2021 LSBC 11
Decision issued: March 10, 2021
Citations issued: September 25, 2018
February 5, 2019
February 5, 2019

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

ERIC JOHN BECKER

RESPONDENT

DECISION OF THE HEARING PANEL

Hearing date:	November 25, 2020
Panel:	Ralston S. Alexander, QC, Chair Geoffrey McDonald, Lawyer Mark Rushton, Public representative
Discipline Counsel:	Irwin G. Nathanson, QC Julia K. Lockhart
Counsel for the Respondent:	Gerry Cuttler, QC

OVERVIEW

[1] On November 25, 2020, the Respondent, E. John Becker, and the Law Society presented the Panel with a conditional admission of a discipline violation and consent to proposed disciplinary action pursuant to Rule 4-30. The conditional admission relates to three Citations that have been joined. The Panel accepted the conditional admission of discipline violation and agreed with the proposed disciplinary action. The Panel ordered that the Respondent serve a 14-month suspension starting March 1, 2021, and pay costs in the amount of $3,500 on or before June 30, 2021. The Panel advised that reasons would follow. These are those reasons.

[2] The Respondent admitted service of the three citations: Citation 1 issued September 25, 2018; Citation 2 issued February 5, 2019; and Citation 3 issued February 5, 2019. The Law Society President joined all three citations for a single hearing on September 30, 2020. A comprehensive Agreed Statement of Facts detailing the circumstances behind each citation was submitted to the Panel, as well as the Respondent's Rule 4-30 conditional admission, an apology by the Respondent, the Respondent's professional conduct record, various authorities and written submissions by the Law Society and the Respondent. The Hearing was completed the morning of November 25, 2020.

APPLICABLE LAW

[3] In a Rule 4-30 submission, a panel must decide two issues. The first issue is whether the facts of the conditional admission support a finding that the alleged discipline violation occurred. This case involves allegations of professional misconduct. Professional misconduct is "… a marked departure from that conduct the Law Society expects of its members" (*Law Society of BC v. Martin*, 2005 LSBC16 at para. 171). A lawyer who "… displays culpability which is grounded in a fundamental degree of fault …" or "… displays gross culpable neglect of his duties as a lawyer" commits professional misconduct (*Martin* at para 154). The Law Society bears the onus of establishing professional misconduct on a balance of probabilities (*Foo v. Law Society of BC*, 2017 BCCA 151 at para. 63).

[4] If satisfied that the admitted facts support the discipline violation, the panel must then determine whether the proposed disciplinary action is appropriate. Under Rule 4-30, the panel may either impose the proposed disciplinary action or refuse to do so and remit the matter to the Discipline Committee to be set for hearing before a new panel. An appropriate sanction has been described as being "… within the range of a fair and reasonable disciplinary action." (*Law Society of BC v. Rai*, 2011 LSBC 02 at para. 7) Rule 4-30 conditional admissions are akin to joint submissions in criminal matters where an accused has entered a guilty plea in exchange for the prosecutor and defence counsel recommending a particular sentence to the Court. The principles articulated in *R. v. Anthony-Cook*, 2016 SCC 43, are directly applicable to assessment of a Rule 4-30 conditional admission.

[5] *Anthony-Cook* recognized that plea arrangements with joint submissions are a vitally important component of the justice system that routinely occur. At issue was the appropriate test to determine when "… a joint submission may appear to be unduly lenient, or perhaps unduly harsh, and [the Courts] are not obliged to go along with them." (*Anthony-Cook* at para. 25) The Court articulated the public interest test, concluding that a joint submission should not be rejected "… unless

the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest." (*Anthony-Cook*, at para. 32) The express purpose of the Law Society and its Rules is to "… uphold and protect the public interest in the administration of justice." (*Legal Profession Act*, section 3) The Law Society disciplinary process is intended to uphold that public interest. Accordingly, a Rule 4-30 conditional admission should only be rejected if the proposed disciplinary action is either so unduly harsh or unduly lenient that imposing it would bring the administration of justice into disrepute or it is otherwise contrary to the public interest.

FACTS

[6] The facts of the three citations before the Panel are as follows.

Citation 1

[7] Citation 1 contains 44 instances of misappropriation of client funds, 205 instances of misappropriation or improper handling of funds relating to charges for insurance binder disbursements during conveyances, four instances of improperly withdrawing trust funds, failing to report a trust shortage over $2,500, leaving blank pre-signed trust cheques accessible to employees, and one instance where the Respondent made charges to a client's credit card that the client later reported exceeded the authorized amount. These were not intentional in the sense that the Respondent did not have any malicious intent when he committed these breaches. Rather, the Respondent was grossly and culpably negligent. At the time the misappropriations took place, the Respondent had expanded his practice, failed to establish proper accounting systems, and used omnibus trust cheques, which combined payments of multiple accounts in respect to multiple clients. The Respondent signed the omnibus trust cheques without reviewing any supporting documentation. The four instances of improperly withdrawing trust funds involved funds that the Respondent would have been otherwise entitled to based on work performed, but he neglected to first deliver a bill. The erroneous insurance binder disbursements were another instance of the Respondent failing to review documentation prior to authorizing the charges.

[8] The various misappropriations were small amounts of money; over a third concerned amounts less than $100, and the smallest was $14.43. Importantly, the clients were all made whole with their funds either returned to them or their accounts correctly reconciled later.

Citation 2

[9] This Citation addresses multiple instances where the Respondent represented his firm as being a registered trademark agent when it no longer was one and provided misleading communications to the Law Society regarding his firm's status. Only a firm with a lawyer who is a registered trademark agent may represent clients before the Office of the Registrar of Trademarks (*Trademarks Act*, RSC 1985, c. T-13, s. 28) and may refer to itself as a registered trademark agent (*Trademarks Regulations*, SOR/2018-227, s. 19(c)).

[10] The Respondent was a registered trademark agent but had allowed his registration to lapse in August 2014. An associate employed by the firm until October 2015 was a registered trademark agent, which allowed the firm to continue to provide trademark services. When the associate left the firm, the Respondent sent letters to the 13 trademark clients advising them that the associate had left the firm and offering them the choice of remaining with the Respondent's firm or transferring to the associate's new practice. The letters did not mention that the Respondent's firm was no longer a registered trademark agent and was not authorized to provide trademark services. The footer of the letters inaccurately represented the firm to be "Lawyers, Notaries & Trademark Agents". The Respondent intended to rely on third party trademark agents in the event that any clients required trademark services, but neglected to advise any clients of this.

[11] The associate complained to the Law Society that the Respondent was falsely representing the firm to be trademark agents. In reply to the Law Society's subsequent investigation, the Respondent gave the following misleading statements:

(a) In a March 16, 2016 letter, the Respondent suggested that his firm did have qualifications as registered trademark agents and that the Respondent was applying to renew his qualifications. Neither was true.

(b) On April 22, 2016, the Respondent falsely asserted in a letter to the Law Society that he was in the process of renewing his registered trademark agent qualifications.

(c) In an October 4, 2016 email to the Law Society, the Respondent represented that there had been a "delay" in processing his trademark application, giving the impression that some unknown processing event by government regulators was the reason he had not regained his qualification. However, the only delay was the Respondent failing to apply to renew his qualifications until September 12, 2016. The Canadian

Intellectual Property Office replied two weeks later requesting proof that the Respondent had passed the qualifying examination. The Respondent did not provide the requested proof (he had never taken the exam), and he was not reinstated as a registered trademark agent.

Citation 3

[12] Citation 3 addresses incidents related to the termination of the Respondent's management of Greenway Legal Centre. The Respondent operated Greenway Legal Centre under a management agreement from spring 2016 until November 2017. In November 2017 the Respondent notified the owners of Greenway Legal Centre that he was terminating the management agreement. The owners did not wish to retain the several hundred corporate clients who had registered and records offices at Greenway Legal Centre. The Respondent did not notify the clients of this and did not seek their instructions. Instead, he had his staff move all corporate records to his firm and change the registered and records offices to his firm's address.

[13] After moving the records and changing the registered and records offices to his firm, the Respondent sent misleading correspondence to the corporate clients. The correspondence was sent on Greenway Legal Centre letterhead and advised that the office had moved to a new address. The clients were not told that Greenway Legal Centre remained open or that the new address was actually a different law firm.

[14] When contacted by Law Society staff, the corporate clients confirmed they had never been asked, nor had they instructed the Respondent to move their records. Several indicated that they would not have agreed to move as they either did not know the Respondent or they preferred a Langley-based lawyer.

DO THE ADMITTED FACTS SUPPORT THE DISCIPLINE VIOLATION?

[15] The Respondent's admitted conduct is grossly and culpably negligent. He mishandled trust funds, failed to report a trust shortage, signed blank trust cheques, repeatedly sent misleading correspondence to clients and the Law Society, moved corporate records without instructions, and represented his firm to be a registered trademark agent when it was not. This is "… a marked departure from that conduct the Law Society expects of its members." (*Martin* at para. 171)

[16] The Respondent ran his practice without sufficient systems and checks to ensure clients were given correct and informed legal services. Rather than properly review files and properly bill clients, the Respondent took shortcuts using omnibus trust

cheques and other inappropriate practices. When faced with a complaint that he was misrepresenting himself as a registered trademark agent, the Respondent chose to fend off the Law Society investigation with misleading correspondence instead of admitting his error and amending his letterhead. Rather than offer the corporate clients the choice of moving to his firm or selecting a different office, the Respondent chose to arbitrarily move them. He later misrepresented that it was a move to a new address instead of a move to a new firm. The Respondent's actions display a "… culpability which is grounded in a fundamental degree of fault …" and "… gross culpable neglect of his duties as a lawyer." (*Martin* at para. 154)

[17] The Respondent committed professional misconduct with respect to each of the citations.

IS THE PROPOSED DISCIPLINARY ACTION APPROPRIATE?

[18] Is the proposed disciplinary action appropriate? Is the proposed disciplinary action so unduly harsh or lenient that imposing it "… would bring the administration of justice into disrepute or is otherwise contrary to the public interest"? (*Anthony-Cook* at para. 32) In the Panel's judgment, the proposed disciplinary action is appropriate and imposing it meets the public interest test.

[19] The primary purpose of disciplinary proceedings is to uphold and protect the public interest, which requires lawyers to conduct themselves with integrity, honour and competence. Lawyers who commit professional misconduct must face a sanction that protects the public from the misconduct and maintains confidence in the legal profession generally, but is mindful of the need for rehabilitation. (*Law Society of BC v. Nguyen*, 2016 LSBC 21 at para. 36, citing *Law Society of BC v. Lessing*, 2013 LSBC 29 at paras. 57 to 61 and *Law Society of BC v. Ogilvie*, 1999 LSBC 17 at paras. 9 and 10) *Law Society of BC v. Faminoff*, 2017 LSBC 4 at paras. 81 to 84, confirmed that the proper approach is to apply the *Ogilvie* factors that are relevant to the particular circumstances of the misconduct and the respondent. These factors are not weighed equally in all cases. Rather, they are weighed contextually with some factors taking on special importance as required by the specific facts of each case. (*Law Society of BC v. Gellert*, 2014 LSBC 05 at paras. 39 to 41) The following *Ogilvie* factors are relevant to this case:

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

(b) the number of times the offending conduct occurred;

(c) the age and experience of the respondent;

(d) whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;

(e) the impact of the proposed penalty on the respondent;

(f) the need for specific and general deterrence;

(g) the need to ensure the public's confidence in the integrity of the profession; and

(h) the range of penalties imposed in similar cases.

[20] The application of these factors to the facts of this case supports a 14-month suspension.

[21] The Respondent's misconduct is extremely serious. The misconduct spans more than seven years and impacted hundreds of clients. The misconduct occurred repeatedly. While some of the misconduct is less serious, there are multiple instances of misappropriation and misleading and false communications. Misappropriation is one of the most serious offences a lawyer can commit. Dishonesty, in this case repeated misleading and false communications with the Law Society and with clients, undercuts the public's confidence in the legal profession.

[22] The Respondent is a senior lawyer, practising for three decades. His professional conduct record includes four conduct reviews, referral to practice standards and an administrative suspension. However, the facts underlying that conduct record are not related to the misconduct that the Respondent committed in this matter. Though somewhat aggravating, the Respondent's professional conduct record is of limited weight.

[23] The Respondent has admitted to the misconduct and taken responsibility for his behaviour. The Respondent has changed the administrative practices in his office to prevent future breaches.

[24] A 14-month suspension is significant and will have a very large impact on the Respondent. It provides specific and general deterrence. It ensures the public's confidence in the legal profession by demonstrating that lawyers who misconduct themselves will face stiff penalties.

[25] There are no truly comparable cases with as many wide ranging and diverse offences as this one. Counsel presented the Panel with a large number of cases

relevant to the different types of misconduct committed by the Respondent. Considering those cases and evaluating them in the context of a global disciplinary sanction supports a suspension in the range of 14 months.

CONCLUSION

[26] The Panel accepts the Rule 4-30 conditional admission. The Panel agrees that the proposed disciplinary sanction of a suspension for 14 months is appropriate and meets the public interest test.

[27] As noted above, on November 25, 2020, the Panel, with reasons to follow, made the following orders:

(a) pursuant to section 38(5)(d) of the *Act*, the Respondent is suspended from the practice of law for 14 months, commencing on March 1, 2021; and

(b) pursuant to Rule 5-11, the Respondent must pay costs of $3,500 on or before June 30, 2021.