2015 LSBC 49
Decision issued: November 9, 2015
Oral reasons: August 13, 2015
Citation issued: October 9, 2015

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

ERIC JOHN (JACK) WOODWARD

RESPONDENT

DECISION OF THE HEARING PANEL

Hearing date:	August 13, 2015
Panel:	Lee Ongman, Chair Dan Goodleaf, Public representative Carol Hickman, QC, Lawyer
Discipline Counsel:	Kieron Grady
Counsel for the Respondent:	David M. Rosenberg, QC

INTRODUCTION

[1] This matter comes before us by way of Rule 4-30 (formerly Rule 4-22) of the Law Society Rules, which provides for a conditional admission of a discipline violation and a consent to a specified disciplinary action. On September 25, 2014 a citation was authorized by the Discipline Committee. That citation alleges one count of issuing cheques when the Respondent knew that there were insufficient funds in the accounts to satisfy some or all of those cheques, for the purpose of concealing that there were insufficient funds in one or both accounts, contrary to Chapter 2, Rule 1 of the *Professional Conduct Handbook,* (the "Handbook"). The Respondent admitted service of the citation on October 15, 2014 and waived the requirements of Rule 4-19 (formerly Rule 4-15).

[2] The Respondent consented to a specified disciplinary action pursuant to Rule 4-30. The specified disciplinary action was a suspension of one month, and costs in the amount of $1,736.20 payable by October 1, 2015. The Panel heard this matter on August 13, 2015, and for the reasons that follow, we accepted the admission that the conduct described by the allegation in the citation constitutes conduct unbecoming and that there be a one-month suspension commencing that day with costs of $1736.20 including disbursements. That decision was given orally with written reasons to follow. These are those written reasons.

BACKGROUND FACTS

[3] The Facts are taken from an Agreed Statement of Facts filed in these proceedings. The names of third parties and institutions have been anonymized. This matter arises out of commercial transactions involving the ongoing use of a credit line with a local credit union in excess of its limits by writing cheques where the Respondent knew that there were no funds in the account to satisfy the cheques.

[4] The Respondent's conduct did not involve a law firm trust account or a law firm general account.

[5] At the material time, the Respondent had business interests outside of the practice of law. These business interests included the operation of a hotel, restaurant and farm on Salt Spring Island (the "Hotel"), and the Respondent is the sole Officer, Director and shareholder of the operating company of the Hotel.

[6] The Respondent was also the director of Jack Woodward Law Corporation ("JWLC"), which had an account with a credit union strictly for the personal use of the Respondent and not for the practice of law (the "JWLC account").

[7] The Hotel also had a current account with the credit union.

[8] The Respondent did his personal banking at the credit union, including using a chequing account with a $25,000 unsecured line of credit attached. The Respondent also had a mortgage with the credit union on his personal residence. In a previous year the Hotel had a first mortgage with the credit union in the amount of $3,200,000. At all materials times JWLC had term deposits at the credit union in the amount of $1,000,000 and JWLC owned real estate, for which the credit union held a first mortgage inter alia with the Respondent's principal residence. JWLC had an unsecured line of credit of $150,000. In short, the lending and credit transactions between the Respondent and his associated companies, on the one

hand, and the credit union on the other hand, amounted to many millions of dollars every year, including the relevant year, 2011.

[9] The Hotel account had no line of credit.

[10] In 2011, the Respondent was responsible for the day-to-day operations of the Hotel.

[11] During 2008/2009, the Respondent occasionally exceeded the authorized line of credit limit on the JWLC account in order to cover cheques he had already written on the Hotel account, for which there were insufficient funds in the Hotel account and insufficient authorized credit on the JWLC line of credit. The Respondent asked the credit union to cover these cheques (usually around $10,000), using the JWLC line of credit, for short periods to meet payroll and other Hotel expenses, upon the promise that funds to cover the Hotel cheques would be received shortly from third parties.

[12] Each of the Respondent's "temporary bump up" requests required discussions between the credit union and the Respondent and specific approval by the credit union's manager, DT, or credit committee, depending upon the amount. The Respondent was not aware of this process. After approving a number of these requests, credit union staff advised the Respondent that he needed to stay within his account limits and that he could not continue to exceed the limit by writing cheques for which there were insufficient funds to cover.

[13] In early January 2009, the Respondent asked the credit union to increase the authorized limit for the JWLC line of credit to cover cheques totalling $35,000 on the Hotel account that, but for the credit union's approval, would be returned NSF. The Respondent signed an Extension Agreement to increase the JWLC line of credit from $150,000 to $185,000 for a short period (January 8 to 13, 2009). Although the credit union approved the excess to the JWLC line of credit, staff advised the Respondent to cease his practice of issuing cheques in the absence of sufficient funds on deposit to cover them.

[14] On January 19 and 22, 2009, the credit union noted additional cheques written by the Respondent in excess of the JWLC line of credit, which was already over the authorized limit. Credit union staff advised the Respondent that it could not keep covering the excesses on the JWLC line of credit and that it would start to return as NSF these items going forward. Credit union staff made an appointment to meet with the Respondent to review the account operation.

[15] On January 29, 2009:

(a) Credit union staff met with the Respondent to determine the reason for the recurring line of credit excesses. The Respondent requested an extension of the Extension Agreement since there was a delay in receiving anticipated funds to pay down the line of credit and he needed to meet the payroll for the Hotel;

(b) Staff determined that the operation of the account was not to the credit union's satisfaction and a review of the current structure was required. The Respondent was not made aware of this. The credit union's Executive Credit Committee approved an extension of the overdraft agreement from January 30 to February 12, 2009.

[16] Later the Respondent contacted the credit union and asked for a further extension of JWLC's line of credit noting that the Extension Agreement was to expire on February 12, 2009. When payment was due on February 13, 2009, the Respondent had not reduced the line of credit as agreed. The Respondent asked the credit union to extend or convert the line of credit to an alternate credit facility but the credit union declined to do so. After a period of time, the Respondent reduced the indebtedness on the line of credit to the previously authorized level of $150,000. During that period of time, and despite the fact that there was no formal authority for indebtedness above $150,000, no cheques were returned NSF. There were no other similar temporary extension agreements for the Respondent's accounts.

[17] CM, the credit union's risk manager, noted one instance in early 2009 where the Respondent used the credit union's ATM to process cheques between JWLC and Hotel accounts in which the Respondent wrote a cheque on one account, which he deposited to the second account, and then wrote a cheque on the second account for roughly the same amount, which he deposited back into the first account, with no funds or credit available in either account to cover the cheques. CM said that the matter was brought to the Respondent's attention at the time and credit union staff advised him not to do so again.

[18] On June 19, 2009, the Respondent asked the credit union to cover $15,000 for payroll cheques he wrote on the Hotel account, for which there were insufficient funds in the Hotel account and insufficient credit on JWLC's line of credit. DT approved the request but advised staff in an email that they should meet with the Respondent in the near future to determine what was causing the recurring excesses and to come up with a plan to restructure the accounts to prevent these situations in the future. The Respondent was not aware of DT's email.

[19] Notes in the credit union's JWLC file indicated that the credit union had concerns regarding the Respondent's debt load, his working capital, and the fact that he had

not been paying down (revolving) the JWLC account's line of credit. The Respondent was not aware of those notes.

[20] On August 25, 2010, LV of the credit union met with the Respondent to review his accounts and financial statements as part of a routine annual review. She advised the Respondent that no additional credit would be extended to him by the credit union. LV summarized her account review and discussions with the Respondent in a memo, but the memo was not provided to the Respondent. She reviewed the assets/liabilities and noted that he owed funds to family members that he borrowed to keep the Hotel afloat. She observed that the "back and forth" between the accounts from the last year seemed to have stopped, credit union staff seldom saw the JWLC account on the NSF/overage reports, the Respondent remained loyal to the credit union even though it would not extend further credit to him, but that the Hotel had a "long way to go" and continued to drain his accounts.

[21] In 2011, the Respondent's accounts were credited immediately upon deposit and not when the deposited cheques actually cleared the credit union. The Respondent believed that the reason for this was because the credit union valued his business.

[22] Between January 1, 2011 and October 27, 2011, a total of 417 cheques were written back and forth between the JWLC account and the Hotel account. A total of 211 cheques were written from the JWLC account to the Hotel account. In the same period, a total of 206 cheques were written from the Hotel account to the JWLC account.

[23] In 2011, the majority of the cheques were written from the JWLC account when there were insufficient funds to cover the cheques written. The Respondent used his line of credit and exceeded his authorized limit of $150,000 on 94 per cent of the days that cheques were written.

[24] Of the 417 cheques written, 414 of them were deposited into non-credit union ATMs. The Respondent used the non-credit union ATMs for the purpose of extending the clearing time of the cheques to create additional credit that the credit union had not authorized.

[25] In August 2011, LJ, one of the credit union's head office staff, was doing routine reviews of large cheque notifications (more than $10,000) from other credit unions. LJ noted several large cheque notifications for the Respondent's accounts deposited through non-credit union ATM machines. LJ followed the credit union's procedures in place at the time and referred the matter to then business account manager, AB, to speak to the Respondent about the transactions. AB did not recall

speaking to the Respondent but the Respondent recalled receipt of a message for him to call AB.

[26] In late October, 2011, CM conducted an internal investigation and determined that by October 31, 2011, the JWLC account was in overdraft by about $535,000.

[27] On October 27, 2011, DT sent an email to a number of other staff at the credit union stating that he was not comfortable with these transactions and, in essence, a meeting was necessary with the Respondent to be clear that the transactions would not be allowed in future.

[28] All ATM cards for the JWLC and Hotel accounts were cancelled. A decision was made at that time to sever the credit union's business relationship with the Respondent. As well, the credit union determined that all deposits for any of the accounts must be held for ten days and no new ATM cards were to be issued.

[29] On October 31, 2011, DT requested that the Respondent attend a meeting with credit union staff immediately.

[30] On November 1, 2011, the Respondent met with DT, CM and credit union counsel.

[31] At the meeting, the Respondent apologized for his conduct, offered security for the indebtedness and promised to arrange financing to repay the credit union in full shortly. The Respondent agreed with the credit union as to the amount of the indebtedness, which was, at that point, in excess of $680,000 (including the $150,000 authorized line of credit amount on the JWLC account).

[32] After all of the cheques had been returned, the amount owing as of December 13, 2011, inclusive of penalties and interest, was $686,724.77. On December 13, 2011, the Respondent's counsel delivered a trust cheque for that amount to retire the Respondent's indebtedness.

ROLE OF A HEARING PANEL ON RULE 4-30

[33] Rule 4-30 sets up a procedure where the Respondent may conditionally admit to a discipline violation and consent to a specified disciplinary action. If the Discipline Committee finds the proposal acceptable, it will instruct discipline counsel to recommend acceptance to the hearing panel. If the proposal is accepted by the hearing panel, the discipline violation will be recorded on the Respondent's professional record and the disciplinary action will be imposed. If the proposal is rejected by the hearing panel, it must advise the chair of the Discipline Committee of its decision and proceed no further with the hearing of the citation.

CONDUCT UNBECOMING A LAWYER

[34] Professional misconduct refers to conduct occurring in the course of a lawyer's professional practice, while conduct unbecoming a lawyer refers to conduct in the lawyer's private live. (*Law Society of BC v. Watt*, 2011 LSBC 16; *Law Society of BC v. Berge*, 2005 LSBC 28.)

[35] In writing cheques back and forth on several accounts when the Respondent knew there were insufficient funds and that his credit line was exceeded, he failed to act in his private life in a way that maintains the confidence and respect of the public. The Respondent admits that this behaviour is conduct unbecoming a lawyer, and we accept that admission as appropriate and find that the Respondent's behaviour is conduct unbecoming.

DISCIPLINARY ACTION

[36] In *Law Society of BC v. Rai*, 2011 LSBC 2, the panel stated, in essence, that a panel must be satisfied that the proposed admission on the substantive matter is appropriate and must also be satisfied that the proposed disciplinary action is "acceptable." Moreover, the panel stated that a disciplinary action is acceptable if it is within the range of a fair and reasonable disciplinary action in all the circumstances.

[37] The Law Society submits in this case that the proposal for discipline should be accepted by the Panel, having regard to the following (non-inclusive) factors as set out in *Law Society of BC v. Ogilvie*, [1999] LSBC 17. Of significance to this Panel are:

(a) the nature and gravity of the conduct proven — the conduct was serious;

(b) the previous character of the respondent — the Respondent has been practising law for 35 years. He has no professional conduct record;

(c) the impact upon the victim — ultimately the credit union suffered no loss. The Respondent paid all amounts owing in full, together with the credit union's legal fees, penalties and interest;

(d) the advantage gained, or to be gained, by the Respondent — the Respondent gained a significant financial benefit in continuing to overuse his credit by writing cheques where funds were not authorized to honour the cheques;

(e) the number of times the offending conduct occurred — there were more than 400 cheques written where either there were insufficient funds or the credit line was exceeded over a period of approximately ten months; far too many to be taken lightly;

(f) 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 — the Respondent took steps to rectify this situation as soon as he learned that the overuse of the credit lines would not be tolerated. He immediately applied for refinancing his commercial debts with another financial institution and paid out the monies owing to the credit union within six weeks. The payout of the amount owing to the credit union occurred prior to the complaint and investigation by the Law Society of the Respondent's conduct. The Respondent has been proactive and cooperative at all stages of the Law Society investigation.

(g) the need for specific and general deterrence — specific deterrence is not a factor in this case as the Respondent has clearly taken responsibility for his actions. General deterrence is required. This matter involved a breach of Rule 1 Chapter 2 of the *Professional Conduct Handbook* and therefore is very serious. Although the Panel finds that there is no compelling need for specific deterrence in this case, there remains the need for general deterrence in order to ensure the continued adherence to the regulations governing the profession.

(h) the need to ensure the public's confidence in the profession — the Respondent's conduct reflects poorly on the legal profession and erodes the public's confidence in the regulation and integrity of its members. A significant disciplinary action is necessary to ensure that the public remains confident in the integrity of the legal profession.

The range of penalties imposed in similar cases

[38] The Law Society submitted that, in this case, the proposal for a one-month suspension and costs should be accepted. The Law Society had difficulty providing many case authorities directly on point as precedent for range of penalty due to the rare incidence of similar behaviour by lawyers. The most helpful case is *Law Society of Upper Canada v. Dawe*, 1999 CanLII 18535(ON LST). Mr. Dawe was a solicitor. His case arose out of three criminal code counts arising from the ATM deposit of cheques from Mr. Dawe's closed bank account at Canada Trust to other

of his bank accounts at Royal Bank and Bank of Nova Scotia respectively and thereby withdrawing funds on the strength of the deposit when he knew that the cheques he was depositing would not be honoured. He did this on three occasions. He had no prior discipline record, he fully cooperated with the Law Society, and he made full restitution. In the criminal proceedings he pleaded guilty to one count and was given an absolute discharge. In the Law Society of Upper Canada decision he was found guilty of conduct unbecoming a barrister and solicitor, suspended for one month and assessed costs.

[39] The *Dawe* case is similar to this case in many ways and provides assistance to the Panel. It is authority that the conduct unbecoming in this case justifies a penalty at the level of a suspension, which is more serious than a reprimand and fine, but not as severe as disbarment.

[40] The Panel finds that a one-month suspension is within the range of penalties suitable for acceptance of the proposal for discipline pursuant to Rule 4-30. It is fair and reasonably reflects the seriousness of the transgression.

ORDER

[41] The Panel orders the Respondent:

(a) be suspended from practice for one month commencing August 13, 2015; and

(b) pay costs of $1,736.20 pursuant to the Tariff by December 31, 2015.

[42] The Executive Director is instructed to record the Respondent's admission and the disciplinary action on his professional conduct record.