

2021 LSBC 16  
Decision issued: May 12, 2021  
Citation issued: November 19, 2018

**THE LAW SOCIETY OF BRITISH COLUMBIA**

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

**and a hearing concerning**

**JOHN (JACK) JOSEPH JACOB HITTRICH**

**RESPONDENT**

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**DECISION OF THE HEARING PANEL  
ON DISCIPLINARY ACTION**

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Written materials: December 3, 2020  
February 9, 2021

Panel: Steven McKoen, QC, Chair  
Anita Dalakoti, Public representative  
Gavin Hume, QC, Lawyer

Discipline Counsel: Julia Lockhart

Acting on his own behalf: John (Jack) Joseph Jacob Hittrich

**BACKGROUND**

- [1] In our decision on Facts and Determination (2020 LSBC 26), we found that the Law Society had shown that the Respondent had committed professional misconduct by filing transcripts in a proceeding and providing those transcripts to an expert without informing himself as to the meaning of the restriction on use of statements throughout the transcripts, and despite a court ruling that he and his clients did not have the right to access those transcripts.
- [2] The Law Society made an application for a consent order that the Disciplinary Action phase proceed by way of written materials and the Respondent consented to that application. That application was granted on December 9, 2020.

[3] These are our reasons on the disciplinary action to be taken.

### **POSITION OF THE PARTIES**

- [4] The Law Society submits that the appropriate disciplinary action is a two-month suspension, commencing on the first day of the month after release of this Panel's decision, or such other date as this Panel may order. The Law Society also seeks an order for costs in the amount of \$12,985.19, payable on or before October 31, 2021, or such other date as this Panel may order.
- [5] The Respondent has agreed to the two-month suspension sought by the Law Society and has agreed to costs in the amount of \$12,985.19.
- [6] By letter dated February 2, 2021, the Respondent noted that his court calendar through May 2021 included trials and complex hearings and that prejudice to his clients would result if any suspension was to occur during that time period. He further indicated that he had no complex hearings or trials in June, only one trial booked in July and no complex hearings or trials booked from mid-September to the end of the year. The Respondent submitted that, if a suspension was ordered, it should be served in two one-month segments in June and later in the year so as not to interfere with his trial schedule.
- [7] The Law Society responded in a letter dated February 4, 2021 that, if a two-month suspension was ordered by this Panel, two one-month suspensions are qualitatively different from a two-month suspension, and given that on the date of the Respondent's letter the July trial was five months off, a two-month suspension, if ordered, should commence on June 1, 2021.
- [8] This Panel considered these submissions and in the interests of providing the Respondent with as much notice as possible to deal with the July trial, informed the Law Society and the Respondent on February 9, 2021 that, if the Panel ordered a two-month suspension, it would commence on June 1, 2021.

### **DECISION**

- [9] Section 38(5) of the *Legal Profession Act* states that, where a hearing panel finds, as this Panel did, that a respondent's actions constitute professional misconduct, the panel must do one or more of the following:
- (a) reprimand the respondent;

- (b) fine the respondent;
- (c) impose conditions or limitations on the respondent's practice;
- (d) suspend the respondent for a period of time or till any conditions or requirements imposed by the panel are met;
- (e) disbar the respondent; or
- (f) require the respondent to do one or more of remedial actions or make submissions respecting their competence to practise law.

[10] When making a determination as to disciplinary action, this Panel is guided by section 3 of the *Act*, which states that it is the object and duty of the Law Society to uphold and protect the public interest in the administration of justice.

[11] As stated by the review board in *Law Society of BC v. Nguyen*, 2016 LSBC 21 at para. 36:

Still, the disciplinary action chosen, whether a single option from s. 38(5) or a combination of more than one of the options listed, must fulfill the two main purposes of the discipline process. The first and overriding purpose is to ensure the public is protected from acts of professional misconduct, and to maintain public confidence in the legal profession generally. The second purpose is to promote the rehabilitation of the respondent lawyer. If there is conflict between these two purposes, the protection of the public and the maintenance of public confidence in the profession must prevail, but in many instances the same disciplinary action will further both purposes.

[12] In *Law Society of BC v. Lessing*, 2013 LSBC 29 at para. 55, the panel confirmed that "... objects and duties set out in section 3 of the Act are reflected in the factors set out in *Law Society of BC v. Ogilvie*, [1999] LSBC 17, at paras. 9 and 10 ... ." In *Ogilvie*, the panel set out 13 factors that, while not exhaustive,

... might be said to be worthy of general consideration in disciplinary dispositions:

- (a) the nature and gravity of the conduct proven;
- (b) the age and experience of the respondent;

- (c) the previous character of the respondent, including details of prior discipline;
- (d) the impact upon the victim;
- (e) the advantage gained, or to be gained, by the respondent;
- (f) the number of times the offending conduct occurred;
- (g) 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;
- (h) the possibility of remediating or rehabilitating the respondent;
- (i) the impact on the respondent of criminal or other sanctions or penalties;
- (j) the impact of the proposed penalty on the respondent;
- (k) the need for specific and general deterrence;
- (l) the need to ensure the public's confidence in the integrity of the profession; and
- (m) the range of penalties imposed in similar cases.

[emphasis added in *Lessing*]

[13] Those factors have been considered in many discipline decisions. In *Law Society of BC v. Dent*, 2016 LSBC 05 at para. 16, the panel stated:

It is not necessary for a hearing panel to go over each and every *Ogilvie* factor. Instead, all that is necessary for the hearing panel to do is to go over those factors that it considers relevant to or determinative of the final outcome of the disciplinary action (primary factors). This approach flows from *Lessing*, which talks about different factors having different weight.

[14] As stated, not all of the *Ogilvie* factors have the same weight (*Law Society of BC v. Gellert*, 2014 LSBC 05 at para. 39). The Law Society stressed this last point in their submissions and argued that this Panel must focus on the public interest and the collective reputation of the legal profession (citing *Merchant v. Law Society of Saskatchewan*, 2014 SKCA 56 at para. 119).

- [15] While we agree that the collective reputation of the profession in British Columbia must be maintained through our disciplinary process, we must keep in mind that it is the reputation of the profession in the minds of the public that is the principle we should be guided by. Upholding and protecting public interest in the administration of justice is our paramount purpose.
- [16] The panel in *Dent* also consolidated the *Ogilvie* factors as follows:
- (a) the nature, gravity and consequences of conduct;
  - (b) the character and professional conduct record of the respondent;
  - (c) acknowledgement of the misconduct and remedial action; and
  - (d) public confidence in the legal profession, including public confidence in the disciplinary process.
- [17] The Law Society and the Respondent made their submissions using the consolidated *Dent* factors. The Panel agrees that those factors provide an appropriate framework in this matter, and we will address each of the four consolidated factors in turn.

### **Nature, gravity and consequences of conduct**

- [18] The nature of the conduct here is one of repeated failures to appropriately deal with highly sensitive information. The Respondent heard NB, the person who was the subject of the transcripts, when she argued before Master MacNaughton, as she then was, that the Respondent should not have access to the transcripts. The Respondent should have been aware of the sensitive nature of the transcripts due to the limitations on use affixed to their cover and to each page. The Respondent heard from Justice Choi that she found he should not have had access to the transcripts. Even after Justice Choi's pronouncement, the Respondent continued to use the transcripts in Court of Appeal submissions and by sending them to an expert. The Respondent's persistent use of the transcripts in light of all of those factors, is an aggravating factor.
- [19] Further, as an experienced family law practitioner, the Respondent should have known that the reason such transcripts are marked for limited use is specifically to create an environment that encourages forthright and honest disclosure of difficult matters in family law hearings by assuring the participants that the material would be kept confidential. By using the transcripts contrary to their purpose, the Respondent's actions could have the effect of eroding public confidence in our

court system's ability to keep confidential matters confidential. The Respondent's continued use of the transcripts in that context is also an aggravating factor.

### **Character and professional conduct record**

- [20] The Respondent is 63 years old and a senior member of the family law bar in British Columbia, having practised for 34 years. He has appeared in over 114 reported cases and at all levels of court in British Columbia, as well as in the Supreme Court of Canada.
- [21] The Respondent has a professional conduct record that consists of the following:
- (a) **1994 Conduct Review:** Early in his career, the Respondent met with both spouses in a matrimonial dispute at once in his office and allowed the meeting to continue despite the husband insisting on staying. A conduct review subcommittee discussed the matter with him and concluded that he understood that it was not appropriate to meet with both spouses at once.
  - (b) **September 2000 Conduct Review:** In this matter, the Respondent continued to hold funds that Justice Gill had ordered be released to a spouse. After seeking advice and ultimately re-appearing before Justice Gill, he released the funds. A conduct review subcommittee reviewed the matter and, in their reasons for not recommending any further action, noted that the Respondent felt his failure to release the funds in a timely fashion had been caused by "a lack of objectivity and over identification with his client's dilemma." This is notable because similar factors of acting in a manner contrary to a judicial determination were at work in the matter before us.
  - (c) **November 2000 Conduct Review:** In this matter, the Respondent was found to have backdated a letter and spoken to a client who was under cross-examination. He explained the backdating as occurring due to his practice being extremely busy and his not having full control of his practice. Notably, in the matter before us, the transcripts in question were originally ordered by the Respondent's legal assistant, and the Law Society did not prove that the Respondent assisted his clients in getting them. Nonetheless, his office was involved in obtaining the transcripts when, ultimately, his clients were not entitled to them, which raises similar questions as to whether he was in full control of his practice.

- (d) **2014 Conduct Review:** Due to high workloads, the Respondent failed to adequately supervise the preparation of three affidavits that contained inaccuracies and that were sworn by his legal assistant.
- (e) **2014 to 2015 Practice Standards Referral:** Following the 2014 conduct review, the Respondent was referred to Practice Standards and was given recommendations, which he agreed to accept, respecting staying on top of administrative matters in his firm and being a better supervisor of delegated tasks.
- (f) **2018 Citation:** The Respondent was found to have committed professional misconduct and was suspended for three months following a citation issued in 2018. The decision on facts and determination, reported at *Law Society of BC v. Hittrich*, 2019 LSBC 24, found that the Respondent sent a letter threatening to advance perjury allegations if litigation was not resolved in his client's favour, despite co-counsel cautioning him that such a letter was inappropriate. Sending that letter was found to be professional misconduct, and in *Law Society of BC v. Hittrich*, 2020 LSBC 27, a three-month suspension was ordered. Similar to the current matter before us, the hearing panel in this prior matter found that the Respondent's actions were informed by an attitude "... of knowing better than anyone else what was the right thing to do" (para. 29).

[22] The Respondent has a substantial professional conduct record. While the Panel acknowledges that, for a period of 14 years, the Respondent had no additional entries in his professional conduct record, we also observe that many of the behaviours that were apparent in the matter before us (namely, over-identification with his client's cause and taking actions that others, who he should have listened to whether co-counsel or judges, had stated should be dealt with in ways other than how he decided to proceed), are common threads in his professional conduct record that reflect poorly on his character.

[23] The Respondent submitted eight letters with character references from former clients, as well as senior members of the bar. The letters were originally submitted with respect to the 2018 citation referenced above. It is clear from reviewing these letters that the Respondent has, on numerous occasions, provided valuable service to members of our community through his practice. His colleagues, many acknowledging that they had read the 2019 decision on facts and determination, continue to vouch for him as being a knowledgeable educator and a zealous and passionate advocate for his clients' interests.

- [24] We take into account the character references that evidence the Respondent's service to the community, but find that the Respondent's professional conduct record, and the repeated conduct it demonstrates, is an aggravating factor.

### **Acknowledgement of the misconduct and remedial action**

- [25] In his submissions, the Respondent has unconditionally acknowledged his error, has apologized for his actions and has agreed to the penalty proposed by the Law Society.
- [26] We find that the Respondent's unreserved acknowledgement and agreement to the proposed penalty is a mitigating factor.

### **Public confidence in the legal profession**

- [27] When considering the effect of the Respondent's actions on the public's confidence in the legal profession, we must look at both the nature of the actions and their effect on the public's confidence in the disciplinary process. In *Dent*, the panel found that the specific item at issue with respect to public confidence is whether the public will have confidence in the proposed disciplinary action when comparing it to similar cases (*Dent*, para. 23).
- [28] In this case, one of the fundamental issues is ensuring that the outcome will provide the public with confidence that this matter is dealt with appropriately. The rules around access to transcripts of confidential hearings demonstrate the importance of being able to assure participants in hearings that their statements will be kept confidential so that they will be willing to divulge highly sensitive and personal information to the judge and so that all relevant information will be before the court when critically important decisions are made about the best interests of a child. The administration of justice and public confidence in the legal profession will suffer if the Law Society does not take very seriously any activity that undermines that system.
- [29] The Law Society submitted that, of the range of available outcomes under s. 38 of the *Act*, we should impose a two-month suspension. In support of this position, they cited four cases.
- [30] In *Law Society of Saskatchewan v. Merchant*, 2020 SKLSS 06, the hearing panel accepted that, when a lawyer engages in misconduct that is contrary to the directions of the court, that misconduct is analogous to deliberate breach of a court order.



- [31] In *Lessing*, the panel was confronted with breaches of court orders in the context of the lawyer's own matrimonial proceedings, a finding of contempt of court and eight unsatisfied judgments against the lawyer. In that case, the lawyer received a one-month suspension.
- [32] In *Law Society of BC v. Kirkhope*, 2013 LSBC 35, the panel ordered a 45-day suspension for failing to comply with a court order. That matter also arose in the context of a family dispute, but in the specific context of court-ordered payments. Despite a court order for payment of interim support, the client paid the subject amount into the lawyer's trust account, who then wrote to suggest payment be handled in a way that varied from the court order. The opposing party complained to the Law Society and ultimately the payment was made as ordered.
- [33] In *Law Society of BC v. Taunk*, 2008 LSBC 37, a one-month suspension was ordered for a lawyer who obtained a divorce order without advising the court of prior directions made by the court which would have required that the matter be consolidated with another proceeding where the opposing party was self-represented. The hearing panel found that the lawyer had acted out of an over-identification with his loyalty to his client. No evidence was presented of the lawyer having a professional conduct record at the time.
- [34] In *Law Society of BC v. MacLeod*, 1998 LSDD No. 10, a lawyer was suspended for 30 days after appearing in a matter where a court would not approve a settlement without also reviewing the reasonableness of the lawyer's fee. Rather than providing evidence with respect to the fee, the lawyer applied to another judge for approval and did not disclose the prior application.
- [35] When comparing those cases to the one before us, the sanctions appear to range from 30 to 45 days. At two months, the proposed sanction is two weeks above the high end of the range.
- [36] After taking into account that this matter involves preserving confidence in hearings respecting the best interests of a child, and considering the Respondent's professional conduct record and the range of sanctions imposed in similar cases, we accept that a two-month suspension is appropriate in this matter and will preserve public confidence in the Law Society's disciplinary process to regulate the conduct of lawyers.

## **COSTS**

- [37] The Law Society sought an order for costs in the amount of \$12,985.19. That amount is the result of applying the tariff in Schedule 4 to the Law Society Rules, which Rule 5-11 directs us to have regard to when considering an order for costs. We believe that amount is reasonable and appropriate given the finding of professional misconduct in this matter, and we find no reason to deviate from the tariff costs.
- [38] The Respondent requested that, if costs are awarded, they be payable over a period of time. In response to that request, the Law Society submitted that the Respondent be given till October 31, 2021 to pay such costs.

## **ORDER**

- [39] This Hearing Panel orders that:
- (a) pursuant to section 38(5)(d) of the *Act*, the Respondent is suspended from the practice of law for a period of two months commencing on June 1, 2021; and
  - (b) pursuant to Rule 5-11 of the Rules, the Respondent pay costs to the Law Society of British Columbia in the amount of \$12,985.19 on or before October 31, 2021.