2015 LSBC 42
Decision issued: September 8, 2015
Citation issued: October 8, 2013

THE LAW SOCIETY OF BRITISH COLUMBIA

In the matter of the *Legal Profession Act*, SBC 1998, c. 9

and a hearing concerning

RONALD WAYNE PERRICK

RESPONDENT

DECISION OF THE HEARING PANEL
ON DISCIPLINARY ACTION

Hearing date:	April 28 and July 6, 2015
Panel:	David Mossop, QC, Chair John M. Hogg, QC, Lawyer Linda Michaluk, Public representative
Discipline Counsel:	Kieron G. Grady
Appearing on his own behalf:	Ronald W. Perrick

BACKGROUND

Introduction

[1] This Panel's decision in *Law Society of BC v. Perrick*, 2014 LSBC 39, held that Mr. Perrick had committed professional misconduct. The Respondent, to his credit, agreed or consented to this finding in regards to an amended citation. However, this consent or agreement only came on the last day of the hearing. The specific amended citation reads as follows:

> 1. In the course of representing your client, SM, in matters arising from motor vehicle accidents on or about April 9, 2002 and December 2, 2004, you failed

to serve her in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to that which would be expected of a competent lawyer in a similar situation, contrary to Chapter 3, Rules 3 and 5 of the *Professional Conduct Handbook* then in force. In particular, you failed to do some or all of the following:

(a) keep your client reasonably informed by failing to provide her with copies of material correspondence sent to you about the accidents or inform her of the contents of that correspondence;

(b) disclose to your client the service of a Demand for Discovery of Documents dated December 14, 2004 and her obligations pursuant to that Demand;

(c) disclose to your client that opposing counsel had requested Examinations for Discovery be conducted;

(d) disclose to your client that a mediation had been scheduled for September 19, 2008 until after the date was cancelled;

(e) provide your client with a copy of the Formal Offer to Settle dated April 3, 2006 and discuss the Offer with your client and explain to her the consequences of rejecting the Offer;

(f) disclose promptly to your client that opposing counsel was seeking to have the claims dismissed and adequately explain to her the chances of that occurring;

(g) provide your client with copies of application materials provided by opposing counsel in February 2009 and July 2009 seeking to dismiss her claims;

(h) promptly file a Statement of Claim in respect of the April 9, 2002 accident as required by the Supreme Court Rules;

(i) promptly file a Statement of Claim in respect of the December 2, 2004 accident as required by the Supreme Court Rules; and

(j) take substantive steps, promptly or at all, to advance your client's claims to settlement or trial.

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

2. In the course of representing your client, SM, in matters arising from motor vehicle accidents on or about April 9, 2002 and December 2, 2004, you failed to reply reasonably promptly to some or all of the letters dated December 14, 2004; March 3, 2005; April 4, 2005; May 13, 2005; October 14, 2005; December 8, 2005; September 26, 2006; February 6, 2007; *November 4, 2008* and *April 27, 2009*, from opposing counsel that required a response, contrary to Chapter 11, Rule 6 of the *Professional Conduct Handbook* then in force.

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

[2] The Respondent admitted all the matters listed in the first allegation, other than 1(c) and 1(e). The Law Society agreed to withdraw 1(c) and 1(e).

[3] With respect to the second allegation, the parties agreed that the Respondent would admit to allegation 2 in regards to all matters other than the letters dated November 4, 2008 and April 27, 2009. The Law Society agreed to withdraw those matters from allegation 2.

[4] For clarity, the matters that were withdrawn are highlighted in italics in the citation reproduced above.

[5] The detailed reasons for the finding are set out in the reasons of the Hearing Panel.

[6] The position of the Law Society on disciplinary action is that the Respondent should be given a one-month suspension.

[7] The position of the Respondent is that this Hearing Panel should impose a fine of $15,000.

ISSUES

[8] Under another citation, the Respondent was found to have committed professional misconduct and to have breached the Rules. A fine of $25,000 was imposed, even though Law Society had requested of fine of $15,000.

[9] The Respondent filed for review under the *Legal Profession Act*. A decision is expected in the next few months.

[10] The first issue for this Hearing Panel is what weight, if any, should this Hearing Panel put on the previous determination of professional misconduct? The position of the Respondent is that this Hearing Panel should not consider that prior finding

of professional misconduct or the disciplinary action imposed *because that matter is under review*. The position of counsel for the Law Society is that we should consider the finding of these matters.

[11] The second issue is whether a fine or suspension is the appropriate disciplinary action.

ANALYSIS AND REASONING

[12] There are two leading cases dealing with the factors to be considered in imposing a disciplinary action. They are *Law Society of BC v. Ogilvie*, [1999] LSBC 17 and *Law Society of BC v. Lessing*, 2013 LSBC 29.

[13] The hearing panel in *Ogilvie* set out a number of appropriate factors to be taken into account (from paragraph 10 of *Ogilvie*). Whilst no list of appropriate factors to be taken into account can be considered exhaustive or appropriate in all cases, the following might be said to be worthy of general consideration in disciplinary dispositions:

(a) the nature and gravity of the conduct proven;

(b) the age and experience of the Respondent;

(c) the previous character of the Respondent, including the details of prior discipline;

(d) the impact upon the victim;

(e) the advantage gained, or to be gained, by the Respondent;

(f) the number of times the offending conduct occurred;

(g) 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;

(h) the possibility of remediating or rehabilitating the Respondent;

(i) the impact upon the Respondent of criminal or other sanctions or penalties;

(j) the impact of the proposed penalty on the Respondent;

(k) the need for specific and general deterrence;

(l) the need to ensure the public's confidence in the integrity of the profession; and

(m) the range of the penalties imposed in similar cases.

The nature and gravity of the conduct proven

[14] The Respondent did little, if anything, to advance his client's claim. He put his client's claims at risk and settled one in the face of a want of prosecution application. The Respondent's conduct forced his client to commence a negligence action against him. The negligence action was settled.

[15] As well, the Respondent failed entirely to respond to eight letters from opposing counsel over a 26-month period. Those letters from opposing counsel were aimed at moving the Respondent's client's claim along.

[16] The finding of inadequate quality of service shows that the Respondent was not actively moving his client's claim forward. The finding of a failure to respond to letters from opposing counsel demonstrates he was not even reacting to steps that would have moved his client's claim along.

[17] In addition, this Hearing Panel would also like to point out the following. At paragraphs [38] and [39] of the decision of the Hearing Panel on Facts and Determination, the following is stated:

> Then there is the issue of the settlement of the claims. In regards to accident number one, a reading of his Statement of Accounts to SM indicates the following:
>
> (a) There is no evidence that he obtained a medical opinion or talked to Dr. G, the family doctor, about accident number one.
>
> (b) There is no indication that he read over the medical records of Dr. G. Instead he relied on an opinion from a specialist, Dr. T. This doctor was paid for by ICBC.
>
> From a common sense point of view, this Panel finds it a marked departure for a lawyer to recommend a settlement when he had not reviewed the medical records of the family doctor. He had not talked to the family doctor about the accident or sought a second medical opinion. Instead he relied on a medical report from a doctor hired by ICBC.

[18] *We have in this case not only a marked departure from quality of service expected, but also a fundamental failure to provide any meaningful service to this client*.

[19] It is of some significance that the Master reduced the Respondent's fee from $3,866.96 to $500. It is also of some significance that the client was required to launch a negligence suit against the Respondent.

[20] This is an aggravating factor.

The age and experience of the Respondent

[21] The Respondent was called to the bar in 1971. He has practised in excess of 40 years. The Respondent indicated that he has no intention to retire in the immediate future. Many members of the Law Society of British Columbia practise in their seventies and eighties, and there are a few who practise in their nineties. Mandatory retirement does not exist in the legal profession.

[22] It is the right of the Respondent to continue to practise. However, if a lawyer indicates to the Hearing Panel that he intends to retire, this may be a factor in reducing any disciplinary action. The public will be protected by the fact that the lawyer is no longer practising. Such a situation does not exist in the case at bar.

[23] In the case at bar, we are dealing with an experienced lawyer. He should have known better than to engage in the activities that resulted in a finding of professional misconduct. Overall, this is an aggravating factor.

The previous character of the Respondent including details of prior discipline

[24] There are two prior items in the Respondent's disciplinary history. One is of little significance. The other is of more importance.

[25] The first is a Conduct Review held in 1993 that concerned a conflict of interest. The Conduct Review Subcommittee noted the Respondent appreciated the problem.

[26] This Hearing Panel notes that that Conduct Review happened over 20 years ago. Little weight should be given to it.

[27] The second matter is of grave concern to this Hearing Panel. The details of the second matter are set out in *Law Society of BC v. Perrick*, 2014 LSBC 03.

[28] The citation in the matter, issued December 2012, contained 11 allegations broken down into five categories as follows:

(a) improper use of an expired power of attorney;

(b) backdating an assignment of shares, to a date prior to the death of the parents of a client;

(c) failure to respond to communications from another lawyer;

(d) three allegations of failure to provide quality of service; and

(e) five allegations of breach of rules.

[29] The hearing panel in that case determined that the Respondent's actions set out in all of the allegations amounted to professional misconduct, with the exception of two of the five allegations related to rule violations, one of which was dismissed and one was found to be a breach of the rules but not professional misconduct.

[30] The Respondent's position can be summarized as follows. The Respondent's misconduct in the present case was taking place at approximately the same time as his conduct that gave rise to the earlier citation. In fact, part of the Respondent's explanation for his conduct in the present case was that he was dealing with the Law Society in relation to their investigation that gave rise to the earlier citation and was accordingly too busy to deal with this client's file.

[31] The Respondent's earlier citation contained allegations that were subsequently proven and that are similar to the current findings of professional misconduct (i.e., quality of service and failing to respond to communications).

[32] The position of the Respondent is that this Hearing Panel should not consider the 2014 finding of professional misconduct in making a decision on disciplinary action on this matter, given he has filed a Notice of Review under the *Legal Profession Act*. He expects a decision in the next few months.

[33] The position of the Law Society is that we should consider the 2014 disciplinary decision and disciplinary action.

[34] It is important to remember that the authority to consider the conduct record of a Respondent is not based on common law. Rather, it is based on the *Legal Profession Act* and the rules under that *Act*.

[35] "Professional conduct record" is a defined term under the Law Society Rules. The definition includes, under subparagraph (k), "*an action taken under section 38(5), (6) and (7) of the Act*."

[36] Rule 4-35(4) states:

> The panel may consider the professional conduct record of the respondent in determining a disciplinary action under this rule.

[37] Rule 4-1(2) states:

> This part must be interpreted in a manner consistent with standards of simplicity, fairness and expediency, and so as to provide maximum protection to the public and to lawyers.

[38] On a plain reading of the definition of "professional conduct record" and Rule 4-35(4), the Respondent's previous sanction should be included for consideration by the Panel.

[39] The Respondent's argument on this matter can be summarized as follows. This Hearing Panel has discretion to consider the professional conduct record. The Respondent says that the Review Board may overturn the previous Hearing Panel's decision. He states he has a strong case. In these circumstances we should exercise our discretion and not consider the previous decision.

[40] This is a simple matter to deal with. We have a statutory scheme. This statutory scheme gives discretion to the Hearing Panel to consider the conduct record of the Respondent. At this time there is a valid decision of a previous hearing panel in 2014 regarding the Respondent. That hearing panel's decision is valid until it is overturned by a Review Board.

[41] The Respondent argues that he will apply to get additional evidence in front of the Review Board. This Hearing Panel does not doubt the sincerity of the belief of the Respondent that he will be prevail in front of the Review Board. However, he may also lose in front of the Review Board. In such an event he may take the case to the BC Court of Appeal. If he loses there, he has a right to seek leave to appeal to the Supreme Court of Canada. This could drag the matter on for years. It is not consistent with protection of the public in the public interest to delay the outcome of this matter to allow for that process.

[42] If we consider the previous 2014 finding of professional misconduct in our disciplinary action and subsequently that 2014 decision is overturned, the Respondent has a remedy. He can file a Notice of Review of our decision and seek redress in front of the Review Board.

[43] In addition, the Respondent is asking us to review the 2014 finding of professional misconduct by another hearing panel. He is asking us to come up with our view as to what exactly happened. We do not think we have the authority to do that.

[44] As a general principle, hearing panels should consider prior discipline decisions, even if they are under review. This is particularly so in regards to the previous 2014 decision. The citation covered a multitude of allegations that were proven.

[45] In this Hearing Panel's view, the important duty of this Panel is to look at the written decision of the previous hearing panel. This Hearing Panel considers that the key paragraph in the decision on disciplinary action, *Law Society of BC v. Perrick*, 2014 LSBC 25, is paragraph [29], which reads as follows:

> The improper use of powers of attorney and the back-dating of assignment of shares are extremely grave acts of professional misconduct and deserve clear and unequivocal sanctions in their own right.

[46] A finding of an improper use of a power of attorney and backdating an assignment are primarily questions of fact. These are unlikely to be set aside by a Review Panel. This Hearing Panel therefore decides to consider the previous hearing panel's decisions on liability and disciplinary action.

[47] The previous finding of professional misconduct and disciplinary action is an aggravating factor.

The impact upon the victim

[48] The Respondent gave evidence at the Facts and Determination hearing of this matter. For one of the auto accidents, his client ultimately had to sue the Respondent in a solicitor's negligence claim to recover compensation.

[49] The other auto accident was settled at a sum that was originally recommended by the Respondent.

[50] Overall, this is an aggravating factor.

The advantage gained or to be gained by the Respondent

[51] There is no known advantage gained by the Respondent.

[52] This is a mitigating factor.

The number of times the offending conduct occurred

[53] The Respondent's conduct took place over a period of more than two years and included examples of dereliction of his duty to his client and to the opposing counsel.

[54] This is an aggravating factor.

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

[55] While the Respondent did ultimately admit to professional misconduct, this was done on the very last day of the hearing on Facts and Determination. The Respondent's only explanation was that he was preoccupied with other matters. This is not a significant mitigating consideration.

The possibility of remediating or rehabilitating the Respondent

[56] The Respondent, in his oral submissions, stated that he had reorganized his practice and he was now being very selective in taking on new cases. The inference would be that he would not take motor vehicle cases like the one in this case. If this were a question of quality of service in regards to a complicated matter, that might be a consideration in mitigating any disciplinary action. However, in this case we are dealing with a rather simple motor vehicle accident. This is the type of situation that could easily be dealt with by the Respondent in a professional and efficient way. It was not complicated.

[57] This is an aggravating factor.

The impact of the proposed penalty on the Respondent

[58] The Respondent suggests a fine of $15,000 would be appropriate in this matter. This Hearing Panel believes a fine, even of this amount, would have little or no impact on the Respondent.

[59] When you approach that fine amount, a hearing panel should seriously consider a suspension as alternative. Fines should not become a cost of doing business. A suspension, even a short suspension, sends a stronger message than a large fine.

The need for specific and general deterrence

[60] There is a need in this case for specific deterrence. It is true the Respondent did admit professional misconduct in regards to the citation as amended. However, this Hearing Panel noticed that he seems to have a fixation on the previous finding of professional misconduct now under review. During his submissions, we tried to bring him back to the professional misconduct regarding the citation in this case. He kept going back in his submissions to the previous finding of professional misconduct now under review. This Hearing Panel has doubts whether he really appreciates what he did was wrong.

[61] This Hearing Panel also notes that there is a need for general deterrence to lawyers generally.

[62] Overall, this factor is an aggravating factor.

The need to ensure the public confidence in the integrity of the profession

[63] The public needs to be protected for quality of service issues. The public needs to know that the Law Society takes a lawyer's failure to provide quality services seriously.

[64] This is an aggravating factor.

The range of penalties imposed in similar cases

[65] The range of sanction for cases involving a failure to respond to lawyers and non-lawyers ranges from a reprimand with conditions (*Law Society of BC v. Tsang*, 2005 LSBC 18 and 2006 LSBC 17) to an 18-month suspension with conditions (*Law Society of BC v. Gellert*, 2004 LSBC 28 and 2005 LSBC 15). The range of sanctions for a failure to provide an adequate quality of service ranges from a reprimand with conditions (again, *Tsang*) to a six-week suspension (*Law Society of BC v. Williamson*, 2005 LSBC 04 and 2005 LSBC 19, and *Law Society of BC v. Uzelak*, 2013 LSBC 11).

SUMMATION

[66] The leading authority as to factors relevant to whether a fine or a suspension is the appropriate sanction is the review decision of *Law Society of BC v. Martin*, 2007 LSBC 20, where, at paragraph [41], the panel stated:

> While the Applicant's case is unique, the salient features considered in the authorities provided on behalf of the Law Society and the Applicant, as well as the cases mentioned by the Hearing Panel and noted above, when considering a suspension include the following:
>
> (a) elements of dishonesty;
>
> (b) repetitive acts of deceit or negligence;
>
> (c) significant personal or professional conduct issues.

[67] In the present matter, there are no elements of dishonesty. However, it is submitted that there are repetitive acts of negligence and significant professional conduct issues.

[68] Another important factor for the Hearing Panel is the Respondent's admission to eight separate particulars in relation to the quality of service allegations. In addition, he admitted to not replying promptly or at all to eight separate letters from defence counsel that spanned a period of over two years.

[69] The Respondent's conduct, combined with his Professional Conduct Record, suggests that a suspension is appropriate.

[70] A very important factor in deciding that a suspension is warranted over a fine can be found in *Perrick*. That is the previous finding of disciplinary action. There, the panel at paragraph [26] says the following:

> In this instance, the Panel felt that, ordinarily, a suspension of 90 days would be warranted. However, given the age of the Respondent, his 43 year Professional Conduct Record, which is remarkably clean, the fact that there have been no further complaints or issues involving the Respondent since this matter arose in 2006 and, more importantly, given the Law Society's position that a fine was appropriate, we have concluded that a fine instead of a suspension should be imposed.

[71] In this case, unlike the previous disciplinary action, there is a serious prior conduct record. The Law Society is seeking a suspension. For all the above reasons, we believe a 30-day suspension is appropriate in the circumstances.

COSTS

[72] The Law Society seeks costs of $19,315.81. The Respondent did not seriously question the costs. Therefore, we make the order of costs in that amount. We recognize that the Respondent admitted professional misconduct on the last day of the hearing. We would have been more likely to exercise our discretion to reduce the amount of costs if he had made such an admission earlier in the process.

ORDER

[73] The Respondent is suspended for 30 days.

[74] The Respondent shall pay costs in the amount of $19,315.81.

[75] This Hearing Panel recognizes that the Respondent is a single practitioner, and for that reason, his suspension will take effect on December 1, 2015. The parties can agree to another date. We give this starting date for a period in the future to allow the single practitioner to make arrangements to have someone look after his files.