payment of fees for services without a bill or a receipt for the particulars;
- withdrawing client funds from a trust account and depositing them into his general account on 10 occasions without delivering a bill;
- withdrawing funds from a trust account for payment of fees on behalf of a client, when there were not sufficient funds held to the credit of that client.

## Failure to maintain accounting records

Between January 2007 and June 2010, Faminoff failed to maintain accounting records in accordance with the Law Society Rules. This included failure to record in his general account the name of each recipient for each disbursement, not recording in accounts receivable ledgers the balance owed by each client, not completing trust reconciliations for several months in 2007, not reconciling monthly trust reconciliations in 2007 and 2008, and not maintaining a cash receipt book of duplicate receipts in 2008.

## Breaches of undertakings

Between January 2007 and April 2010, Faminoff breached 11 undertakings given to ICBC not to disburse settlement funds before obtaining signed releases and returning them to ICBC. On three occasions he paid fees and disbursements to himself before obtaining a signed release; on eight other occasions he paid his fees and disbursements and/or disbursed funds to clients before returning the signed release to ICBC.

## DETERMINATION

Faminoff admitted to preparing and backdating the accounts in the Agreed Statement of Facts filed at the hearing. While he denied doing so with any intention to mislead the Law Society, the panel saw it otherwise. He also admitted to the allegations of improper handling of client trust funds, failing to maintain accounting records and breaches of undertakings.

The panel found that Faminoff's conduct constituted professional misconduct.

## DISCIPLINARY ACTION

The panel expressed concern about the seriousness of his global misconduct, in particular, his intentional misleading of the Law Society. Yet none of Faminoff's misconduct, including his failure to comply with trust and accounting rules and his breaches of undertakings, involve any misappropriation of funds. The panel found that there was no loss or harm to the public and no advantage gained by Faminoff from his conduct.

The panel was satisfied by Faminoff's efforts to address the administrative and accounting issues in his practice and his cooperation throughout the process.

The panel ordered that Faminoff:

1. be suspended for two months; and
2. pay \$8,430 in costs. ❖

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## *Credentials hearings ... from page 17*

practice of law. It was also the dissent view that Perry did not fully comply with the terms of the undertaking, and that, despite this experience, he failed to learn or evolve his character.

Panel: Craig Ferris, QC, Ralston Alexander, QC and Linda Michaluk

Decision issued: April 13, 2015 ([2015 LSBC 18](#))

Counsel: Henry Wood, QC for the Law Society; Michael Shirreff and Jessie Meikle-Kahas for Applicant 7

## BACKGROUND

In January 2013, Applicant 7 commenced articles with a law firm. In April 2013, members of the firm were searching for a missing trial record needed by a lawyer the next day. When the search turned up nothing, they began to reproduce the documents. Applicant 7 noticed the commotion

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## APPLICANT 7

Hearing (application for enrolment): November 27, 2014, January 19 and 20 and February 6, 2015

and commented to the employee responsible for reproducing the documents that the missing binder was in his office.

Later, Applicant 7 asked the employee what he should do with the binders who in turn told him he should inform the lawyer. His response was that he "would take care of it" and later participated in a discussion concerning shredding the documents. However, in a performance review held later, it was apparent that Applicant 7 did not inform the lawyer and, following an internal investigation, his employment was terminated.

Applicant 7 failed to find a replacement articling position within the 30-day time limit, but in October he secured a paralegal position with another firm. That firm would later offer Applicant 7 an articling position, but he misrepresented the facts of his termination in his application form, triggering this hearing.

## DECISION

The panel heard testimony from members of Applicant 7's first firm regarding his behaviour and actions concerning the missing file. His

performance as an articled student prior to that incident was already fraught with problems. The panel determined that, in an effort to deflect further problems and protect his employment at the firm, the applicant attempted to cover up the fact that the files were in his possession.

Applicant 7's responses and actions during his second application for enrolment were also worrisome to the panel. Without question, his responses were misleading. The applicant had even contacted the Law Society to seek advice on how to proceed and had been informed that he needed to disclose the facts around his termination. Yet, he did not do so.

In the panel's view, his actions prior to the hearing and during the hearing itself do not speak of good character and repute. Applicant 7 attempted to cover up his actions, mislead others and even failed to tell the truth in sworn testimony. These are not acceptable qualities for a practising lawyer.

On that basis, the panel rejected his application for enrolment in the Law Society Admission Program. ❖

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### *Conduct reviews ... from page 15*

A conduct review subcommittee emphasized that a lawyer must never mislead the court, either directly or indirectly, and that lawyers must be especially careful in *ex parte* applications to disclose all the material facts, including those that are not supportive of their case. The lawyer expressed genuine remorse over her behaviour, particularly regarding her lack of candour to the court. The subcommittee noted that she demonstrated insight into the importance of speaking up when under pressure and that she has clearly learned from her mistakes, which she is not likely to repeat. The lawyer has taken steps to ensure she is working in a law firm that provides excellent training, support and guidance. (CR 2015-09)

## ACTING WITHOUT INSTRUCTIONS / BREACH OF CLIENT CONFIDENTIALITY

A lawyer failed to obtain his client's instructions for an application to adjourn her personal injury trial, contrary to Chapter 3, Rule 3(a) and (k) of the *Professional Conduct Handbook* then in force, and he disclosed confidential client communications in the application and affidavit filed in support, contrary to Chapter 5, Rule 1. The lawyer took responsibility for his misconduct and was fully responsive to all questions of a conduct review subcommittee about how the incident occurred, what steps he

took to avoid such conduct in the future, and what steps he took to protect the interests of his client after the trial was adjourned.

The subcommittee told the lawyer it is imperative that he maintain a high level of oversight of any work delegated to paralegals. He was receptive to the remarks of the subcommittee about risk management, lawyer/client confidentiality, and obtaining clear and unequivocal instructions from clients. The lawyer acknowledged the errors and inappropriate conduct and has taken steps to avoid such circumstances occurring in the future. (CR 2015-10)

## COUNSELLING / ENGAGING IN UNLAWFUL CONDUCT

A lawyer acted as a director and officer for two corporate clients that had been implicated in criminal and fraudulent activities. A conduct review subcommittee advised the lawyer that his conduct was inappropriate because it was apparent that his clients were using him as a front for their illegal activities. The subcommittee stated that this conduct would cast doubt on the lawyer's professional integrity and reflected adversely on the integrity of the legal profession, contrary to Chapter 2, Rule 1 of the *Professional Conduct Handbook* then in force. The lawyer ought also to have taken positive steps to remove himself from the companies as soon as he became aware of the illegal activities. The lawyer agreed to be on the alert and, more importantly, agreed to consult with other lawyers if such concerns arise in the future. (CR 2015-11) ❖

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