

2022 LSBC 20
Hearing File No.: HE20190031
Decision Issued: June 29, 2022
Citation Issued: May 24, 2019

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

PETER DARREN STEVEN HART

RESPONDENT

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

Hearing date: March 11, 2022

Panel: Bruce LeRose, QC, Chair
Geoffrey McDonald, Bencher
Mark Rushton, Public representative

Discipline Counsel: Mandana Namazi and Ilana Teicher
Counsel for the Respondent: Peter Firestone
(for part of the hearing)

Appearing on his own behalf: Peter Darren Steven Hart

Written reasons of the Panel by: Geoffrey McDonald

[1] Following a 16-day hearing, the Respondent was found to have committed multiple acts of professional misconduct (*Law Society of BC v. Hart*, 2021 LSBC 49) (the “F&D Decision”). At issue is the correct disciplinary action. The Law Society argues that the only appropriate disciplinary action is disbarment and seeks costs as

set out in the tariff. Despite having notice and representing himself through most of the hearing on Facts and Determination, the Respondent did not attend, make submissions, nor provide any materials at the disciplinary action phase of the hearing.

FACTS

- [2] The Panel's findings of professional misconduct are set out in paras. 39 to 48 of the F&D Decision. The misconduct can be broadly summarized as the Respondent exploited a vulnerable client for his own benefit. The Respondent's client was under psychiatric care, was financially destitute and on the facts of her family case, was certain to receive a settlement valued in the millions. The Respondent provided an abysmal quality of service, failed to act with honesty and candour and pressured his client into entering into an unfair and unethical contingency fee agreement entitling him to 20 per cent of any settlement. Once the contingency fee agreement was in place, the Respondent ignored his client's instructions and instead focused his efforts on obtaining a settlement. The Respondent entered into a settlement that was contrary to his client's instructions, misled her about the terms of the settlement and took over a million dollars in fees, which he was not entitled to under the unfair and unethical contingency fee agreement. At a later taxation, the court described the settlement as a poor result – no more than the minimum she was entitled to. The Respondent's conduct was dishonest and a gross abuse of his vulnerable client.
- [3] The Law Society advises that the Respondent used the improperly obtained fees to settle debts, fund his practice and take his entire office on a paid holiday to Las Vegas.
- [4] The client provided a statement and testified regarding the profound impact of the Respondent's misconduct on her. Though she should have been financially secure with a substantial settlement from her divorce, she is destitute because of the Respondent's actions. Despite being ordered by the Supreme Court in 2018 to repay over a million dollars to the client, the Respondent has only repaid \$18,167. The client's poor financial circumstances and the ongoing legal proceedings have negatively impacted her mental health and recovery.
- [5] The Respondent is a senior lawyer called in 1994. His professional record includes one other matter which involved misappropriation of trust funds and the improper withdrawal of over half a million dollars of client money. A citation was issued on September 26, 2018 and the Respondent was disbarred on July 20, 2021 (see *Law Society of BC v. Hart*, 2021 LSBC 29).

DECISION

- [6] Disciplinary proceedings are intended to protect the public interest in the administration of justice by ensuring the integrity, honour and competence of lawyers (*Legal Profession Act*, SBC 1998 c. 9, section 3). As noted in *Law Society of BC v. Ogilvie*, 1999 LSBC 17, at para. 9, “Given that the primary focus of the *Legal Profession Act* is the protection of the public interest, it follows that the sentencing process must ensure that the public is protected from acts of professional misconduct”. *Ogilvie* also sets out a series of factors that a panel must consider when determining the appropriate disciplinary action. In reviewing those factors, the Panel finds the following are key to this case:
- (a) the nature and gravity of the conduct;
 - (b) the impact on the victim;
 - (c) the advantage gained, or to be gained, by the respondent;
 - (d) the need for specific and general deterrence; and
 - (e) the need to ensure the public’s confidence in the integrity of the profession.
- [7] In this case, the Respondent’s conduct is extremely grave. He chose to betray and mislead a vulnerable client who he knew to be suffering from a mental illness. The Respondent ignored his instructions, lied to his client, and acted solely for his own personal financial benefit. In addition to forcing his client to enter into an unethical and unfair contingency fee agreement, the Respondent took funds that he was not entitled to under that agreement.
- [8] The impact on the client has been profound. She is financially destitute. What should have been an adequate divorce settlement to ensure her future financial security was decimated by the Respondent. The ongoing litigation, both in court for the taxation of the Respondent’s fee as well as these proceedings, has negatively impacted her mental health and her ongoing attempts to heal. The client has suffered irreparable emotional and financial harm that she will never recover from.
- [9] The Respondent benefitted from his misconduct by gaining over a million dollars. It is worth noting that had the Respondent abided by the terms of the unfair and unethical contingency fee agreement, he could only have taken approximately \$300,000 – 20 per cent of the received settlement funds. Instead, he helped himself to \$1.127 million. Despite the 2018 court order requiring the Respondent to repay

the client, he has only provided a little over \$18,000 – less money than he spent taking his entire office on a holiday in Las Vegas.

- [10] These facts require a strong disciplinary action that will protect the public from the Respondent, provide general deterrence for any other lawyer who might consider similar unethical behaviour and ensure confidence in the legal profession. The Panel emphasizes that this was the deliberate and calculated abuse of a mentally ill client for the Respondent's own financial benefit. The Respondent acted with a complete lack of integrity.
- [11] The Law Society has presented the Panel with a variety of cases in which lawyers were disbarred. Those cases generally involved less serious misconduct and often had some mitigating factor or factors present. Even the circumstances of the Respondent's other citation, for which he was disbarred, is far less egregious. In that case, all of the misappropriated, or improperly withdrawn funds, were repaid to his clients with ten per cent interest (*Hart, 2021 LSBC 29*, at para. 39). In this case, despite being ordered to repay fees in 2018 the Respondent has repaid less than two per cent of the money owed. Further, there are no mitigating factors. Throughout the hearing, the Respondent repeatedly attempted to justify his unethical and, in the Panel's view, indefensible behaviour.
- [12] Individuals who act without integrity and exploit their clients for their own financial gain have no place in the legal profession. Lawyers are supposed to be the ones protecting vulnerable people. The public should be able to rely on their lawyer to act in their best interests, treating them with respect, honesty and candour. The Respondent has compromised the sanctity of the solicitor-client relationship and dishonoured the legal profession. This misconduct must be definitively denounced and deterred. The only possible sanction for misconduct this egregious is disbarment. Other lawyers have been disbarred for far less.

COSTS

- [13] The Law Society also seeks costs in accordance with the tariff in the amount of \$60,840, payable within six months of the release of this decision. The Law Society is entitled to their costs under Rule 5-11.

ORDERS

- [14] The Panel orders that:

- (a) the Respondent is disbarred pursuant to section 38(5) of the *Legal Profession Act*, SBC 1998 c. 9; and
- (b) pursuant to Rule 5-11, the Respondent must pay costs to the Law Society in the amount of \$60,840, payable within six months of the release of this decision.