

2024 LSBC 27
Hearing File No.: HE20230012
Decision Issued: June 6, 2024
Citation Issued: July 27, 2023

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

MARC ANDRE ECKARDT also known as MARC ANDRE SCHEIRER

RESPONDENT

**DECISION OF THE HEARING PANEL
ON FACTS AND DETERMINATION**

Hearing date: March 11, 2024
Written submissions: April 4, 2024

Panel: Nicole Byres, KC, Chair
Erwin Nest, Public representative
James Struthers, Bencher

Discipline Counsel: Mandana Namazi

Appearing on his own behalf: Marc Andre Eckardt

Written reasons of the Panel by: Nicole Byres, KC

CITATION

[1] The Law Society issued a citation on July 27, 2023 (the “Citation”) against the Respondent. It seeks a finding of professional misconduct against the Respondent for sexually harassing his client, AR (the “Complainant”) contrary to one or more of rules 2.2-1 and 6.3-3 of the *Code of Professional Conduct for British Columbia* (the “BC Code”) and his fiduciary duties, including through one or more of the following:

- (a) unwelcome comments,
- (b) unwelcome advances, and
- (c) unwelcome physical contact.

[2] The Citation alleges that the professional misconduct and sexual harassment occurred between approximately January 2016 and November 2017.

BACKGROUND

[3] The Respondent was called to the Bar in California, USA in June 1996 and called to the Bar in Washington State, USA in November 2000. Following a credentials hearing, the Respondent was called to the Bar in British Columbia on January 5, 2015.

[4] On June 2, 2023 the Respondent became a former member of the Law Society.

[5] The Respondent represented the Complainant between January 2016 and November 2017 for certain family law matters including child support and guardianship of the Complainant’s three children, and a protection order against the Complainant’s former common law partner (the “Family Law Services”).

LEGAL ISSUES

Onus and Burden of Proof

[6] The onus of proof in disciplinary hearings is well known and consistently applied. The standard was articulated by the Supreme Court of Canada in *F.H. v. McDougall*.¹ As stated in that decision, the onus of proof is on the Law Society, and the standard of proof is a balance of probabilities. Evidence must be scrutinized with care and must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test.

¹ *F.H. v. McDougall*, [2008] 3 S.C.R. 41, 2008 SCC 53

[7] The onus is on the Law Society to prove on a balance of probabilities that the Respondent engaged in the conduct as alleged in the Citation and the Panel must determine whether the proved conduct amounts to professional misconduct.

Rules 2.2-1 and 6.3-3 of the *BC Code*

[8] Rule 2.2-1 of the *BC Code* imposes a duty on lawyers to carry on the practice of law and discharge all responsibilities to clients honourably and with integrity.

[9] Rule 6.3-3 of the *BC Code* states that a lawyer must not sexually harass a client.

Test for Professional Misconduct

[10] Section 38(4)(b)(i) of the *Legal Professions Act* (the “*Act*”) authorizes a panel to determine that a respondent has engaged in professional misconduct. The test for whether conduct constitutes professional misconduct was set out in *Law Society of BC v. Martin*², as “whether the facts as made out disclose a marked departure from that conduct the Law Society expects of its members”.

[11] The *Martin* marked departure test is an objective test; a hearing panel must consider the appropriate standard of conduct expected of a lawyer and then determine if the lawyer falls markedly below that standard.³ This test has been accepted by many subsequent hearing panels and was affirmed by the British Columbia Court of Appeal in *Foo v. Law Society of British Columbia*⁴.

[12] In determining the appropriate standard expected of lawyers, a panel must bear in mind the requirements of the *Act*, the Law Society Rules (“Rules”), and the *BC Code*, and then consider the duties and obligations that a lawyer owes to a client, to the court, to other lawyers and to the public in the administration of justice. Each case will turn on its particular facts.⁵

² *Law Society of BC v. Martin* 2005 LSBC 16, at para. 171

³ *Law Society of BC v. Sangha*, 2020 LSBC 3

⁴ *Foo v Law Society of British Columbia*, 2017 BCCA 151, at paras. 52-57

⁵ *Law Society of BC v. Kim*, 2019 LSBC 43, at para. 45

SUMMARY OF FACTS AND EVIDENCE

Admitted Facts

[13] The Respondent did not respond to the Law Society's Notice to Admit and therefore the following facts were deemed to be admitted. The Respondent:

- (a) was served with the Citation in accordance with the requirements of Rule 4-19 of the Rules;
- (b) provided the Family Law Services to the Complainant between January 2016 to November 2017;
- (c) met with the Complainant in person in his office for the first time on June 15, 2016 and billed for a one and a half hour meeting on that date (the "June 2016 Office Visit"); and
- (d) attended court with the Complainant on October 20, 2016 (the "October 2016 Court Appearance").

[14] It was also deemed admitted that the Complainant submitted a complaint to the Law Society on December 10, 2022, alleging misconduct by the Respondent in 2016 while she was a client.

Complainant

[15] The Complainant testified that in late 2022 she read a news article reporting on the Respondent and his inappropriate conduct toward another woman, and it was this article that prompted her to come forward, initially to the reporter who had written the article, about her experience with the Respondent. The Complainant said that the reporter referred her to the Law Society.

[16] The Complainant also testified that since events occurred six years earlier, there were some things she could not remember and other things that were "burned" in her memory.

June 2016 office visit

[17] The Complainant agreed with counsel for the Law Society's statement that she first met with the Respondent in his office on June 15, 2016. The Complainant said that she was apprehensive about the June 2016 Office Visit because she was fearful of men because of violence and abuse she had suffered while growing up including

while in foster care, and more recently at the hands of her former common law spouse.

[18] The Complainant recalled attending the Respondent's office for the first time by herself, and that when she arrived at his office there was no one sitting at the reception desk. The Complainant testified that a man she later identified as the Respondent came up behind her and put his arms around her upper chest and pressed her body against the front of his body. The Complainant said at that point the Complainant "froze" with fear. After a period described by the Complainant as approximately one minute, she said the Respondent chuckled, released her and asked her to come into his office.

[19] The Complainant said that the Respondent was wearing a suit but looked "disheveled", and despite the fact she was nervous about being alone with him she followed him to his office where he collected information related to the Family Law Services.

[20] The Complainant said that as she sat in a chair opposite the Respondent in his office, the Respondent started rubbing his socked foot against her feet and leg under the Respondent's desk. The Complainant said that she could not remember what the interview was about or what information she provided to the Respondent, but she did remember being "petrified".

[21] As an exception to her statement that she could not recall what she discussed with the Respondent during the June 2016 Office Visit, the Complainant said that the Respondent asked her if she planned on having any more children, and after she responded in the negative, the Respondent said how lucky he would be if she was the mother of his children. This struck the Complainant as unusual, as framed photographs of what the Complainant assumed were the Respondent's wife and children were sitting on the Respondent's desk.

[22] When asked why she continued with her meeting with the Respondent if she feared being alone with the Respondent, the Complainant provided the following reasons:

- (a) throughout her life she had been subjected to verbal and physical abuse and she had learned to de-escalate situations and keep herself safe by placating the other party;
- (b) she did not like confrontation;

- (c) she was afraid to say or do anything that might cause the Respondent to cease acting for her and she was not sure if she would be able to get another lawyer because he had been appointed by legal aid; and
- (d) she knew that it would be her word against that of the Respondent, a licensed lawyer.

[23] The Complainant testified that after the interview was over, and as she was leaving the Respondent's office the Respondent leaned into her as if he was going to give her a kiss or hug. The Complainant said she panicked and turned her head away and ran down the staircase out of the building. According to the Complainant, after she got into her car she sat and cried for a few minutes before going home, and that she also cried sitting in her car in the driveway of her home.

[24] The Complainant testified that she needed the Family Law Services, including the restraining order to protect her and her children from a violent former partner. The Complainant also testified that the Respondent's conduct led her to feel helpless and invisible.

[25] The Complainant said that she attended his office one or more times after the June 2016 Office Visit, but she always brought her children with her, on the assumption that the Respondent would not try to touch her again if her children were in attendance.

[26] The Complainant said that she did try to talk to her best friend ("TW") about what happened during the June 2016 Office Visit, however the Complainant did not think her friend believed her.

October 2016 court appearance

[27] The Complainant testified that the Respondent also touched her inappropriately and smelled of alcohol during other appearances at provincial court. The Complainant could not remember the dates of those court appearances. She said that during one of those court appearances, a social worker approached the Complainant to ask her why her lawyer was touching her, stating that he should not be doing that. When questioned, the Complainant said she remembered the first name of that social worker was Kayla after seeing a document at this Hearing.

[28] When asked if October 20, 2016 was the date of the court appearance with the Respondent in which TW was present, the Complainant said: "...I want to say yes" and then added "If that was the date, then yes, this was to have been the date that she

came –that [TW] came with me.” The Notice to Admit indicates a protection order against her former common law spouse was granted that day.

[29] When describing the October 2016 Court Appearance, the Complainant said that she asked TW to attend court with her that day, and she also brought her three children with her as a way to “protect” herself from any advances the Respondent might make.

[30] According to the Complainant, during the October 2016 Court Appearance the Respondent looked “very disheveled”, “smelled bad”, and appeared to be drunk. She recounted that at one point when they were all sitting on a bench outside the courtroom, the Respondent put his hand on her thigh, her arm, and back. The Complainant said that at that time, she was sitting in between the Respondent and TW.

[31] The Complainant said that she did not say anything when the Respondent touched her but recalls going “silent and very stiff” and testified that he kept his hand on her thigh for longer than 60 seconds.

[32] The Complainant said that after the Respondent got up and left, TW asked her why he was touching her, to which she responded she did not know and that she did not know what to do. At that point, the Complainant said that TW apologized to the Complainant for not believing her when she had previously informed TW that the Respondent touched her inappropriately during the June 2016 Office Visit.

[33] When describing the impact of the Respondent’s actions on her, the Complainant said that she found it difficult to process what was happening at the time of the events because she did not think she would be able to deal with it emotionally. The Complainant said at the time, she did not know there would have been supports for her if she had spoken up and complained about the Respondent’s behaviours.

[34] The Complainant again referred to the power disparity between her and the Respondent, the fact it would be his word over hers, and the fact she was dependent on him to obtain orders securing custody of her children and a protection order against her former common law spouse, all as reasons for not speaking up in 2016 about the Respondent’s inappropriate behaviour.

[35] The Respondent did not cross-examine the Complainant on her evidence regarding the allegations of inappropriate touching during the June 2016 Office Visit or the October 2016 Court Appearance.

Witness TW

[36] TW testified that she and the Complainant had been friends for about ten years and in 2016 they would have been friends for approximately four years. TW described the Complainant as being emotionally unstable, vulnerable and unsure of herself in 2016 following her break up with her common law spouse.

[37] TW said that prior to the October 2016 Court Appearance, the Complainant had informed her that the Respondent made the Complainant feel uncomfortable and did not act professionally. TW confirmed that during her interview with the Law Society investigator, TW advised the investigator that the Complainant had informed her that the Respondent had touched the Complainant on her leg, back and shoulders. TW said the Complainant informed her of the Respondent's behaviour "quite a few times" which she said was about ten times.

[38] TW recounted what she remembered during the October 2016 Court Appearance, and confirmed she attended to support the Complainant. TW observed that the Respondent smelled like alcohol and his speech was not clear.

[39] TW said that at some point she, the Complainant and the Respondent were sitting together on a bench, when TW observed the Respondent putting his hand on the Complainant's upper thigh. TW also said she observed the Complainant become noticeably uncomfortable when this happened.

[40] TW said that after observing the Respondent touching the Complainant, she felt bad because she felt she had not been a good friend to the Complainant because TW had assumed that the Complainant had been exaggerating when the Complainant had previously informed her the Respondent had touched her inappropriately. TW said she apologized to the Complainant for not taking her seriously before.

[41] The Respondent did not cross-examine TW on any evidence TW provided.

Respondent

[42] The Respondent started by saying he wanted to apologize to the Complainant for making her feel uncomfortable in 2016 and for any discomfort that he put her under, saying that it was not his intent to do so.

[43] The Respondent gave limited evidence and did not provide any evidence about the June 2016 Office Visit or the October 2016 Court Appearance, nor did he address the Complainant's evidence or TW's evidence about those events.

[44] The Respondent's evidence was confined to two subjects: the timeline of events as it related to the Family Law Services he provided as described in his timesheets attached as part of the Notice to Admit and Exhibit 5, and to dispute the age of the Complainant's youngest child.

[45] The Respondent testified he believed the Complainant's youngest child was three or four because when he first met the Complainant's children, the youngest was running "wild" around the courthouse, and when the Complainant brought her children to the office the Complainant's youngest child was running around his office and nearly broke the office window by throwing a tennis ball at it.

[46] The Respondent also noted that his ex-wife who was also a lawyer in the same office was in attendance during one of the Complainant's visits to the office when she was accompanied by her children. The Respondent did not call his ex-wife to give evidence.

[47] Under cross-examination, the Respondent was directed to documentary evidence that noted the Complainant's youngest child was born July 26, 2015 and was asked to agree that he was mistaken in his recollection that the Complainant's youngest child was two or three when he was in the Respondent's office in 2016. While surprised, the Respondent said he did not dispute that evidence. The Respondent was also shown documentary evidence that contradicted his evidence that the Complainant's middle child was female.

CREDIBILITY

[48] The principles for the assessment of credibility are not in dispute. A starting point often begins with the BC Court of Appeal decision *Faryna v. Chorny*⁶, which states:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

⁶ *Faryna v. Chorny*, [1952] 2 DLR 354, p. 357, 1951 CanLII 252 (BCCA)

[49] A useful description of the two distinct aspects of credibility (honesty and reliability) are set out in *R. v. Taylor*⁷, as follows:

“Credibility” is omnibus shorthand for a broad range of factors bearing on an assessment of the testimonial trustworthiness of witnesses. It has two generally distinct aspects or dimensions: honesty (sometimes, if confusingly, itself called “credibility”) and reliability. The first, honesty, speaks to a witness’ sincerity, candour and truthfulness in the witness box. The second, reliability, refers to a complex admixture of cognitive, psychological, developmental, cultural, temporal and environmental factors that impact on the accuracy of a witness’ perception, memory and, ultimately, testimonial recitation. The evidence of even an honest witness may still be of dubious reliability.

[50] The methodology for assessing credibility was expanded on in *Bradshaw v Stenner*⁸, as follows:

It has been suggested that a methodology to adopt is to first consider the testimony of a witness on a ‘stand alone’ basis, followed by an analysis of whether the witness’ story is inherently believable. Then, if the witness testimony has survived relatively intact, the testimony should be evaluated based upon the consistency with other witnesses and with documentary evidence. The testimony of non-party, disinterested witnesses may provide a reliable yardstick for comparison. Finally, the court should determine which version of events is the most consistent with the “preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions” (*Overseas Investments (1986) Ltd. v. Cornwall Developments Ltd.* (1993), 1993 CanLII 7140, 12 Alta. L.R. (3d) 298 at para. 13 (Alta. Q.B.)). I have found this approach useful.

[51] TW’s evidence was not disputed nor subject to cross examination. The Panel finds TW to be an honest and reliable witness.

[52] The Complainant admitted that her recollection of the events in 2016 was affected by past trauma that was triggered by the Respondent’s behaviour, and by the fact that she had deliberately tried to forget about those events. While she agreed with counsel for the Law Society about the dates of the June 2016 Office Visit and the October 2016 Court Appearance, the Panel was not convinced she remembered the actual dates of those events, nor did she remember dates of her other office visits that were noted in documents attached as part of the Notice to Admit.

⁷ *R. v. Taylor*, 2010 ONCJ 396, para. 58

⁸ *Bradshaw v Stenner*, 2010 BCSC 1398, para. 187

[53] When giving evidence about the June 2016 Office Visit, the Complainant frequently referred to “dissociating” from her memories of the June 2016 Office Visit. However, despite these self-admitted limitations on her memory, she was able to recall her emotional reactions when the Respondent hugged her or touched her leg with his socked foot, the smell of the Respondent’s body odor, and the height and weight of the Respondent (in relation to hers) when the Respondent hugged her from behind.

[54] The Complainant’s evidence about the June 2016 Office Visit and the October 2016 Court Appearance was not contradicted by the Respondent’s evidence, nor subject to cross examination. The Complainant’s evidence about the October 2016 Court Appearance was corroborated by TW.

[55] The Panel finds the Complainant gave her evidence honestly, although the Panel did have some concerns with the reliability of some of her evidence regarding the actual dates of the June 2016 Office Visit, in large part because her self-admitted memory issues.

[56] The Respondent gave no evidence on the material facts in issue, and some of his evidence regarding the age and gender of the Complainant’s children was clearly incorrect. Regarding the limited evidence given by the Respondent, the Panel finds the Respondent was not a reliable witness.

ANALYSIS AND FINDINGS OF FACT

[57] The Law Society is seeking a finding of professional misconduct against the Respondent for sexually harassing the Complainant through unwelcome comments, advances and/or physical contact contrary to one or more of rules 2.2-1 and 6.3-3 of the *BC Code* and his fiduciary duties.

Test for Sexual Harassment

[58] Rule 6.3 of the *BC Code* includes the following provisions:

6.3-1 The principles of human rights laws and related case law apply to the interpretation of this section.

6.3-2 A term used in this section that is defined in human rights legislation has the same meaning as in the legislation.

6.3-3 A lawyer must not sexually harass any person.

[59] The commentary to rule 6.3 states:

[1] A lawyer has a special responsibility to comply with the requirements of human rights laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in human rights laws.

[60] As the *BC Code* does not include a definition of “sexual harassment”, and in light of rule 6.3-1 of the *BC Code*, human rights legislation, the principles of human rights law, and related human rights case law apply to this case, in accordance with *Law Society of BC v. Butterfield*⁹.

[61] The *BC Human Rights Code* does not define sexual harassment. The leading case in Canada regarding the definition and test for sexual harassment is the SCC decision of *Janzen v. Platy Enterprises Ltd*¹⁰, which was quoted with approval in *Butterfield*. In *Janzen*¹¹, the SCC provided the following definition of ‘sexual harassment’:

Without seeking to provide an exhaustive definition of the term, I am of the view that sexual harassment in the workplace may be broadly defined as unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment. It is, as Adjudicator Shime Report observed in *Bell v. Ladas*, and as has been widely accepted by other adjudicators and academic commentators, an abuse of power. When sexual harassment occurs in the workplace, it is an abuse of both economic and sexual power. Sexual harassment is a demeaning practice, one that constitutes a profound affront to the dignity of the employees forced to endure it. By requiring an employee to contend with unwelcome sexual actions or explicit sexual demands, sexual harassment in the workplace attacks the dignity and self-respect of the victim both as an employee and as a human being.

[62] In *Law Society of BC v. Heflin*¹², the panel adopted the *Janzen* definition from which the following three-part test was derived:

- (a) the conduct must be sexual in nature;
- (b) the conduct must be unwelcome; and
- (c) the conduct must detrimentally affect the relevant environment or lead to adverse consequences.

⁹ See *Law Society of BC v. Butterfield*, 2017 LSBC 2 at para. 24

¹⁰ *Janzen v. Platy Enterprises Ltd.*, 1989 CanLII 97 (SCC)

¹¹ *Janzen*, supra at page 33

¹² *Law Society of BC v. Heflin*, 2022 LSBC 41, at paras. 37 & 38

Sexual in nature

[63] In *Law Society of BC v. Johnston*¹³, the panel described sexual in nature as follows:

Sexual harassment encompasses a wide range of behaviours of a sexual nature, including subtle sexual innuendos and crude sexual remarks: *Dian Greene v. Revolution Environmental Solutions LP*, 2019 BCHRT 199 at para. 34; *Janzen*, pg. 31. The misconduct may have arisen as a result of one incident or multiple incidents, and may be physical or verbal, and overt or subtle: *Hodgson v. Coast Storage and Containers*, 2020 BCHRT 55 at para. 29.

In *Janzen*, the Court at p. 30, provided the following list of concrete examples of sexually harassing behaviour:

Sexual harassment can manifest itself both physically and psychologically. In its milder forms it can involve verbal innuendo and inappropriate affectionate gestures. It can, however, escalate to extreme behaviour amounting to attempted rape and rape. Physically, the recipient may be the victim of pinching, grabbing, hugging, patting, leering, brushing against, and touching. Psychological harassment can involve a relentless proposal of physical intimacy, beginning with subtle hints which may lead to overt requests for dates and sexual favours.

A common theme in the cases is that sexual harassment is ultimately about an abuse of power: *Al-Musawi v. One Globe Education Services*, 2018 BCHRT 94 at para. 30....

[64] Despite some concerns the Panel had regarding the Complainant's memories of the June 2016 Office Visit, the Panel finds that the Respondent put his arms around the Complainant and stroked her leg during the June 2016 Office Visit. The Panel also finds that the Respondent placed his hand on the Complainant's thigh, arm and back during the October 2016 Court Appearance. The Panel finds that the Respondent's conduct towards the Complainant was sexual in nature.

Conduct must be unwelcome

[65] In *Heflin*¹⁴, the hearing panel stated the following in regards to the "unwelcome" component of the test for sexual harassment:

¹³ *Law Society of BC v. Johnston*, 2023 LSBC 16, at paras. 60 to 62

¹⁴ *Heflin* at para. 40

Evaluating whether the conduct is unwelcome is an objective test, invoking the reasonable person standard. In *Dutton v. British Columbia (Human Rights Tribunal)*, 2001 BCSC 1256 at para. 70, the court held:

...The test for determining whether conduct is unwelcome is an objective one: taking into account all the circumstances, would a reasonable person know that the conduct in question was not welcomed by the complainant? A complainant is not required to expressly object to the conduct unless the respondent would reasonably have no reason to suspect that it was unwelcome...

Not only overt, but also subtle indications of unwelcomeness may be sufficient to communicate that the conduct is unwelcome. The fact that a complainant submits to or tolerates sexual demands does not necessarily mean that they are welcome or solicited. Behaviour may be tolerated and yet unwelcome at the same time. The reasons for submitting to conduct may be closely related to the power differential between the parties and the implied understanding that lack of co-operation could result in some sort of disadvantage.

[66] When applying the reasonable person standard in assessing evidence as to whether the conduct was unwelcome by the Complainant, the Panel follows *Heflin*¹⁵ and *Johnston*¹⁶ in adopting the principles articulated in *Ms. K v. Deep Creek Store*¹⁷, cautioning against a focus on a complainant's conduct (i.e. what a complainant said or did to indicate the conduct was unwelcome) because that creates space for problematic gender-based myths, stereotypes and assumption-based reasoning that may improperly influence adjudication of a complaint. Accordingly, a complainant could prove that the conduct was unwelcome by establishing that the conduct had an adverse impact on them.

[67] The Complainant testified as a result of the Respondent's conduct during the June 2016 Office Visit, she was "frozen with fear" and petrified. She also testified that immediately following the June 2016 Office Visit, she cried in her car, first while parked outside of the Respondent's office, and later in her driveway after arriving home. The Complainant said that during any in-person meetings with the Respondent after the June 2016 Office Visit (including during the October 2016 Court Appearance), she brought her three children with her based on her belief that the Respondent would not try to touch her again in their presence.

¹⁵ *Heflin* at para. 42

¹⁶ *Johnston* at para. 68

¹⁷ *Ms. K v. Deep Creek Store*, 2021 BCHRT 158, at paras. 82 to 89

[68] The Panel finds that the Respondent's conduct in touching the Complainant during the June 2016 Office Visit and the October 2016 Court Appearance was unwelcome.

Conduct must detrimentally affect the relevant environment or lead to adverse consequences

[69] The Court stated in *Janzen* that sexual harassment negatively affects and attacks the dignity and self-respect of the victim. The panel in *Law Society of Manitoba v. Davis*¹⁸, held that "sexual harassment in the context of a solicitor-client relationship constitutes an abuse of power that demeans the dignity and self-respect of the client."

[70] The Complainant testified that she was afraid to say or do anything about the Respondent's behaviour for fear that the Respondent would cease acting for her and she was not sure if she would be able to get another lawyer because he had been appointed by legal aid. The Complainant also testified about her personal history of dealing with trauma and abuse while growing up and in her most recent relationship, and that her experience with the Respondent led to her feeling "helpless and invisible".

[71] The Panel finds that the Respondent's conduct detrimentally affected the Complainant's experience as she accessed necessary legal services, and led to adverse consequences.

Conclusion on Sexual Harassment

[72] Having found that all three parts of the *Janzen* test for sexual harassment are satisfied on the evidence, the Panel finds that the Respondent sexually harassed the Complainant, contrary to rule 6.3-3 of the *BC Code*.

Rule 2.2-1 - Integrity

[73] As noted earlier, lawyers have a duty to carry on the practice of law and discharge all responsibilities to clients honourably and with integrity.

[74] The commentary to rule 2.2-1 of the *BC Code* explains the meaning and significance of this obligation in regard to the trust of clients, the public's confidence in the profession, and the integrity of the profession.

¹⁸ *Law Society of Manitoba v. Davis*, 2001 MBLS 4 (CanLii) at para. 12

- (a) Trust of clients, commentary [1] states:

Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. If clients have any doubt about their lawyers' trustworthiness, the essential element in the true lawyer-client relationship will be missing. If integrity is lacking, the lawyer's usefulness to the client and reputation within the profession will be destroyed, regardless of how competent the lawyer may be.

- (b) Public confidence, commentary [2] states:

Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer's irresponsible conduct. Accordingly, a lawyer's conduct should reflect favourably on the legal profession, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety.

- (c) Integrity of the profession, commentary [3] states:

Dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice. Whether within or outside the professional sphere, if the conduct is such that knowledge of it would be likely to impair a client's trust in the lawyer, the Society may be justified in taking disciplinary action.

[75] Previous Tribunal decisions such as *Heflin*¹⁹ and *Johnston*²⁰, have determined that lawyers who engage in sexual harassment towards clients or staff contravene rule 2.2-1 of the *BC Code*.

[76] The Panel agrees and finds that the Respondent contravened rule 2.2-1 of the *BC Code*.

Professional Misconduct

[77] The test for professional misconduct is set out in paragraphs [10] to [12]. Having found that the Respondent engaged in sexual harassment contrary to rules

¹⁹ *Heflin*, at para. 79

²⁰ *Johnston*, at para. 104

2.2-1 and 6.3-3 of the *BC Code*, the Panel also finds that such conduct is a marked departure from conduct expected of a lawyer and constitutes professional misconduct.

CONCLUSION

[78] The Respondent's actions were sexual in nature, unwelcome and resulted in adverse consequences to the Complainant. The Panel finds that the Respondent's actions constitute sexual harassment contrary to the *BC Code*.

[79] The Respondent's conduct occurred while he was in a solicitor-client relationship with the Complainant and the Panel finds that this conduct amounts to professional misconduct contrary to the *Act*.