2014 LSBC 02
Report issued: January 20, 2014
Citation issued: July 5, 2012

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

LAUREL ELIZABETH HUDSON (TANNER)

Respondent

Decision of the Hearing Panel
on Facts, Determination and Disciplinary Action

Hearing date: November 20 - 22, 2013
Panel: Thelma O'Grady, Chair, Don Amos, Public representative, Brian J. Wallace, QC, Lawyer

Counsel for the Law Society: Carolyn Gulabsingh
Counsel for the Respondent: Richard Gibbs, QC

Background

[1] The Discipline Committee authorized the citation against Ms. Hudson on June 21, 2012 (the "Citation"). The Citation alleges the Respondent submitted accounts to the Legal Services Society ("LSS") on her behalf and on behalf of other lawyers in her firm that were false, and on behalf of other lawyers in her firm when she did not have the required approval of LSS to do so.

[2] The specific allegations in the Citation are as follows:

> 1. Between approximately April 2007 and October 2007, you caused to be submitted to the Legal Services Society for payment at least six accounts that falsely stated the time spent by lawyers in order to recover time spent by legal assistants, when you knew the accounts were false and you knew that the Legal Services Society did not permit billing for time spent by legal assistants.
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> This conduct constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.
>
> 2. Between approximately October 2007 and April 2008, you caused the time records of lawyers who worked at your firm to be altered on at least 12 accounts to include time spent by legal assistants and you caused false accounts to be submitted to the Legal Services Society for payment based on the altered time records.
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> This conduct constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.
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> 3. Between approximately April 2008 and September 2008, you caused the time records of lawyers who worked at your firm to be altered to include approximately 20% more hours had been worked [sic] than had actually been worked by the lawyers and you caused at least nine false accounts to be submitted to the Legal Services Society based on the altered time records.
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> This conduct constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.

4. Between approximately June 2008 and November 2008, you caused at least five false accounts to be submitted to the Legal Services Society for payment in which you claimed preparation time related to court applications filed on a stated date, when:

(a) no application was filed on that date; or

(b) multiple applications were filed on the stated date and you claimed preparation time for each application, contrary to the LSS tariff.

This conduct constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.

5. Between approximately April 2007 and November 2008, you caused accounts to be submitted electronically to the Legal Services Society on behalf of other lawyers in your firm, using the other lawyers' e-billing access codes without prior authorization from the Legal Services Society, when you knew the Legal Services Society did not permit you to submit accounts for payment on behalf of other lawyers without prior authorization from the Legal Services Society to do so.

This conduct constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.

[3] By signing the Agreed Statement of Facts in July of 2013, the Respondent admitted to the allegations set out in the Citation. She also admitted that they constituted professional misconduct. That admission stands as it relates to allegations 1, 3, 4, and 5 in the Citation.

[4] However, before the Respondent gave evidence at the hearing, her counsel cast doubt on her admission of allegation 2 of the Citation. In particular, Mr. Gibbs said that, in agreeing to paragraph 25 of the Agreed Statement of Facts, the Respondent did not intend to contradict her responses to the Law Society's letter to her counsel of May 5, 2011. However, Mr. Gibbs also said that the Respondent was not withdrawing her agreement to paragraph 25 of the Agreed Statement of Facts.

[5] Paragraph 25 of the Agreed Statement of Facts and allegation 2 cover the period from October 2007 to April 2008, immediately following an LSS audit of the Respondent's firm's billings in which it uncovered billings of legal assistant time. The legal assistant billings for the audit period were identified in the firm's records, but not on the bills to LSS using words like "EXPLICIT entry to enter Legal Services Society time worked on the file at 45% of actual time." After the audit, from October 2007 to April 2008, the Respondent's firm continued the 45 per cent billings but without identifying them in its billing records.

[6] In its letter of May 5, 2011 to the Respondent's counsel, the Law Society raised the issue in allegation 2 as follows:

> As well, I understand LSS conducted a billing audit in 2007 where LSS determined that the Firm was improperly billing LSS for work performed by Assistants. Notwithstanding this, Ms. Hudson continued to bill LSS for time worked by Assistants; however the billing procedures changed over time. This might suggest to some that Ms. Hudson was being intentionally deceptive.
>
> I have asked Ms. Hudson to answer a series of questions regarding each billing procedure. However, one of my main concerns is why she kept billing LSS for Assistant time in the face of the LSS billing protocol and the billing audit conducted by LSS.

[7] The Respondent's response to that comment is consistent with her admission in paragraph 25 of the Agreed Statement of Facts. It is set out in her letter of October 24, 2011, as follows:

> I continued to bill the Legal Services Society of B.C. ("LSS") for legal assistant ("Assistant") time in the face of the LSS billing protocol and the billing audit conducted by LSS in 2007 because I believed at the time that I was justified in doing so.

> Specifically, I considered that the work done by my Assistants was valuable enough to our clients that its exclusion from the LSS billing protocol was improper, and that my actions were therefore justified. Essentially I thought, wrongfully, that I knew better than LSS. I regret this.

[8] Later in her letter, the Respondent contradicts this admission, saying, “I made the decision to stop the 45% Assistant time mark up upon reviewing the LSS Tariff and realizing that I could not bill for Assistant’s work. I stopped the practice in October 2007.” The Respondent then deals in more detail with the 45 per cent mark up during this period, beginning, “To reply generally to this section, I don’t recall authorizing this markup, at all,” and continuing with a nine-paragraph denial.

[9] At the hearing, the Respondent’s testimony was consistent with the lengthy denial in her letter. She said that the LSS audit “caused me to change something ... We needed to stop doing it.” It was “a chill ... I told the billing clerk to stop billing the 45%.” She testified that she “did not authorize the miss-billing between October 2007 and April 2008,” but, as in her letter of October 24, 2011, she had no explanation as to how it might have happened.

[10] The internal inconsistencies in the Respondent’s letter of October 24, 2011 were not canvassed at the hearing. However, she explained the variance between her denials and her signing the Agreed Statement of Facts by saying that she had been under stress at the time she signed the Agreed Statement of Facts and did not read paragraph 25 closely enough.

DISCUSSION AND ANALYSIS

[11] The Law Society must prove, based on evidence we find on careful scrutiny is sufficiently clear, convincing and cogent to satisfy the balance of probabilities test, the facts to justify a conclusion that the Respondent has committed professional misconduct. (*FH v. McDougall*, 2008 SCC 53)

[12] Although Mr. Gibbs expressly did not request that the Respondent be allowed to withdraw her admission to allegation 2, we have considered whether it has been proven. She has admitted it twice, and denied it twice. However, we do not find the denials to be credible. The improper billings continued between October 2007 and April 2008. The only difference was that they were no longer recorded in the firm’s records. The Respondent managed the firm throughout that time and instructed the billing clerks. She offers no explanation as to how the improper billing might have occurred without her knowledge. These facts support her admission. There is no evidence to support her denial.

[13] The Respondent has admitted the facts underlying allegations 1, 3, 4 and 5 in the Citation. We are satisfied that the evidence on allegation 2 is sufficiently clear, convincing and cogent to establish on the balance of probabilities, that between October 2007 and April 2008 the Respondent caused time records of lawyers at her firm to be altered on at least 12 accounts to include time spent by legal assistants, and caused false accounts to be submitted to LSS for payment based on the altered time records.

[14] The Respondent knowingly and deliberately falsified accounts submitted to LSS on her behalf and on behalf of other lawyers employed by the Firm, for an extended period of time, even after being cautioned about doing so by the LSS. The LSS paid the Respondent’s false invoices. Her intentional dishonesty falls far below the standard that the Law Society expects of its members. We find that the Respondent has committed professional misconduct.

Disciplinary Action

FACTS AND EVIDENCE

[15] After the actions that led to this Citation, the Respondent's marriage broke down, and she lost an opportunity to adopt her foster children, events that her counsel termed "a complete derailment" of her personal life. As a result, and on medical advice, the Respondent took sick leave, but for which, she would currently be in practice.

[16] There is no evidence that the Respondent's misconduct was the result of duress or undue influence at the time of the wrongdoing. Rather, the evidence supports the assertion that her conduct was wilful and voluntary. The breakdown in her personal circumstances occurred three or four years after she began the conduct giving rise to these allegations.

[17] The Respondent's evidence is that she deliberately misreported time and submitted false invoices to the LSS, justifying it by her belief that the Tariff was "unfair". She was expending monies to have legal assistants perform many of the basic activities on the files, and she could not recapture that time under the Tariff. She submitted false accounts because, in her mind, she thought that she was "justified in doing so," and because she believed that the exclusion of legal assistant's time from the LSS Tariff was "improper".

[18] The Respondent chose to "beg for forgiveness" if caught, rather than "ask for permission". She did not discuss the issue with LSS at any time before creating the bills because she had good reason to believe that the LSS would not accept her arguments.

[19] The Respondent's misconduct resulted in LSS paying funds to which neither she nor her firm was entitled. Therefore, her conduct amounted to misappropriation. *Black's Law Dictionary*, 8th Edition, defines misappropriation as follows:

> The application of another's property or money dishonestly to one's own use.

[20] Further, the Respondent's misconduct was not an isolated incident. Rather, it was extensive and consistent, occurring over an extended period of time. She has admitted to submitting numerous false accounts in her name and in the names of other lawyers in her firm. The Law Society's audit report confirms the admissions.

DISCUSSION AND ANALYSIS

[21] The primary purpose of disciplinary proceedings is the fulfillment of the Law Society's mandate set out in section 3 of the *Legal Profession Act* to uphold and protect the public interest in the administration of justice by ensuring the independence, integrity, honour and competence of lawyers. This purpose is recognized in the following often-cited passage from MacKenzie, *Lawyers and Ethics: Professional Regulation and Discipline* at p. 26-1:

> The purposes of law society discipline proceedings are not to punish offenders and exact retribution, but rather to protect the public, maintain high professional standards, and preserve public confidence in the legal profession.
>
> In cases in which professional misconduct is either admitted or proven, the penalty should be determined by reference to these purposes. … All sanctions necessarily have punitive effects, which are tolerable results of the protective and deterrent functions of the disciplinary process. The goals of the process are, nevertheless, nonpunitive.
>
> The seriousness of the misconduct is the prime determinant of the penalty imposed. In the most serious cases, the lawyer's right to practise will be terminated regardless of extenuating

> circumstances and the probability of recurrence. If a lawyer misappropriates a substantial sum of clients' money, that lawyer's right to practise will almost certainly be determined, for the profession must protect the public against the possibility of a recurrence of the misconduct, even if that possibility is remote. Any other result would undermine public trust in the profession. (quoted in *Law Society of BC v. Hordal*, 2004 LSBC 36 at paragraph [51]).

[22] In *Law Society of BC v. Hill*, 2011 LSBC 16, the hearing panel further referenced the MacKenzie text and commented at paragraph [3] that:

> It is neither our function nor our purpose to punish anyone. The primary object of proceedings such as these is to discharge the Law Society's statutory obligation, set out in section 3 of the *Legal Profession Act*, to uphold and protect the public interest in the administration of justice. Our task is to decide upon a sanction or sanctions that, in our opinion, is best calculated to protect the public, maintain high professional standards and preserve public confidence in the legal profession.

[23] *Law Society of BC v. Ogilvie*, [1999] LSBC 17, sets out a non-exhaustive list of the factors to be considered in assessing penalty. We have considered the following factors from that list as relevant here:

The nature and gravity of the conduct proven

[24] A deceitful action by a lawyer is serious misconduct. The Respondent admitted to deliberately falsifying accounts and time records in order to be paid funds to which she was not entitled under her contract with LSS. The Respondent's conduct included intentionally and systematically submitting false invoices to LSS. Her misconduct was not inadvertent; it was intentionally and consistently dishonest. It is no excuse that she believed that the terms of her engagement by LSS were unfair.

The age and experience of the respondent

[25] The Respondent, at the time of the offences, was in her mid-30s. The conduct commenced when she had been practising for about seven years. Although not a senior lawyer, she was not inexperienced or new to the profession.

The previous character of the respondent, including details of prior discipline

[26] The Respondent's Professional Conduct Record disclosed no misconduct other than that in the Citation.

The impact upon the victim

[27] In *Law Society of BC v. Lessing*, 2013 LSBC 29, the Benchers on Review held at paragraph [105] that the impact on both direct victims and indirect victims are properly considered when assessing the appropriate disciplinary response. In this case, the direct victim was LSS, as the Respondent received thousands of dollars from LSS on the basis of falsified billings.

[28] The funds paid to the Respondent and her firm by LSS as a result of the falsified billings also give rise to a number of indirect victims of the Respondent's misconduct. Legal aid in British Columbia is inadequate. The resources expended by LSS to satisfy the false accounts, and in uncovering the false accounts submitted by the Respondent took resources away from LSS clients or potential clients who would have benefitted from those resources.

[29] Furthermore, LSS is funded, in part, through revenue generated by the Provincial Government from

taxpayers. As a result, taxpayers in British Columbia are also indirect victims of the Respondent's misconduct.

The advantage gained, or to be gained by the respondent

[30] A further aggravating factor is that the Respondent's misconduct was intended to, and did have a direct financial benefit to the Respondent and her firm. Despite her justification that her wrong-doing assisted more clients to be served, the result is that it was the Respondent, through her firm, who received funds from LSS to which neither she nor her firm were entitled.

The number of times the offending conduct occurred

[31] The Respondent's conduct was ongoing over a period of time. During 2007, the Respondent's practice was audited by LSS. Despite the caution from LSS that billing for legal assistants' time was not permitted under the Tariff, she found another way to do it.

[32] The ways in which the LSS accounts were falsified changed twice. The Respondent admitted in the Agreed Statement of Facts that she was responsible for both changes. The changes were made in order to avoid LSS detecting the deceit.

Whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances

[33] The Respondent has acknowledged her misconduct and took early steps to completely disclose her wrongdoings – both to LSS and to the Law Society.

[34] She has not made any restitution to LSS. She testified she is unable to do so because of her ongoing financial state.

[35] There were no mitigating circumstances for the wrongdoing. There is no evidence indicating the Respondent's misconduct was related to or caused by a medical condition, disability, illness or disease that was present at the time of the misconduct.

The possibility of remediating or rehabilitating the respondent

[36] The Respondent has taken full responsibility for her misconduct, acknowledging that her "moral compass was off". This is a necessary first step towards rehabilitation.

The impact upon the respondent of criminal or other sanctions or penalties

[37] The Respondent was not charged with any criminal or other sanctions or penalties other than to lose her LSS vendor number.

The impact of the proposed penalty on the respondent

[38] The Respondent is currently not practising as she was on a leave of absence for medical reasons. She is now well enough to return to work.

The need for specific and general deterrence

[39] The need for general deterrence is the most important factor in this case. We must adamantly say to

the rest of the profession, “Don’t even think about it.” (*Law Society of BC v. McGuire*, 2006 LSBC 20, paragraph [24]).

[40] A clear message must be sent to the Respondent and to all lawyers that the Law Society will not tolerate dishonesty or deceit, even if the lawyer believes it is “justified” by the unfair terms of their engagement.

The need to ensure the public’s confidence in the integrity of the profession and the range of penalties imposed in similar cases

[41] The Law Society presented a range of penalty decisions for similar misconduct in British Columbia and Ontario. The penalties in BC ranged from a six-month suspension to disbarment. The penalties in Ontario ranged from a reprimand to disbarment.

[42] The Panel has reviewed these cases carefully and concluded that only disbarment of the Respondent is appropriate. Any other sanction would compromise the public confidence in the profession’s integrity and suggest that the legal profession does not take dishonesty committed by lawyers seriously.

[43] In *Lessing* (supra), the Review Panel emphasized two of the *Ogilvie* factors “protection of the public, including confidence in the discipline process and public confidence in the profession generally,” and “the rehabilitation of the member” (paragraph [57]). The Review Panel was in no doubt as to how to balance those two factors, saying at paragraph [60]:

> Undoubtedly, if there is a conflict between these two factors, then protection of the public will prevail.
>
> [emphasis added]

We agree.

[44] We are also guided by paragraph 24 of *Law Society of BC v. McGuire*, 2006 LSBC 20:

> … We accept that disbarment is a penalty that should only be imposed if there is no other penalty that will effectively protect the public. Protecting the public, however, is not just a matter of protecting the Respondent’s clients in future. Even if the latter could properly be done by imposing restrictions on the Respondent’s use of his trust account, we do not think that such a measure adequately protects the public in the larger sense. Wrongly taking a client’s money is the plainest form of betrayal of the client’s trust. In our view, the public is entitled to expect that the severity of the consequences reflect the gravity of the wrong. Protection of the public lies not only in dealing with ethical failures when they occur, but also in preventing ethical failures.

[45] The Panel is not without empathy for the Respondent. She appears to understand the gravity of her actions and is truly sorry for them. She admitted that she had temporarily lost her “moral compass”. She repeated on many instances while giving testimony that she wants to take responsibility for her actions and “make amends”. She appears to have learned from her mistakes.

[46] Her counsel made compelling arguments and urged the Panel, instead of disbarring the Respondent, to use sanctions in a rehabilitative way that would allow her to return to practice. But the case law in these circumstances is ultimately persuasive.

[47] A Supreme Court judge, and an experienced and well-respected senior lawyer from the same region, doing the same types of cases, provided letters of reference attesting that the Respondent is a dedicated and skilful lawyer. It is clear that the Respondent has great concern for the poor and marginalized citizens of British Columbia and their lack of access to justice. When LSS took away her vendor number, she

continued to assist poverty clients by doing pro bono work.

[48] The state of legal aid in British Columbia is sadly inadequate. The Province has seen continual reduction in legal aid funding over the years. Fewer types of cases are covered by the limited funding. However, it is just this shortfall in a finite resource that makes the Respondent's actions so egregious. She falsified her accounts to LSS in a way that allowed her to unilaterally accept more of this sparse resource than she was entitled to. And, while she justified to herself that, in doing so, she was helping more people, the fact is she was doing so by helping herself.

ORDER

[49] We order that the Respondent, Laurel Hudson, be disbarred

CONFIDENTIAL INFORMATION

[50] In the course of this hearing, the parties provided information relating to the Respondent's client files, information that is confidential.

[51] Hearings of the Law Society are generally public, and the need for openness and transparency in the disciplinary process of the Law Society is critical to maintaining the public's confidence in the ability of the Law Society to regulate the legal profession adequately.

[52] However, we have the discretion to protect confidential information and are of the view that names of third parties need not be disclosed to the public in order to carry out the mandate of the Law Society; therefore, pursuant to Rule 5-6(2)(a), we order that such references in the transcript of the proceedings must not be disclosed or published.

COSTS

[53] We order costs payable by the Respondent as set out in the Law Society's proposed Bill of Costs in the amount of $13,860. Recognizing the Respondent's submissions regarding her financial situation, we order that costs be payable on or before September 30, 2014