

2013 LSBC 38

Decision issued: December 20, 2013

Oral Reasons: May 28, 2013

Citation issued: November 9, 2012

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

Jeffrey Robert Arndt

Respondent

Decision of the Hearing Panel

Hearing date: May 28, 2013

Panel: Gregory Petrisor, Chair, Carol W. Hickman, QC, Lawyer, Graeme Roberts, Public representative

Counsel for the Law Society: Alison Kirby, Maria Morielli, articled student

Counsel for the Respondent: Richard S. Margetts, QC

introduction

[1] The citation against the Respondent alleges:

1. In the course of representing your client in criminal proceedings, you agreed to provide legal services and receive payment in cash as an “off the books” transaction and received cash payments from your client in the amounts of \$2,500 in November 2002 and \$10,000 in October 2003. In doing so, you did some or all of the following:

(a) failed to deposit the funds into your trust account, contrary to Law Society Rule 3-51(1);

(b) failed to record the transactions, contrary to Law Society Rules 3-59(1) and 3-63; and

(c) engaged in dishonourable or questionable conduct that casts doubt on your integrity, contrary to Chapter 2, Rule 1 of the *Professional Conduct Handbook*.

This conduct constitutes professional misconduct or a breach of the Act or rules pursuant to s. 38(4) of the *Legal Profession Act*.

[2] The Respondent admitted service of the citation at the hearing.

[3] Counsel submitted an Agreed Statement of Facts, and no oral evidence was given at the hearing.

[4] Rule 4-22 of the Law Society Rules allows the Respondent to make an admission of a discipline violation, conditional upon the acceptance of a proposed specified disciplinary action to which the respondent has consented. The proposal is first made to the Discipline Committee of the Law Society and then, if accepted by the Committee, presented to a hearing panel. The hearing panel, pursuant to Rule 4-22(5) and 4-23, can only accept, or reject, the conditional admission and the proposed disciplinary action.

[5] The Respondent conditionally admitted:

(a) the facts alleged in the citation, and laid out in more detail in the Agreed Statement of Facts;
and

(b) the conduct admitted to constitutes professional misconduct,

and proposed, pursuant to Rule 4-22, that he pay:

(a) a fine in the amount of \$7,500 by October 30, 2013; and

(b) costs in the amount of \$2,000 by October 30, 2013.

[6] In this case, the Panel accepted the Respondent's conditional admission of professional misconduct as alleged, and the proposed disciplinary action. We also accepted counsel's suggestion that we make an Order preventing disclosure of certain information. Following the hearing, we gave our oral decision, and advised that we would deliver written reasons. These are our reasons.

Facts

[7] Jeffrey Arndt was called to the British Columbia bar on May 14, 1979. He practises predominantly in the area of criminal law.

[8] Mr. Arndt failed to file income tax returns for the years 1996 through 2002. The Canada Customs and Revenue Agency ("CCRA") estimated that Mr. Arndt owed between \$360,000 and \$500,000 in unpaid taxes. Mr. Arndt was charged in October of 2001 with eight counts of failing to comply with the Income Tax Act. He was the subject of collection efforts, including the garnishment of his and his law corporation's general bank accounts, between 2001 and 2004.

[9] On or about March 21, 2002, Mr. Arndt was retained by a client in respect of criminal charges brought against the client. On or about May 3, 2002, Mr. Arndt agreed with the client that the money paid by the client in that transaction would be kept "off the books" in order to avoid (quoting from the Agreed Statement of Facts):

(a) billing, collecting, and remitting any PST and GST owed for the services;

(b) including the amount in income on Mr. Arndt's personal or law corporation's income tax filings;
and

(c) collection proceedings brought by CCRA under various certificates of unpaid taxes issued against Mr. Arndt.

[10] In approximately early November, 2002, Mr. Arndt accepted \$2,500 in cash from the client. Mr. Arndt acknowledged receipt of the funds on the back of a business card. He did not deposit the funds into a pooled trust account but placed the cash in a desk drawer. He did not record the transaction in his trust account records, or on a separate client trust ledger, or in his general account records.

[11] On or about November 8, 2002, Mr. Arndt attended a preliminary inquiry on behalf of the client, and billed the client \$2,500. The statement of account acknowledged the \$2,500 as having been paid. Mr. Arndt maintains it was only after he rendered his bill that he used the funds to pay personal and business expenses. In any event, the funds were used by Mr. Arndt.

[12] Mr. Arndt did not bill, collect or remit GST or PST in respect of the November 8, 2002 bill, and did not

report the \$2,500 as income for tax purposes.

[13] On January 16, 2003, Mr. Arndt pleaded guilty to two of the charges against him. In May, 2003, he was served with a Writ of Seizure and Sale for assets of his law corporation, and was also served with attachment Orders for bank accounts of his law corporation. That same month, Mr. Arndt informed the Law Society of his financial difficulties.

[14] In or about May, 2003, Mr. Arndt and the client negotiated a flat fee of \$10,000 for services in connection with a criminal trial and sentencing.

[15] On May 31, 2003, Mr. Arndt filed a Notice of Insolvency with the Superintendent of Bankruptcy. In August, 2003, he filed estimated income tax returns for the years 1996 to 2002.

[16] On or about October 23, 2003, Mr. Arndt accepted \$10,000 cash from the client. As before, Mr. Arndt acknowledged receipt of the funds on the back of a business card. As before, he did not place the cash into a pooled trust account, but placed it in a desk drawer. Again, he did not record the transaction in his trust account records, or on a separate client trust ledger, or in his general account records.

[17] On or about October 27, 2003, Mr. Arndt negotiated a plea bargain on behalf of the client. On or about October 28, 2003, Mr. Arndt billed the client a flat fee of \$10,000 for services rendered. The statement of account acknowledged the \$10,000 as having been paid. Mr. Arndt maintains it was only after he rendered his bill that he used the funds to pay personal and business expenses. In any event, he used the funds.

[18] Mr. Arndt did not bill, collect, or remit GST or PST in respect of the October 28, 2003 bill, and did not report the \$10,000 as income for tax purposes.

[19] On December 11, 2003, Mr. Arndt made a proposal of Insolvency to CCRA. That proposal was eventually approved by the Court. On April 1, 2004, Mr. Arndt pleaded guilty to the remaining six charges brought against him under the *Income Tax Act*.

[20] Between May, 2004 and May, 2009, Mr. Arndt provided various legal services to the client in respect of six separate matters without rendering a bill to the client to avoid a review of the “off the books” transactions from 2002 and 2003.

[21] On October 3, 2011, the client made a complaint to the Law Society against Mr. Arndt. In the course of the investigation, Mr. Arndt raised the “off the books” transactions that eventually led to the issuance of the citation against him. Counsel for the Law Society advised that, if not for Mr. Arndt’s raising of those matters, they would not have come to the attention of the Law Society.

DISCUSSION

[22] As stated above, the only actions open to the Hearing Panel are to accept the Respondent’s conditional admission and the proposed disciplinary action, or to reject them.

[23] The test for determining whether or not specific conduct constitutes professional misconduct, is:

whether the facts as made out disclose a marked departure from that conduct the Law Society expects of its members; if so, it is professional misconduct,

as stated in *Law Society of BC v. Martin*, 2005 LSBC 16 at paragraph [171], and subsequently endorsed by a Review Panel in *Re: Lawyer 12*, 2011 LSBC 35 at paragraphs [8] and [42].

[24] The facts in this case amply support a finding that the Respondent’s actions constitute professional misconduct. Accordingly, we make that finding. The Respondent failed to follow Law Society Rule 3-51(1)

regarding the handling of funds and Rule 3-63 regarding the recording of transactions. He also, by participating in “off the books” transactions to avoid tax consequences and collection efforts, engaged in dishonourable or questionable conduct that casts doubt on his integrity.

Disciplinary Action

[25] The misconduct of the Respondent occurred in two separate transactions. The misconduct involved multiple breaches of Law Society Rules and tax laws. The Respondent engaged in the misconduct for personal gain, to avoid tax reporting and payment as well as to avoid collection efforts. The Respondent is a senior member of the bar. Those are all aggravating factors.

[26] The Respondent’s misconduct did not harm his client. The Respondent brought his misconduct to the attention of the Law Society staff, and admitted professional misconduct. The misconduct specified in the citation happened more than 10 years ago, and there is no suggestion that the Respondent has any professional conduct history arising from his actions since. Those are mitigating factors.

[27] Counsel for the Respondent provided several extremely positive letters of reference concerning the Respondent from other members of the bar. In those letters, the Respondent is described as an invaluable resource, professional, courteous, compassionate, knowledgeable, reliable, honest, responsible, and diligent.

[28] Counsel for the Law Society provided a number of authorities for our consideration in respect of the proposed disciplinary action. The disciplinary action imposed in each of those was:

- (a) a reprimand, a \$7,500 fine and costs to be assessed in *Law Society of BC v. Greig*, 2005 LSBC 20;
- (b) a \$2,000 fine and costs of \$2,500 in *Law Society of BC v. Hendery*, 2005 LSBC 25;
- (c) a reprimand, a \$1,500 fine, and costs of \$2,000 in *Law Society of BC v. Murray*, 2006 LSBC 47; and
- (d) a \$3,000 fine and costs of \$1,500 in *Law Society of BC v. Wittmann*, 2008 LSBC 24.

[29] In *Law Society of BC v. Rai*, 2011 LSBC 02, the single Benchers panel, in describing the process under Law Society Rule 4-22, stated at paragraph [8]:

This same 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.

[30] Similarly, the hearing panel in *Law Society of BC v. Batchelor*, 2013 LSBC 09 states at paragraph 37:

Deference should be given to the recommendation to accept the proposed disciplinary action if it is within the range of a fair and reasonable disciplinary action in all the circumstances.

[31] The proposed disciplinary action is, in this case, within the range established by the authorities cited, and addresses the aggravating and mitigating factors discussed above. The sanction is significant enough

to provide general and specific deterrence, and to ensure the public's confidence in the integrity of the profession. We accept the proposed disciplinary action, a fine in the amount of \$7,500 payable by the Respondent on or before October 31, 2013.

[32] Costs as proposed are nearly in the middle of the range established by the Tariff of Costs for discipline hearings. We accept the proposed costs in the amount of \$2,000 payable by the Respondent on or before October 31, 2013.

[33] As stated previously, counsel sought an order that the following information not be disclosed:

- (a) any reference to the name and/or address of the complainant;
- (b) confidential client information about the underlying criminal law matters for which the Respondent was engaged by the complainant; and
- (c) attachments 3 through 9, 11, 13, 14, and 15 to the Agreed Statement of Facts in their entirety.

The information described includes the identity and address of the complainant, and details of the criminal matters faced by the complainant. That information is, by its nature, confidential and sensitive. The complainant provided that information to the Respondent with a reasonable expectation of confidentiality. The order sought by counsel will protect the confidentiality of that information. The order sought is appropriate in the circumstances.

ORDER

[34] The Respondent must pay a fine to the Law Society of British Columbia in the amount of \$7,500, pursuant to Rule 38(5)(b) of the *Legal Profession Act*, on or before October 31, 2013.

[35] The Respondent must also pay costs to the Law Society of British Columbia in the amount of \$2,000 on or before October 31, 2013.

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

[37] The following specific information contained in the Agreed Statement of Facts dated May 13, 2013, entered as Exhibit "1" in this hearing must not be disclosed under Rule 5-6(2) of the Law Society Rules:

- (a) any reference to the name and/or address of the complainant;
- (b) confidential client information about the underlying criminal law matters for which the Respondent was engaged by the complainant; and
- (c) attachments 3 through 9, 11, 13, 14 and 15 to the Agreed Statement of Facts in their entirety.

[38] The following specific information contained in the transcripts to this hearing must not be disclosed under Rule 5-6(2) of the Law Society Rules:

- (a) any reference to the name and/or address of the complainant;
- (b) confidential client information about the underlying criminal law matters for which the Respondent was engaged by the complainant; and
- (c) attachments 3 through 9, 11, 13, 14 and 15 to the Agreed Statement of Facts in their entirety.