

2020 LSBC 12  
Decision issued: March 3, 2020  
Citation issued: April 16, 2019

**THE LAW SOCIETY OF BRITISH COLUMBIA**

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

**and a hearing concerning**

**ANDREW JAMES LIGGETT**

**RESPONDENT**

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**DECISION OF THE HEARING PANEL**

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Hearing date: November 27, 2019

Panel: Ralston S. Alexander, QC, Chair  
Jacqueline McQueen, Bencher  
Mark Rushton, Public representative

Discipline Counsel: Sarah Conroy  
Counsel for the Respondent: Kieron Grady

**BACKGROUND**

[1] On April 16, 2019, a citation was issued against the Respondent pursuant to the *Legal Profession Act* (the “Act”) and Rule 4-13 of the Law Society Rules by the Executive Director of the Law Society of British Columbia, pursuant to the direction of the Chair of the Discipline Committee; the citation was amended on May 30, 2019.

[2] The citation directed that this Panel inquire into the Respondent’s conduct as follows:

- (a) preparing late monthly trust reconciliations in ten instances, ranging from 29 days to 103 days late, contrary to Rule 3-73(5) of the Law Society Rules (the “Rules”) (allegation 1);

- (b) failing to remit Goods and Services Tax (“GST”) to the Canada Revenue Agency (“CRA”) in a timely way, contrary to rule 7.1-2 of the *Code of Professional Conduct for British Columbia* (the “BC Code”) (allegation 2) ; and
- (c) Failing to remit employee source deductions to CRA in a timely way contrary to rule 7.1-2 of the *BC Code* (allegation 3).

It was alleged that this conduct constitutes professional misconduct, pursuant to s. 38(4) of the *Act*.

- [3] This matter came on for disposition under Rule 4-30, which is headed “Conditional admission and consent to disciplinary action.”
- [4] The Respondent made a conditional admission of professional misconduct and agreed to the proposed disciplinary action of a suspension of one month. Rule 4-30 requires that a hearing panel consider whether the conditional admission can be accepted and, if so, whether the disciplinary action agreed to is appropriate for the professional misconduct admitted.
- [5] The parties provided an Agreed Statement of Facts (the “ASF”), including supporting materials, to provide the Panel a clear understanding of the circumstances of the citation.
- [6] Following submissions of counsel, the Panel considered the conditional admission and proposed penalty. We accepted the conditional admission and proposed penalty and made the orders that appear at the end of this decision with reasons to follow. The following are those reasons.

## **PROCEDURE**

- [7] Pursuant to Rule 4-31, a conditional admission tendered under Rule 4-30 must not be used against a Respondent unless the admission is accepted by the Discipline Committee and the admission of proposed disciplinary action is accepted by a hearing panel. If the panel rejects the Respondent’s proposed disciplinary action, it is the panel’s responsibility to advise the Chair of the Discipline Committee of its decision. The panel may take no further action with respect to the hearing.

## **FACTS**

- [8] The ASF describes a history of the Respondent’s struggle with compliance issues with the trust and general accounting rules of the Law Society.

- [9] In addition to the rules compliance issues identified in the ASF, the Respondent has frequently, and to a significant extent, financed his law practice with money belonging to Canada in the form of unremitted GST and employee payroll source deductions. The affected governments have pursued aggressive collection efforts in the form of garnishment orders of the general account of the Respondent.
- [10] At various times during the time period from January 2016 and September 2018 the Respondent was indebted to Canada on account of unremitted GST in amounts on the order of \$5,000 to \$10,000.
- [11] At various times during the time period from February 2016 and February 2019 the Respondent was indebted to Canada on account of unremitted payroll source deductions. The amounts owing varied from time to time, but at one point the Respondent owed Canada on account of unremitted payroll source deductions \$139,600.
- [12] At times material to this citation, Law Society staff cautioned the Respondent, noting existing rules breaches and urging remedial action to avoid a referral to the discipline committee. More than one warning was provided to the Respondent.
- [13] The Law Society conducted a compliance audit of the practice of the Respondent in the spring of 2016. The compliance audit revealed ten of 35 audited areas as being out of compliance. The Law Society directed the Respondent as to the manner in which he needed to amend his record keeping so as to achieve compliance with the Rules.
- [14] Despite the clear direction provided to the Respondent, he did not make the required changes to his record keeping, and a follow up audit revealed the continuing inability of the Respondent to operate his practice in a compliant manner.
- [15] Following a lengthy and largely unsuccessful series of requests from the Trust Assurance Department of the Law Society, the Respondent became the subject of a 19-page complaint to the Professional Regulation Department of the Law Society. The Law Society conducted an investigation of the practice of the Respondent, and that investigation revealed the various breaches of the Rules that are described in the citation.

## ANALYSIS

- [16] The Respondent's conduct is a marked departure from the conduct that the Law Society expects of lawyers, which is the standard for professional misconduct set out in *Law Society of BC v. Martin*, 2005 LSBC 16.
- [17] Repeated failures to comply with trust accounting rules will usually be a marked departure, particularly when, as here, the failures follow warnings from the Law Society. This is because the trust accounting rules are at the heart of the ability of the Law Society to regulate the financial integrity of the profession and to provide the public with assurances of the financial trust fidelity of the profession.
- [18] The failure to remit GST and employee source deductions to CRA has been the regrettably frequent subject of Law Society discipline proceedings. In all such instances a finding of professional misconduct is made.
- [19] We are satisfied that the Respondent's admission of professional misconduct is made out and is accepted by the Panel.
- [20] This Panel finds that the problems encountered by the Respondent have their genesis in two primary factors. First, we find that the Respondent does not have the necessary bookkeeping skill or training to operate his practice in a compliant manner and his attempts to resolve this deficiency with professional help have had only intermittent success.
- [21] The second factor bearing on the difficulties facing the Respondent is that his admirable focus on legal aid work has rendered his practice largely uneconomic. He has often found himself to be paying more for the professional help that he needs than his legal aid fee revenue provides.
- [22] The result of this imbalance of revenues and expenses has forced the Respondent to sell several properties, including his residence and an investment property. He is living in a rented basement suite. His one remaining property is financed to provide financial support for his uneconomic law practice.
- [23] It is the task of a hearing panel, after a determination that the facts supporting the admission of professional misconduct are made out, to ensure that the disciplinary action proposed to be imposed is within the range of a "fair and reasonable disciplinary action in all of the circumstances" (*Law Society of BC v. Rai*, 2011 LSBC 2).
- [24] The Panel reviewed the authorities provided by counsel, including *Law Society of BC v. Ogilvie*, 1999 LSBC 17, which lists the factors that are generally taken into

account in deciding on disciplinary sanction. In this case both the Law Society and the Panel focused on the gravity of the misconduct and particularly the professional conduct record of the Respondent.

- [25] With respect to the trust accounting violations, the Panel was referred to several cases, including *Law Society of BC v. Tungohan*, 2015 LSBC 26, aff'd 2016 LSBC 45, aff'd in part, 2017 BCCA 423, *Law Society of BC v. Liggett*, 2009 LSBC 36 and *Law Society of BC v. Lail*, 2012 LSBC 32. These cases, including the prior case involving the Respondent, suggest a fine and conditions as the “usual” result of repeated accounting rule breaches. The aggravating characteristic in this case is the significant professional conduct record, addressed below.
- [26] The Panel also reviewed the cases provided by counsel dealing with failures to remit to governments, taxes collected from clients on account of legal services provided and paid for. Specifically, *Law Society of BC v. Young*, 2018 LSBC 34, which referenced the following precedents: *Law Society of BC v. Purvin-Good*, 2004 LSBC 05, (a \$1,000 fine); *Law Society of BC v. Chipperfield*, 2003 LSBC 24, (a \$1,500 fine); *Law Society of BC v. Donaldson*, 2003 LSBC 27, (a \$1,500 fine); *Law Society of BC v. Worobec*, 2003 LSBC 22, (a fine of \$1,500); *Law Society of BC v. Hendery*, 2005 LSBC 25, (a \$2,000 fine); *Law Society of BC v. Wittmann*, 2008 LSBC 24, (a fine of \$3,000); *Law Society of BC v. Bonfield*, 2008 LSBC 23, (a \$5,000 fine); and *Law Society of BC v. Lowes*, 2007 LSBC 54, (a fine of \$5,000).
- [27] These cases indicate that a range of fines is the normal penalty for first time failures to remit taxes. With the exception of *Young*, which is easily distinguished on its facts, most of the suggested precedents are dated.
- [28] However, in this case and in addition to the seriousness of all of the allegations made out against the Respondent, he has an extensive professional conduct history. This circumstance engages a consideration of the principle of progressive discipline, which suggests penalties of increasing seriousness as the events of misbehaviour accumulate.
- [29] The Professional Conduct Record of the Respondent includes two previous findings of professional misconduct, a series of supervision engagements with the Practice Standards Committee, an administrative suspension for failing to meet a requirement of the Law Society, most of which deal with circumstances that are substantially similar to those described in this decision. With that determination, an argument can be developed arguing for a more substantial suspension than that proposed in this Rule 4-30 conditional admission.

[30] It is, however, not the role of the Panel to substitute a decision we would have made but, instead, to ensure that the penalty proposed is in the “range” of appropriate penalties. This proposed penalty is within the appropriate range, though it is likely at the lower end of that range. However, as noted, this is all that is required of this Panel, and we so find.

[31] The Respondent has acknowledged responsibility for the misconduct and cooperated with Law Society staff throughout.

## CONCLUSION

[32] Under the circumstances as outlined in the ASF and as summarized above, the Panel has concluded that the proposed disciplinary action is a fair and reasonable disciplinary action in all of the circumstances and accordingly accepted the conditional admission and proposed penalty pursuant to Law Society Rule 4-30 and directed the Executive Director to the record the Respondent’s admission on his professional conduct record.

[33] The Panel made the following orders:

- (a) an Order under Section 38(5)(d) of the *Act*, that the Respondent be suspended from the practice of law for a period of one month, commencing January 1, 2020;
- (b) an Order under Section 38(5)(c) of the *Act*, that the Respondent not operate a trust account in his practice except in accordance with the terms of a Trust Supervision Agreement approved by the Law Society, with this condition to be effective from and after January 31, 2020;
- (c) an Order under Rule 5-11 that the Respondent pay costs, including disbursements, to the Law Society in the amount of \$2,305.93, with six months from January 31, 2020 to pay those costs;
- (d) an Order under Rule 5-8(2)(a) that, if any person, other than a party, seeks to obtain a copy of any exhibit filed in these proceedings, client names, identifying information, and any confidential information or information protected by solicitor-client privilege be redacted from the exhibit before it is disclosed to that person; and
- (e) an Order under Rule 5-8(2)(a) that, if any person, other than a party, applies for a copy of the transcript of these proceedings, that client names, identifying information, and any confidential information or

information protected by solicitor-client privilege be redacted from the transcript before it is disclosed to that person

- [34] The Panel directs the Executive Director to record the Respondent's admission on his professional conduct record.