

2022 LSBC 16
Hearing File No.: HE20210004
Decision Issued: June 6, 2022
Citation Issued: April 28, 2021

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

DOUGLAS BERNARD CHIASSON

RESPONDENT

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

Hearing date: April 25, 2022

Panel: Eric V. Gottardi, QC, Chair
Karen Kesteloo, Public representative
Georges Rivard, Bencher

Discipline Counsel: Barbara Lohmann
Appearing on his own behalf: Douglas Bernard Chiasson

Written reasons of the Panel by: Georges Rivard

BACKGROUND

- [1] A citation was issued on April 28, 2021 and amended on November 5, 2021, where it is alleged that the Respondent engaged in professional misconduct summarized as follows:
- (a) Allegation 1: The Respondent failed to promptly remit some or all GST collected between January 1, 2018 and September 30, 2020, in the amount of \$27,515.46, including penalties and interest, contrary to rule 7.1-2 of the *Code of Professional Conduct for British Columbia*.
 - (b) Allegation 2: The Respondent failed to promptly remit some or all PST collected between July 1, 2019 and November 30, 2020, in the amount of \$22,574.38, including penalties and interest, contrary to rule 7.1-2 of the *Code of Professional Conduct for British Columbia*.
 - (c) Allegation 3: The Respondent failed to promptly remit some or all employee payroll source deductions between January 1, 2017 and January 31, 2019, in the amount of \$8,496.08, contrary to rule 7.1-2 of the *Code of Professional Conduct for British Columbia*.
 - (d) Allegation 4: The Respondent failed to notify the Executive Director of the Law Society of British Columbia in writing of three unsatisfied monetary judgments against Douglas B. Chiasson Law Corporation between October 31, 2019 and November 15, 2019 and his proposal for satisfying such judgments, contrary to Rule 3-50 of the Law Society Rules.
 - (e) Allegation 5: The Respondent failed to immediately eliminate or make a written report to the Executive Director of the Law Society of British Columbia of five trust shortages greater than \$2,500, or both, between March 18, 2019 and July 12, 2019, contrary to Rule 3-74 of the Rules.
- [2] On November 5, 2021, the Respondent was served with a Notice to Admit dated November 5, 2021 by email and by posting it on his member portal and notifying him of same by email, in accordance with Rules 5-4.8(2) and 10-1(7.1) of the Law Society Rules (the “Rules”). The Respondent did not respond to the Notice to Admit.
- [3] On December 1, 2021, Discipline Counsel emailed the Respondent advising him that as the Law Society had not received a response to the Notice to Admit, he had

been deemed to have admitted to the truth of the facts described in the Notice to Admit and to the authenticity of the documents attached to the Notice to Admit.

- [4] On February 1, 2022, Discipline Counsel sent a letter to the Respondent confirming a January 25, 2022 telephone conversation in which the Respondent acknowledged service of the Notice to Admit and that it was deemed admitted. In that letter, Discipline Counsel further advised the Respondent that should he wish to withdraw the deemed admissions, he would have to seek leave to do so.
- [5] As of the date of this hearing, the Respondent did not respond to the Notice to Admit and did not apply to withdraw the deemed admissions.
- [6] At a discipline hearing held on April 25, 2022, the Respondent appeared on his own behalf and further admitted the facts as set out in the Notice to Admit.
- [7] The Law Society's case was based solely on the Notice to Admit. No further *viva voce* evidence was tendered by the Law Society.
- [8] The Respondent did not present any evidence to the Panel.
- [9] The Panel finds that, based on the admitted facts in the Notice to Admit, the Respondent committed professional misconduct with respect to all allegations.

ISSUES

- [10] Do the allegations against the Respondent amount to professional misconduct pursuant to s. 38(4) of the *Legal Profession Act*, SBC 1998 c. 9 (the "Act")?

FACTS

- [11] The Respondent, by admitting the facts set out in the Notice to Admit, has admitted the facts underlying the allegations in the amended citation as described above.

ANALYSIS

Onus and burden of proof

- [12] In *Foo v. Law Society of BC*, 2017 BCCA 151, at para. 63, the British Columbia Court of Appeal confirmed that the Law Society carries the burden of proof to establish on a balance of probabilities the facts that it alleges constitute professional misconduct. That evidence must be sufficiently clear, convincing and cogent.

- [13] In this case, the onus on the Law Society is discharged by the Respondent's admission to the facts as set out in the Notice to Admit.

Professional misconduct

- [14] *Law Society of BC v. Martin*, 2005 LSBC 16, at para. 171, established the test for whether conduct constitutes professional misconduct to be an objective test, "whether the facts as made out disclose a marked departure from that conduct the Law Society expects of its members." Such a finding does not require behaviour that was disgraceful or dishonourable.

Allegations 1 to 3 – failure to remit GST, PST and payroll deductions

- [15] The duty to meet financial obligations is set out in rule 7.1-2 of the *Code of Professional Conduct for British Columbia* (the "BC Code"):

7.1-2 A lawyer must promptly meet financial obligations in relation to his or her practice, including payment of the deductible under a professional liability indemnity policy, when called upon to do so.

- [16] The Respondent admits that GST, PST and payroll deductions were not paid in full and on time due to cash flow problems. The Respondent used the funds to pay other financial obligations of the firm. The Respondent was aware that the funds collected and not remitted were subject to a statutory trust and ought to have been remitted when due.
- [17] The GST arrears as of February 2, 2021 were in the amount of \$27,515.46. On February 3, 2021, the Respondent paid \$5,000 to CRA towards the outstanding GST, interest and penalties.
- [18] The PST arrears as of January 26, 2021 were in the amount of \$22,574.38. On February 3, 2021, the Respondent paid \$4,839.09 to the Minister of Finance of British Columbia towards the outstanding PST, interest and penalties.
- [19] The payroll deductions arrears as of March 6, 2019 were in the amount of \$8,496.08. On August 29, 2019 and October 21, 2019, the Respondent made payments to CRA totalling \$4,427.70 towards the payroll deductions arrears.
- [20] As a result, the Respondent's conduct amounted to a prolonged failure to manage his financial obligations with respect to GST, PST and payroll deductions from 2017 to 2019.

- [21] The Respondent's duty to remit GST, PST and payroll deductions is a statutory trust obligation.
- [22] In *Law Society of BC v. Lo*, 2020 LSBC 09, the hearing panel found that a lawyer's failure to pay remittances to government agencies for taxes collected from clients when due is conduct that amounts to professional misconduct. Ensuring that lawyers meet the financial obligations relating to their practice is necessary to protect the public and uphold public confidence in the profession.
- [23] Remittances do not belong to a lawyer and cannot be used for the lawyer's own purposes. In *Law Society of BC v. Donaldson*, 2003 LSBC 27, at para. 13, the hearing panel found that "[c]ollecting tax and failing to remit it is, moreover, a breach of duty to a client" because "[a] client does not pay the required taxes on a lawyer's bill in the expectation that the lawyer will use the money to prop up a marginal practice."
- [24] In *Law Society of BC v. Ali*, 2007 LSBC 18, at para. 107, the hearing panel found that:
- ... [W]e also find that her failure to pay practice debts, as set out in Counts 7 and 13 and her personal use of funds held for payment of GST, PST and employee income tax, as set out in Counts 8 and 9 exhibited a disregard for her professional obligations, amounting, in all the circumstances, to professional misconduct ...
- [25] In relation to the Respondent's failure to pay the required tax and payroll deductions, the Panel finds that this failure was a marked departure from that conduct expected of a lawyer and, as such, amounts to professional misconduct.

Allegation 4 - failure to notify the Executive Director of the Law Society of British Columbia of unsatisfied monetary judgments in relation to GST, PST and payroll deductions

- [26] If a lawyer does not satisfy a monetary judgment within seven days, they are required by Rule 3-50 of the Rules to notify the Executive Director. Rule 3-50 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.

[27] Compliance with Rule 3-50 is an important tool in its regulatory toolbox to ensure that the public's funds are adequately protected. As noted in *Law Society of BC v. Boles*, 2016 LSBC 48, at para. 69:

... the reason for Rule 3-44 [now Rule 3-50] is to provide the Law Society with an opportunity to intervene to determine whether the unpaid judgment is evidence of financial issues in the lawyer's practice that could put the public at risk. In this case, the hearing panel found that Ms. Boles' practice was indeed in financial disarray. In the event, no harm came to a client or any other member of the public, but the lack of reporting did result in a missed opportunity for the Law Society to undertake its regulatory function.

[28] The Respondent's breaches of Rule 3-50 occurred with respect to three judgments that were registered against him in October and November of 2019. As of February 8, 2021, over one year later, the Respondent admits that he had not fully satisfied any of the three judgments and had made no arrangements to pay off and discharge the judgments.

[29] The Respondent admits that at the material times, he was aware of his obligation to report the judgments to the Law Society.

[30] The Panel finds that this behaviour by the Respondent, as in *Boles*, deprived the Law Society of an opportunity to undertake its regulatory function. As such, it was also a marked departure, as that term was defined in *Martin*, and amounts to professional misconduct.

Allegation 5 – failure to eliminate and report trust shortages over \$2,500

[31] Rule 3-74 provides:

3-74 (1) A lawyer who discovers a trust shortage must immediately pay enough funds into the account to eliminate the shortage.

(2) A lawyer must immediately make a written report to the Executive Director, including all relevant facts and circumstances, if the lawyer

(a) discovers a trust shortage greater than \$2,500, or

(b) is or will be unable to deliver up, when due, any trust funds held by the lawyer.

[32] Rule 3-74 requires a lawyer who discovers a trust shortage to immediately pay into trust sufficient funds to eliminate the shortage, and to immediately make a written report to the Law Society if the trust shortage is greater than \$2,500. Even if a trust shortage is not caused by the lawyer, for example, a bank error, service charges or credit card discounts, the lawyer is not excused from their obligations.

[33] On two occasions, the trust shortages were caused by the Respondent's bank complying with a third party demand, in effect garnishing the bank account to satisfy judgments for GST and PST remittances. The shortages were not eliminated for 121 days in the first instance and 22 days in the second. The issue was not whether the bank wrongfully withdrew the funds from the trust account, but rather whether the Respondent failed to advise the Law Society and immediately eliminate the shortage. Rule 3-74(3) makes it clear that even trust shortages caused by bank errors must be immediately eliminated and reported. He failed to do either.

[34] The Respondent also posted an incorrect deposit amount, subsequently paying out more than what was available to the credit of the client, which caused a trust shortage in the amount of \$4,000. The Respondent did not deposit sufficient funds to eliminate the shortage until 173 days later and he did not report it to the Law Society.

[35] Finally, on two occasions, the Respondent's bank wrongly debited the trust account \$19,782.89 and \$19,333.54. On both occasions, the bank corrected the improper withdrawals three days later. The Respondent did not, however, notify the Law Society of the shortages.

- [36] The Respondent was, at all material times, aware of his duty to report the trust shortages to the Law Society, but admits that he failed to do so due to his procrastination.
- [37] For the same reasons that apply in relation to allegations 1 to 4, the Panel finds that the Respondent's conduct in failing to remedy shortfalls in his trust account and in failing to notify the Law Society amounts to professional misconduct.

CONCLUSION

- [38] The Respondent collected monies from clients and employees, which were due to government agencies, and used those funds to meet other financial obligations of the firm. The Respondent was aware that the funds collected for GST, PST and payroll deductions were subject to statutory trusts and were required to be remitted when due.
- [39] To recapitulate, the Panel finds that the Respondent's failure to pay GST, PST and payroll deductions in full and on time, and the use of those funds to meet other financial obligations of the firm, constitutes a marked departure from that conduct the Law Society expects of lawyers. Accordingly, a finding of professional misconduct is warranted in relation to allegations 1, 2 and 3.
- [40] The Respondent's failure to report the three judgments to the Law Society is a marked departure from that conduct the Law Society expects of lawyers and constitutes professional misconduct in relation to allegation 4.
- [41] The Respondent's conduct in respect of the failure to eliminate and/or report five trust shortages constitutes a marked departure from that conduct the Law Society expects of lawyers and amounts to professional misconduct in relation to allegation 5.

RESULT

- [42] Pursuant to section 38(4)(b)(i) of the *Act*, the Panel finds that the Respondent committed professional misconduct in relation to each of the five allegations in the amended citation.