

2020 LSBC 19
Decision issued: April 21, 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

JEREMY DANIEL KNIGHT

RESPONDENT

DECISION OF THE HEARING PANEL ON AN APPLICATION

Written materials: April 3, 2020
April 7, 2020
April 8, 2020

Panel: Michael F. Welsh, QC, Chair
David Layton, QC, Lawyer
Brendan Matthews, Public representative

Discipline Counsel: Tara McPhail
Appearing on his own behalf: Jeremy D. Knight

BACKGROUND

[1] By an order made by the President at a pre-hearing conference on March 30, 2020, the Facts and Determination phase (“F&D Phase”) of the hearing of this citation, set for April 7, 2020, for two days, was adjourned. On agreement of the parties, the President also ordered that the F&D Phase proceed with a written record of evidence and submissions in writing, with the Panel to determine how any Disciplinary Action phase will proceed. The Law Society was to provide its submissions by April 3, 2020 and Mr. Knight, who is acting on his own behalf, by April 7, 2020. The Law Society was given until April 8, 2020 to reply and the materials were to be provided to this Panel on that same date. This all happened.

- [2] In its initial written submission, the Law Society referred to the hearing panel decision in *Law Society of BC v. Ahuja*, 2019 LSBC 31. In that case, a hearing panel determined Mr. Ahuja had committed professional misconduct in taking client funds. The Law Society sought a finding that this should legally be characterized as misappropriation of those funds. As the Law Society submission in this case states:

... [T]he hearing panel characterized Mr. Ahuja's conduct as amounting to "conversion of client funds to his personal use while in active addiction."

The Law Society disagreed with the hearing panel's decision on this point, and initiated a s. 47 review. The review proceeded before a Review Board on March 12, 2020 and the Board's decision is pending.

- [3] Mr. Knight, in his written submission, states that the circumstances of addiction that led Mr. Ahuja to take client funds were his circumstances as well, and that the characterization of Mr. Ahuja's actions is a "just and appropriate characterization" in this case. He also states that he was unaware of the *Ahuja* decision until he read the Law Society written submission on April 7, 2020 and that he then obtained the decision from Law Society counsel and reviewed it immediately. His written submission was provided to the Law Society that same day.
- [4] As a result of reviewing *Ahuja*, Mr. Knight asks for time to allow him to gather expert medical evidence with respect to his addictions and for the Panel to postpone any F&D Phase decision while he does so. He also submits that it is appropriate to defer any F&D Phase decision until the review board decision in *Ahuja* is released. In *Ahuja*, the panel considered that type of expert evidence at the F&D Phase as part of its deliberations.
- [5] Mr. Knight states that he will seek that expert medical evidence in any event. He and Law Society discipline counsel have agreed that he can adduce it at any Disciplinary Action phase of the hearing.
- [6] Counsel for the Law Society opposes any postponement or continuation, either to allow Mr. Knight to obtain the expert medical evidence or to await the review board decision in *Ahuja*.
- [7] The Law Society submits that Mr. Knight has had ample time to consider the *Ahuja* decision, released in August 2019, and to seek and obtain any expert evidence he wishes to tender. It also submits that Mr. Knight has already admitted to misappropriating client funds in the agreed statement of facts provided as evidence in this matter. Discipline counsel points out that he has admitted both to the

underlying facts supporting a finding of misappropriation and to misappropriation itself.

- [8] The Panel notes that Mr. Knight acts for himself. The Panel also notes from the agreed statement of facts that he underwent residential treatment for substance abuse in the spring of 2016 and entered a Relapse Prevention Agreement in the summer of 2016, followed by a Monitored Recovery Agreement with the Practice Standards Committee. In July 2017, he admitted himself to a second residential treatment centre. His Law Society membership ceased on January 1, 2018 for non-payment of fees.
- [9] Given these agreed facts that support his assertion of addictions for which he has sought treatment, and that he has not practised law for over two years, the Panel does not find his failure to know of and consider the *Ahuja* decision earlier should weigh against him in the request he has made.
- [10] With respect to Mr. Knight's "admissions" of misappropriation in the admissions of fact, the Panel notes that "misappropriation" is a legal characterization of certain acts of taking money, subject to an extensive body of Law Society Tribunal and other case law. It is not a fact.
- [11] While the Book of Exhibits, which contains the admissions of fact, says that it is presented pursuant to a conditional admission under Rule 4-30, that is not the case. We are not considering a conditional admission of a discipline violation and consent to a specified disciplinary action approved by the Discipline Committee. The book is mislabelled. It should probably state it is pursuant to Rule 4-28, the Notice to Admit rule.
- [12] When the Law Society seeks to have a respondent lawyer make formal admissions of fact, it should stick to the facts. Rule 4-28 only authorizes Law Society discipline counsel or the respondent to seek admissions of "the truth of a fact or the authenticity of a document." It is for a Panel to determine if, on the facts, a legal finding of "misappropriation" should be made.
- [13] The Panel consequently takes no notice of this supposed admission.
- [14] Weighing Mr. Knight's entitlement to a fair hearing against any prejudice from delaying this Panel's making a decision, we find little if any prejudice in waiting for several weeks and allowing Mr. Knight to gather expert medical evidence. His application is akin to seeking to reopen his case for additional evidence, which the Panel has discretion to do. We will give him reasonable time to gather that

evidence and make that application. We also accept that it will be useful for the Panel and the parties to have the guidance of the review board decision in *Ahuja*.

- [15] The parties indicate that the *Ahuja* review board decision may be rendered by June 2020.
- [16] The Panel will defer any decision in the F&D Phase until June 22, 2020. Prior to that time, we expect Mr. Knight and counsel for the Law Society to advise as to whether the *Ahuja* review board decision has been released and whether the parties seek to provide any additional evidence or written submissions. A decision will then be made on whether we will accept additional evidence or written submissions and, if so, what extra time will be given to the parties to provide them.
- [17] The parties will also advise the Panel if either seeks to provide any *viva voce* evidence or submissions. Depending on what can safely be done at that time in light of the coronavirus pandemic, the Panel will consider those requests and whether, in person or by video-conferencing or telephone, they will be accommodated.
- [18] The panel also strongly suggests to Mr. Knight that, if he has not already done so, he start now to obtain any expert evidence. It will likely be of assistance whatever the outcome of the *Ahuja* review board decision, and so there is no reason he should wait.