2021 LSBC 36
Decision Issued: September 3, 2021
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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 DISCIPLINARY ACTION

Hearing date:	July 7, 2021
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] In our decision on Facts and Determination issued on October 15, 2020 (2020 LSBC 48), the Respondent was found to have committed professional misconduct by:

(a) misappropriating either or both of retainer and disbursement funds provided to him in relation to two of his clients, and

(b) breaching section 69 of the *Legal Profession Act* (the "*Act*"), Rules 3-54 and 3-58 of the Law Society Rules (the "Rules") and sections 3.5-6 and 3.5-10 of the *Code of Professional Conduct for British Columbia* (the

"*Code*") governing the handling of either or both of client retainer and disbursement funds; including failing to deposit those funds into a pooled trust account, depositing the funds to his personal account prior to rendering a bill for legal services and failing to account for receipt of the funds.

[2] At the Hearing on disciplinary action, the Respondent, while not joining in the submission of the Law Society on proposed sanction and costs, advised that he did not oppose the sanction and costs sought and agreed that they were appropriate.

[3] The sanction sought by the Law Society is on what is known as a "global basis" and its elements are:

(a) an order that the Respondent be suspended for a minimum of 16 months and until he appears before a board of examiners appointed by the Panel or the Practice Standards Committee in order to satisfy the board that the Respondent's competence to practise law is not adversely affected by a dependency on alcohol or drugs; and

(b) an order that the Respondent be subjected to the following conditions until relieved of them by the Discipline Committee:

(i) the Respondent must practise in a firm setting with at least one other practitioner acceptable to the Law Society;

(ii) the Respondent must practise under a supervision agreement on terms acceptable to the Law Society;

(iii) the Respondent is prohibited from operating a trust account and from having any signing authority over a trust account; and

(iv) the Respondent must enter into and comply with a medical monitoring agreement on terms satisfactory to the Law Society, having regard to the recommendations made by Dr. Robert N. Baker in an opinion dated March 18, 2021 (the "Baker Report") that was entered into evidence.

[4] The costs sought are $5,219.63 with 12 months for the Respondent to pay.

[5] The Law Society submits that the proposed sanction reflects an appropriate balancing of the principles and factors relevant to the assessment of disciplinary action in the totality of the circumstances of this case, including the circumstances of the Respondent. In particular, the proposed sanction strikes the appropriate

balance between the gravity of the Respondent's misconduct, the need to ensure public protection, and the unique mitigating circumstances in this case.

PRINCIPLES

[6] While not contested, this Hearing does not proceed on a joint submission of the parties, and the tests for joint submissions do not apply. Consequently, the Panel must determine the appropriate sanction.

[7] The primary purpose of disciplinary proceedings is the fulfillment of the Law Society's mandate, set out in section 3 of the *Act*, to uphold and protect the public interest in the administration of justice.

[8] In *Law Society of BC v. Hill*, 2011 LSBC 16 at para. 3, a hearing panel explained that, in determining an appropriate disciplinary action, the task is to decide upon a sanction that is best calculated to protect the public, maintain high professional standards, and preserve public confidence in the legal profession.

[9] The sanction imposed at the disciplinary action phase of a hearing should be determined by reference to these purposes.

[10] Counsel referred us to the oft-cited cases of *Law Society of BC v. Ogilvie*, 1999 LSBC 17, and *Law Society of BC v. Lessing*, 2013 LSBC 29 (on review). From those cases flow 13 factors (referred to as the *Ogilvie* factors) that we can consider in assessing an appropriate disciplinary action.

[11] *Lessing* affirmed those 13 factors as a guide or "roadmap" (para. 85), while noting that not all may apply in a particular case and that their respective weight will vary from case to case. The review board stated that the protection of the public (including public confidence in the disciplinary process and public confidence in lawyers generally) and the rehabilitation of the respondent are two factors that will, in most cases, play an important role. The review board stressed that, where there is a conflict between these two factors, the protection of the public, including protection of the public confidence in lawyers generally, will prevail.

[12] The more recent hearing decision, *Law Society of BC v. Dent*, 2016 LSBC 05, boiled those factors down to:

(a) the nature, gravity and consequences of the conduct;

(b) the character and professional conduct record of the respondent;

(c) any acknowledgement of the misconduct and remedial action taken; and

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

[13] The Law Society submits that what *Dent* calls these "consolidated *Ogilvie* factors" provide a reasonable framework for this Panel to assess the proper disciplinary action to be taken.

[14] The Law Society also submits that *Lessing* is also instructive on how to approach crafting a sanction concerning multiple citations, or where multiple allegations are contained within one citation. The review board in *Lessing* held that questions of whether a suspension or fine should be imposed, and the length of a suspension, should be determined on a global basis. Disciplinary action for multiple instances of professional misconduct should address the overall nature of the misconduct and what is necessary to protect the public interest.

[15] The Panel accepts that proposition as the appropriate way to deal with sanction in this case.

ANALYSIS OF THE *DENT* FACTORS IN THIS CASE

The nature, gravity and consequences of the conduct

[16] It has been noted time and again in discipline decisions that misappropriation of clients' trust funds is the most serious and egregious conduct in which a lawyer can engage. Misappropriation typically attracts a penalty of disbarment, even where the amounts taken are not large (most recently in *Law Society of BC v. Smaill*, 2021 LSBC 06).

[17] The Law Society referred us to other cases where panels concluded that disbarment was the only appropriate remedy for misappropriation, including: *Law Society of BC v. McGuire*, 2006 LSBC 20 (aff'd 2007 BCCA 442); *Law Society of BC v. Ali*, 2007 LSBC 18 (aff'd 2018 LSBC 57); *Law Society of BC v. Tak*, 2014 LSBC 57; *Law Society of BC v. De Stefanis*, 2018 LSBC 16; and *Law Society of BC v. Mansfield*, 2018 LSBC 30. This has been so even where the underlying cause was or may have been depression (*McGuire*), physical or mental illness (*De Stefanis*) or addiction (*Mansfield*).

[18] As the Law Society rightly points out, an important aggravating factor in the case before us is the intentional nature of the Respondent's conduct. He directed his clients to transfer trust funds to his personal email address in order to facilitate his

improper use of their money and hide it from his employer. Further, he lied to his former employer about funds received, saying they were "sitting in [his] savings account" when that was not accurate. In doing so, the Respondent betrayed his clients' trust and that of his former employer.

[19] As the Law Society also states, this intentional conduct cannot be tolerated. Any sanction has to send a strong message to the profession as a whole, and to the public at large, that these types of breaches of clients' trust will not be condoned.

The character and professional conduct record of the Respondent

[20] The Respondent was called and admitted as a member of the Law Society of British Columbia on May 4, 2015. He articled with a firm in Kamloops and practised law there as an employee until June 2016. In October 2016, the Respondent joined another firm of which he was a member when the underlying events to the Citation occurred. The Respondent became a former lawyer on January 1, 2018, when his membership ceased for non-payment of fees.

[21] Long before he became a lawyer, and during his time practising, the Respondent had substance use problems. Some of these are detailed in our Facts and Determination decision at paras. 15 to 28. The details are augmented in the Baker Report noted earlier and in submissions of the Respondent at the Hearing. We will return to this aspect of the case when considering the Respondent's acknowledgement of his conduct and the remedial actions he has taken.

[22] Rule 4-44(5) stipulates that the panel may consider the respondent's professional conduct record ("PCR") in determining disciplinary action.

[23] The Respondent has a PCR comprising a referral to the Practice Standards Department, and then Committee, from July 2016 to January 2018, which included the following recommendations:

(a) in January 2017, orders that:

(i) the Respondent obtain and provide a medical report by a doctor determining whether he was currently fit to practise and whether it was appropriate for him to be on a monitored recovery program at the time, as well as making treatment recommendations and setting out any conditions that should be imposed on his practising in the future;

(ii) the Respondent provide an undertaking to his employer to report any non-compliance with the Relapse Prevention Agreement in writing to the employer within 24 hours of his becoming aware of the non-compliance and direct his Monitor to send his employer and the Law Society a copy of any report indicating criminal non-compliance by him; and

(iii) the Respondent see his general practitioner at least once per month to discuss his addiction recovery process;

(b) in April 2017, a recommendation that the Respondent attend for a full medical assessment with respect to his addiction issues;

(c) in June 2017, an order, by consent, that the Respondent cease practising law until he had provided a medical report satisfactory to the Practice Standards Committee, produced by a physician approved and instructed by the Practice Standards Committee, certifying that the Respondent was fit to practise either with or without specified conditions or restrictions; and

(d) in June 2017, a recommendation that the Respondent attend the combined trauma/addiction residential therapy program at the Homewood Health Centre facility at the first possible opportunity.

[24] The Respondent did not provide the Practice Standards Committee with any medical reports before his membership lapsed for non-payment of fees on January 1, 2018.

[25] *Lessing*, at paras. 71 to 72, states that in general, the PCR should be considered unless its relevance is slight or tangential and relates to "minor and distant events." However, its weight in assessing the specific disciplinary action will vary.

[26] In this case, the Law Society fairly, and with an enlightened understanding of the role that the Respondent's addictions have played in his career and life, submits:

> While the fact that a lawyer has a PCR is to be considered an aggravating factor, in the particular circumstances of this case, it should be kept in mind that the Respondent's PCR cannot be untangled from his substance abuse issues. Indeed, the PCR is the result of the Respondent's own request for assistance from the Practice Standards Department, after having spent a period of time in a residential treatment program for

> substance abuse issues. In other words, the Respondent sought assistance from the Law Society before he resumed the practice of law.
>
> This is an important consideration. It demonstrates that but for his own recognition of his substance abuse issues, the PCR would not have existed. Additionally, it demonstrates that the Respondent wished to practise law in accordance with his professional obligations.

[27] The Panel agrees with this analysis.

Any acknowledgement of the misconduct and remedial action taken

[28] This naturally brings us to a consideration of acknowledgement by the Respondent of what he did and steps he has taken to remediate the situation both personally and to his clients and former employer.

[29] The Respondent made extensive admissions of fact in this proceeding, acknowledged his misconduct, returned the funds to one client by electronically transferring $1,000 to her four days after being questioned about the funds by his former employer, and apologized to that former employer for his conduct in respect of that client. However, he has not returned funds to another client from whom he misappropriated them, and he has not apologized to either client involved.

[30] As noted earlier, for the purposes of this hearing, Dr. Baker assessed the Respondent on March 18, 2021 in order to determine whether the Respondent's "… substance use disorder in any way contributed to his aberrant behaviour."

[31] The Baker Report states, in part:

> During the time period in question 2016/2017 it is my professional opinion that Mr. Jeremy Knight met the diagnostic criteria as outlined in the DSM V and explained in my Independent Medical Evaluation of May 10, 2017.
>
> Substance Use Disorder Alcohol Severe Not in remission
>
> Substance Use Disorder Cocaine Severe Not in remission
>
> Post Traumatic Stress Disorder
>
> …

> That Jeremy Knight suffered from the disease of addiction, severe not in remission, during the time of the offences is I believe well established. As eloquently explained by Dr. Paul Farnan and Dr. Jennifer Melamed in the Ahuja decision (*Law Society of BC v. Ahuja*, 2019 LSBC 31, reversed on other grounds, 2020 LSBC 31), addiction is a chronic brain disease, a genuine primary chronic progressive condition and not simply a character flaw. As addiction progresses it is often characterized by an impairment in behaviour control and judgement. Addictive substances such as alcohol and cocaine combined with an individual's brain chemistry can result in neurocircuitry pathways changing such that there is significant dysregulation, even when not under the influence of a substance. These brain changes or neurocircuitry changes can require an extended period of abstinence to correct themselves. As such, addiction or substance use disorder can have significant negative consequences with respect to interpersonal relationships including in the workplace. An individuals [sic] judgement is often so impaired as a result of brain changes in addiction, rationalization, denial and minimization so effective that judgement can indeed be severely impaired and individuals engage in activities that they would otherwise normally not be capable of condoning. In simple recovery parlance, an addicted individual is often described as someone who behaves contrary to their own value system.
>
> While not an excuse for any aberrant behaviour it is my professional opinion that untreated addiction is a mitigating factor … In the case of Mr. Knight and the misappropriation of trust funds I believe this serious transgression of accepted values in the legal profession occurred primarily as a result of the untreated brain disease that he suffered from at the time in question and continues to have the potential to suffer from.

[32] The Law Society submits that we should accept this opinion, and we do.

[33] The Law Society also submits that the connection between the Respondent's substance use disorders and his proven misconduct is a significant mitigating factor that, consistent with prior cases, justifies a deviation from the typical sanction of disbarment for misappropriation. Again, the Panel agrees.

[34] The Respondent enlightened the Panel at the Hearing on how his addictions have affected his life and his desire to address and manage them and, in time, return to practice.

[35] The Respondent agreed that his addiction issues do not form any excuse for his conduct in misappropriating client funds, but instead provide some explanation for that conduct. He also said that he was ashamed.

[36] The Respondent had other significant personal consequences of those addictions, including the end of his marriage, loss of some friendships and severe strains on others, and the compromise of his professional and personal reputation. He said the addictions have affected every aspect of his life.

[37] The Respondent said that his addictions predate his becoming a lawyer. His previous career was as a teacher, and he struggled with alcohol during that time. Eventually, his addictions became so severe and his judgment so unsound that he could not see any way out for himself.

[38] The Respondent attends Alcoholics Anonymous, has a sponsor and finds the program successful when he works consistently on the 12 steps. He has recently been attending counselling and provided a letter from the counsellor.

[39] The Respondent agreed that before any return to the practice of law, he must appear before a board of examiners and satisfy that board that his competence to practise law is not adversely affected by a dependency on alcohol or drugs and show an established record of long-term sobriety.

[40] The Respondent returned to teaching in northern British Columbia and Nunavut for a time after his membership with the Law Society ended, but he could not cope with the stress, and he obtained work in a coffee shop in Victoria. He is now living with his mother in Mabel Lake and working for a friend who has a park maintenance business in Clearwater. In a letter in evidence, that friend attests to the Respondent's value as an employee. The friend also states his knowledge that the letter was sought for this proceeding.

[41] The Respondent stated that the law means much to him as a very worthy pursuit and that he wishes to become a practising lawyer again someday. He has been taking courses in mediation through the Justice Institute of BC with the goal of doing mediation work as part of his practice. He stated, however, that he realizes that this will take time as people have to start to trust him again.

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

[42] As noted earlier in paras. 16 and 17, while most cases of misappropriation result in disbarment, this is not universally the case. In other cases, the sanction has been suspension from practice.

[43] In *Law Society of BC v. Gounden*, 2021 LSBC 06, the respondent was found to have committed professional misconduct after having falsified receipts and other documents and intentionally misappropriating approximately $3,500 from his employer. The hearing panel accepted the parties' joint sanction proposal of a 16-month suspension with significant practice conditions. Multiple mitigating circumstances were present, including: the respondent had practised for 27 years without any discipline history (however, 18 of those years were at the Law Society in a professional regulation context); he apologized and reimbursed those affected by his theft; he was undergoing treatment and provided 12 letters of reference all of which described the misconduct as entirely out of character; and he had suffered a series of significant traumatic events in his life. While his experts and the Law Society's expert did not agree on his diagnosis or the causal connection between his traumatic history and misconduct, they agreed that the trauma had significant, negative consequences for him. They also agreed that the proposed practice conditions would adequately protect the public upon the respondent's return to practice, in particular because his risk of reoffending was deemed low.

[44] In *Law Society of BC v. Reuben*, [1999] LSDD No 1 (reversed [1997] LSDD No 52), the lawyer denied that he failed to account for receiving trust funds and engaged in a pattern of dishonest behaviour with the Law Society. A review panel overturned the hearing decision ordering disbarment on the basis of the lawyer's public service record and psychiatric evidence, which established that the lawyer's pattern of denial was linked to early trauma experienced as the child of Holocaust survivors. Ultimately, the respondent was suspended for 18 months with conditions related to continuing therapy and working under supervision.

[45] In *Law Society of BC v. Gellert*, 2005 LSBC 15, the lawyer failed to remit tax filings, failed to serve clients properly and misappropriated nearly $200 from estate funds held in trust. The hearing panel imposed an 18-month suspension with conditions instead of disbarment largely on the basis that the lawyer tendered medical evidence that showed the root of the lawyer's behaviour was untreated depression, for which he had received treatment.

[46] There has been a growing recognition in the legal profession of the need to address mental health and addiction issues amongst lawyers, articled students and law

students. The Law Society established a Mental Health Task Force some years back with a mandate to make recommendations to improve the mental health of the legal profession by identifying ways to reduce the stigma of mental health and addiction issues and, relevant to this Panel's tasks, developing an integrated mental health review concerning regulatory approaches to discipline and admissions.

[47] As part of that task force's work, it is reviewing best regulatory practices that will improve the manner in which the Law Society responds to mental health and substance use issues affecting the legal profession. This review includes examining other models in the disciplinary process where mental health or addiction issues are involved, such as diversionary or other alternative discipline programs where appropriate, while still protecting the public. (See *Law Society of BC Mental Health Task Force Mid-Year Report*, July 12, 2019 at paras. 72 to 75).

[48] The Panel notes this work of the Task Force, as it speaks to the need to understand the effect that mental health issues and addictions play in decision-making, as highlighted in the extract quoted earlier from the Baker Report. We also refer to some additional expert evidence of Dr. Melamed, given in the *Ahuja* decision and accepted by that hearing panel and on review, and accepted and adopted by Dr. Baker. We quote from the review board decision (2020 LSBC 31):

> [16] Dr. Melamed, called as an expert by the Respondent, conducted an independent medical evaluation of him for his then law firm and provided reports, to which she testified. The panel says this of her evidence at paras 30 to 32:
>
> > In specific response to the question of whether the Respondent's medical conditions impaired his capacity to exercise moral, ethical or professional judgment at the time of the events that gave rise to the Citation, Dr. Melamed wrote as follows:
> >
> > > Addiction is defined as a chronic relapsing disorder that is characterized by a compulsion to seek and take drugs, loss of control in limiting intake, and the emergence of a negative emotional state (e.g. dysphoria, anxiety, irritability) when access to the drug is prevented.
> > >
> > > Addiction erodes healthy moral judgment and, in my opinion, could have resulted in Mr. Ahuja having lost the capacity to exercise healthy moral, ethical or professional judgment.

> During her oral evidence, Dr. Melamed remarked that "a hallmark of addiction is dishonesty."
>
> On the question of causation, that is, whether there is a link or a nexus between the illness and the dishonest decision or act, Dr. Melamed opined that a person with a normal moral compass will not steal while a person in addiction cannot make normal moral decisions.

[49] As a result, in appropriate cases where the medical and other evidence supports it, a panel should take this impairment of judgment capacity into account when determining the appropriate remedy, and so older decisions of other panels where this evidence was not available may not hold the same persuasive value. Other hearing panel decisions are not binding but only persuasive to the extent they assist this Panel on the facts of this case. We find the medical and other evidence here does support taking this into account in our decision.

[50] The Panel finds that a minimum 16-month suspension is, in all the circumstances, an appropriate sanction that satisfies the "consolidated *Ogilvie* factors" set out in the *Dent* decision.

[51] The next question is the appropriateness of the additional conditions sought by the Law Society, particularly appearing before a board of examiners.

[52] Section 38(5) of the *Act* provides, in part:

> (5) If an adverse determination is made under subsection (4) against a respondent other than an articled student or a law firm, the panel must do one or more of the following: …
>
> (d) suspend the respondent from the practice of law or from practice in one or more fields of law …
>
> (iv) for a specified minimum period of time and until the respondent fulfills a condition imposed under paragraph (c) or subsection (7) or complies with a requirement under paragraph (f) of this subsection; …
>
> (f) require the respondent to do one or more of the following: …
>
> (iii) appear before a board of examiners appointed by the panel or by the practice standards committee and satisfy the board that the respondent's competence to practise law is

not adversely affected by a physical or mental disability, or dependency on alcohol or drugs.

[53] Other Law Society cases in which panels have made such orders include *Law Society of BC v. Motiuk*, 2003 LSBC 33 and *Law Society of BC v. Dobbin*, 2007 LSBC 09.

[54] The Law Society submits that such an order is appropriate because the expert medical evidence in the Baker Report does not specifically address the Respondent's current fitness to practise law. The Law Society acknowledges that the Respondent has and continues to take steps towards his recovery, and that the purpose of the Baker Report was to provide an opinion as to whether the Respondent's proven misconduct was related to his substance use disorder.

[55] Nor does the Baker Report indicate that the Respondent is currently following a treatment program that would reduce the likelihood of his use of alcohol or drugs. For these reasons, and because the Law Society's primary objective is to protect the public, the Law Society submits that the Respondent should be suspended for a period of not less than 16 months and until he appears before a board of examiners.

[56] The Panel accepts this submission. The requirement that the Respondent appear before a board of examiners will also assist in ensuring public confidence in the profession and the disciplinary process.

[57] Sections 38(5)(c) and 38(7) of the *Act* give the panel authority to impose conditions or limitations on respondent lawyers, including on their practice of law. In this case, the Law Society requests an order that the Respondent be placed on the conditions noted in para. 3(b) above until relieved of the conditions by the Discipline Committee.

[58] The Panel finds that the proposed conditions are appropriate in this case. They are consistent with what the Tribunal ordered in other cases with comparable medical evidence, such as *Gounden*. These conditions are restrictive, but they will assist in reducing the Respondent's risk of reoffending and so will serve to protect the public once a board of examiners has determined that the Respondent's competence to practise law is not adversely affected by a dependency on alcohol or drugs. Finally, these conditions are appropriate and necessary in order to maintain public confidence in the profession and the disciplinary process.

[59] In conclusion, this set of disciplinary actions achieves a balance between the gravity of the Respondent's misconduct, the need to protect the public, and the applicable mitigating circumstances. A suspension for a minimum of 16 months,

and until the Respondent appears before a board of examiners is lengthy and within the range of penalties imposed in similar cases. The order that the Respondent appear before a board of examiners will ensure that he is not able to resume the practice of law if he remains dependent on alcohol or drugs, and the proposed practice conditions assist in addressing the need to protect the public.

COSTS ORDER

[60] Under Rule 5-11, the panel must have regard to the tariff when calculating costs. The costs under the tariff are to be awarded unless under Rule 5-11(4) the panel determines it is reasonable and appropriate to award no costs or costs in an amount other than that permitted by the tariff.

[61] In this case, the Panel sees no reason to deviate from the application of the tariff. The Respondent has not provided any evidence of his current financial circumstances, including any information about his assets, net worth or ability to pay costs. The total effect of an order of costs and the term of the sanction will not be inordinate or out of proportion to the Respondent's misconduct. The Respondent also agreed in his submissions that the costs sought were appropriate.

CONCLUSION AND ORDERS

[62] The Panel orders:

(a) the Respondent is suspended for a minimum of 16 months effective immediately and until he appears before a board of examiners appointed by the Panel or the Practice Standards Committee in order to satisfy the board of examiners that the Respondent's competence to practise law is not adversely affected by a dependency on alcohol or drugs; and

(b) the Respondent is subjected to the following conditions until relieved of them by the Discipline Committee:

(i) the Respondent must practise in a firm setting with at least one other practitioner acceptable to the Law Society;

(ii) the Respondent must practise under a supervision agreement on terms acceptable to the Law Society;

(iii) the Respondent is prohibited from operating a trust account and from having any signing authority over a trust account; and

(iv) the Respondent will enter into and comply with a medical monitoring agreement on terms satisfactory to the Law Society.

[63] The Panel fixes costs at $5,219.63 without interest, as it was not sought, and orders that the Respondent will have 12 months from the date of this decision to pay those costs.