

2022 LSBC 08
Hearing File No.: HE20200094
Decision Issued: March 4, 2022
Citation Issued: November 20, 2020

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

PAULE FIONA SEEGER

RESPONDENT

**DECISION OF THE HEARING PANEL
ON FACTS AND DETERMINATION**

Written submissions: December 7, 2021

Panel: Pinder Cheema, QC, Chair
Lance Ollenberger, Public representative
Monique Pongracic-Speier, QC, Lawyer

Discipline Counsel: Barbara Lohmann
Counsel for the Respondent: Janis McAfee

Written reasons of the Panel by: Monique Pongracic-Speier, QC

INTRODUCTION

[1] On November 20, 2020, the Law Society issued an eight-paragraph citation against the Respondent (the “Citation”) as follows:

1. On or about July 13, 2018, in relation to your client JM, you misappropriated or improperly withdrew some or all of \$1,400 in client trust funds by withdrawing funds from trust when you were not entitled to do so, contrary to Rule 3-64 of the Law Society Rules and your fiduciary duties.

This conduct constitutes professional misconduct or a breach of the Act or rules, pursuant to s. 38(4) of the *Legal Profession Act*.

2. Between approximately January 12, 2017 and September 14, 2018, in relation to one or more of the thirty-seven (37) instances listed in Schedule "A", you misappropriated or improperly withdrew client trust funds by withdrawing fees from trust for the payment of your legal fees when you had not rendered any or sufficient legal services to justify the withdrawal, contrary to Rule 3-64 of the Law Society Rules and your fiduciary duties.

This conduct constitutes professional misconduct or a breach of the Act or rules, pursuant to s. 38(4) of the *Legal Profession Act*.

3. Between approximately December 15, 2015 and July 31, 2018, in relation to one or more of the eighteen (18) instances listed in Schedule "B", you misappropriated or improperly withdrew client trust funds by withdrawing funds from trust when there were insufficient funds on deposit to the credit of the clients, contrary to one or more of Rules 3-63 and 3-64(3) of the Law Society Rules, and your fiduciary duties.

This conduct constitutes professional misconduct or a breach of the Act or rules, pursuant to s. 38(4) of the *Legal Profession Act*.

4. Between approximately January 23, 2017 and September 18, 2017, in relation to one or more of the three (3) instances listed in Schedule "C", you misappropriated or improperly withdrew client trust funds by either withdrawing funds from trust for disbursements that had not been incurred, or by not billing for disbursements accurately, contrary to Rule 3-64(1) of the Law Society Rules and your fiduciary duties.

This conduct constitutes professional misconduct or a breach of the Act or rules, pursuant to s. 38(4) of the *Legal Profession Act*.

5. Between approximately April 30, 2018 and May 8, 2018, in relation to one or more of the four (4) instances listed in Schedule "D", you misappropriated, or improperly withdrew client trust funds by billing clients for legal services at your hourly rate when the work had been completed by an articulated student whose hourly rate was lower, contrary to Rule 3-64(1) of the Law Society Rules and your fiduciary duties.

This conduct constitutes professional misconduct or a breach of the Act or rules, pursuant to s. 38(4) of the *Legal Profession Act*.

6. Between approximately April 30, 2018 and May 8, 2018, in relation to one or more of the four (4) instances listed in Schedule “D”, you made representations in your invoices to clients that you had rendered certain services when you knew or ought to have known that the representations were false or misleading, or both, because your articled student had completed the work billed for, contrary to rule 2.2-1 of the *Code of Professional Conduct for British Columbia*.

This conduct constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.

7. In approximately July 2018, in relation to one or more of the twenty (20) instances listed in Schedule “E”, you gave a non-lawyer pre-signed blank cheques for your [Bank] Pooled Trust Account [number], contrary to one or more of Rule 10-4(1) of the Law Society Rules, rules 3.5-2 and 6.1-3 of the *Code of Professional Conduct for British Columbia*, and your fiduciary duties.

This conduct constitutes professional misconduct or a breach of the Act or rules, pursuant to s. 38(4) of the *Legal Profession Act*.

8. Between approximately January 5, 2018 and April 27, 2018, you failed to notify the Executive Director of the Law Society of British Columbia in writing of the circumstances of an unsatisfied monetary judgment entered against you on January 5, 2018, in Federal Court (File Number [number]), and your proposal for satisfying the judgment, contrary to Rule 3-50 of the Law Society Rules.

This conduct constitutes professional misconduct or a breach of the Act or rules, pursuant to s. 38(4) of the *Legal Profession Act*.

- [2] On September 13, 2021, the Respondent, through her counsel, admitted to the conduct and to the breaches of her fiduciary duties, the Law Society Rules (the “Rules”) and the *Code of Professional Conduct for British Columbia* (the “Code”) alleged in the Citation. The Respondent also admitted to professional misconduct in respect of each allegation.
- [3] For the reasons that follow, we find that the Respondent committed professional misconduct as alleged at paragraphs 1 to 8 of the Citation.

ANALYSIS

A preliminary issue: the mode of hearing

- [4] The Law Society and the Respondent jointly applied for the hearing of the Citation to proceed on the written record only. On December 14, 2021, the Panel granted the application as we were persuaded that there is no issue of fact or law that would require an oral hearing to do justice between the parties. The reasons for this determination are as follows:
- (a) the parties filed an agreed statement of facts, accompanied by two volumes of documents (collectively, the “ASF”). The Panel is satisfied that the ASF provides sufficient admissible evidence for us to make reliable findings of fact;
 - (b) credibility has not been put in issue; and
 - (c) the parties filed a cogent joint submission addressing the factual and legal issues arising from the Citation. The Panel is satisfied that the joint submission adequately addresses all material issues.

Background facts

- [5] The following facts are established by the ASF.

Facts concerning the Respondent and her practice

- [6] The Respondent was called and admitted as a member of the Law Society in May 2004. She practised for approximately one year in Vancouver. She held non-practising status from May 2005 to December 2009. In January 2010, the Respondent requalified to practise. She moved to Kelowna and resumed her practice. Her main area of practice became family law.
- [7] The Respondent opened her own law firm in January 2014 and practised in that setting until she closed the firm in December 2019. Since March 2020, she has practised through a legal services firm.
- [8] For most of the times material to the events alleged in the Citation, the Respondent was experiencing serious personal difficulties, including marital breakdown and identity theft. The identity theft caused significant financial issues for the Respondent.

- [9] In addition, the Respondent's practice was financially precarious. Between 2016 and 2018, for example, the firm's general account was often at or near a zero balance. The Respondent was compelled to rely on a line of credit to meet her expenses.

Events leading to the Citation

- [10] The Respondent employed a bookkeeper, PG, for approximately six weeks beginning in early June 2018. In early September 2018, PG submitted a complaint to the Law Society. PG alleged a number of financial improprieties at the Respondent's firm. The Law Society opened an investigation into the complaint.
- [11] Law Society investigators interviewed PG. PG reported that while she worked for the Respondent, there was a large number of transfers from the firm's trust account to its general account. PG said that the Respondent was "always" making transfers from trust to general to cover the firm's payroll expenses. PG further reported that while the Respondent was out of the country on holiday in July 2018, she had left a packet of 30 to 40 signed, but otherwise blank, trust cheques for PG to use in the Respondent's absence. Additionally, PG reported that she was concerned that, in July 2018, the Respondent had billed a client for court dates that had not yet taken place.
- [12] Law Society investigators also interviewed the Respondent's articled student between September 2017 and September 2018. The articled student confirmed work that she had performed for various of the firm's clients.
- [13] The Law Society ordered a forensic accounting investigation of the Respondent's practice. The investigation report provided evidence of a number of problems on the financial side of the Respondent's practice.
- [14] The Citation was then issued.

Applicable law and professional standards

- [15] Professional misconduct is a marked departure from that conduct the Law Society expects of lawyers: *Law Society of BC v. Martin*, 2005 LSBC 16, at para. 171. The test is objective. The panel must "consider the appropriate standard of conduct expected of a lawyer, and then determine if the lawyer falls markedly below that standard": *Law Society of BC v. Edwards*, 2020 LSBC 21, at paras. 44 to 46.
- [16] The Law Society bears the onus of proving misconduct on a balance of probabilities: *Foo v. Law Society of British Columbia*, 2017 BCCA 151, at para. 63. In this case, the onus on the Law Society is discharged by the Respondent's admissions.

[17] Paragraphs 1 to 5 of the Citation allege that the Respondent breached Rule 3-64. Paragraph 3 also alleges that the Respondent breached Rule 3-63. Those rules provide:

3-63 A lawyer must at all times maintain sufficient funds on deposit in each pooled or separate trust account to meet the lawyer's obligations with respect to funds held in trust for clients.

3-64 (1) A lawyer must not withdraw or authorize the withdrawal of any trust funds unless the funds are

- (a) properly required for the payment to or on behalf of a client or to satisfy a court order,
- (b) the property of the lawyer,
- (c) in the account as a result of a mistake,
- (d) paid to the lawyer to pay a debt of that client to the lawyer,
- (e) transferred between trust accounts,
- (f) due to the Foundation under section 62(2)(b) [*Interest on accounts*], or
- (g) unclaimed trust funds remitted to the Society under Division 8 [*Unclaimed Trust Money*].

(2) The Executive Director may authorize a lawyer to withdraw trust funds for a purpose not specified under subrule (1).

(3) No payment from trust funds may be made unless

- (a) trust accounting records are current, and
- (b) there are sufficient funds held to the credit of the client on whose behalf the funds are to be paid.

(4) A lawyer must not make or authorize the withdrawal of funds from a pooled or separate trust account, except

- (a) by cheque as permitted by subrule (5) or Rule 3-65(1.1)(a) [*Payment of fees from trust*],

(b) by electronic transfer as permitted by Rule 3-64.1 [*Electronic transfers from trust*],

(b.1) by bank draft as permitted by Rule 3-64.1 [*Withdrawal from trust by bank draft*],

(c) by instruction to a savings institution as permitted by subrule (9), or

(d) in cash if required under Rule 3-59(5) or (6) [*Cash transactions*].

(5) A lawyer who makes or authorizes the withdrawal of funds from a pooled or separate trust account by cheque must

(a) withdraw the funds with a cheque marked “Trust”,

(b) not make the cheque payable to “Cash” or “Bearer,” and

(c) ensure that the cheque is signed by a practising lawyer.

(6) to (8) [rescinded]

(9) A lawyer may instruct a savings institution to pay to the Foundation under Rule 3-60 [*Pooled trust account*] the net interest earned on a pooled trust account.

(10) A transfer of funds from a pooled trust account to a separate trust account must be authorized by the client and approved in writing signed by a lawyer.

[18] Paragraph 7 of the Citation alleges that the Respondent’s conduct was contrary to Rule 10-4(1). This rule provides:

10-4(1) A lawyer must protect all records related to the lawyer’s practice and the information contained in them by making reasonable security arrangements against all risks of loss, destruction and unauthorized access, use or disclosure.

[19] Paragraph 8 of the Citation alleges that the Respondent’s conduct infringed Rule 3-50. This rule provides:

3-50(1) A lawyer against whom a monetary judgment is entered and who does not satisfy the judgment within 7 days after the date of entry must immediately notify the Executive Director in writing of

(a) the circumstances of the judgment, including whether the judgment creditor is a client or former client of the lawyer, and

(b) the lawyer's proposal for satisfying the judgment.

(2) Subrule (1) applies whether or not any party has commenced an appeal from the judgment.

(3) If a lawyer fails to deliver a proposal under subrule (1)(b) that is adequate in the discretion of the Executive Director, the Executive Director may refer the matter to the Discipline Committee or the chair of the Discipline Committee.

[20] Paragraphs 6 and 7 of the Citation refer to the following rules in the *Code*:

2.2-1 A lawyer as a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity.

3.5-2 A lawyer must

(a) care for a client's property as a careful and prudent owner would when dealing with like property; and

(b) observe all relevant rules and law about the preservation of a client's property entrusted to a lawyer.

6.1-3 A lawyer must not permit a non-lawyer to:

...

(n) perform any of the duties that only lawyers may perform or do things that lawyers themselves may not do; or

(o) issue statements of account.

Findings on the allegations in the Citation

Paragraph 1 of the Citation

[21] The first paragraph of the Citation alleges that the Respondent misappropriated or improperly withdrew some or all of \$1,400 in trust funds held to the account of her client, JM, when she was not entitled to do so. The Respondent has admitted misappropriation in connection with paragraph 1 of the Citation. The Panel accepts the Respondent's admission.

- [22] The evidence discloses that, on July 11, 2018, JM entered into a retainer agreement with the Respondent's firm and gave the firm a \$5,000 retainer deposit. The retainer deposit was placed in the Respondent's trust account. It is trite that the money was still JM's money when it was deposited into trust.
- [23] On July 13, 2018, the Respondent billed JM \$1,400 in fees, disbursements and taxes. The invoice was paid in full the same day with a transfer from the Respondent's trust account, although some of the work described in the invoice – registering JM's divorce, canvassing dates for a judicial case conference and arranging for service of documents on opposing counsel – was not actually performed.
- [24] The Respondent admits that she was entitled only to \$940 of the \$1,400 billed to JM and withdrawn from trust to pay the invoice of July 13, 2018. The Respondent took \$460 from trust without her client's authorization to do so. An unauthorized use of client trust funds is misappropriation, regardless of whether the amount involved is small or large: *Law Society of BC v. Sahota*, 2016 LSBC 29, at paras. 60 to 63; *Law Society of BC v. Chaudhry*, 2018 LSBC 31, at para. 37.

Paragraph 2 of the Citation

- [25] Paragraph 2 of the Citation alleges that on 37 occasions between January 2017 and September 2018, the Respondent misappropriated or improperly withdrew funds from her firm's trust account when she had not rendered any or sufficient legal services to justify the withdrawals.
- [26] The Respondent admits in the ASF that she had a practice of "pre-billing" clients for services that were yet to be performed. This behaviour developed from the financial pressure bearing down on the Respondent. Ultimately, most of the "pre-billed" services were performed but they were billed before the Respondent was entitled to be paid for them. The "pre-billed" services ranged in value from less than \$200 to nearly \$14,000.
- [27] The Respondent admits: (i) she made the withdrawals from her trust account, as alleged; (ii) when the withdrawals were made, she had not rendered some or all of the services for which the clients were billed; and (iii) the withdrawal of funds held to the clients' accounts in the firm's trust account was misappropriation and professional misconduct.
- [28] The Panel agrees with the Respondent's admissions of misappropriation in connection with this paragraph of the Citation. A lawyer is not entitled to bill a client for legal services until those services have been performed.

Paragraph 3 of the Citation

- [29] The third allegation in the Citation is that on up to 18 occasions between December 15, 2015 and July 31, 2018, the Respondent misappropriated or improperly withdrew client funds when there were insufficient funds on deposit to the credit of the clients concerned. The withdrawals are alleged to have resulted in trust shortages of amounts ranging from \$11.23 to \$2,387.00.
- [30] The Respondent admits that she misappropriated funds as alleged on the 18 occasions at issue in paragraph 3 of the Citation and that that the withdrawals from her trust account resulted in trust shortages of between five and 470 days.
- [31] The Respondent admits her conduct amounts to professional misconduct. We agree. The Respondent's behaviour was inconsistent with her professional obligations and was repeated 18 times in fewer than three years. This is conduct that falls markedly below what the Law Society expects of a lawyer in British Columbia.

Paragraph 4 of the Citation

- [32] The next allegation in the Citation is that, on three occasions, the Respondent misappropriated or improperly withdrew client funds from trust by billing clients for disbursements not actually incurred to the clients' accounts. The disbursements billed amount to \$2,291.50.
- [33] The ASF suggests that the Respondent may have estimated disbursements and failed to keep accurate records of the amounts she actually incurred to the clients' accounts. However, the Respondent has also admitted that, in each instance, the disbursements she claimed had not been incurred when the invoice was issued to the client or paid.
- [34] Whether the Respondent estimated or simply misstated the disbursements, the Respondent admits that her withdrawal of trust funds to pay the improperly claimed disbursements was misappropriation and professional misconduct. We agree. Lawyers owe their clients a duty of candour and must take care to ensure that "amounts billed for disbursements actually reflect the costs incurred by the lawyer issuing the bill": *Law Society of BC v. Lowe*, 2019 LSBC 10, at para. 21.

Paragraphs 5 and 6 of the Citation

- [35] The Citation next alleges that, on four occasions in April and May 2018, the Respondent improperly billed clients for legal services at her rate (\$300 per hour) when the work described on the invoice was completed by the articled student at a lower rate (\$200 per hour).

- [36] The Respondent admits the facts of the allegations. She concedes that her invoices to the clients were false or misleading and that, in total, she overcharged the clients by \$1,710. The Respondent also concedes that by withdrawing funds from her pooled trust account to pay the inflated invoices, she engaged in misappropriation and committed professional misconduct.
- [37] We accept the Respondent's admissions. The Respondent's billing, as described at paragraphs 5 and 6 of the Citation, was dishonest and in breach of her professional duties to her clients.

Paragraph 7 of the Citation

- [38] The penultimate paragraph of the Citation alleges that the Respondent committed professional misconduct in July 2018 by giving a non-lawyer up to 20 pre-signed trust cheques. The Respondent admits that she gave a packet of signed, blank trust cheques to PG before going on vacation in July 2018 and that 20 of those trust cheques were issued in her absence. The Respondent admits that her conduct in this regard was professional misconduct.
- [39] We accept the Respondent's admission. The Respondent's conduct in connection with paragraph 7 of the Citation was in breach of her obligations under Rule 10-4(1) and rules 3.5-2 and 6.1-3(n) of the *Code*. Only a lawyer may issue a trust cheque. Moreover, PG had been in the Respondent's employ for just five weeks when the Respondent began her nine-day vacation in the Caribbean on July 10, 2018. Nonetheless, the Respondent left PG with a large packet of signed, blank trust cheques for PG's unsupervised use. This arrangement did not provide "reasonable security arrangements" against an unauthorized use of cheques and trust funds, contrary to Rule 10-4(1) and rules 3.5-2 and 6.1-3(n) of the *Code*.

Paragraph 8 of the Citation

- [40] The final paragraph of the Citation alleges that between January 5 and April 27, 2018, the Respondent failed to notify the Executive Director of the Law Society in writing of the circumstances of an unsatisfied monetary judgment against her, contrary to Rule 3-50. The allegation is admitted. We accept the admission.
- [41] The facts are that, on January 5, 2018, the Canadian Revenue Agency (the "CRA") registered a judgment against the Respondent in Federal Court for unpaid personal income taxes. The judgment was not satisfied within seven days of the date of entry. The Respondent became aware of the judgment at some point between January 5 and April 27, 2018, when she refinanced her home. On May 7, 2018, the Respondent authorized a

payment of \$117,097.82 to the CRA from the proceeds of her refinancing. The Respondent did not ever – let alone immediately – notify the Executive Director of the unsatisfied judgment or her proposal to satisfy it.

- [42] As recently explained in *Law Society of BC v. Newcombe*, 2021 LSBC 38, an unsatisfied monetary judgment can be an indicator of an underlying problem that may bear on a lawyer’s ability to properly discharge their professional obligations. Rule 3-50 protects the public by requiring lawyers to report unsatisfied judgments to the Executive Director. The important protective purpose of Rule 3-50 is foiled where, as here, a lawyer fails to provide notice of an unsatisfied judgment. See also *Law Society of BC v. Lessing*, 2012 LSBC 19, at para. 60, and *Law Society of BC v. Spears*, 2017 LSBC 29, at paras. 69 and 70. We are satisfied that the Respondent’s failure, between January 5 and April 27, 2018, to report the unsatisfied judgment to the Executive Director of the Law Society discloses a marked departure from the standard of conduct expected of her.

DETERMINATION

- [43] In summary, we find that the Respondent committed professional misconduct as alleged in each of paragraphs 1 to 8 of the Citation.