

2007 LSBC 14

Report issued: March 27, 2007

Oral Reasons: February 6, 2007

Citation issued: July 4, 2006

The Law Society of British Columbia  
In the matter of the *Legal Profession Act*, SBC 1998, c.9  
and a hearing concerning

**Nicole Hainer**

Respondent

**Decision of the Hearing Panel  
on Facts and Verdict**

Hearing date: February 6, 2007

Panel: Dirk Sigalet, Q.C., Chair, Leon Getz, Q.C., Ross Tunnicliffe

Counsel for the Law Society: Brian McKinley

Counsel for the Respondent: Michael Ranspot

## Background

[1] On July 4, 2006, a citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rule 4-13 of the Law Society Rules by the Executive Director of the Law Society of British Columbia pursuant to the direction of the Chair of the Discipline Committee. The citation, as amended, directed that this Panel inquire into the Respondent's conduct as follows:

1. While employed as an associate at Elgin, Cannon & Associates, you misappropriated funds from the firm when you received payments from clients C.B., C.R., T.A., M.A.J., A.Q. and M.G.F. toward outstanding accounts and then failed to provide those funds to the firm.
2. In the fall of 2005 you received trust funds from your client W.H. You failed to deposit those funds into a pooled trust account as soon as practicable, contrary to Rule 3-51 of the Law Society Rules.
3. You failed to account to your client W.H. for trust funds received by you in the fall of 2005, contrary to Rule 3-48 of the Law Society Rules.
4. You received trust funds from your client S.K. on or about January 13, 2006 which you failed to deposit into a pooled trust account as soon as practicable, contrary to Rule 3-51 of the Law Society Rules.
5. You misappropriated trust funds received by you on or about January 13, 2006 from your client S.K.

6. While employed as an associate at Elgin, Cannon & Associates, you misled the firm when you issued statements of account to your clients C.B., C.R., Z.P. and A.Q. which differed substantially from the copies of the statements of account you provided to the firm for their records

7. While employed as an associate at Elgin, Cannon & Associates, you misled the firm when you provided your clients Z.P. and S.K. with a retainer agreement which differed substantially from the copy of the retainer agreement you provided to the firm for their records.

8. You misappropriated trust funds of your client Z.P. received by you on or about November 30, 2005.

[2] This hearing proceeded on an Agreed Statement of Facts, as summarized below.

### **Statement of Agreed Facts**

1. On May 15, 2002, the Respondent was called to the Bar in British Columbia.

2. The Respondent practised with the firm Elgin, Cannon & Associates (the " Firm" ) from May 15, 2002 to approximately February 9, 2006.

3. The Respondent began a position at the Provincial Crown on or about February 10, 2006. She resigned from that position on March 24, 2006.

4. On April 6, 2006, the Discipline Committee of the Law Society authorized the issuance of a citation to the Respondent, and resolved that there be a referral, pursuant to s. 39 of the *Legal Profession Act*, to three Benchers to consider whether to suspend the Respondent or impose conditions on her practice, pending final disposition of the citation.

5. On June 4, 2006, the Respondent gave a written undertaking to the Law Society to advise the Law Society at least 30 days prior to her resuming the practice of law or paying Law Society Liability Insurance. On June 6, 2006, the Discipline Committee of the Law Society resolved to accept the undertaking and hold the s. 39 referral in abeyance.

6. On October 12, 2006, the Discipline Committee of the Law Society authorized the amendment of the citation to the Respondent to add several additional allegations to the citation.

### **Client C.B. - Misleading the Firm**

7. Client C.B. retained the Respondent in or about May or June 2005, on an Application to Citizenship and Immigration Canada to become a Permanent Resident.

8. On or about June 6, 2005, the Respondent prepared a statement of account for client C.B. in the amount of \$1,653.52, which included \$1,500 for fees and \$153.52 for disbursements. C.B. received this account with the Respondent's letter dated June 6, 2006. A copy of this account was not provided to the Firm for their records.

9. The Respondent prepared another June 6, 2005 statement of account in the amount of

\$653.52, which included \$500 in fees and \$153.52 in disbursements. This account was for the same services and was the version provided to the Firm for their records.

10. The difference between the client copy of the account and the Firm copy of the account was \$1,000.00.

11. The Respondent admits that she misled the Firm when she issued a statement of account to C.B. which differed substantially from the copy of the account provided to the Firm for their records.

### **Misappropriation of Funds from the Firm**

12. Between June 2005 and August 2005, C.B. made payments to the Respondent toward the outstanding account of June 6, 2005 (client copy) as follows:

(a) In or about June 2005, C.B. paid \$490 cash to the Respondent. The payment is noted on the client version of account but not on the Firm copy;

(b) In or about August 2005, C.B. paid \$300 cash to the Respondent. The Respondent admitted that she used the \$300 payment for family expenses;

(c) In or about August 2005, C.B. made \$200 cash payment to the Respondent. The Respondent issued a receipt to the client for \$200 which was not provided to the Firm.

13. The Firm's records show that deposits totalling \$653.52 were made by client C.B. in respect of the June 6, 2005 statement of account. These payments reconcile with the Firm's copy of the account.

14. In total, the Respondent received \$1,000 from client C.B. which cannot be accounted for. This is the difference between the client copy and Firm copy of the June 6, 2006 statement of account.

15. The Respondent's counsel, Mr. Ranspot, wrote to the Law Society on April 27, 2006. That letter states, in part:

Cannon, Elgin received \$653.52 to \$853.52 on an account of \$1,653.52. That leaves \$800.00 to \$1,000.00 not accounted for, to Cannon Elgin. Of that \$800.00 to \$1,000.00, Ms. Hainer recalls receiving and retaining \$1,000.00. A possible further \$300.00 was retained by Ms. Hainer in August, 2005...It is clear that Ms. Hainer misappropriated \$1,000.00. It is possible that she further misappropriated \$300.00 in August, 2005.

16. The Respondent admits that she misappropriated funds from the Firm when she received payments from C.B. towards the outstanding account and failed to provide those funds to the Firm.

### **Client C.R. - Misleading the Firm**

17. Client C.R. retained the Respondent in or about April 2005 for a spousal sponsorship

application and a Pre-Removal Risk Assessment.

18. On or about April 25, 2005, the Respondent prepared a statement of account for client C.R. in the amount of \$2,544.74, which included \$2,500 for fees and \$44.74 for disbursements. A copy of this account was not provided to the Firm for their records.

19. The Respondent prepared another April 25, 2005 statement of account in the amount of \$2,063.29, which included \$2,000 for fees and \$63.29 for disbursements. This account was for the same services and was the version provided to the Firm for their records.

20. The difference between the client copy of the account and the Firm copy was \$481.45.

21. The Respondent's counsel, Mr. Ranspot, wrote to the Law Society on March 10, 2006. That letter states, in part:

Ms. Hainer completed the work on the sponsorship application at approximately the end of April, 2005 and rendered an account for \$2,500.00, plus disbursements. Another account for \$2,000.00 was prepared by Ms. Hainer and that account was provided to Elgin, Cannon & Associates.

22. The Respondent's counsel, Mr. Ranspot, also wrote to the Law Society on April 27, 2006. That letter states, in part:

Ms. Hainer rendered an account to this client for \$2,544.74 whereas the firm copy was for \$2,063.29.

23. The Respondent admits that she misled the Firm when she issued a statement of account to C.R. which differed substantially from the copy of the account provided to the Firm for their records.

### **Misappropriation of Funds from the Firm**

24. Between approximately July 2005 and March 2006, C.R. made several payments to the Firm in respect of various outstanding accounts prepared by the Respondent.

25. In or about January 2006, the Respondent received a cash payment of \$300 from C.R. for which she provided a receipt to C.R. The Respondent did not provide these funds or a copy of the receipt to the Firm.

26. Except for the \$300 payment, all other funds provided to the Firm by C.R. have been accounted for.

27. The Respondent's counsel, Mr. Ranspot, wrote to the Law Society on March 10, 2006. That letter states, in part:

Ms. [R] made several payments to Ms. Hainer of the outstanding balance on her account. One of those payments, for possibly \$400.00 was not forwarded to Elgin, Cannon & Associates and Ms. Hainer did not advise Elgin, Cannon & Associates of this payment.

28. The Respondent admits that she misappropriated funds from the Firm when she received a payment from C.R. towards the outstanding account and failed to provide these funds to the Firm.

### **Client T.A. - Misappropriation of Funds from the Firm**

29. The Respondent acted for client T.A. on a number of immigration matters.

30. Between approximately October 2004 and February 2006, T.A. made several payments to the Respondent and/or the Firm in respect of various outstanding accounts prepared by the Respondent. The Respondent failed to provide three of these payments to the Firm:

(a) On or about May 24, 2005, T.A. made a \$1,000 payment to the Respondent, with respect to a statement of account of the same date in the amount of \$1,000. The Firm was not provided with a copy of this account;

(b) On or about August 11, 2005, T.A. made a \$1,070 payment to the Respondent, with respect to a statement of account of the same date in the amount of \$3,160. The Firm received a different version of this account for \$2,060.50;

(c) On or about September 22, 2005, T.A. made a \$1,600 payment to the Respondent. There is no corresponding account but the Respondent provided T.A. with a receipt for these funds. The Firm was not provided with a copy of this receipt.

31. The Respondent admits that she received three payments totalling \$3,670 from T.A. and used the funds for her own purposes.

32. The Respondent's counsel, Mr. Ranspot, wrote to the Law Society on May 12, 2006. That letter states, in part:

With respect to the August 11, 2005 account to Mr. [A], it appears Ms. Hainer was duplicitous to the firm with respect to the fees charged the client and probably, but at present not certainly, the \$1,070.00 in retainer received by Ms. Hainer...It appears as though the \$1,600.00 received by Ms. Hainer on September 22, 2005 was kept by Ms. Hainer.

33. The Respondent admits that she misappropriated funds from the Firm when she received payments from T.A. towards outstanding accounts and failed to provide these funds to the Firm.

### **Client S.K. - Misleading the Firm**

34. Client S.K. retained the Respondent in or about June 2005 for immigration matters.

35. On or about June 9, 2005, the Respondent prepared a retainer letter for client S.K. which set out an agreement of \$2,000 for fees. A copy of this retainer letter was not provided to the Firm for their records.

36. On or about June 9, 2005, the Respondent prepared a further retainer letter for client S.K. for the same services. On this copy, the set out fees were \$1,500. This version was not provided to the client but was copied to the Firm's file.

37. The difference in fees between the two retainer letters was \$500.

38. The Respondent admits that she misled the Firm when she provided S.K. with a retainer agreement which differed substantially from the copy of the retainer agreement provided to the Firm for their records.

### **Misappropriation of Trust Funds and Breaches of Law Society Accounting Rules**

39. Between approximately June 2005 and August 2006, S.K. made several payments to the Firm in respect of various outstanding accounts prepared by the Respondent.

40. On January 13, 2006, the Respondent received a payment of \$400 in trust from S.K. The Respondent issued a receipt to the client for \$400, and provided a copy of another receipt for \$300 to the Firm.

41. Of the \$400 received by the Respondent on January 13, 2006, only \$300 was deposited to the Firm's trust account.

42. The Respondent's counsel, Mr. Ranspot, wrote to the Law Society on April 27, 2006. That letter states, in part:

The allegation is that Ms. [K] provided a \$400.00 cash retainer but only \$300.00 was provided to the firm. It appears as though Ms. Hainer may have kept \$100.00 of the \$400.00 retainer.

43. The Respondent admits that she received trust funds of \$100 from S.K. on or about January 13, 2006 which she failed to deposit into a pooled trust account as soon as practicable, contrary to Rule 3-51 of the Law Society Rules.

44. The Respondent admits that she misappropriated trust funds of \$100 received by her from her client S.K. on or about January 13, 2006.

### **Client Z.P. - Misleading the Firm**

45. Client Z.P. retained the Respondent in or about November 2005 for an immigration matter.

46. On or about November 30, 2005, the Respondent prepared a retainer letter for A.F., the daughter of client Z.P., which set out an agreement of \$2,500 for fees, which included a \$1,250 retainer fee and two additional payments of \$625 each. A copy of this retainer letter was not provided to the Firm for their records.

47. On or about November 30, 2005, the Respondent prepared a further retainer letter for A.F., the daughter of client Z.P., for the same services. In this version, the agreed fees were \$2,000, which included a \$1,250 retainer fee and two additional payments of \$375 each. This version was not

provided to the client but was copied to the Firm's file. The client's version charged an additional \$500 in fees.

48. On or about December 2, 2005, the Respondent prepared a statement of account for client Z.P. in the amount of \$2,500 (for fees). A copy of this account was not provided to the Firm for their records.

49. On or about December 2, 2005, the Respondent prepared a further statement of account for client Z.P. in the amount of \$2,000 (for fees). This account was for the same services and was the version provided to the Firm for their records.

50. The difference between the client copy of the account and the Firm copy was \$500.

51. The Respondent's counsel, Mr. Ranspot, wrote to the Law Society on April 27, 2006. That letter states, in part:

...Ms. Hainer was duplicitous with respect to the Retainer Agreement of November 30, 2005. Specifically, Ms. Hainer was duplicitous in the total fees quoted (\$2,500.00 vs. \$2,000.00) and the payment schedule (\$625.00 vs. \$375.00). ...Further, Ms. Hainer was duplicitous in the December 2, 2005 account rendered wherein the client was billed \$2,500.00 but Cannon Elgin believed the bill to be \$2,000.00.

52. The Respondent admits that she misled the Firm when she provided Z.P. with a retainer agreement which differed substantially from the copy of the retainer agreement provided to the Firm for their records.

53. The Respondent admits that she misled the Firm when she issued a statement of account to Z.P. which differed substantially from the copy of the account provided to the Firm for their records.

### **Misappropriation of Trust Funds**

54. On or about November 30, 2005, the Respondent received a \$1,250 cheque and \$550 in cash from A.F., the daughter of the client Z.P. (total \$1,800) with respect to the November 30, 2005 retainer letter. The Respondent issued a receipt to A.F. for these amounts but she did not provide a copy of the receipt for \$1,800 to the Firm.

55. The Respondent deposited the \$1,250 cheque to the Firm's trust account but kept the \$550 cash.

56. The Respondent's counsel, Mr. Ranspot, wrote to the Law Society on April 27, 2006. That letter states, in part:

Ms. Hainer recalls receiving and retaining a cash retainer from Ms. [P] but does not recall the amount of the cash retainer.

57. The Respondent admits that she misappropriated trust funds of \$550 from client Z.P. on or about November 30, 2005.

## **Client M.A.J. - Misappropriating Funds from the Firm**

58. Client M.A.J. retained the Respondent in or about May 2004.

59. The Respondent's counsel, Mr. Ranspot, wrote to the Law Society on September 13, 2006. That letter states, in part:

With respect to the Visitor's Visa ... Ms. Hainer advises that she received \$200-\$300 in cash, from Ms. [A.J.] which she did not forward to Cannon, Elgin and which she did not account for to Cannon, Elgin.

60. The Respondent admits that she misappropriated funds from the Firm when she received payment from M.A.J. towards an outstanding account and then failed to provide those funds to the Firm.

## **Client A.Q. - Misleading the Firm**

61. Client A.Q. retained the Respondent in or about February 2005 for a stay application.

62. On or about August 25, 2005, the Respondent prepared a statement of account for client A.Q. in the amount of \$3,395, which included \$3,000 for fees and \$395 for disbursements. A copy of this account was not provided to the Firm for their records.

63. On or about August 25, 2005, the Respondent prepared a further statement of account for client A.Q. in the amount of \$2,895, which included \$2,500 for fees and \$395 for disbursements. This account was for the same services and was the version provided to the Firm for their records.

64. The Respondent's counsel, Mr. Ranspot, wrote to the Law Society on September 13, 2006. That letter states, in part:

With respect to the August 25, 2005 account, it would appear that Ms. Hainer rendered an account to the client for \$500.00, more than what the firm believed was the amount of the account.

65. The Respondent admits that she misled the Firm when she issued a statement of account to A.Q. which differed substantially from the copy of the account provided to the Firm for their records.

## **Misappropriation of Funds from the Firm**

66. Client A.Q. made a payment to the Respondent in the amount of \$4,000 on or about August 22, 2005 in respect of the August 25, 2005 statement of account (client copy). The Respondent provided A.Q. with a receipt for that amount but did not provide a copy of the receipt to the Firm.

67. On or about that same day, the Respondent prepared a receipt with respect to this payment from the Firm's receipt book. The amount on the receipt, which was not provided to the client, was \$3,800.

68. Of the \$4,000 received by the Respondent, \$200 cannot be accounted for. This is the difference between the client copy and Firm copy of the August 25, 2005 statement of account, and the difference between the client copy and Firm copy of the receipt dated August 22, 2005.

69. The Respondent's counsel, Mr. Ranspot, wrote to the Law Society on September 13, 2006. That letter states, in part:

...Further, if the August 22, 2005 receipt was issued to the client (which it appears to be), then Ms. Hainer retained \$200.00 and did not account to Cannon, Elgin for this.

70. The Respondent admits that she misappropriated funds from the Firm when she received a payment from A.Q. towards the outstanding account and failed to provide \$200 of those funds to the Firm.

### **Client M.G.F. - Misappropriation of Funds from the Firm**

71. Client M.G.F. retained the Respondent in or about May 2004.

72. The Respondent rendered a statement of account to M.G.F. dated June 30, 2005 in the amount of \$1,611.30, which included \$1,440 for fees and \$171.30 for disbursements.

73. In May or June 2005, M.G.F. provided the Respondent with \$1,500 in cash.

74. The firm was unaware of this account and does not have any record of \$1,500 being paid to the Respondent by M.G.F.

75. The Respondent's counsel, Mr. Ranspot, wrote to the Law Society on September 13, 2006. That letter states, in part:

Ms. Hainer admits receiving the \$1,500 cash retainer from Mr. [G.F.] and retaining this cash. She did not account to Cannon, Elgin for this retainer.

76. The Respondent admits that she misappropriated funds from the Firm when she received payment from M.G.F. and failed to provide those funds to the Firm.

### **Client W.H. - Breach of Law Society Accounting Rules**

77. Client W.H. retained the Respondent in or about July 2004 for immigration matters.

78. On March 3, 2005, the Respondent wrote to W.H. to confirm an agreement that she would assist him with a pardon application for \$500.

79. W.H. claimed that in approximately April 2005 and December 2005, W.H. made two payments of \$500 each to the Respondent, in cash.

80. The Respondent's counsel, Mr. Ranspot, wrote to the Law Society on April 27, 2006. That

letter states, in part:

Ms. Hainer recalls receiving \$500.00 in cash in the fall of 2005 but no other payment. The \$500.00 received in the fall of 2005 was not forwarded to Cannon Elgin.

81. The Respondent admits that she received \$500 in trust funds in the fall of 2005 from client W.H. and failed to deposit those funds into a pooled trust account as soon as practicable, contrary to Rule 3-51 of the Law Society Rules.

82. The Respondent admits that she failed to account to W.H. for \$500 in trust funds received by her in the fall of 2005, contrary to Rule 3-48 of the Law Society Rules.

## **Admissions**

83. The Respondent admits that she was served with a true copy of the citation in accordance with Rule 4-15 of the Law Society Rules.

84. The Respondent admits that while employed as an associate at Elgin, Cannon & Associates, she misappropriated funds from the Firm when she received payments from clients C.B., C.R., T.A., M.A.J., A.Q. and M.G.F. toward outstanding accounts and then failed to provide those funds to the Firm.

85. In the fall of 2005 the Respondent received trust funds from her client W.H. The Respondent admits that she failed to deposit those funds into a pooled trust account as soon as practicable, contrary to Rule 3-51 of the Law Society Rules.

86. The Respondent admits that she failed to account to her client W.H. for trust funds received by her in the fall of 2005, contrary to Rule 3-48 of the Law Society Rules.

87. The Respondent admits that she received trust funds from her client S.K. on or about January 13, 2006, which she failed to deposit into a pooled trust account as soon as practicable, contrary to Rule 3-51 of the Law Society Rules.

88. The Respondent admits that she misappropriated trust funds received by her on or about January 13, 2006 from her client S.K.

89. While employed as an associate at Elgin, Cannon & Associates, the Respondent admits that she misled the Firm when she issued statements of account to clients C.B., C.R., Z.P. and A.Q. which differed substantially from the copies of the statements of account she provided to the Firm for their records.

90. The Respondent admits that, while employed as an associate at Elgin, Cannon & Associates, she misled the Firm when she provided her clients Z.P. and S.K. with a retainer agreement which differed substantially from the copy of the retainer agreement she provided to the Firm for their records.

91. The Respondent admits that she misappropriated trust funds of her client Z.P. received by

her on or about November 30, 2005.

92. The Respondent admits that her conduct referred to above constitutes professional misconduct.

[3] The Hearing Panel accepts these admissions and finds that the conduct constitutes professional misconduct.