2020 LSBC 20
Decision issued: April 30, 2020
Citation issued: October 30, 2018

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

CHRISTOPHER JAMES WILSON

RESPONDENT

DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION

Written materials:	December 5, 2019
Further submissions:	February 11 and 12, 2020
Panel:	Craig A.B. Ferris, QC, Chair Ralston S. Alexander, QC, Lawyer J. Paul Ruffell, Public representative
Discipline Counsel:	Michael D. Shirreff and Maya Ollek
Counsel for the Respondent:	Richard Margetts, QC

BACKGROUND

[1] The decision on Facts and Determination, 2019 LSBC 25 (the "Facts and Determination Decision"), in respect of the citation issued on October 30, 2018 in this matter was issued on July 9, 2019. The parties scheduled a date for argument on the disciplinary action phase of this matter but later requested that that phase proceed with a hearing in writing, as had been the case with the hearing on facts and determination. The Panel considered the request and agreed that the hearing on disciplinary action could proceed by way of a hearing in writing.

[2] The parties provided written submissions in support of an agreed disciplinary action being a fine of $15,000. The Panel was impressed by the persuasive submissions of the Law Society but felt that the agreed action did not respond to

the severity of the misconduct that we found in the Facts and Determination Decision.

[3] The Panel provided a series of questions to counsel for the parties with a request that they reconsider the agreed disciplinary action before the Panel rendered a decision. We note here that the process followed by the parties is not analogous to the Law Society Rule 4-30 process where the respondent provides a conditional admission of misconduct and consents to a specified disciplinary action. Under that Rule, the panel must either accept or reject the conditional admission of misconduct and the proposed disciplinary action. In this hearing, a finding of professional misconduct has been made, and we are now considering the appropriate disciplinary action, a matter that is entirely within the discretion and jurisdiction of this Panel.

DISCUSSION

[4] The initial written submissions of the Law Society on the appropriate disciplinary action for the multiple counts of professional misconduct found in the Facts and Determination Decision highlighted the following characteristics as matters that should inform the decision of the Panel on the disciplinary action phase of the hearing.

Progressive discipline

[5] On this subject, the Law Society noted the significant though dated professional conduct record of the Respondent. The Respondent has been cited on two previous occasions and has been the subject of two conduct review processes, with the most recent engagement on a discipline matter occurring in 1993. The argument for progressive discipline suggests that each succeeding incident of misbehaviour needs to carry a penalty that is more serious than would be the case had the subject misbehaviour occurred as the only incident of misconduct under consideration.

[6] Previous decisions on this subject (e.g., *Law Society of BC v. Lessing*, 2013 LSBC 29) have determined that, to engage progressive discipline, it is not necessary for the subject misbehaviour to be similar to the previous misbehaviour for which the earlier penalty was imposed. There is no specific statement on the impact that the passage of time has on the application of the principle, but it is logical that, as the historical incidents of misbehaviour are removed in time from the current incidents, the impact of progressive discipline will be less severe.

[7] Despite the passage of time and the incident-free interval since the Respondent's last discipline engagement with the Law Society, the Panel is not able to discern any significant element of progressive discipline in the agreed penalty outcome.

Globalization

[8] This consideration deals with the concept of developing a disciplinary action in circumstances where there are multiple counts of misconduct to be sanctioned with a single penalty. The preferred approach is to find a disciplinary action that properly reflects the full range of the misconduct that has been established, rather than seeking individual penalty outcomes for the various events of misconduct that have been identified. The risk introduced with a global disciplinary action is that the single penalty imposed may not in fact reflect the seriousness of the accumulation of individual incidents of misconduct.

[9] The hearing panel in *Law Society of BC v. Gellert*, 2014 LSBC 05, addressed the appropriateness of a global disciplinary sanction where there were multiple findings of professional misconduct arising from a single citation (as opposed to a matter involving multiple citations):

> [13] In cases involving multiple allegations of professional misconduct and/or rule breaches, the usual approach is to arrive at a disciplinary action that is suitable for all of the incidents viewed globally (*Law Society of BC v. Gellert*, 2005 LSBC 15, para. 22; *Law Society of BC v. Basi*, 2005 LSBC 1, para. 2; *Law Society of BC v. Markovitz*, 2012 LSBC 25, para. 13; *Lessing*, paras. 75-78). A global approach tends to carry with it the benefit of simplicity and will, in most cases, be particularly well-suited to arriving at a result that furthers the objective of protecting the public. After all, the extent to which the public needs protection, and the manner by which such protection is best provided, must ultimately relate to the entire scope of the misconduct in issue and not to each particular wrongdoing viewed piecemeal.

[10] The Facts and Determination Decision identified four allegations of proven misconduct and more than a dozen included subheadings of misconduct. Several of the incidents identified in that decision would have separately justified a fine in the amount agreed to by the parties for the "global" penalty. The Panel does not believe that the disciplinary action suggested by the joint submissions responds in any meaningful way to the globalization imperative urged upon us.

[11] Counsel for the Law Society discussed the application of the "Ogilvie" factors (*Law Society of BC v. Ogilvie*, 1999 LSBC 17) referencing the oft cited

considerations for assessing an appropriate disciplinary action. We were asked to pay particular attention to the following six of the 13 *Ogilvie* considerations:

(a) the nature and gravity of the conduct proven;

(b) the Respondent's character and professional conduct record;

(c) the Respondent's acknowledgement of the misconduct and remedial action;

(d) public confidence in the legal profession, including public confidence in the disciplinary process;

(e) the presence or absence of other mitigating or aggravating factors; and

(f) the range of sanctions imposed in prior similar relevant cases.

Nature and gravity of the conduct proven

[12] We noted in the Facts and Determination Decision our belief that the Respondent's misconduct in this matter was very serious. It is important for our decision on disciplinary action to reflect the seriousness with which we regard these events. We believe that it is necessary for us to send a clear message to the profession that practising as the Respondent did, "with total disregard for Law Society trust accounting rules" and "with an astounding history of neglect and dereliction of duty on a grand scale," is unacceptable and will not be countenanced by the Law Society.

[13] The Law Society notes that the Respondent committed multiple, repeated acts of neglect and/or dereliction of important professional duties that permeated his practice over an extended period of time. Importantly, the misbehaviour included the processing of nearly $20 million of trust monies without the approval (by signature on a trust cheque) of the supervising lawyer. As noted in the Facts and Determination Decision, these funds were processed with 177 separate trust cheques.

[14] We found that the Respondent conducted his real estate practice entirely without regard to the requirements governing the application of his electronic signature. He had, contrary to all direction in this regard, shared his electronic signature with his staff so that the electronic registration of documents could be processed without the necessary lawyer oversight upon which the integrity of the system is founded. The hearing panel in the recent decision, *Law Society of BC v. Dhindsa*, 2020 LSBC 13, imposed a four-month suspension on similar facts.

[15] As noted in the Facts and Determination Decision, a Law Society audit of the Respondent's real estate files revealed that, in the six files reviewed, the Respondent had not once complied with the client identification rules. This represents a further demonstration of the careless practice style adopted by the Respondent and is an aggravating factor in the seriousness of the misbehaviour identified in the Facts and Determination Decision.

[16] Generally, the circumstances described indicate that the nature and gravity of the misconduct is, at a very serious level, perhaps only exceeded in seriousness by a misappropriation of trust funds.

The Respondent's character and professional conduct record

[17] The important observation to make on this subject is that the Respondent has been engaged in the full-time practice of law since 1974, a career of almost 45 years duration. In that regard, it should be clear that there is very little about the practice of law that the Respondent has not experienced, and accordingly, he is not able to plead inexperience or lack of familiarity with the subject matter. These are not "rookie" mistakes but instead are the result of intentional neglect or at least, studied indifference to compliance obligations. The vast experience of the Respondent weighs heavily against him.

[18] We have previously addressed the Respondent's professional conduct record ("PCR") in our discussion on progressive discipline. There is, however, a further characteristic of the PCR that is important. This is the third citation to which the Respondent is subject. The hearing panel in *Law Society of BC v. Siebenga*, 2015 LSBC 44, noted as follows:

> [47] Lawyers who have been found to have committed professional misconduct on two occasions and fined on both occasions, are candidates for suspension on a third citation. This does not mean "three strikes and you're out." Rather, it means three strikes and you may be out depending on the circumstances. To put it another way, lawyers who have been found to have committed professional misconduct on two occasions are put in a state of "heightened possibility" of being suspended. A hearing panel should seriously consider issuing a suspension, instead of a fine.

[19] Given that the Facts and Determination Decision identifies four separate serious findings of professional misconduct and more than a dozen subheadings of misconduct, it is unclear how the "heightened possibility" of suspension could be avoided by the Respondent in the circumstances.

The Respondent's acknowledgement of the misconduct and remedial action

[20] We observed in the Facts and Determination Decision that there were several examples of the Respondent's reluctance to acknowledge the facts underlying his misconduct. These circumstances appeared during the investigation of the Respondent's practice by the Law Society following the report of the Law Society audit of the practice. In particular, the Respondent initially denied that he had signed blank trust cheques and maintained for some time that he was not aware that his staff was processing trust transactions without his supervision or control. As the evidence to the contrary became overwhelming, the Respondent did acknowledge the misbehaviour and did cooperate with the Law Society to bring this matter to a conclusion without the requirement of a multi-day formal hearing.

[21] By all accounts, the Respondent has modified his practice in the office so that the various incidents of misconduct described are no longer happening. There is a new compliant regime of client identification in place in that all trust cheques require the signature of the Respondent and no one but the Respondent now has access to his digital signature for Land Title processing of documents. These measures speak positively to the beneficial impact that this process has had on the practice of the Respondent.

Public confidence in the legal profession, including public confidence in the disciplinary process

[22] There are various aspects of this matter that engage directly the issue of public confidence in both the legal profession and the disciplinary process of the Law Society. The unfortunate cavalier approach to handling trust funds reflects badly on the profession as a whole. The primary obligation of the Law Society in its regulation of the profession is the protection of the public interest in the matters under the care and control of practising lawyers. No aspect of that public interest ranks higher than the administration of trust funds, and in that regard, a significant disciplinary action must follow these many demonstrated instances of trust account mismanagement.

[23] This case is also important, as noted by Law Society counsel, as being the first consideration of a number of issues that are presented on these facts. The first consideration of dealing with signing blank trust cheques and the unsupervised distribution by non-lawyer employees of nearly $20 million of funds entrusted to the Respondent by clients, other lawyers and financial institutions. For this additional reason and the potential precedential value this case will have going

forward, the misconduct involved requires a clear and substantial response. It was not clear to the Panel that a $15,000 fine accomplished that goal.

[24] Counsel for the Law Society summarized its position on this aspect of the *Ogilvie* considerations with the following observation, adopted here as a component of our determination on this issue:

> Ultimately, when the Panel looks at the issues in this matter globally, it is apparent that the notion of lawyer *integrity* permeates all four of the allegations in the Citation. As the Panel will know, Rule 2.2-1 of the *Code* establishes an overarching obligation of lawyers to act with integrity. The Commentary to this rule describes the critical role of integrity on the part of legal professionals in maintaining public confidence in the legal profession and the administration of justice:
>
> > [1] Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. If a client has any doubt about his or her lawyer's trustworthiness, the essential element in the true lawyer-client relationship will be missing. If integrity is lacking, the lawyer's usefulness to the client and reputation within the profession will be destroyed, regardless of how competent the lawyer may be.
> >
> > [2] Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer's irresponsible conduct. Accordingly, a lawyer's conduct should reflect favourably on the legal profession, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety.
>
> This matter reveals very serious concerns about aspects of the respondent's professional integrity. The circumstances of the Respondent's misconduct are such that the Panel must assess a significant fine in order to ensure the public's ongoing confidence in the integrity of the profession and our disciplinary process.
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> [emphasis in original]

The presence or absence of mitigating or aggravating factors

[25] The Law Society and the Respondent both relied upon the steps the Respondent has taken in his practice management to operate in a manner compliant with Law

Society rules as a mitigating factor in our determination of an appropriate penalty. We do not disagree.

The range of sanctions imposed in prior similar relevant cases

[26] The Panel was referred to *Law Society of BC v. Singh*, 2013 LSBC 17. In that case, the respondent admitted professional misconduct with respect to five allegations relating to breaches of Law Society accounting rules. He had failed to rectify and report trust shortages and there were allegations with respect to his borrowing funds from a client of his firm and failing to advise the client that he was not representing the client's interests. The hearing panel noted the respondent's irresponsible attention to matters of financial accountability and disregard for the rules and standards expected for lawyers. The respondent was fined $10,000 and assessed costs of $8,000. It was acknowledged that the disciplinary action was ameliorated in part by a recognition of the respondent's disability, an addiction to alcohol.

[27] In *Law Society of BC v. Reith*, 2018 LSBC 23, the respondent admitted to professional misconduct in respect of a variety of transactions. For a period of approximately four years, the respondent used his trust account essentially as his own personal bank account. Stressing the importance of the public's need for confidence in the disciplinary process, the respondent was suspended from the practice of law for 30 days. The Law Society sought to distinguish that case on the basis that the respondent gained a financial advantage from his misdeeds, while no such advantage accrued to the Respondent in this case.

[28] The Panel reviewed the decision of *Law Society of BC v. Cruickshank*, 2012 LSBC 27. The respondent made various conditional admissions to breaches of accounting rules, tax and remittance issues, breaches of undertakings, and the improper use of trust funds, including four instances of permitting the withdrawal of funds by trust cheques that were not signed by a practising lawyer. The hearing panel found the respondent was "profoundly sloppy in the management of the financial and accounting side of his law practice." While there was no evidence of harm to clients, the hearing panel noted that there were serious breaches of accounting rules and other rules occurring over an extended period of time (five years) and that the respondent had numerous previous engagements with the Law Society discipline process, including three conduct reviews and a citation.

[29] The hearing panel in *Cruickshank* accepted the respondent's proposed penalty of a one-month suspension and costs of $8,500. This decision was distinguished by Law Society counsel on the basis that the misbehaviour with accounting rules

spanned various areas of practice, was of a longer duration and the breaches of accounting rules were more widespread. It was also noted that the prior discipline history was more current in *Cruickshank*.

[30] There are no British Columbia reported decisions involving a penalty for pre-signing trust cheques. In other Canadian jurisdictions, fines have been imposed for this misconduct ranging from $500 to $2,000.

[31] In respect of the misuse of the Juricert digital signature, we have already noted above that, in *Dhindsa*, a four-month suspension was ordered for this misconduct. The decision was rendered after our hearing and the parties have not had an opportunity to provide submissions on the impact that decision should have on our discipline action here. It is, accordingly, not proper for us to be guided by that decision in the absence of a full canvass of the facts and circumstances in that decision.

SUMMARY

[32] As will be apparent from our analysis to this point, the Panel is of the opinion that the proposed disciplinary action of a fine of $15,000 does not appropriately address the array of important considerations advanced by Law Society counsel. Most of the issues are identified as very significant and important from a precedential perspective. This characteristic is made more important because several of the issues have not been previously considered in Law Society hearing jurisprudence. We agree that the issues are properly described as being very important, and our point of departure with counsel for the parties is the manner in which this importance is reflected.

[33] We are of the opinion that these facts are at the margin where a fine has been transitioned to a suspension in many similar factual situations as described in our analysis. In seeking additional explanatory information, we have learned some facts about the magnitude of fines in Law Society Tribunal decisions, which suggests that a more extensive analysis is required.

[34] Section 38(5)(b) of the *Legal Profession Act* stipulates that the maximum fine a disciplinary panel can impose is $50,000. We are surprised to learn that there has never been a $50,000 fine ordered by a hearing panel. We are further advised that, since 2002, disciplinary panels have ordered fines in over 165 discipline decisions. Of those 165 decisions in which fines have been ordered, only 10 matters have involved fines of $15,000 or higher. The largest fine ordered to date has been $25,000.

[35] This analysis is provided by the Law Society in support of the proposition that in the historical context described, a fine of $15,000 is indeed a significant penalty since its imposition is such a rare event. In the view of the Panel, this analysis suggests an alternative explanation for the clearly unusual history described. It is probable that the frequency with which large fines are imposed is more a function of the default penalty outcome, namely suspension, being imposed in circumstances where a larger fine might well be a more appropriate response.

[36] In the disciplinary action phase of the hearing process, panels are provided, as here, a series of somewhat similar fact based precedents and are directed to return a disciplinary action that is within the range of penalties that is demonstrated by the precedents. It follows that, if the largest fine ever imposed is $25,000, and that amount only once, there will be no expansion of fine amounts because there is no precedent upon which to base that expanded amount. So where the expected fine parameters are as indicated in the submissions of the Law Society, and where a panel feels that a fine of that magnitude is not sufficient, a suspension follows.

[37] The effect of inflation on the value of money is generally known and accepted, so we can take notice of that effect without evidence on the record. Fines of the order of magnitude discussed here have not kept pace with inflationary pressures. A fine of $15,000 in 1999 would approach, in 2020 dollars, the amount of the largest fine ever levied but is considered by some to be in the range of "usual" fine amounts. We believe that a fine needs to be considered in terms of the value that it represents to the party paying the fine at the time that the party is paying it. The impact of fines has diminished over time by a failure to properly account for the decreased dollar value as impacted by inflation.

[38] We are of the view that the fine penalty has been less impactful as a deterrent to misbehaviour as a result of the inflationary impact on the value of a dollar. Rather than opt for a suspension in cases where the fine appears to be an inadequate remedy, we believe that the upper limit on fines imposed needs to increase to a point where there is a real impact on behaviour. To be an effective deterrent, a fine needs to be in an amount that gives the party required to pay the amount an element of real concern. At productivity levels made possible with technology and with significantly rising hourly rates for legal services becoming the norm, a $15,000 fine no longer "hurts" to the extent that it once did, even in 1999.

[39] In the result of our analysis as above, and after a careful consideration of all of the circumstances of this matter, the Panel imposes a fine of $25,000 and orders costs in the amount of $4,509.71. We appreciate that this determination might not have

been anticipated by the Respondent, and accordingly, the Respondent will have until October 1, 2020 to make the payment.