

2017 LSBC 17
Decision issued: May 29, 2017
Citation issued: October 6, 2016

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

TERRENCE EDWARD HUDSON

RESPONDENT

DECISION OF THE HEARING PANEL

Hearing date: April 21, 2017

Panel: James E. Dorsey, QC, Chair
Jeff Campbell, QC, Lawyer
Carol Gibson, Public representative

Discipline Counsel: Carolyn Gulabsingh
Counsel for the Respondent: Henry C. Wood, QC

PROPOSED DISCIPLINARY ACTION ACCEPTED BY THE HEARING PANEL

- [1] On October 6, 2016, a citation was issued alleging that the Respondent committed professional misconduct in the course of a verbal altercation with opposing counsel during a Provincial Court Family Case Conference on October 16, 2014, contrary to the duties to the court and to opposing counsel set out in Rules 2.1-2(a), 2.1-4(a), 5.1-1, and 5.1-5 of the *Code of Professional Conduct for British Columbia*.
- [2] The Respondent makes a conditional admission of professional misconduct by committing the disciplinary violation as alleged in the citation. He consents to pay a \$5,000 fine by October 31, 2017 and \$1,241.65 for the costs of the hearing. He acknowledges he will be identified in the publication of a summary of this disciplinary action, which Rule 4-48 requires.

- [3] The Discipline Committee accepted his conditional admission of professional misconduct and the proposed disciplinary action. In accordance with Rule 4-30(4), the Committee instructed discipline counsel to recommend acceptance by the Hearing Panel.
- [4] The Panel decided to accept the proposed disciplinary action after reviewing an Agreed Statement of Facts; hearing an audio recording of the case conference; viewing the relevant portion of a video recording of the case conference; hearing testimony from the Respondent; and hearing submissions by counsel. The Panel advised the parties of its decision following the hearing on April 21, 2017, with reasons to follow.
- [5] In accordance with Rule 4-30(5), the Panel instructed the Executive Director to record the lawyer's admission on the lawyer's professional conduct record; impose the proposed disciplinary action; and notified the Respondent and the complainant of this disposition.
- [6] Under Rule 5-11(1), the Panel ordered the Respondent to pay hearing costs as agreed in the amount of \$1,241.65 by October 31, 2017. (Law Society Rules 2015, Schedule 4 – Tariff for Hearing and Review Costs, Item 25)
- [7] To protect the privacy of the clients, the Panel also ordered pursuant to Rule 5-8(1) and (2) that:
1. Members of the public be excluded from the portion of the hearing at which the audio and the video recordings of the court proceedings were tendered and played (Exhibits 5 and 6).
 2. The transcript and the audio and video recordings of the court proceedings not be disclosed (Exhibits 4, 5 and 6).
 3. The Agreed Statement of Facts (Exhibit 2) and transcript of the hearing proceedings be redacted to remove the clients' names and information identifying the clients before disclosure to the public in response to any request under Rule 5-9(2).
- [8] These are our reasons for accepting the proposed disciplinary action.

RESPONDENT'S PROFESSIONAL CONDUCT RECORD AT THE TIME OF THIS INCIDENT

- [9] In his youth, the Respondent left difficult family circumstances for a new life path on which he achieved university undergraduate and law degrees. He was called to the Alberta bar in September 2002. He left practice in Calgary to move to the British Columbia northwest corridor. On November 30, 2005, he was called to the bar and admitted to the Law Society of British Columbia.
- [10] He practised for approximately a year in Smithers before moving to a firm in Prince Rupert where he practised with and married a lawyer. In the time period from April 2007 to November 2008, his spouse falsified time records and accounts submitted to the Legal Services Society. Knowing it was not permitted by the Legal Services Society, she caused accounts to be submitted on behalf of other lawyers in her firm using their e-billing access codes without their prior authorization. After receiving a complaint by a lawyer who left the firm, the Legal Services Society conducted an audit and took away her billing or vendor number. The Discipline Committee issued a citation in July 2012. She was disbarred in January 2014. (*Law Society of BC v. Hudson*, 2014 LSBC 02)
- [11] The Legal Services Society's suspension of payments caused financial problems for the firm and the Respondent's household and led to an incident that resulted in a conduct review of the Respondent by a subcommittee of the Discipline Committee in September 2011. By that time, he was separated from his wife; they had separate financial affairs; and he no longer practised law with her. A second conduct review arising out of his wife's submission of an account to the Legal Services Society using his billing number was conducted in September 2012.
- [12] The Respondent's professional conduct record includes a third conduct review in October 2013. The Respondent had contacted the Law Society for guidance the day after he realized he had acted wrongly in a matter, but he did not follow the guidance until almost one month later. At that time, he had moved to Smithers; was unable to obtain employment with a firm and was practising alone; had completed an acrimonious divorce; was regularly communicating with the Law Society for practice advice; had remarried with a woman who had three children; and he and his new wife had a child.

CIRCUMSTANCES OF THE MISCONDUCT

- [13] After the close of business on May 22, 2014, a mother was served with a father's application, returnable the next morning for an order excluding her from their son's

life. At the time, a Ministry of Child and Family Development Safety Plan was in place addressing the mother's drug addiction and her supervised access to her son.

- [14] The next morning, the Respondent was at the courthouse for another matter. The mother retained him. The Court heard submissions and adjourned the application to May 27. An interim consent order provided the mother with supervised access and prohibited her from consuming drugs. The application was adjourned to June 26 for review. At that hearing, the order was slightly modified. At a summary hearing on July 8, the mother's access and drug testing were maintained. On August 6, a Family Case Conference was scheduled for October 16, 2014. No trial dates were scheduled.
- [15] At some time before the case conference, the Respondent provided results of drug testing of the wife to the father's lawyer.
- [16] The Honorable Judge B.G. Hoy presided at the case conference by video conference from Abbotsford. The Respondent and opposing counsel attended with their clients.
- [17] Opposing counsel advised the Court that he was not optimistic that anything could be accomplished in the conference. His client wanted to proceed to trial. The Respondent submitted there were no dangers for the child and stated: "This is nothing but trumped up allegations based on somebody running to court on one day's notice and obtaining orders they should never have achieved."
- [18] Judge Hoy addressed the litigants directly. He asked the father for his viewpoint. The father was not aware of any evidence to verify compliance with the prior court order. He said "... I haven't been assured in any way it's being followed." Judge Hoy asked the mother for her viewpoint. She said she had been doing what she was supposed to do. Later, the father said "... I was told that I would be provided with reports from the other party's doctor saying that she was not using anymore."
- [19] The Respondent interrupted to say reports had been provided to opposing counsel on "an ongoing basis." This began a disagreement between opposing counsel and the Respondent during which opposing counsel spoke in a raised, antagonistic voice.

Opposing Counsel: No, they have not.

Mr. Hudson: They have so, I have --

Opposing Counsel: They have not been --

Mr. Hudson: -- the faxes

Opposing Counsel: -- provided.

[Father]: Am I being --

Mr. Hudson: Okay. Your Honour --

[Father]: -- am I talking, or?

Mr. Hudson: -- we can just adjourn this, because it's clear that somebody is not telling the truth. And I have confirmations showing those have been sent.

[Father]: There was two in June. I haven't received any --

[Mother]: You just wanna go --

[Father]: -- since then.

[Mother]: -- to court.

Mr. Hudson: Shhh. Stop.

[Mother]: [Indiscernible/overlapping voices]

Mr. Hudson: Your Honour, this is -- all just needs -- let a judge hear it. Because it is clear that [Father] is not open to the evidence that's actually been provided, and doesn't wish to actually see any possibility that anybody can change. Even though she's complied with the orders --

Opposing Counsel: If my friend is finished --

Mr. Hudson: -- and he --

Opposing Counsel: -- with his speech --

Mr. Hudson: -- and he also --

Opposing Counsel: -- I wonder if we might move on it --

Mr. Hudson: Could you shut up?

Opposing Counsel: You shut up yourself. You shut up.

Mr. Hudson: No.

Opposing Counsel: Don't tell me to do anything back and forth like this.

The Court: Counsel.

Opposing Counsel: I won't put up with this.

The Court: Counsel.

Opposing Counsel: Who the hell do you think you are anyway?

Mr. Hudson: Excuse me.

Opposing Counsel: Just --

The Court: Counsel. Counsel, what are you doing? What are you doing?

Opposing Counsel: I -- I'm -- Your Honour --

The Court: Please.

Opposing Counsel: -- I have been -- I have been -- listened to my friend make aspersions about [Father] on and on, and this - - this cannot continue.

The Court: Oh --

Mr. Hudson: There have been no --

The Court: -- counsel --

Mr. Hudson: -- aspersions, Your Honour.

The Court: -- please. Look, let me just cut it short.

[20] It is clear from the video and audio recordings and what is set out in the Agreed Statement of Facts that, during this exchange opposing counsel rose to his feet and approached the Respondent. Initially the Respondent was seated, but rose to his feet after opposing counsel approached him while shouting at him and jabbing his finger in the Respondent's face several times.

- [21] Judge Hoy intervened and expressed his disappointment in the conduct of counsel. He concluded the case conference, referred the parties to the judicial case manager and adjourned.

COMPLAINTS TO LAW SOCIETY

- [22] The father made a written complaint to the Law Society on October 29, 2014 about the Respondent's behaviour.
- [23] On February 10, 2015, the Office of the Chief Judge of the Provincial Court made a written complaint about counsel's behaviour. Its Legal Officer enclosed copies of the transcript of the case conference with clients' names redacted, the audio and video recordings, a letter opposing counsel wrote to the Smithers Court Registry on October 16, 2014 and an email from the Respondent on October 16, 2014 to the Judicial Case Manager in the Smithers Courthouse.
- [24] In his email, the Respondent expressed "... his deepest apologies to the Honourable Judge Hoy for my unacceptable conduct in his courtroom today." He was specific about what he should not have done, but implicitly deflected some responsibility by identifying opposing counsel's actions as triggering his words and conduct.
- [25] The Respondent was given written notice of the complaint by letter dated January 9, 2015 and was interviewed by a Law Society investigator and staff lawyer on March 11, 2016.

APPROPRIATE DISCIPLINE FOR THIS PROFESSIONAL MISCONDUCT

- [26] We find, as the Respondent's conditional admission accepts, that his conduct as alleged in the citation was a blameworthy marked departure from the conduct the Law Society expects of its members and constitutes professional misconduct. (*Legal Profession Act*, SBC 1996, c. 9, s. 38(4)(b)(i); *Law Society of BC v. Martin*, 2005 LSBC 16, para. 171; see also *Re: Lawyer 12*, 2011 LSBC 11, para. 14 and 2011 LSBC 35, para. 7 and 46) What is appropriate discipline for this professional misconduct?
- [27] The two-step conditional admission process in Rule 4-30 of the Law Society Rules consists of Discipline Committee review and recommendation for acceptance of the proposed disciplinary action and a public hearing by a panel. The higher the likelihood that the hearing panel will accept the conditional admission and proposed penalty, the higher the likelihood that lawyers and the Law Society will use the admissions process in Rule 4-30.

- [28] The process of conditional admissions and consent to disciplinary action in Rule 4-30 benefits the administration of Law Society disciplinary proceedings. It saves significant administrative resources and involves the Respondent accepting responsibility for his or her conduct. It is more likely that the participants will use this process if there is some degree of comfort that a joint proposal will be accepted by the hearing panel. This is the reason that hearing panels give deference to conditional admissions, consent disciplinary action and the recommendations of the Discipline Committee.
- [29] The process is transparent and the public is protected by having a hearing panel thoroughly review and publish reasons for accepting the proposed disciplinary action. The public is also protected as the hearing panel has the authority to reject a conditional admission with the consequence the citation will proceed to hearing before another panel. (Rule 4-31)
- [30] A panel that shows deference to a recommendation of the Discipline Committee in an individual case is not abdicating its independence or responsibility. The panel hears the evidence and exercises independent judgment. However, instead of determining what discipline the panel would impose (which might be more, less or different than what is proposed by the parties), the panel decides whether the proposed disciplinary action is “within the range of a fair and reasonable disciplinary action.” (*Law Society of BC v. Rai*, 2011 LSBC 2, para. 7) If the proposed disciplinary action is within the range of fair and reasonable action, the panel must accept the Discipline Committee recommendation. If it is not, the panel must reject the conditional admission.
- [31] There is no exhaustive list of factors to consider in determining an appropriate sanction for a finding of professional misconduct. A non-exhaustive list of factors is set out in *Law Society of BC v. Ogilvie*, 1999 LSBC 17, para. 10.
- [32] The applicable factors and their relative importance will vary in each citation against a lawyer. Protection of the public and public confidence in the integrity of lawyers generally is paramount in determining appropriate discipline.
- [33] Recently, a panel restated the accepted factors under four categories: (1) nature, gravity and consequence of the professional misconduct; (2) Respondent’s character and professional conduct record; (3) Respondent’s acknowledgement and remedial action and other mitigating circumstances; and (4) maintaining public confidence in the disciplinary process and integrity of the legal profession. (*Law Society of BC v. Lessing*, 2013 LSBC 29)

- [34] Professional courtesy is the expected norm of behaviour. Civility between lawyers is essential to maintaining the integrity of the profession, orderly dealings among the profession and resolution of client differences. Incivility may in some circumstances constitute dishonourable conduct that brings the profession into disrepute and diminishes public confidence in the integrity of lawyers.
- [35] While incivility is serious, it is not the most serious professional misconduct. However, it is our view that incivility in court is a more serious form of incivility. Confidence in the administration of justice depends in large part on the proper functioning of a courtroom.
- [36] Incivility in court or another formal or informal setting intended to achieve a resolution of differences between parties is obstructive to the proper functioning of the process. It impedes the orderly administration of justice. The Respondent's incivility occurred in this context. The impact of such behaviour is clearly evident in this case. It abruptly led to the breakdown of the proceedings and the intervention of the presiding judge.
- [37] The evidence is that there was no ongoing discourtesy or incivility in the communications between the Respondent and opposing counsel in this or other litigation.
- [38] The Respondent had a Professional Conduct Record consisting of conduct reviews, although the conduct reviews were for dissimilar and unrelated behaviour.
- [39] The Respondent acknowledged his misconduct on the day that it occurred. He apologized to the court and court staff in writing later that day. He has been unqualified in acknowledging his misconduct to the Law Society and to the Panel in his testimony.
- [40] Based on his understanding of the stressors and triggers that he believes were involved in his behaviour, he has taken steps to manage his affairs so that he will not repeat his impulsive behaviour.
- [41] There is no fixed range of discipline for incivility that constitutes professional misconduct. Recently, Law Society counsel provided a panel with a summary of penalties in panel decisions when members made discourteous or threatening remarks: the penalties ranged from reprimands to fines (\$500 to \$3,000) to suspensions (1 week to 6 months). (*Law Society of BC v. Foo*, 2014 LSBC 21, para. 41) On the facts in that case and the lawyer's professional conduct record, the panel imposed a two week suspension. An application to review was dismissed

(2015 LSBC 34), and the BC Court of Appeal dismissed an appeal. (2017 BCCA 151)

[42] We conclude that, in the circumstances of this case, a fine is appropriate discipline.

[43] We find the proposed disciplinary action of a \$5,000 fine in this situation is balanced, proportionate and consistent with the principles applied in determining a fair and reasonable discipline in all the circumstances. Therefore, we accept the proposed disciplinary action.

ORDER

[44] We order that the Respondent:

- (a) pay a fine in the amount of \$5,000 on or before October 31, 2017;
- (b) pay costs in the amount of \$1,241.65 on or before October 31, 2017.

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