

2007 LSBC 48

Report issued: October 31, 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 Penalty**

Hearing date: September 12, 2007

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

Counsel for the Law Society: Maureen Boyd

No-one appearing on behalf of the Respondent

Background

[1] On February 6, 2007 the Respondent appeared before this Panel and admitted to ten occasions where she, in a nine-month period stole, in total, at least, \$7,520 from eight different clients. The Statement of Agreed Facts provided the particulars. Briefly, these particulars, as summarized below, show how these thefts were achieved:

(a) preparing and issuing statements of account to clients for an amount higher than the statements of account she prepared and submitted to her firm. The differences between the two account amounts were used for her own purposes; and

(b) using the above technique but, instead, with retainer letters.

[2] At the conclusion of the hearing on Facts and Verdict, Mr. Ranspot, counsel for the Respondent, urged the Panel not to continue the hearing into the Penalty stage and asked that we adjourn to another date so that time would be available for preparation. This adjournment was granted. Law Society counsel told us that, in April 2007, Mr. Ranspot accepted service of the notice of hearing for the September 12, 2007 Penalty hearing. Then, on September 6, 2007, Mr. Ranspot wrote the Law Society (Exhibit 1) to give notice that he had withdrawn as counsel for the Respondent. To confirm his withdrawal and as a courtesy to the Panel, Mr. Ranspot appeared before us on September 12, 2007, and advised he was without any instructions with regard to explaining her absence. After a 15-minute adjournment, the hearing went ahead, absent the Respondent.

Decision

[3] At all material times, the Respondent was a practising lawyer, with no previous discipline history. There was no evidence provided to the Panel of medical or contextual mitigating circumstances to explain the Respondent's egregious professional misconduct.

[4] After three years of employment with her firm, E.C. & Associates, it is reasonable to conclude that the firm could expect that the Respondent was a person of honour, integrity and good character, with the reputation and fitness to be a lawyer. More importantly, the public is certainly entitled to that expectation. Given our verdict of professional misconduct, it is now the task of the Panel to impose a penalty that assists the Law Society in meeting the public's expectation of the Law Society that it is ensuring the integrity and honesty of its members.

[5] Law Society counsel, Maureen Boyd, fairly and properly drew the Panel's attention to previous decisions that may have offered some hope of supporting an argument on the Respondent's behalf that the penalty should not be disbarment but, instead, suspension together with certain conditions for possible reinstatement. See, for example, the following: *Law Society of BC v. Morrison*, [1997] L.S.D.D. No. 193; *Law Society of BC v. Wood*, Discipline Digest 1990: No. 1 November; and *Law Society of Upper Canada v. Frishette*, [2005] L.S.D.D. No. 17. These cases are distinguishable from the Respondent's case because they had an evidentiary basis that supported the finding of such mitigating factors as a medical condition, degree of supervision, or nature of the victim.

[6] The Respondent misappropriated trust funds on an almost regular basis, and did so without providing any evidence of mitigation or explanation to this Panel. Accordingly, the Panel orders that the Respondent be and is hereby disbarred.

Costs

[7] The Respondent shall pay the costs of these proceedings in the amount of \$11,532.00.