2020 LSBC 48
Decision issued: October 15, 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 FACTS AND DETERMINATION

Written materials:	April 9, 2020 August 17, 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 Daniel Knight

INTRODUCTION

[1] On April 16, 2019, the Law Society issued a citation (the "Citation") alleging that the Respondent committed professional misconduct in handling retainer funds provided to him in relation to two clients, TO and PP.

[2] Specifically, the Citation alleges that the Respondent committed professional misconduct regarding each client by misappropriating retainer funds and failing to comply with various provisions in the *Legal Profession Act* (the "*Act*"), the *Code of Professional Conduct for British Columbia* (the "*Code*") and the Law Society Rules (the "Rules") governing the handling of client funds, including provisions regarding the need to keep proper records.

[3] The parties have filed an Agreed Statement of Facts ("ASF"), which comprises the entire evidentiary record in this proceeding. In his written submissions, the Respondent agrees

that the ASF establishes that he committed professional misconduct with respect to both TO and PP. He nonetheless asks us not to find that he "misappropriated" these clients' funds, but instead to find that his mishandling of their funds amounted to "conversion of client funds to his personal use while in active addiction."

[4] For the reasons set out below, we have concluded that the Respondent committed professional misconduct as alleged in the Citation and that his mishandling of the funds should be categorized as misappropriation, not as the conversion of client funds to his personal use while in active addiction.

Procedural background and decision to hear the matter based on written materials only

[5] At a prehearing conference held before the President on March 30, 2020, the parties indicated their agreement that the Facts and Determination phase ("F & D Phase") of the hearing proceed in writing only. The two-day hearing, which had been scheduled for April 7 and 8, 2020, was adjourned, and we were advised accordingly.

[6] On April 9, 2020, we received each party's written submissions, as well as a "Book of Exhibits" comprising the Citation and the ASF.

[7] In his written submissions, the Respondent referred us to the hearing panel's decision in *Law Society of BC v. Ahuja*, 2019 LSBC 31, ("*Ahuja*") which he had only become aware of on reading the Law Society's written submissions on April 7, 2020.

[8] In *Ahuja*, the panel concluded that the respondent committed professional misconduct by misusing client funds and accepted that this misconduct fell within the legal definition of misappropriation. However, the panel also found that the respondent had been suffering from an addiction disorder that rendered him unable to exercise healthy moral, ethical or professional judgment. As a result, the panel held that the respondent's professional misconduct should not be described as "misappropriation", but rather as "conversion of client funds to his personal use while in active addiction."

[9] At the time we received the parties' written submissions, the Law Society had launched a review of the panel's decision in *Ahuja*. The review hearing had taken place on March 12, 2020, at which time the review board reserved its decision.

[10] The Respondent requested that we delay the F & D Phase of his matter pending release of the review board's decision in *Ahuja*, which it was anticipated would occur in June 2020. If the review board upheld the panel's decision, the Respondent wished to call evidence at the F & D Phase supporting a finding that his conduct in misusing client funds should be

described, not as misappropriation, but rather as conversion of client funds to his personal use while in active addiction.

[11] For the reasons given in *Law Society of BC v. Knight*, 2020 LSBC 19, we granted the Respondent's request that we hold off proceeding with the F & D Phase of this matter pending release of the review board's decision in *Ahuja*. We also directed that, prior to June 22, 2020, the parties advise us whether the review board's decision in *Ahuja* had been released, and if so, whether they sought to provide us with any additional evidence or written submissions.

[12] The review board's decision in *Ahuja* remaining under reserve, on June 23, 2020 we provided the parties with revised directions regarding the filing of additional evidence or written submissions upon release of the review board's decision.

[13] On June 26, 2020, the review board released its decision in *Law Society of BC v. Ahuja*, 2020 LSBC 31, ("*Ahuja* review") which overturned the hearing panel's ruling that the misuse of client funds should not be described as misappropriation where committed by a lawyer in active addiction. We will discuss this decision more fully below. For now, suffice it to say that, following the release of the review board's decision in *Ahuja* review, neither party indicated an intention to file further evidence. The Law Society filed additional written submissions regarding *Ahuja* review on August 15, 2020. On or about August 25, 2020, the Respondent indicated that he would not file any additional written submissions.

[14] After considering all the written materials filed, we determined that there was no factual or legal issue on which oral submissions or testimony were required to do justice between the parties (*Law Society of BC v. Lebedovich*, 2018 LSBC 17, at paras. 4 to 7). We therefore granted the parties' application to conduct the hearing on written materials only and proceeded to determine the F & D Phase on this basis.

RELEVANT FACTUAL FINDINGS

[15] The Respondent became a member of the Law Society on May 4, 2015. He articled with a firm in Kamloops and practised law there as an employee until June 2016.

[16] From April 21 to June 2, 2016, the Respondent removed himself from the practice of law for intensive rehabilitation for substance abuse issues at a residential treatment centre.

[17] On the recommendation of a practice advisor, the Respondent contacted the Practice Standards Department on June 15, 2016 to seek assistance in resuming the practice of law.

[18] To this end, on July 27, 2016, the Respondent entered into a three-year "Relapse Prevention Agreement" with Precision Medical Monitoring. The Relapse Prevention Agreement set out in detail his obligations under a monitoring program intended to assist in preventing a relapse regarding the use of alcohol or other mood-altering drugs. These obligations included daily check-ins, attendance at self-help group meetings, submission to random and regular alcohol and drug testing, and immediate disclosure to Precision Medical Monitoring and immediate self-removal from his workplace should he use alcohol or any other mood-altering drug.

[19] The Respondent also consented to a referral to the Law Society's Practice Standards Committee, and on August 2, 2016, he entered into a "Monitored Recovery Agreement Including Undertakings" with the Practice Standards Committee. The Agreement, which was revised slightly on August 15, 2016, could only be terminated by the Practice Standards Committee and was expected to remain in place for at least three years.

[20] In the Monitored Recovery Agreement Including Undertakings, the Respondent acknowledged that he was addicted to alcohol and other mood-altering substances. He further acknowledged that this addiction, if not controlled, would negatively affect his work as a lawyer and might put his clients at risk and that overcoming his addiction would require the coordinated efforts of a team of people including himself, a general practitioner, a counselor, a psychiatrist, a monitoring agency, a suitable peer support group, the Lawyers Assistance Program ("LAP"), friends, family and the Law Society. The Respondent also confirmed or agreed that:

(a) abstinence from any potentially addictive substances was the only way he would overcome the effects of his addiction;

(b) he would not consume alcohol, cocaine or any other mood-altering drugs except as prescribed by his medical team for the duration of the Agreement; and

(c) he consented to a referral to the Practice Standards Committee to ensure there would be consequences should he not remain abstinent.

[21] The Monitored Recovery Agreement Including Undertakings also contained numerous undertakings by the Respondent. To name but a few, he undertook:

(a) to follow the recommendations of his medical team;

(b) to take the utmost care to avoid any product containing alcohol or other mood-altering drugs;

(c) if he consumed any alcohol or other mood-altering drug not prescribed by his medial team, to report that fact in writing within 24 hours to Precision Medical Monitoring, his general practitioner and the Law Society; and

(d) to abide by the terms of his Relapse Prevention Agreement with Precision Medical Monitoring.

[22] The Agreement nonetheless made it clear that, while the Respondent would do his utmost to remain abstinent, a relapse alone would not constitute a breach of undertaking.

[23] On September 29, 2016, the Practice Standards Committee ordered that the Respondent be subject to a Practice Review.

[24] On October 4, 2016, the Respondent joined a law firm called Hebert Law.

[25] On January 26, 2017, after the Practice Review was completed, the Practice Standards Committee made various recommendations to the Respondent, which included obtaining a medical report regarding his fitness to practise law and providing an undertaking to report any non-compliance with his Relapse Prevention Agreement within 24 hours to his employer Natalie Hebert. The Respondent entered this undertaking on February 7, 2017.

[26] On June 8, 2017, the Practice Standards Committee ordered that the Respondent cease practising law until he provided a medical report stating he was fit to practise. The Respondent was then practising at Hebert Law. The Practice Standards Committee's order was accompanied by reasons setting out the Respondent's background as a lawyer and his struggles to overcome addictions to alcohol, cocaine and gambling. These reasons noted that the Respondent's pattern of relapses had unfortunately continued after he entered into the Relapse Prevention Agreement and the Monitored Recovery Agreement Including Undertakings.

[27] On or about June 26, 2017, the Respondent admitted himself to a residential treatment centre.

[28] The Respondent became a former member of the Law Society on January 1, 2018, when his membership ceased for non-payment of fees.

The Respondent's conduct regarding his client TO

[29] In May 2017, TO retained the Respondent to represent her in a criminal matter. The Respondent told TO that he required a $1,000 retainer, which he would hold in trust, and asked her to send an electronic transfer to his personal email address.

[30] On Tuesday, May 16, 2017, TO electronically transferred $700 to this email address. The Respondent accepted the transfer and deposited the $700 into his personal bank account. Prior to this deposit, the account showed a $1,035.72 overdraft. The next activity in the account following the deposit was a withdrawal of $600 made by the Respondent the same day.

[31] On Friday, May 19, 2017, TO electronically transferred another $300 to the Respondent's personal email address. Once again, the Respondent deposited the money into his personal bank account. Prior to this deposit, the account showed a $1,009.09 overdraft. The next activity in the account following the deposit was a withdrawal of $260 made by the Respondent the same day.

[32] The Respondent did not issue and deliver a bill to TO prior to depositing her funds into his personal account, nor did he perform legal services entitling him to the $1,000. Over the course of the retainer, he spent only about 30 minutes working on TO's file. The Respondent also failed to make any records regarding receipt of the funds, and he did not issue a receipt to TO. Hebert Law was unaware that TO had retained the Respondent or that she had sent him a retainer.

[33] On June 21, 2017, the Respondent emailed TO to tell her that he was not able to continue as her lawyer because he was on medical leave for a few months. He said he would transfer the $1,000 she had given him to her new lawyer. He recommended JM as a lawyer she might wish to retain. JM practised at the law firm where the Respondent practised prior to joining Hebert Law. TO emailed back the same day asking the Respondent to have JM contact her.

[34] On July 21, 2017, Natalie Hebert of Hebert Law, by then the Respondent's former employer, received a letter from a lawyer, LS, saying she had been retained to handle TO's matter and asking for a transfer of TO's trust funds. LS's letter stated that the Respondent had arranged for JM to take over TO's case, but this had not ended up happening.

[35] That same day, Ms. Hebert determined that her firm had never opened a file for TO. She contacted JM, who advised that his firm had not opened a file for TO prior to the Respondent starting work at Hebert Law. JM also told Ms. Hebert that, when the Respondent asked him to take over TO's file, he had said that "he would have to sort out the trust funds when he got back" from the residential treatment centre.

[36] Later that day, LS sent a second letter to Ms. Hebert advising that, at the Respondent's request, TO had transferred the funds to the Respondent's personal email address. Ms. Hebert emailed the Respondent asking him to advise her of the whereabouts of the trust money he had received from TO.

[37] On July 24, 2017, the Respondent emailed Ms. Hebert, stating that he was about to transfer the $1,000, which was "sitting in my savings account." He offered the following explanation as to how TO's funds had ended up in this account:

> She received my name, old work email and phone # from a friend. She contacted me by email. I told her my retainer was $1000. She transferred it via email to [email address]. I should have declined and corrected her on where to send it but I did not. I accepted the transfer into my savings account. It was a Friday evening I believe. Mid may [sic]. I was impaired that whole weekend. I completely forgot about the payment she made. I forgot to even open the file. We met at the courthouse the following week and I received the circumstances.
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> […]
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> It was a terrible lapse in judgement on my part and I offer my sincere apologies.

[38] In the ASF, the Respondent admitted that he intentionally used some or all of TO's retainer funds for a purpose other than that authorized by TO. Altogether, apart from this admission, we find that the explanation offered in his July 24 email to Ms. Hebert is not reliable and that the Respondent deposited the entire $1,000 into his personal bank account knowing that he was not authorized to do so. We come to this conclusion for two reasons.

[39] First, after the Respondent asked TO to provide him with a $1,000 retainer, which he would hold in trust, she made two electronic transfers to an email address that he gave to her. This address was not associated with the Respondent's law firm. On both occasions, the Respondent deposited the funds directly into his personal banking account, which was in overdraft. Given these circumstances, we find that the Respondent knew he had no right to deposit the funds to his own account, but did so anyway.

[40] Second, in his July 24 email, the Respondent says he deposited the $1,000 into his personal account because of a "lapse in judgement," and thereafter forgot about receiving the payment. But he does *not* claim to have been unaware that he was not authorized to put the funds into his own account, nor does he claim that he was impaired when he did so. In any event, the Respondent's explanation is not reliable because, contrary to the narrative suggested in the email, he received the funds not in a single transfer but rather by means of two transfers several days apart. Notably, the first of these transfers occurred on the Tuesday prior to the weekend on which he claims to have been impaired.

[41] On July 24, 2017, Ms. Hebert made a complaint to the Law Society regarding the Respondent's handling of TO's trust funds.

[42] On July 25, 2017, the Respondent electronically transferred $1,000 to TO.

The Respondent's conduct regarding his client PP

[43] In November 2016, the Respondent was retained by PP to act for him on several criminal matters.

[44] PP's partner, ZR, communicated extensively with the Respondent with respect to the retainer, especially during PP's incarceration, and provided the Respondent with funds to finance the retainer.

[45] At the Respondent's request, ZR sent an electronic transfer of $2,000 to a Hebert Law email address on both November 2 and 28, 2016. Hebert Law deposited these two payments into its trust account on November 3 and 29, respectively. By the latter date, Hebert Law therefore held $4,000 in trust on account of PP's retainer.

[46] On November 28, 2016, at the Respondent's request, ZR provided him with $480 cash. He gave her a receipt, which stated that the money was paid "for legal fees." ZR understood that this money was to be used to cover part of a bill for work done for PP. However, the Respondent did not deposit the cash into the Hebert Law trust account, nor did he ever account for the funds in any other way. In these circumstances, we find that the Respondent used the $480 cash payment for a purpose that he knew was not authorized by ZR or PP.

[47] On December 9, 2016, the Respondent rendered an account to PP for $3,368.73. Although the Respondent signed this account, there is no evidence that it was ever sent to PP or ZR.

[48] The December 9 account included a disbursement of $345 for a medical report, which Hebert Law had paid for earlier the same day.

[49] On December 12, 2016, Hebert Law transferred $3,368.73 from trust in payment of the December 9 account. The balance left in trust was $631.27.

[50] On December 14, 2016, the Respondent emailed ZR asking that she send $345 to his personal email address to pay for the medical report. He did not tell her that this report had already been paid for using funds held in trust for PP. Later the same day, ZR transferred $345 to the Respondent, and he accepted the funds and deposited them into his personal bank account.

[51] Prior to the receipt of the $345, the Respondent's bank account had a balance of $1,010.14. The next activity in the bank account following the $345 deposit was a withdrawal of $163 made by the Respondent the same day. On December 15, the Respondent's mortgage payment of $504.09 was withdrawn from the bank account and by December 16, the account had a negative balance of $370.96.

[52] Given the circumstances described in the previous five paragraphs, we find that the Respondent used the $345 received from ZR on December 14 for a purpose that he knew was not authorized by ZR or PP.

[53] On December 30, 2016, the Respondent texted ZR, who was out of the province, to explain that PP had been arrested for allegedly breaching his bail and would have a bail hearing the next morning. The Respondent asked ZR to send him $1,000, which he would "hold on to in case it's needed" to post bail for PP. ZR electronically transferred $1,000 to the Respondent's personal email address that same day. The Respondent accepted the transfer and deposited the money into his personal bank account.

[54] Prior to the receipt of the $1,000, the Respondent's bank account had a negative balance of $741.12. After the $1,000 deposit, it had a positive balance of $258.88. Subsequent withdrawals that same day left the account with a positive balance of $34.13.

[55] Given the circumstances described in the preceding two paragraphs, we find that the Respondent used the $1,000 provided by ZR on December 30 for a purpose that he knew was not authorized by ZR or PP.

[56] On December 31, 2016, the Respondent conducted PP's bail hearing. PP was released on bail. Later that day, ZR texted the Respondent to ask if he had needed the $1,000 for the bail. The next day, the Respondent replied that he had not needed the funds for this purpose, but he would require payment for his December 30 and 31 work on PP's bail, and his fee for such a bail matter was $1,000. He also said that a further application might be required, for which additional fees would be necessary. The Respondent nonetheless offered to return the $1,000 if ZR did "not agree to pay [PP's] legal fees for the bail." ZR responded, "No thank you of course I will pay."

[57] On January 4, 2017, the Respondent emailed ZR to request that she "top up" PP's retainer. He told ZR that about $650 remained in trust, but this money would be "used up very easily" in preparing for PP's sentencing on the initial charges. He said there were also "new breaches of bail (2 counts) and a CSO [Community Supervision Order] breach allegation," although he might be able to resolve these without any charges proceeding. The Respondent added that he would in any event need to apply to change PP's CSO residency condition. The Respondent asked for a further $2,000, saying he was "optimistic will cover all of my work involving the charges themselves (with the goal being to convince Crown to just dropping [sic] the charges altogether) and the application to change his CSO and get the file to Kelowna."

[58] On January 6, 2017, ZR electronically transferred $2,000 to the Respondent's personal email address, which the Respondent deposited into his personal bank account. Prior to the receipt of these funds, the bank account had a negative balance of $778.25. After the

deposit, it had a positive balance of $1,221.73. Subsequent withdrawals that same day left the account with a positive balance of $949.90.

[59] As explained in the previous two paragraphs, ZR provided the Respondent with $2,000 on January 6, 2017 to pay for work that was to be performed in the future. We find that in depositing these funds into his personal account, instead of holding them in trust to pay for future work as had been agreed upon, the Respondent used the funds for a purpose that he knew was not authorized by ZR or PP.

[60] On February 3, 2017, ZR emailed the Respondent to pass on some requests from PP regarding the upcoming sentencing hearing, including that it be moved to Kelowna. In the same email, ZR noted that on January 4 there was $650 left in trust, after which she sent another $2,000, and asked "was all that used for the hearing in Kamloops in January?" ZR also asked for a receipt or invoice for her file. The Respondent replied in part as follows:

> Yes, the money remaining in trust is going to the hearing and/or the work going into moving the sentencing hearing to Kelowna, which will take some stick handling and is not guaranteed. Crown has to agree to waive. The money in trust has not been billed but will be shortly.

[61] Despite ZR's request, the Respondent did not provide her with a copy of the account rendered on December 9, 2016. He also did not tell her that the precise amount then held in trust was $631.27. Further, he did not explain what he had done with the $480 cash payment he received on November 29, 2016; the $345 transfer he received on December 14, 2016; the $1,000 transfer he received on December 30, 2016; or the $2,000 transfer he received on January 4, 2017.

[62] On February 3, 2017, ZR sent an electronic transfer to the Respondent's personal email address in the amount of $2,000. There is no evidence, such as an email or text message, to explain the impetus for this transfer. In any event, the Respondent deposited the funds into his personal bank account. Prior to the receipt of this money, the bank account had a negative balance of $885.90. After the deposit, the bank account had a positive balance of $1,114.10.

[63] On February 7, 2017, the Respondent issued an invoice for $631.26 for services rendered from January 1 to 17, 2017. This invoice was paid out of the funds remaining in the Hebert Law trust account. But there is no evidence to suggest the invoice was sent to ZR or PP. In fact, neither of them ever received any invoice or accounting of funds from the Respondent.

[64] Although the February 7 invoice indicated that the Respondent was being paid $631.26 for work done from January 1 to 17, his timesheet for the PP file recorded only one hour of

work during this period on January 2. The time sheet recorded a further 1.85 hours of work for January, said to have been performed on January 24 and 25.

[65] Given the circumstances described in the previous five paragraphs, we conclude that the $2,000 provided to the Respondent by ZR on February 3 was intended to be used to pay for legal work performed on behalf of PP after January 17. However, the Respondent's time sheets indicate that he only performed 1.85 hours work between January 17 and February 3. Accordingly, we find that by failing to deposit the $2,000 into trust, and instead depositing the funds into his personal account, the Respondent used some or all of the $2,000 for a purpose that he knew was not authorized by ZR or PP.

[66] On June 9, 2017, Ms. Hebert took over PP's file and issued a statement of account to PP and ZR, after which they told her that it was nice to receive a statement showing how their money had been used. This led Ms. Hebert to conduct further inquiries. She learned that the Respondent had mishandled money received directly from ZR, and on August 11, 2017 she made a complaint to the Law Society.

LEGAL TESTS FOR PROFESSIONAL MISCONDUCT AND MISAPPROPRIATION

[67] Professional misconduct is conduct that represents a "marked departure" from what the Law Society expects of lawyers (*Law Society of BC v. Martin*, 2005 LSBC 16, at para. 171; *Re: Lawyer 12*, 2011 LSBC 35, at para. 8). This is an objective test, which the Law Society must meet on a balance of probabilities standard (*Law Society of BC v. Daignault*, 2020 LSBC 18, at para. 53). Factors to consider in deciding whether the Law Society has done so include the gravity of the conduct, its duration, the number of breaches, the presence or absence of bad faith and any resulting harm (*Law Society of BC v. Lyons*, 2008 LSBC 09, at para. 35; *Law Society of BC v. Vlug*, 2018 LSBC 26, at para. 115; *Law Society of BC v. Atmore*, 2020 LSBC 04, at para. 12; *Law Society of BC v. Lo*, 2020 LSBC 09, at para. 34).

[68] Misappropriation is not defined in the *Act*, the *Code* or the Rules, but rather is a concept that has been developed by hearing panel and review board decisions, including *Law Society of BC v. Sahota*, 2016 LSBC 29, at paras. 60 to 63; *Law Society of BC v. Gellert*, 2013 LSBC 22, at paras. 71 to 73; *Law Society of BC v. Ali*, 2007 LSBC 18, at paras. 79 to 80; and *Law Society of BC v. Harder*, 2005 LSBC 48, at para. 56.

[69] As explained in these decisions, misappropriation occurs where a lawyer uses a client's funds for a purpose not authorized by the client, "whether knowingly or through negligence or incompetence so gross as to prove a sufficient element of wrongdoing" (*Gellert*, at para. 71). Provided this fault element is met, misappropriation is established regardless of the lawyer's motivation or intention, or the length of time during which the

funds were misused. It therefore matters not that the lawyer was responding to catastrophic personal financial pressures, never intended to derive any benefit from use of the client's funds, misused the funds only because of repeated and careless inattention to trust accounting obligations, repaid the funds or became entitled to them after a short period of time.

[70] In the *Ahuja* review, mentioned at paragraph 13 above, the review board affirmed this definition of misappropriation, at para. 43. In doing so, it rejected the hearing panel's position that, where a lawyer misuses client funds while in active untreated addiction, conduct legally falling within the definition of misappropriation should nonetheless be called something else, namely, "conversion of client funds to the lawyer's personal use while in active addiction."

[71] In rejecting the hearing panel's position, the *Ahuja* review board stated at paras. 44 to 46 and 51 to 52:

> As noted from the quotations from its decision set out earlier, the panel, on the admission of the Respondent's counsel, found that the Respondent's actions could be legally characterized as misappropriation, but declined to do so in favour of its own label.
>
> Was the panel correct in its decision not to follow this established precedent in classifying the professional misconduct of the Respondent? This Review Board finds that it was not. In saying this, we respect and defer to all of the panel's factual findings, which both parties accepted on this Review. The concerns that motivated the panel are well-founded, and are reflected in the Law Society's own recent initiatives in approving and implementing the recommendations of its Mental Health Task Force to remove the stigmas around addictions and mental health issues, and to improve supports to those who have them, their families and their colleagues.
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> The hearing panel accepted, and the Respondent admitted, that the legal test for misappropriation was met on the facts in this case. And although it refused to apply it, the panel also fully knew the law on what constitutes misappropriation. While a hearing panel is entitled to deference on any of its findings of facts, it cannot find all of the factual elements necessary to form a legal conclusion and then decline to make that conclusion. As a result, this Review Board finds that the panel committed a legal error in re-classifying the conduct so as to avoid having to call it the very thing it found had legally occurred.
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> […]

> Therefore, on the third question, this Review Board finds the hearing panel made an error of law in affixing its own label to the Respondent's taking of client funds when it found that, legally it met the test for characterization as misappropriation.
>
> On the final question, this Review Board finds that the correct legal characterization of the Respondent's actions is "misappropriation", but accepts the factual underpinnings of the addictions that led the Respondent to that misappropriation.

[72] This reasoning applies equally here. Accordingly, at the F & D Phase of the Respondent's matter, if the proven facts meet the legal test for misappropriation, we must find that he misappropriated the funds in question, regardless of whether there is or may be a causal relationship between the Respondent's addictions and his conduct in handling the funds.

ANALYSIS OF ALLEGATIONS

[73] Paragraph 1 of the Citation alleges that between May 11 and July 23, 2017, in the course of representing his client TO, the Respondent committed professional misconduct or breached the *Act* or Rules by doing one or more of the following:

(a) misappropriating some or all of $1,000 provided to him by the client as a retainer;

(b) failing to deposit the retainer funds into a pooled trust account, contrary to Rule 3-58;

(c) depositing the retainer funds into his personal bank account prior to rendering a bill for legal services, contrary to one or more of rule 3.6-10 of the *Code* and s. 69 of the *Act*; and

(d) failing to record all funds received and disbursed by maintaining the required records, contrary to Rule 3-67(2).

[74] Paragraph 2 of the Citation alleges that between approximately November 2016 and July 2017, in the course of representing his client PP, the Respondent committed professional misconduct or breached the *Act* or Rules by doing one or more of the following:

(a) misappropriating some or all of $5,825 provided to him for payments of retainers and/or disbursements;

(b) failing to deposit the retainer and/or disbursement funds into a pooled trust account, contrary to Rule 3-58;

(c) depositing the retainer and/or disbursement funds into his personal bank account prior to rendering a bill for legal services, contrary to one or more of rule 3.6-10 of the *Code* and s. 69 of the *Act*; and

(d) failing to account for the receipt of the retainer and/or disbursement funds, contrary to one or more of Rule 3-54 and rule 3.5-6 of the *Code*.

[75] As explained at paragraphs 28 to 39 above, we find that the Respondent deposited $1,000 received from TO into his personal bank account knowing that TO had not authorized him to use the funds for this purpose. The Respondent therefore misappropriated these funds from TO as alleged in paragraph 1(a) of the Citation.

[76] As explained at paragraphs 42 to 64 above, we find that the Respondent received a total of $5,825 from ZR, and that he used some or all of this money for purposes not authorized by ZR or PP. The Respondent therefore misappropriated some or all of these funds as alleged in paragraph 2(a) of the Citation.

[77] Rule 3-58(1) states that, subject to subrule (2) and Rule 3-62, neither of which apply in this case, "a lawyer who receives trust funds must deposit the funds in a pooled trust account as soon as practicable." The Respondent deposited trust funds received from TO and ZR into his personal bank account instead of a pooled trust account. He therefore breached Rule 3-58 as alleged in paragraphs 1(b) and 2(b) of the Citation.

[78] Rule 3.6-10 of the *Code* states that, "A lawyer must not appropriate any client funds held in trust or otherwise under the lawyer's control for or on account of fees except as permitted by the governing legislation." Section 69(1) of the *Act* provides that "A lawyer must deliver a bill to the person charged." By depositing retainer and/or disbursement funds received from TO and ZR into his personal bank account without delivering a bill to TO or to ZR or PP, the Respondent breached rule 3-6.10 and s. 69 as alleged in paragraphs 1(c) and 2(c) of the Citation.

[79] Rule 3-67(2) is found in Division 7 of Part 3 of the Rules. It states that, "A lawyer must record all funds received and disbursed in connection with his or her law practice by maintaining the records required under this division." Division 7 requires that a lawyer "maintain accounting records, including supporting documents" (Rule 3-67(3)). Division 7 also requires that a lawyer keep certain records regarding trust transactions (Rule 3-68). The Respondent made no records whatsoever regarding the trust funds received from TO and ZR. He therefore breached Rule 3-67(2) as alleged in paragraph 1(d) of the Citation.

[80] Rule 3-54(1) states that, "A lawyer must account in writing to a client for all funds and valuables received on behalf of the client." Rule 3-5.6 of the *Code* states that, "A lawyer must account promptly for clients' property that is in the lawyer's custody and deliver it to

the order of the client on request or, if appropriate, at the conclusion of the retainer." The Respondent failed to account to ZR or PP for any of the funds that he received from ZR over the course of the retainer. He therefore breached Rule 3-54 and rule 3-5.6 as alleged in paragraph 2(d) of the Citation.

[81] In our view, the Respondent's misappropriation of retainer funds and his breach of the various provisions in the *Code*, *Act* and Rules set out above constitute a marked departure from what the Law Society expects of lawyers and thus amounts to professional misconduct as alleged in paragraphs 1 and 2 of the Citation.

NON-DISCLOSURE ORDER

[82] The Law Society requests an order under Rule 5-8(2) that portions of the transcript and exhibits that contain confidential client information or privileged information not be disclosed to members of the public. The Respondent does not oppose this request.

[83] Rule 5-9(1) allows any person to obtain a transcript of a hearing. Rule 5-9(2) allows any person to obtain a copy of an exhibit that was tendered in a Law Society hearing that was open to the public, subject to solicitor-client privilege. Rule 5-9 is subject to any orders made under Rule 5-8(2), which provides that a panel may order that specific information not be disclosed to protect the interests of any person.

[84] To prevent disclosure to the public of confidential or privileged information relating to the Respondent's clients TO and PP, as permitted by Rule 5-8(2), we order that no copies of the exhibits, transcripts or any other documents filed in this matter are to be released to the public unless they have been redacted for confidential or privileged information.

CONCLUSION AND ORDERS

[85] The Respondent has committed professional misconduct as alleged in paragraphs 1 and 2 of the Citation by misappropriating retainer and/or disbursement funds provided to him in relation to his clients TO and PP and by breaching various provisions of the *Code*, the *Act* and the Rules governing the handling of client funds, including regarding the need to keep proper records.

[86] We order that no copies of the exhibits, transcripts or any other documents filed in this matter are to be released to the public unless they have been redacted for confidential or privileged information.