

2022 LSBC 21
Hearing File No.: HE20200118
Decision Issued: July 5, 2022
Citation Issued: December 17, 2020

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

GARY (KIN IP) LO

RESPONDENT

DECISION OF THE HEARING PANEL

Written materials: November 24, 2021

Panel: Geoffrey G.R. McDonald, Chair
Laura Nashman, Public representative
William R. Younie, QC, Lawyer

Discipline Counsel: Michael Feder, QC

Counsel for the Respondent: Edward Wong

Written reasons of the Panel by: Geoffrey G.R. McDonald

- [1] The Respondent and the Law Society presented a joint submission pursuant to Rule 4-30 seeking a finding that the Respondent committed professional misconduct, contrary to section 38(4) of the *Legal Profession Act*, SBC 1998 c. 9,

and seeking a fine of \$10,000 payable within six months of the release of this decision. The parties requested a hearing in writing without oral submissions or further evidence. The Panel was provided with the citation, a letter by the Respondent dated November 19, 2021, a comprehensive Agreed Statement of Facts and the Respondent's professional conduct record. The Panel granted the requested finding of professional misconduct and disciplinary action with reasons to follow. These are those reasons.

HEARING IN WRITING

- [2] The application for the hearing in writing was made pursuant to Rule 5-6(1) and Law Society Practice Direction dated April 27, 2020. The Panel agreed that the materials and written submissions were sufficient to properly adjudicate this matter without an oral hearing and proceeded on that basis.

THE CITATION

- [3] The citation, issued December 17, 2020, sets out that between February 10, 2020 and November 2, 2020, the Respondent practised law as a sole practitioner, contrary to an undertaking given to the Law Society. The Respondent, in his November 19, 2021 letter, acknowledges that he breached his June 15, 2010 undertaking not to practise as a sole practitioner and agreed that this constituted professional misconduct.

FACTS

- [4] The Respondent was called in 1996. Prior to 2010, the Respondent was administratively suspended from practice twice for failing to file his annual trust report. On December 31, 2009, he became a former member for failure to pay his annual fees.
- [5] The Respondent applied for reinstatement as a practising lawyer. On June 9, 2010, the Credentials Committee granted his application on condition that he give his undertaking not to practise as a sole practitioner and not to operate or be the authorized signatory on a trust account without a second signatory who is a practising lawyer. The Respondent provided the requested undertaking on June 15, 2010.
- [6] A Law Society audit in October 2014 raised concerns that the Respondent may have been practising as a sole practitioner, contrary to his undertaking. The Law

Society advised the Respondent in a September 23, 2015 letter that he may be in breach of his undertaking. The Law Society reminded the Respondent that he must comply with his undertaking and that it was his obligation to apply to have it amended or removed if he wished to be a sole practitioner.

- [7] The Respondent applied to the Credentials Committee to be relieved of his undertaking. The Credentials Committee denied the application but instead allowed the undertaking to be waived so long as the Respondent complied with a practice supervision agreement with an approved practice supervisor. The Respondent entered into a practice supervision agreement on July 13, 2016, with AL acting as his approved practice supervisor. Thereafter, the Respondent practised as a sole practitioner.
- [8] On January 6, 2020, the Law Society notified AL by email that her approval as practice supervisor for the Respondent was revoked effective immediately. AL emailed the Respondent on January 7, 2020 advising that she had been suspended from acting as his practice supervisor.
- [9] The Law Society delivered a letter to the Respondent dated February 7, 2020 advising that AL was no longer approved as a practice supervisor and cautioning him that he was required to cease acting as a sole practitioner until he either found a new practice supervisor acceptable to the Credentials Committee or applied to be relieved of his undertaking. In an email dated February 10, 2020, the Respondent confirmed that he had received the Law Society's letter dated February 7, 2020.
- [10] The Respondent continued to practise as a sole practitioner, contrary to his undertaking. Between February 10, 2020 and September 17, 2020, the Respondent opened 246 new files – mostly real estate conveyances or financings. The Respondent and his assistant conducted numerous searches and filings with the Land Title Service Authority and conducted transactions with an aggregate value of \$555 million. The Respondent collected \$228,262.56 in legal fees between February 10, 2020 and October 18, 2020. The Respondent did not advise any of his clients that he was not entitled to practise law due to his undertaking.
- [11] On February 25, 2020, the Respondent advised the Law Society that he would be joining a local law firm and would cease practising as a sole practitioner. Over the following months, the Respondent had a variety of discussions with the law firm and signed an agreement to split fees, however, he never provided any legal services to the law firm and he did not generate any new files with them.

- [12] Despite not actually working for the law firm, on July 17, 2020, the Respondent sent correspondence to the Law Society on letterhead that included the law firm and had a notation that the Respondent was an associate counsel at the firm.
- [13] Over the following months, the Respondent communicated with the Law Society advising that he and the law firm were seeking an appropriate location to lease office space and identified another lawyer as a potential practice supervisor. The proposed practice supervisor was never approved and the law firm and the Respondent never found an appropriate location to lease.
- [14] On September 18, 2020, the Respondent sent a letter to the Law Society advising that he and the law firm had failed to find an appropriate office space and he would not be working with them. The Respondent requested approval of the proposed practice supervisor.
- [15] On October 6, 2020, the Law Society advised the Respondent that he appeared to have been practising as a sole practitioner since February 7, 2020 and that he must comply with his undertaking. The Respondent replied the same day advising that he would voluntarily cease the practice of law until his conditions were met.
- [16] Despite his representation to the Law Society that he would not practise until he met his conditions, the Respondent continued to work as a sole practitioner on 13 client files after October 6, 2020.
- [17] The Law Society initiated an investigation in September 2020. On November 20, 2020, the Respondent wrote the Law Society admitting all his conduct contrary to his undertaking.
- [18] The Respondent entered into a new practice supervision agreement on March 15, 2021 with a new practice supervisor. The Respondent has continued to practise and been compliant with his conditions since then. There is no evidence that anyone's interests were harmed by the Respondent's breach of his undertaking.

DECISION

- [19] The Panel must determine whether the Respondent's conduct is professional misconduct and, if so, whether the proposed disciplinary action is appropriate. As this is a Rule 4-30 application with conditional admissions, the Panel must either accept the admission of professional misconduct and the proposed disciplinary action or reject it. A panel can only consider an alternate action if

the proposed disciplinary action is “ ... contrary to the public interest in the administration of justice” (Rule 4-30(6)(b)).

[20] The Panel agrees that the Respondent’s admitted actions are professional misconduct. The Respondent practised law as a sole practitioner breaching his undertaking over an eight-month period. Breaching an undertaking is extremely serious conduct that has repeatedly been found to be professional misconduct (see *Law Society of BC v. Di Bella*, 2019 LCBC 32, at paras. 67 to 70). Undertakings are essential to the practice of law. Breach of an undertaking is unacceptable and undermines the practice of law and the public’s confidence in it.

[21] The parties seek a \$10,000 fine payable within six months from the release of this decision. Other cases with similar circumstances have generally imposed a fine of \$10,000 or have imposed a combination of a fine and costs ranging between \$8,500 and \$13,300. The proposed disciplinary action is within the range of previous cases and is appropriate.

ORDER

[22] The Panel orders pursuant to section 38(5)(b) of the *Act*, that the Respondent pay the Law Society a fine of \$10,000 within six months of the release of this decision.