2019 LSBC 27
Decision issued: July 22, 2019
Citation issued: August 29, 2018

THE LAW SOCIETY OF BRITISH COLUMBIA

In the matter of the *Legal Profession Act*, SBC 1998, c. 9

a hearing concerning

STEVEN NEIL MANSFIELD

RESPONDENT

DECISION OF THE HEARING PANEL

Written materials:	May 9, 2019
Panel:	Jeff Campbell, QC, Chair Carol Gibson, Public Representative Sandra Weafer, Lawyer
Discipline Counsel:	Kathleen Bradley
Appearing on his own behalf:	Steven Mansfield

BACKGROUND

[1] Steven Mansfield (the "Respondent") practised law in the Lower Mainland for 24 years. In the final years of his practice, he misappropriated large sums of trust funds from several clients in order to settle gambling debts. He was disbarred in 2018 for similar misconduct: *Law Society of BC v. Mansfield*, 2018 LSBC 30. The citation before this Hearing Panel involves allegations that were not addressed in the prior proceedings that resulted in his disbarment.

[2] The Respondent has made a conditional admission of the discipline violation and consents to an order of disbarment pursuant to Rule 4-30(1) of the Law Society Rules. Rule 4-30 allows for a respondent to admit the misconduct and consent to a specified penalty, conditional upon approval by the Discipline Committee and a hearing panel. The Respondent's admission has been accepted by the Discipline Committee and has been referred to this Hearing Panel.

[3] The parties have provided an Agreed Statement of Facts. Both the Respondent and counsel for the Law Society agree that the appropriate penalty is disbarment.

[4] The Law Society has applied to conduct the hearing on written record rather than an oral hearing, pursuant to a Law Society Practice Direction issued April 6, 2018. The Respondent consents to proceed on written record without the need for an oral hearing.

AGREED STATEMENT OF FACTS

[5] The Respondent was called to the bar in 1993. Between 1993 and 2013, he practised as a family law lawyer with various small law firms in the Lower Mainland. After 2013 he was a sole practitioner. The Respondent's membership with the Law Society ended on January 1, 2017 when he became a former member due to non-payment of fees.

[6] The Respondent admits that he misappropriated trust funds belonging to several clients between 2013 and 2017. During that time, the Respondent had a gambling problem, which involved betting on sporting events. He had struggled with a gambling problem throughout his career. His behaviour escalated in the later years of his practice. He accumulated gambling debts that he could not pay from his personal resources. He began withdrawing money from his trust accounts in order to meet the debts arising from his gambling losses.

[7] The Respondent admits this conduct in a detailed statement of facts that has been filed in these proceedings. He also admits that this conduct constitutes professional misconduct pursuant to s. 38(4)(b)(i) of the *Legal Profession Act*.

Allegation 1: GS

[8] The Respondent represented GS in a family law matter. The proceedings involved the sale of real property in June 2014. Pursuant to a court order dated June 25, 2014, $95,000 from the proceeds of the property sale was to be held in trust by the Respondent pending further agreement of the parties or court order. The Respondent subsequently received a cheque in that amount on behalf of his client. The funds were deposited to his trust account at Bank 1 on July 3, 2014.

[9] Shortly after the cheque was deposited, GS terminated the solicitor-client relationship with the Respondent and retained different counsel. The trust funds, however, remained in the Respondent's trust account as GS did not immediately instruct the Respondent to transfer them to his new counsel.

[10] GS's legal matter was resolved by a consent order in March 2017. The order provided that the $95,000 held in trust by counsel would be divided between GS and his former spouse.

[11] At the time of the consent order, the Respondent was no longer a practising lawyer. As of December 21, 2015, the balance in the Respondent's trust account was $244.79. The Respondent admits that, at some point between July 2014 and December 2015, he misappropriated the $95,000 held in trust on behalf of GS.

Allegation 2: DH

[12] The Respondent represented DH in a family law matter, which included the sale of real property in June 2013. The Respondent's firm was to receive the net proceeds from the sale and hold the funds in trust pending resolution of the family law matter.

[13] The Respondent's firm received the proceeds from the sale of the property in July 2013. Following payment of taxes, fees and a mortgage, $82,274.91 remained in the trust account.

[14] On December 18, 2014, the Respondent arranged to transfer DH's trust funds to a new trust account with Bank 1. The transfer of DH's trust funds to the new trust account occurred on January 13, 2015.

[15] As noted above, only $244.79 remained in the Respondent's Bank 1 trust account as of December 21, 2015. The Respondent admits that at some time between January and December 2015, he misappropriated DH's trust funds in the amount of $82,274.91.

Allegation 3: RK

[16] The Respondent represented RK in a family law matter and in a fee dispute with RK's former lawyer. The fee dispute was resolved in September 2016 by an agreement with the former lawyer that she would provide $10,000 as full settlement of RK's claim against her. In September 2016, the former lawyer provided a cheque for $10,000 to the Respondent, which was deposited to the Respondent's Bank 2 trust account on October 6, 2016.

[17] By November 14, 2016, only $247.15 remained in the Respondent's trust account. The Respondent admits that between, October 6, 2016 and November 14, 2016, he misappropriated the $10,000 held in trust for RK.

Allegations 4, 5 and 6: CB

[18] The Respondent represented CB in a family law matter from 2013 to 2016. During the proceedings, the Respondent received payments in trust on behalf of his client. In July 2014 the Respondent received $98,750 on behalf of CB related to the sale of the matrimonial home. The Respondent later received other funds on behalf of CB pursuant to the final order in the family law matter. These payments were deposited to the Respondent's trust accounts. Some of these funds were withdrawn for the Respondent's legal bill, but a significant amount of CB's funds remained in the trust accounts. The final amount that the Respondent received on behalf of CB was in August 2016 when he received $44,314.58 on behalf of CB pursuant to the final order between the parties. This was deposited to the Bank 2 trust account.

[19] As of August 15, 2016, there should have been $106,065.53 to CB's credit in the Respondent's Bank 2 account and $17,632.53 in the Respondent's Bank 1 trust account. Collectively, the Respondent's trust accounts should have held $123,698.06 on behalf of CB. However, as noted above, the Respondent's Bank 1 trust account held $244.79 as of December 21, 2015 and the Respondent's Bank 2 trust account held $247.15 as of November 14, 2016.

[20] The Respondent admits that he misappropriated $123,698.06 of CB's trust funds between July 2014 and August 2016.

Allegation 7: MW

[21] The Respondent acted for MW in a family law matter in 2016. MW sold his interest in a Whistler property to his former spouse. The Respondent received $648,104 on MW's behalf. This was deposited to the Respondent's Bank 2 trust account. The Respondent then disbursed funds from Bank 2 trust account, including paying out mortgages to two lenders in the amounts of $97,602.21 and $288,424.82.

[22] The Respondent's client file with respect to MW did not include any client invoices, accounts receivable ledger or client trust ledger. The Respondent admits that he withdrew funds from trust when the trust accounting records were not current. This was contrary to Rule 3-64(3)(a) of the Law Society Rules, which states that no payment from trust funds may be made unless trust accounting records are current.

Allegation 8: BP

[23] The Respondent represented BP in a family law matter from March 2014 to December 2016. In December 2016, the family law matter was resolved through mediation. The final order agreed to by the parties provided that BP's former spouse pay $50,000 to BP by December 23, 2016. BP's former spouse delivered a cheque for $50,000 to the Respondent's office on approximately December 20, 2016. The Respondent deposited the cheque into his Bank 2 trust account on December 21, 2016. On the same date, the Respondent transferred $48,000 from his Bank 2 trust account to his general account.

[24] The transfer of $48,000 was intended for legal fees. At the time of depositing the cheque on December 21, 2016, BP had an outstanding account with the Respondent in the amount of $8,270.90, and the remainder of the transfer was for legal work that the Respondent had done on behalf of BP. However, the Respondent did not render a proper legal account at that time. A short time later, the Respondent became a former member of the Law Society and was no longer practising.

[25] The Respondent admits that he withdrew funds that he received in trust for BP on December 21, 2016, without first preparing and delivering a bill to the client, contrary to Rule 3-65(2) of the Law Society Rules.

[26] The Respondent entered into a locum agreement with another lawyer in the spring of 2017. At that time, a legal account was produced for BP's matter to reflect the trust funds that were taken as legal fees on December 21, 2016.

APPLICATION FOR HEARING IN WRITING

[27] As noted above, the Law Society applies pursuant to the Practice Direction of April 6, 2018 for the hearing to be conducted by written record rather than by oral hearing. The Respondent consents to this application.

[28] As noted in *Law Society of BC v. Johnson*, 2019 LSBC 04 at para. 24, in determining whether a hearing panel should exercise its discretion to proceed with a hearing in writing rather than by oral hearing, the following factors may be relevant:

a. The evidentiary record: A hearing based on written materials will generally require substantial agreement on the facts underlying the citation. If there is a conflict in the evidence or if the parties do not agree on the key facts, then an oral hearing may be required to hear viva voce testimony, weigh the competing evidence and make findings of fact.

There may be some cases where it is possible to conduct a hearing in writing notwithstanding that there is conflicting evidence, but in practice we consider that such cases will usually require an oral hearing.

b. Whether the parties have provided comprehensive submissions and a complete evidentiary record: If the hearing is to be conducted on written record, it is important that the hearing panel be provided with comprehensive materials with respect to all the relevant issues in the proceedings. If the hearing panel has questions that cannot be resolved on the basis of the written materials, it may be necessary to proceed with an oral hearing.

c. Whether the public interest requires an oral hearing: Some cases may raise public interest concerns that weigh in favour of holding an oral hearing. For example, some cases may involve significant media interest. In some cases there may be complainants or other parties who wish to attend a public hearing. Third party interests are not determinative, but they may be considered by the hearing panel when deciding whether an oral hearing is required. It is not necessary to exhaustively define the circumstances in which the public interest requires a public hearing, but there are some cases where an oral hearing open to the public is necessary.

[29] In this case, the parties have provided an Agreed Statement of Facts with supporting documentation. Both counsel for the Law Society and the Respondent agree on the proposed penalty.

[30] The material that has been filed is sufficient to permit this Hearing Panel to properly consider the factual background and the proposed resolution. We exercise our discretion to conduct the hearing in writing.

[31] The parties have provided a Joint Book of Exhibits, which consists of the citation, the Respondent's admissions and the Agreed Statement of Facts marked as exhibits 1, 2 and 3, respectively.

ANALYSIS

[32] Pursuant to Rule 4-30(3), this Hearing Panel must either accept or reject the conditional admission of a disciplinary violation and the proposed penalty. The Respondent admits that his conduct constitutes professional misconduct as set out in s. 38(4)(b)(i) of the *Legal Profession Act* and consents to an order of disbarment.

[33] Professional misconduct requires a fundamental degree of fault amounting to a "marked departure" from the conduct that is expected of a lawyer: see *Law Society of BC v. Martin*, 2005 LSBC 16 at para. 171. In this case, the Respondent misappropriated significant sums of money from several clients over a three-year period. There is no doubt that the Respondent's conduct is grave professional misconduct. Wrongfully taking clients' funds is a fundamental betrayal of the solicitor-client relationship. A number of Law Society decisions have emphasized the severity of this conduct and the harm that it causes to public confidence in the profession: see for example *Law Society of BC v. Gellert*, 2014 LSBC 05; *Law Society of BC v. Tak*, 2014 LSBC 57; *Law Society of BC v. Harder*, 2005 LSBC 48; and *Law Society of BC v. Lebedovich*, 2018 LSBC 17.

Professional conduct record

[34] The Respondent's professional conduct record consists of a previous order of disbarment in 2018 for similar conduct (*Mansfield*), four conduct reviews between 1998 and 2010 and one Practice Standards matter from 2001 to 2003.

[35] It is an accepted principle of disciplinary action that a prior professional conduct record is relevant to determining the appropriate penalty. In this case, there is a record involving similar acts of misappropriation of trust funds. The incidents encompassed in the prior disbarment, however, post-date the conduct encompassed in the citation before this Hearing Panel. This raises the question of whether it should be treated as an aggravating factor, given that it had not yet occurred at the time the Respondent committed the acts that are encompassed in the citation before us.

[36] In the criminal law context, a person in these circumstances would be treated as a first-time offender. A person with a prior record for an offence committed after the offence for which they are being sentenced is treated as a first offender, as they had not yet committed the subsequent offence at the time of the conduct for which they are being sentenced. In other words, a sentencing judge should not treat post-offence convictions as prior convictions or an aggravating factor requiring a harsher sentence. However, the fact that a person has committed subsequent offences may be relevant to their character, the prospects for rehabilitation and the person's risk of reoffending: see *R. v. Khosravi*, 2019 BCSC 509; and *R. v. Pete*, 2019 BCCA 244.

[37] In the context of professional discipline, it has been held that the timing of previous acts of misconduct or findings of professional misconduct does not strictly constrain the determination of penalty in Law Society decisions: see for example

Law Society of BC v. Dent, 2016 LSBC 05 at para. 36; and *Peet v. Law Society of Saskatchewan*, 2019 SKCA 49 at paras. 31 to 54.

[38] It is our view, however, that the timing of these incidents is not a significant factor in this case. Regardless of whether the Respondent is a first or repeat offender, the gravity of the conduct in the case before us requires the severe sanction of disbarment. Even if the Respondent did not have a conduct record for similar misconduct, the circumstances of this case clearly require an order of disbarment.

The penalty

[39] The primary purpose of disciplinary proceedings is to protect the public and to maintain public confidence in the legal profession: see *Gellert* at para. 36; *Law Society of BC v. Hordal*, 2004 LSBC 36 at para. 51; and *Law Society of BC v. Batchelor*, 2013 LSBC 09 at para. 40. This derives from s. 3 of the *Legal Profession Act*, which provides that the Law Society's mandate is to uphold and protect the public interest in the administration of justice.

[40] There is a strong public interest in ensuring that lawyers handle trust funds in compliance with the Law Society Rules. The reputation of the legal profession relies on public confidence that lawyers can be trusted to properly deal with clients' funds.

[41] In determining the appropriate penalty in disciplinary proceedings, the nature and gravity of the conduct are primary considerations. Given the severity of the misconduct in this case, the disbarment of the Respondent is necessary. The Respondent has demonstrated an egregious failure to respect his duties and obligations to his clients.

[42] The Respondent has already been ordered disbarred. It could be said that a further order of disbarment is not necessary in order to protect the public as the Respondent is already prohibited from practising law. However, it is necessary that the penalty reflect the gravity of the misconduct. This case involves multiple incidents of misappropriation of significant amounts of trust funds over a lengthy period of time. Any result other than disbarment would harm the reputation of the profession.

[43] As stated in *Tak* at para. 38:

> There should be no doubt that a strong message of general deterrence should be sent to other members of the Law Society in respect of

> misappropriating funds, and it should be unequivocal that such misconduct will almost certainly result in the revocation of the right to practise law.

[44] An order of disbarment is consistent with other disciplinary cases. The intentional misappropriation of clients' funds has generally resulted in disbarment: see *Gellert*; *Harder*; and *Law Society of BC v. Ali*, 2007 LSBC 57.

[45] We agree with the comments of the hearing panel at para. 45 in the Respondent's previous disciplinary hearing with respect to similar acts of misappropriation by the Respondent:

> Anything less than disbarment in this instance would be wholly inadequate for the protection of the public and would fail to address the need to ensure public confidence in the integrity of the legal profession.

[46] The fact that the Respondent has already been disbarred does not preclude a further order of disbarment. Section 1(1) of the *Legal Profession Act* defines "disbar" as to declare that a lawyer or "former lawyer" is unsuitable to practise law and to terminate the lawyer's membership in the society. In *Law Society of BC v. De Stefanis*, 2018 LSBC 16, a lawyer was ordered disbarred for a second time. Further, a second order of disbarment would be relevant if the Respondent were to apply in the future for reinstatement to the Law Society.

[47] The Respondent has co-operated with the Law Society investigation and has expressed remorse for his conduct through his admission of responsibility and his submissions to this Hearing Panel. However, the seriousness of his misconduct does not permit any result other than disbarment.

C**ONCLUSION**

[48] We accept the proposed resolution. We find that the Respondent has committed professional misconduct, pursuant to s. 38(4)(b)(i) of the *Legal Profession Act*. We order that the Respondent be disbarred pursuant to s. 38(5)(e) of the *Legal Profession Act*.

[49] The Law Society is not seeking an order for costs and we make no such order.

NON-DISCLOSURE ORDER

[50] The Law Society seeks a non-disclosure order with respect to all exhibits that contain privileged or confidential client information.

[51] The materials that have been filed in this proceeding include privileged and confidential client information. Pursuant to Rule 5-8(2) of the Law Society Rules, we order that any information with respect to clients' identities and any information protected by solicitor-client privilege or confidentiality not be disclosed. This information must be redacted from the exhibits prior to disclosure.