

2022 LSBC 04
Hearing File No.: HE20200091
Decision Issued: January 26, 2022
Citation Issued: November 5, 2020

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

GEORGIALEE ALIDA LANG

RESPONDENT

DECISION OF THE HEARING PANEL

Written submissions: August 6, 2021

Oral Issued: August 17, 2021

Panel: Steven McKoen, QC, Chair
Kimberly Henders Miller, Lawyer
Cyril Kesten, Public representative

Discipline Counsel: Tara McPhail
Appearing on her own behalf: Georgialeee Alida Lang

OVERVIEW

[1] This matter relates to the Respondent's conduct in communicating with two members of the public outside a courtroom during breaks in a family law proceeding on May 30, 2019.

- [2] Under Rule 4-30, the Respondent and the Law Society of British Columbia (the “Law Society”) submitted to the Panel an admission of a discipline violation, and consent to a specified disciplinary action, relating to the Respondent’s conduct.
- [3] On August 17, 2021, the Panel accepted the admission of the discipline violation and agreed with the disciplinary action proposed jointly by the Law Society and the Respondent. The Panel ordered that the Respondent pay a fine of \$10,000 and costs in the amount of \$1,000 on or before September 17, 2021. The Panel advised that reasons would follow. These are those reasons.

PROCEDURAL BACKGROUND

- [4] On March 30, 2020, the Law Society received a complaint from SB dated March 28, 2020 regarding the Respondent’s conduct. After an investigation, the matter was referred to the Discipline Committee.
- [5] On October 29, 2020, the Discipline Committee authorized a citation against the Respondent, which was issued on November 5, 2020 (the “Citation”). The Citation contains two allegations arising from the Respondent’s conduct in communicating with two individuals during breaks in a family law proceeding on May 30, 2019. The Respondent admits that she was properly served with the Citation.
- [6] The Respondent and the Law Society filed a joint submission dated July 15, 2021, as well as other materials, under Rule 4-30.
- [7] By letter dated July 26, 2021, the Respondent admitted the substance of the two allegations and further admitted that the allegations amount to professional misconduct.

ISSUES

- [8] The Panel considered the following issues:
- (a) whether it is appropriate for this Panel to proceed with the matter on the written record;
 - (b) whether the actions of the Respondent constitute professional misconduct; and
 - (c) whether the penalty proposed by the parties is an appropriate sanction.

HEARING IN WRITING

- [9] The parties requested that this matter proceed by way of a hearing on the written record, pursuant to the Practice Direction issued April 6, 2018.
- [10] To proceed with a hearing in writing, the panel must be satisfied that, on the basis of the materials filed, it can make a determination under s. 38(4) of the *Legal Profession Act* (the “*Act*”) as to whether there was a discipline violation, and if so, the appropriate disciplinary action under s. 38(5) of the *Act*.
- [11] In this case, the written record includes a joint submission, an agreed statement of facts, with supporting documentation, and the Respondent’s professional conduct record.
- [12] The Panel finds that the materials filed provide a comprehensive record which is sufficient to allow it to make these determinations.

FACTS

- [13] The Respondent was called and admitted as a member of the Law Society on November 17, 1989. Since 2011, she has been a sole practitioner at Cypress Law Corporation in Vancouver, British Columbia, practising exclusively in the area of family law.
- [14] The Respondent represented RB in family proceedings against his former spouse, SB. SB was represented by counsel. From May 27 to 31, 2019, a trial on property division and spousal support was conducted at the Vancouver Law Courts. The issues between RB and SB were highly contested and the hostilities between the parties were palpable.

Allegation #1

- [15] During a break in court proceedings on May 30, 2019, the Respondent approached SB in the absence of her counsel, while SB was seated in a waiting area, and suggested to SB that a particular piece of property should receive a certain valuation. SB responded that the Respondent should discuss the matter with her counsel. The Respondent then walked away.

Allegation #2

- [16] During another break in court proceedings on May 30, 2019, the Respondent approached SB and her counsel’s junior associate in a waiting area with the

intention of providing documents to SB. SB's adult son, MH, was also present. MH indicated that the documents were not the correct ones, to which the Respondent replied to MH, "What the fuck do you know?". The Respondent then walked away.

ANALYSIS

Whether the respondent's actions constitute professional misconduct

- [17] The Law Society bears the onus of proving, on a balance of probabilities, that the conduct of the respondent constitutes professional misconduct: *Foo v. Law Society of British Columbia*, 2017 BCCA 151.
- [18] While "professional misconduct" is not a defined term in the Law Society's governing legislation, it is well established that it is characterized as culpable conduct that is a marked departure from that conduct expected of lawyers: *Law Society of BC v. Martin*, 2005 LSBC 16, at para. 171; *Re: Lawyer 12*, 2011 LSBC 35.

Communicating with a represented party

- [19] The Respondent admits that she attempted to have a settlement discussion directly with SB in the absence of her counsel and without the permission of her counsel. This is in direct contravention of rules 7.2-6 (a) and (b) of the *Code of Professional Conduct for British Columbia* (the "Code"), which states:
- 7.2-6** Subject to rules 7.2-6.1 and 7.2-7, if a person is represented by a lawyer in respect of a matter, another lawyer must not, except through or with the consent of the person's lawyer:
- (a) approach, communicate or deal with the person on the matter; or
 - (b) attempt to negotiate or compromise the matter directly with the person.
- [20] Contravention of this rule is clearly a marked departure from that conduct expected of lawyers: *Law Society of BC v. Moore-Stewart*, 1993 LSDD No. 188. This should have been readily apparent to the Respondent as she has previously been the subject of a decision in this area: *Law Society of BC v. Lang*, 2014 LSBC 35.

Civility

- [21] The Respondent admits that her comment to MH was discourteous and uncivil. This is in contravention of rule 7.2 of the *Code*, which states, in part:

7.2-1 A lawyer must be courteous and civil and act in good faith with all persons with whom the lawyer has dealings in the course of his or her practice.

...

7.2-4 A lawyer must not, in the course of a professional practice, send correspondence or otherwise communicate to a client, another lawyer or any other person in a manner that is abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from a lawyer.

- [22] The use of offensive and profane language by counsel in the course of their practice is not acceptable and can constitute professional misconduct: *Law Society of BC v. Johnson*, 2014 LSBC 08.

- [23] The requirement for lawyers to maintain civility in their interactions with others is entrenched in the profession: in tradition, in jurisprudence and within the regulatory framework. In *Groia v. Law Society of Upper Canada*, [2018] 1 SCC 772, the Supreme Court of Canada recently affirmed that civility is a cornerstone to the profession, noting at para. 63 that:

... Practicing [sic] law with civility brings with it a host of benefits, both personal and to the profession as a whole. Conversely, incivility is damaging to trial fairness and the administration of justice in a number of ways.

- [24] As was the case here, emotions can run high between litigants in contentious matters. For that reason, it is even more important that counsel maintain a high level of professionalism and courtesy in their dealings with opposing litigants and members of the public. When counsel employ offensive and profane language in a manner that adds to an already hostile atmosphere, it clearly constitutes a marked departure from the behaviour expected of lawyers: *Law Society of BC v. Greene*, 2003 LSBC 30.

Whether the proposed penalty is appropriate

- [25] The sanctions that may be imposed pursuant to ss. 38(5) and (7) of the *Act* range from a reprimand to disbarment. A panel's decision on penalty is guided by the overarching duty in s. 3 of the *Act* to uphold and protect public interest in the administration of justice.
- [26] In determining the appropriate penalty, a panel must consider the case-specific mitigating and aggravating factors. Many of these factors were enumerated in the leading case of *Law Society of BC v. Ogilvie*, 1999 LSBC 17. More recently, in *Law Society of BC v. Dent*, 2016 LSBC 05, the *Ogilvie* factors were conveniently condensed into four broad categories:
- (a) nature, gravity and consequences of conduct;
 - (b) character and professional conduct record of the respondent;
 - (c) acknowledgment of the misconduct and remedial action; and
 - (d) public confidence in the legal profession including public confidence in the disciplinary process.
- [27] Hearings under Rule 4-30 proceed by way of joint submissions. A panel hearing a matter under Rule 4-30 is statutorily prohibited from diverging from the joint submission on disciplinary action unless it finds that the proposed penalty is contrary to public interest in the administration of justice: Rule 4-30(6)(b).
- [28] This statutory limitation reflects the principles set out by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43, which support deference being given to joint submissions. These principles include: certainty for the parties negating the negative aspects involved in requiring witnesses to testify; and creating efficiencies in the system: *Law Society of Upper Canada v. Archambault*, 2017 LSDD No. 100, at para. 15.
- [29] In prior cases involving communicating with a represented litigant, the disciplinary action imposed has generally ranged from a reprimand to a lower fine: *Lang*; *Moore-Stewart*; *Law Society of Alberta v. Welz*, 1996 LSDD No. 303; *Law Society of Alberta v. Bilyk*, 2006 LSA 18; *Law Society of Alberta v. Hanson*, 2010 ABLS 20.
- [30] In prior cases involving incivility in communications, the disciplinary action imposed has generally ranged from a fine to, in cases where threatened or actual

violence occurred, a suspension: *Johnson; Greene; Law Society of BC v. Hudson*, 2017 LSBC 17.

Nature, gravity and consequences of conduct

- [31] With regard to the unsanctioned communication with SB, the Panel found that it was a brief interaction, it lacked any *mala fides* and SB quickly neutralized any harm through her response. However, the conduct itself is serious: it was intentional conduct constituting a flagrant breach of a clear rule that exists in order to protect public interest in the administration of justice. Moreover, given that counsel for SB was nearby and accessible, there was absolutely no need for the Respondent to proceed in this matter.
- [32] With regard to the offensive communication with MH, the Panel found that it was a brief interaction from which no significant harm resulted to MH. However, the conduct is again serious: it was a breach of a rule that exists to foster civility in members of the profession with each other and with members of the public. Although the words spoken were not threatening or intimidating, they held no legitimate purpose. It is also highly aggravating that the comment was made to a member of the public. While no direct harm resulted, the damage inflicted by this type of conduct is the harm done to the public's perception of lawyers, and resultingly, the diminishment of public faith in the administration of justice.
- [33] The Panel found that the context in which both acts occurred was aggravating. The Respondent's explanation for the interaction with MH was that emotions were running high during the trial and that she spoke out of frustration. While it is true that litigation can be stressful and can evoke strong emotions, it is incumbent on members of the profession to remain objective and uphold the highest standards of civility in such circumstances, particularly when the litigants themselves are entrenched in hostile attitudes towards each other.
- [34] The Panel also considered that the location where both acts occurred was aggravating. Litigants should be able to trust that the law courts provide a forum where they can have their disputes fairly heard in a setting that is dignified and respectful and where they are treated with courtesy. Where litigants have the benefit of representation, they should be able to take comfort in the fact that they have someone present who is retained to advocate and act on their behalf in all matters.

Character and professional conduct record of the respondent

- [35] The Respondent has enjoyed a lengthy career of over 30 years practising law, and practises exclusively in the area of family law.
- [36] The Respondent's professional conduct record consists of the following:
- (a) a conduct review authorized July 30, 2002 for filing an affidavit that the Respondent should have known contained misleading information. The Discipline Committee accepted the Conduct Review Subcommittee's recommendation to take no further action;
 - (b) a citation issued March 18, 2014 for communicating with a represented party with the intent to settle a review of the Respondent's bill that was before the Deputy Registrar. The hearing panel found that the appropriate penalty was a reprimand and the Respondent was ordered to pay costs: *Lang*; and
 - (c) a conduct review authorized May 27, 2020 for breaching confidentiality of a potential client by providing an email from the potential client to another party. The Discipline Committee accepted the Conduct Review Subcommittee's recommendation to take no further action.
- [37] Clearly, one of the most aggravating features of this matter is that the Respondent has a prior professional conduct record, which includes a previous citation and a reprimand for a cognate infraction. The Respondent's characterization of the communication with SB as "harmless banter" that was intended to impart information to SB, gives the Panel little confidence that the Respondent recognizes the seriousness of the breach. Resultingly, it is appropriate that the penalty be more significant than those previously imposed in similar cases.
- [38] Given the Respondent's professional conduct record, and the two infractions before this Panel, it is appropriate to apply the principle of progressive discipline and impose on the Respondent a more significant penalty than she has previously received. The imposition of progressive discipline is an important feature of the regulatory scheme, as it demonstrates to the public that the Law Society takes seriously a lawyer's recurring failure to act in accordance with their duties: *Law Society of BC v. Batchelor*, 2013 LSBC 09, at paras. 49 to 51.

Acknowledgment of the misconduct and remedial action

[39] The Respondent has admitted the conduct and that both events amount to professional misconduct.

Public confidence in the legal profession

[40] Both incidents of professional misconduct were committed against members of the public while they were in attendance at the Vancouver Law Courts. As discussed above, such conduct is damaging to the perception of the legal profession generally, and resultingly, is damaging to public confidence in the administration of justice. Given the duties of the Law Society to protect these principles, a penalty that addresses general deterrence is required.

[41] In addition, a lawyer who has a previous professional conduct record, who commits two infractions and who has failed previously in their duties in the same way, requires a penalty that also addresses specific deterrence.

[42] Accordingly, the penalty imposed in this case should be greater than those imposed in cases that do not involve members of the public, do not occur in the law courts or are single transgressions during a lawyer's career.

[43] The proposed joint submission of a fine of \$10,000 will impact the Respondent sufficiently to address the need for both specific and general deterrence. It signals to the public that the Law Society is responsive when a lawyer engages in inappropriate communications with members of the public.

CONCLUSION ON DISCIPLINARY ACTION

[44] Based on a consideration of the relevant mitigating and aggravating factors and the range of sanctions imposed previously, this Panel finds that a \$10,000 fine is a fair and reasonable disciplinary action and does not find that the proposed penalty is contrary to public interest in the administration of justice. Therefore, the Panel accepts the joint submissions of the Law Society and the Respondent on the proposed penalty.

[45] COSTS

[46] The hearing panel derives its authority to order costs from s. 46 of the *Act* and Rule 5-11 of the Rules. Costs under the tariff are to be awarded under Rule 5-11 unless the panel determines that it is reasonable and appropriate to award no costs or costs in an amount other than that permitted by the tariff.

[47] The Law Society and the Respondent have jointly requested an order for costs in the amount of \$1,000. In considering this request, the Panel acknowledges that the Respondent admitted to her conduct early in the process and that the parties proceeded by way of a written record. In these circumstances, the Panel accepts the joint request, finding that to award costs to the Law Society in the amount of \$1,000 is reasonable and appropriate and is not contrary to public interest in the administration of justice.

ORDER

[48] In its order dated August 17, 2021, the Hearing Panel ordered that:

- (a) the Respondent pay a fine in the amount of \$10,000 pursuant to s. 38(5)(b) of the *Legal Profession Act*, on or before September 17, 2021; and
- (b) the Respondent pay costs to the Law Society in the amount of \$1,000, on or before September 17, 2021.