2012 LSBC 32
Report issued: December 19, 2012
Oral Reasons: September 20, 2012
Citation issued: March 22, 2012

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

**KARAMGOPAL PAUL SINGH LAIL**

Respondent

## Decision of the Hearing Panel

Hearing date: September 20, 2012
Panel: Leon Getz, QC, Chair, Robert Smith, Public representative, Gary Weatherill, QC, Lawyer

Counsel for the Law Society: Carolyn Gulabsingh
Counsel for the Respondent: Robert Hunter

## BACKGROUND

[1] The citation was authorized by the Discipline Committee on March 1, 2012, and issued March 22, 2012. The Respondent admits that on March 22, 2012, he was served with the citation through his counsel, and he has waived the requirements of Rule 4-15 of the Law Society Rules.

[2] The citation sets out two allegations, which arise from the Respondent issuing a number of accounts that authorized the withdrawal of trust funds to satisfy the accounts, the Respondent's failure to deliver the bills to the clients and the Respondent's authorization of withdrawal of trust funds on behalf of one corporate client to pay the purported debt of another corporate client, without the consent of the first corporate client to do so.

[3] This matter came before the Panel pursuant to Rule 4-22, which provides for, inter alia, the Discipline Committee to accept a conditional admission of a discipline violation and proposed disciplinary action. That Rule requires a hearing panel to consider the proposal and impose the proposed disciplinary action if it agrees that it should be accepted.

[4] The Law Society and the Respondent have entered into an Agreed Statement of Facts. In it, the Respondent has admitted that:

> (a) in or about December 2007, he prepared 24 bills to clients by which he authorized the withdrawal of funds from trust, without delivering those bills to the clients, contrary to s. 69 of the *Legal Profession Act* and Rule 3-57 of the Law Society Rules, as set out in the first allegation in the citation;
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> (b) in or about December 2007, he authorized the withdrawal of trust funds held to the account of his client C Inc. to pay the purported debt of another client, J Co., without the authorization or consent of C Inc., contrary to Rule 3-56 and Rule 3-60(c) of the Law Society Rules, as set out in the second allegation in the citation; and
>
> (c) his admitted conduct constitutes professional misconduct.

[5] The Respondent has proposed the following disciplinary action:

> (a) a fine of $3,500;
>
> (b) a condition under section 38(5)(b) of the *Legal Profession Act* that he not operate or act as a signatory to a trust account of any practice; and
>
> (c) that he pay costs in the amount of $2,000.

[6] At the conclusion of the hearing, we gave our decision orally. We found that the conduct set out in the citation was proven to the requisite standard, that the Respondent's admission of professional misconduct was appropriate and that the proposed disciplinary action fell within an appropriate range. We ordered that the Respondent pay a fine of $3,500 by April 30, 2013 and that he not operate or act as a signatory to a trust account of any practice. We also ordered that he reimburse the Law Society in the amount of $2,000 on account of its costs in connection with this matter. These are our written reasons.

## FACTS

[7] The following are the material facts that have been agreed to:

### Allegation #1

1. In November 2007, Mr. Lail notified his former employer, Fritz Lail Shirreff & Vickers, (the "Firm") of his intended resignation and during the month of December, he wound up his private law practice at the Firm in anticipation of his departure at the end of the month.

2. In the process of winding up his practice, Mr. Lail issued and signed 24 accounts addressed to various clients of the Firm. In each of the 24 accounts, the amount of the invoice was equal to the balance held in trust for the client by the Firm, and each authorized the withdrawal of funds from trust to satisfy the accounts.

3. Mr. Lail took no steps to cause the accounts to be delivered to the clients, by mail or otherwise, and none of them was delivered. Many of them were incomplete and lacked addresses or complete client names.

4. None of the files in respect of which the 24 accounts were issued contained a retainer agreement, correspondence or notes indicating the clients consented to Mr. Lail billing the files, as he did, without providing a copy to the clients.

### Allegation #2

5. One of the 24 accounts Mr. Lail issued was to the client C Inc., in the amount of $750, including GST (the "C Inc. Account"). On December 19, 2007, when Mr. Lail issued the C Inc. Account, C Inc. did not owe any money to the Firm.

6. The Respondent issued the C Inc. Account so that he could authorize the withdrawal of trust funds to partially satisfy the amount owing to the Firm by another company, J Co., that Mr. Lail understood was related to C Inc.. C Inc. did not consent to Mr. Lail withdrawing funds from trust to satisfy the account of J Co.

## APPROPRIATENESS OF RESPONDENT'S ADMISSION OF PROFESSIONAL MISCONDUCT

[8] It is now well established that the test for "professional misconduct" is "whether the facts as made out disclose a marked departure from that conduct the Law Society expects of its members." See *Law Society of BC v. Martin*, 2005 LSBC 16 at paragraph [171]. And see *Re Lawyer 12*, 2011 LSBC 11.

[9] It is also well established that not every breach of the rules of professional conduct and the Law Society's Rules necessarily amounts to professional misconduct. It is for the Benchers to determine whether a breach crosses the line.

[10] In our view, the Respondent's admitted misconduct clearly amounts to the marked departure referred to in the *Martin* case and hence is properly to be characterized as professional misconduct. Trust accounting obligations go to the heart of confidence in the integrity of the legal profession, and there is a clear public interest in ensuring that they are performed meticulously and not, as here, nonchalantly. In our view the Respondent's conduct clearly crossed the line between mere breach of the Rules and professional misconduct. Accordingly, it is our view that the Respondent's admission of professional misconduct was entirely justified. It is appropriate, and we accept it.

## APPROPRIATENESS OF DISCIPLINARY ACTION

[11] The approach to be taken in considering whether to accept a proposal for disciplinary action is succinctly set out in *Law Society of BC v. Rai*, 2011 LSBC 2 at paragraphs [7] and [8]:

[7] This provision exists to protect the public. The Panel must be satisfied that the proposed admission on the substantive matter is appropriate. In most cases, this will not be a problem. The Panel must also be satisfied that the proposed disciplinary action is "acceptable". What does that mean? This Panel believes that a disciplinary action is acceptable if it is within the range of a fair and reasonable disciplinary action in all the circumstances. The Panel thus has a limited role. The question the Panel has to ask itself is, not whether it would have imposed exactly the same disciplinary action, but rather, "Is the proposed disciplinary action within the range of a fair and reasonable disciplinary action?"

[8] This approach allows the Discipline Committee of the Law Society and the Respondent to craft creative and fair settlements. At the same time, it protects the public by ensuring that the proposed disciplinary action is within the range of fair and reasonable disciplinary actions. In other words, a degree of deference should be given to the parties to craft a disciplinary action. However, if the disciplinary action is outside of the range of what is fair and reasonable in all the circumstances, then the Panel should reject the proposed disciplinary action in the public interest.

[12] In applying this approach to the present circumstances and in accepting the proposed disciplinary action, we have taken account of some of the considerations identified in the well-known decision in *Law Society of BC v. Ogilvie*, [1999] LSBC 17, among them:

> (a) the fact that the Respondent's transgressions took place in somewhat unusual circumstances and over a limited period of time;
>
> (b) the Respondent neither sought nor did he receive any benefit, financial or otherwise, from his breaches of the Rules;
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> (c) the risk of any repetition of the Respondent's misconduct is virtually nil. He is now employed outside the legal profession and is not required to operate a trust account. Moreover, any concern over this aspect of the matter is, in our view, satisfactorily dealt with through the imposition of a condition that he not operate or be a signatory on a trust account without the consent of the Discipline Committee;
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> (d) the Respondent has been a member of the Law Society for more than 25 years. His Professional Conduct Record consists of a single conduct review, held in 2006. It seems that one aspect of the

conduct reviewed at that time seems to have arisen out of inadequate file maintenance and management practices and thus may be thought to bear some similarity to the present misconduct. The similarity is at best superficial, however, and accordingly we do not think the Respondent's Professional Conduct Record should play any significant role in determining an appropriate penalty.

[13] Counsel for the Law Society referred to several previously decided cases involving breaches of the accounting Rules in support of the contention that the proposed fine of $3,500 is within the range of what is fair and reasonable. The cases are few in number and little is to be gained from an examination of the detailed facts. What is clear, however, is that in the absence of other more serious breaches of the accounting Rules, a fine of $3,500, as proposed here, is within the requisite range.

[14] For all of these reasons we accept the proposed sanctions.

## COSTS

[15] It is proposed that the Respondent reimburse the Law Society in the amount of $2,000 in respect of its costs, including fees of counsel and disbursements.

[16] Prior to April 2012 the costs regime applicable to cases such as this was as described in the decision in *Law Society of BC v. Racette*, 2006 LSBC 29. In general terms that regime required a panel to be satisfied as to the reasonableness of a claim by the Law Society for costs, having regard to several considerations such as the seriousness of the offence, the complexity of the matter and so on. Effective in April 2012 the applicable Rule (Rule 5-9) was amended to provide for a tariff of costs. Item 23 of the tariff deals expressly with the costs of hearings, such as this, under Rule 4-22 of the Law Society Rules. It provides that for a complete hearing, the costs recoverable range from $1,000 to $3,500 depending on various considerations including the complexity of the matter.

[17] We are satisfied that, in all the circumstances, whether determined under the old costs regime or the new, an order that the Respondent contribute $2,000 to the Society's costs is fair and reasonable and appropriate.

## ORDER

[18] The panel finds that the Respondent has committed professional misconduct and orders that he:

(a) pay a fine of $3,500; and

(b) pay costs in the amount of $2,000, both costs and fine payable by April 30, 2013.

[19] The Executive Director is instructed to record the Respondent's admission on his professional conduct record.