

2015 : No. 1 Spring

Bradley Darryl Tak

Port Moody, BC

Called to the bar: February 15, 1991

Ceased membership: January 1, 2011

Discipline hearing : March 12 and September 11, 2014

Panel : Lee Ongman, Chair, Anna Fung, QC and John Lane

Decisions issued : June 16 (2014 LSBC 27) and November 27, 2014 (2014 LSBC 57)

Counsel : Carolyn Gulabsingh for the Law Society; no one on behalf of Bradley Darryl Tak

Facts

Bradley Darryl Tak was suspended from practice from July 16 to August 30, 2010 as ordered by a discipline hearing panel. He was suspended from December 7, 2010 to January 1, 2011 for failing to file a trust report. His membership ceased from January 1 to February 17, 2011 for non-payment of fees, and he was suspended from February 17 to June 16, 2011. Tak's membership was not reinstated after January 1, 2011 and he became a former member.

Misappropriation of client funds

Tak received retainer funds from nine clients and did not deposit the funds in his firm's trust account, as required. He misappropriated these funds by making personal use of them when he was not entitled to do so.

Misleading and/or attempting to mislead the Law Society

In a Law Society investigation of a complaint, Tak represented that he deposited the retainer funds to his general account when he knew, or ought to have known, that he did not deposit the funds to his general account.

Tak made a statement to the Law Society that his practice had paid all GST remittances to the government when this was not true.

Failure to respond to the Law Society

Tak did not provide a substantive response to the Law Society's inquiries on eight different issues, including his obligations to file GST returns, the handling of retainer funds provided to him by clients, and the investigation of a complaint from the Ministry of the Attorney General that he was practising law while suspended.

Failure to remit GST collected

Auditors found that the GST collected was not maintained as a form of trust, but was used by Tak for drawings and to pay expenses.

Failure to follow trust accounting rules

Tak failed to keep accounting records in compliance with the rules between September 2008 and March 2010.

Determination

Tak did not appear at the hearings or send anyone on his behalf. The panel exercised its discretion to proceed in his absence. The panel found that Tak had committed professional misconduct in respect of 26 allegations. Tak's misappropriation had an obvious impact on his client victims, who were facing criminal court proceedings. He took retainers from clients and their families and then misappropriated the funds for his own personal use. He failed to communicate with clients on many occasions and did not attend fixed court dates that he contracted to attend, leaving his clients to suffer the consequences.

Tak made little effort to compensate his clients for his misconduct. His failure to provide any assistance when transferring client files to other counsel made the transition more difficult.

In addition to misappropriating client funds, Tak was found to have committed multiple other types of professional misconduct, including misleading the Law Society. The panel's finding that his misrepresentations were intentional elevated the seriousness of this element of his misconduct.

The Law Society's ability to carry out its regulatory responsibilities is significantly compromised if lawyers are permitted to ignore accounting rules and requirements of communicating with clients, colleagues and the Law Society, and the requirement to report judgments and charges to the Law Society. The Law Society would have been in a better position to seek immediate measures to protect the public and may have been able to detect and prevent some of the misappropriation if Tak had been forthright with the Law Society.

Disciplinary Action

The panel ordered that Tak:

1. be disbarred; and
2. pay \$10,350 in costs.

At the conclusion of the hearing, counsel for the Law Society made an oral application for a non-disclosure and sealing order for the purpose of preventing third-party access to solicitor-client confidential information. Certain exhibits must be redacted or anonymized prior to disclosure to the public.

Trust Protection Coverage

In every profession, there are occasionally members who are dishonest. Although not all professions or industries protect victims of their dishonest members, the legal profession in BC has, since 1949, provided financial protection to members of the public whose money has been stolen by their lawyer. If a claim is

made against a lawyer relating to the theft of money or other property, Trust Protection Coverage (TPC) is available under Part B of the lawyer's insurance policy to reimburse the claimant, on the lawyer's behalf, for the amount of the loss. Based on the circumstances described in paragraphs [47], [77], [90] and [109] of *Law Society of BC v. Tak*, 2014 LSBC 27, four TPC claims were made against Bradley Darryl Tak and the amounts of \$2,700, \$3,500, \$7,200 and \$1,750 paid respectively. Tak is obliged to reimburse the Law Society in full for the amounts paid under TPC. For more information on TPC, including what losses are eligible for payment, see Trust Protection Coverage on the Law Society's website.