

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

JAMES ROGER WEBBER

RESPONDENT

DECISION OF THE HEARING PANEL

Written materials: July 28, 2020

Panel: Steven McKoen, QC, Chair
Eric V. Gottardi, Lawyer
Karen Kesteloo, Public representative

Discipline Counsel: Ilana Teicher
Appearing on his own behalf: James R. Webber, QC

BACKGROUND

- [1] On October 9, 2019, a citation was issued against the Respondent (the “Citation”) pursuant to the *Legal Profession Act* and Rule 4-13 of the Law Society Rules (the “Rules”) pursuant to the direction of the Chair of the Discipline Committee.
- [2] At its meeting on July 9, 2020, the Discipline Committee considered and accepted a Rule 4-30 proposal made by the Respondent and instructed discipline counsel to recommend its acceptance to the hearing panel.
- [3] The Citation directed that this Panel inquire into the Respondent’s conduct as follows:
- (a) Between approximately November 2017 to May 2019, you collected Goods and Services Tax (“GST”) from your clients but failed to remit funds and interest due to Canada Revenue Agency in payment of

the GST in a timely way, contrary to rule 7.1-2 of the *Code of Professional Conduct for British Columbia*; and

(b) Between approximately February 2017 and August 2019, you made employee payroll source deductions but failed to remit the payroll source deduction funds and interest due to Canada Revenue Agency in a timely way, contrary to rule 7.1-2 of the *Code of Professional Conduct for British Columbia*.

- [4] The conduct alleged in each paragraph was stated to constitute professional misconduct, pursuant to s. 38(4) of the *Act*.
- [5] This matter comes before this Panel without an oral hearing, on the consent of both parties, and further to the Respondent's Rule 4-30 conditional admission of professional misconduct and consent to specified disciplinary action, as accepted by the Discipline Committee on July 9, 2020.
- [6] The Panel received a joint application from the Respondent and the Law Society to conduct a hearing on documents and submissions in writing. The Panel considered the joint application and decided that this was an appropriate case to proceed on written materials only, without an oral hearing, in accordance with the Law Society's procedure for a "Hearing in Writing" pursuant to a Practice Direction issued on April 6, 2018. Under this procedure, a "Hearing in Writing" is still a "hearing" within the meaning of Rule 4-30.
- [7] In reaching the conclusion that it was an appropriate circumstance to proceed without an oral hearing, the Panel considered whether it had questions about the facts of the matter that were not clearly answered in the Agreed Statement of Facts (the "ASF") provided by the parties. The Panel also considered whether any credibility issues were presented by the ASF. The Panel determined that the written record was complete, no credibility issues were raised and that no additional useful information would be provided by an oral hearing. On that basis, the Panel agreed to proceed to conduct the hearing pursuant to the April 6, 2018 Practice Direction, without the need for an oral hearing.
- [8] By way of joint submissions, the Respondent made a conditional admission of professional misconduct. The parties jointly proposed disciplinary action by way of a fine of \$9,000 and costs of \$1,000. Rule 4-30 requires that a hearing panel consider whether the disciplinary action agreed to is appropriate for the professional misconduct that has been conditionally admitted.

PROCEDURE

- [9] After considering the circumstances set out in the ASF and reading the submissions of Law Society counsel and the Respondent, the Panel accepted the admissions of professional misconduct. The Respondent's conduct is culpable, and it 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 at para. 171.

FACTS

- [10] The factual basis for this Citation can be set out in brief compass. The Respondent was called and admitted as a member of the Law Society of British Columbia on May 12, 1967. He is 81 years of age.
- [11] The Respondent resides in Kamloops, BC. He practises via a sole proprietorship registered in his name, Webber Law. He practises primarily in the area of real estate, wills and estates, some civil solicitor's work and litigation.
- [12] The Respondent failed to pay his government remittances in full and on time in 2017 and 2018. The total amount of arrears was approximately \$142,870.30, consisting of \$10,870.30 for GST and \$132,000 for payroll source deductions.
- [13] In 2017, the Respondent moved to a new office location and had a low volume of business in that year. In 2018, there were insufficient funds in the firm's general account to meet all financial obligations. The Respondent laid off one associate lawyer and one support staff in 2018 in order to lower overhead costs.
- [14] The Respondent self-reported in his 2017 Trust Report that Webber Law did not pay GST and payroll source deductions in full and on time "due to cash flow shortage as a result of over-budget on a new practice, overdue accounts receivable, large work in progress," and that payments would be made current "as overdue accounts are collected and one large continuance file completed."
- [15] The Respondent again self-reported in his 2018 Trust Report that Webber Law did not pay GST and employee payroll source deductions in full and on time.
- [16] While the GST arrears were paid off in full as of May 2019, the Respondent has admitted that, as of June 30, 2020, approximately \$98,000 remained outstanding in respect of arrears from unremitted payroll source deductions. The Respondent has further acknowledged that he was aware of the arrears and that he used the

collected GST and payroll source deductions to pay other financial obligations of his firm.

[17] The Respondent has cooperated with the Law Society throughout its investigation.

ANALYSIS

[18] 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 jointly proposed penalty is within the range of a “fair and reasonable disciplinary action in all of the circumstances” (*Law Society of BC v. Rai*, 2011 LSBC 02 at para. 7).

[19] 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 addition, the Panel considered *Law Society of BC v. Lessing*, 2013 LSBC 29, and *Law Society of BC v. Faminoff*, 2017 LSBC 04. Those cases provide guidance on the application of the *Ogilvie* factors to particular fact patterns.

[20] The Panel also reviewed the authorities provided by counsel for the Law Society that purport to set out the range of sanctions imposed in other similar cases, including *Law Society of BC v. Hu*, 2010 LSBC 10 (\$7,500 fine, \$2,000 costs); *Law Society of BC v. Gordon*, 2018 LSBC 37 (\$12,000 fine); and *Law Society of BC v. Lo*, 2020 LSBC 09 (\$15,000 fine).

[21] These cases suggest a range of fines for failures to remit taxes. There is, at best, a loose correlation between the amount of taxes not paid and the amount of the fines imposed. It is significant, however, that both *Gordon* and *Lo* involved a degree of deception that is absent from this case.

[22] The Panel agrees with the parties that the *Ogilvie* factors that are most relevant in this case to a determination of the appropriate sanctions are:

- (a) the nature and gravity of the proven misconduct;
- (b) the character and professional conduct record of the Respondent;
- (c) acknowledgement of the misconduct, steps taken to disclose and redress the wrong and the presence or absence of other mitigating circumstances;
- (d) public confidence in the profession, including public confidence in the disciplinary process; and

(e) the range of sanctions imposed in similar cases.

[23] The Panel, having considered the applicable factors and the written record as a whole, is of the view that the proposed disciplinary action of a \$9,000 fine is appropriate in the totality of the circumstances. The Respondent, despite having practised law for over 50 years, demonstrated a gross lack of judgment in the continued organization and operation of his law practice. He used monies collected from his clients, which were due to the government and collected for that purpose, to keep his ailing practice afloat. The Respondent's failure to pay his government remittances in full and on time is contrary to rule 7.1-2 of the *Code of Professional Conduct*, which unequivocally requires lawyers to promptly meet financial obligations in relation to their practices. Such conduct is simply not acceptable for a member of the profession.

[24] The Respondent's professional conduct record ("PCR"), consisting of three conduct review reports from 2014, 2016 and 2018, was emphasized by counsel for the Law Society. While we have considered the PCR, we do not give it much weight other than to note that the Respondent's three prior violations are close in time to each other and have all taken place in the last six years. Given the recent violations and comparing them to the Respondent's previously untarnished record, the Panel wonders whether the time has come for the Respondent to consider concluding his active status in the profession.

[25] The Respondent has acknowledged responsibility for the misconduct and cooperated with Law Society staff throughout. He has paid the GST amounts that were owing in full and is currently making payments towards the remainder. That said, \$98,000 is a significant debt to repay at this stage of his career, all while trying to maintain a viable practice.

CONCLUSION

[26] In all of the circumstances, as outlined in the ASF and as summarized above, the Panel has concluded that a \$9,000 fine, as proposed, is a fair and reasonable disciplinary action. Accordingly, the Panel accepts the admission of professional misconduct and proposed penalty pursuant to Rule 4-30, and directs the Executive Director to record the Respondent's admission on his professional conduct record.

[27] The Law Society, as part of the agreed proposed disciplinary action, seeks an order for costs in the amount of \$1,000. The Panel agrees and such an order is made.

[28] In summary, the Panel makes the following orders:

- (a) the Respondent must pay a fine in the amount of \$9,000 on or before September 30, 2020; and
- (b) the Respondent must pay costs to the Law Society in the amount of \$1,000, on or before September 30, 2020.

NON-DISCLOSURE ORDER

- [29] Discipline counsel has applied for a sealing order in these proceedings to protect confidential or privileged information about the clients from being disclosed.
- [30] Rule 5-8(2) of the Rules provides that, upon application or on its own motion, a panel may order that specific information not be disclosed to protect the interests of any person. Rule 5-8(5) requires that, if the panel makes such an order, it must give its written reasons for doing so. In the absence of such an order, Rule 5-9(2) of the Rules permits a person to obtain a copy of an exhibit entered into evidence when a hearing is open to the public.
- [31] We find that the Citation, the ASF and all other materials filed in this hearing contain confidential and privileged information of clients that should not be disclosed. We therefore make the following order:
- (a) 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 information protected by solicitor-client privilege must be redacted from the exhibit before it is disclosed to that person; and
 - (b) if any person, other than a party, applies for a copy of the transcript of these proceedings, client names, identifying information, and any information protected by solicitor-client privilege must be redacted from the transcript before it is disclosed to that person.