2024 LSBC 08
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Decision Issued: February 20, 2024
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THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL

HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

TEJINDER SINGH DHILLON

RESPONDENT

DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION

Hearing date:	December 5, 2023
Panel:	Dean P.J. Lawton, KC, Chair Bruce LeRose, KC, Lawyer Robert Smith, Public representative
Discipline Counsel:	Angela R. Westmacott, KC
Counsel for the Respondent:	Andrew P. Morrison

Written reasons of the Panel

BACKGROUND

[1] In a facts and determination ("F&D") decision issued on September 8, 2022, we found the Respondent to have engaged in multiple instances of professional misconduct. Those findings are available in *Law Society of BC v. Dhillon*, 2022 LSBC 31 ("F&D decision").

[2] At the time of the hearing leading to the F&D decision, the Respondent was no longer a practicing lawyer, having resigned from the Law Society with the consent of the Executive Director on June 4, 2019, pursuant to s.21.1 of the *Legal Profession Act*, SBC 1998, c.9 (the *"Act").*

[3] The hearing leading to the F&D decision occurred over five days, namely April 25, 26, 27, 28, and 29, 2022. The Respondent was self-represented at the F&D hearing.

[4] Although the citation was issued on November 5, 2019, the Respondent requested, and was granted, several adjournments prior to the commencement of the F&D hearing.

[5] During the first four days of the F&D hearing, the Law Society led witness testimony through in-person and Zoom platform attendances. The Respondent cross-examined Law Society witnesses.

[6] In leading evidence in his case, the Respondent called a witness whose evidence was not completed. As a result, we did not consider any of the testimony of that witness. The Respondent gave evidence and was cross-examined.

[7] On the fifth and final day of the F&D hearing, the Respondent and Law Society counsel informed us that they had come to a procedural arrangement that would make the hearing process more efficient, namely the consent filing of a Further Amended Citation containing seventeen paragraphs setting forward allegations of misconduct against the Respondent. The Respondent then acknowledged the Further Amended Citation and admitted all of the allegations of misconduct contained in it.

[8] We accepted the admissions of the Respondent on the record, and determined that all of the misconduct set out in the Further Amended Citation amounted to professional misconduct.

INTRODUCTION

[9] Following the F&D decision, the disciplinary action ("DA") phase of the hearing was initially scheduled for four days, namely June 6, 7, 8 and 9, 2023, in person; however, it was necessary to adjourn the hearing on the morning of commencement because we were informed an immediate family member of the Respondent had died that morning.

[10] The Respondent engaged counsel following the adjournment, and the DA hearing was then rescheduled for two days, December 5 and 6, 2023 by Zoom platform. Counsel for the parties informed us before the commencement of the hearing that only one day would be necessary for evidence and submissions.

[11] Evidence at the DA hearing on December 5, 2023 consisted of the affidavit of the Respondent, affirmed on November 9, 2023, and his professional conduct record ("PCR") as at March 13, 2023. There was no challenge to the contents or admissibility of the PCR. The Respondent was not cross-examined on his affidavit.

[12] At the DA hearing we had the benefit of both written and oral submissions from counsel. We thank counsel for their helpful submissions, and for responding ably to our questions during the hearing.

ISSUE

[13] What is the appropriate sanction for the Respondent's professional misconduct as determined in our F&D decision?

FRAMEWORK FOR DETERMINING APPROPRIATE DISCIPLINARY ACTION

[14] Counsel for the Law Society, in written submissions, has stated succinctly an overview of the principles applicable to DA determinations as follows, with which we agree:

> The primary aim of the discipline process is to fulfill the Law Society's mandate of protecting the public and maintaining confidence in the administration of justice, including confidence in the legal profession. (*Act*, s.3; *Law Society of BC v. Wesley*, 2016 LSBC at para. 20-21; *Law Society of BC v. Hill*, 2011 LSBC 16 ("*Hill*") at para. 3.) Public protection must be considered in the broadest sense. It lies not only in dealing with

ethical failures by a lawyer when they occur, but also in preventing ethical failures by other members of the profession.

[15] Counsel for the Respondent, in written submissions, has identified some principles he invites us to consider as follows, with which we agree:

> The primary purpose of disciplinary proceedings, including the disciplinary action imposed is to protect the public, not punish the lawyer. The goal is to maintain public confidence in the legal profession. (*Law Society of BC v. Gellert,* 2014 LSBC 5 at para. 36 (*"Gellert"*))
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> …
>
> When there are multiple findings of professional misconduct or breaches, the panel will often take a global approach to determining an appropriate penalty. A holistic approach permits the panel to consider the entire scope of misconduct, rather than viewing each wrongful act piecemeal. (*Gellert* at para. 37.)
>
> A global approach requires an assessment of the seriousness of the totality of the misconduct to determine a penalty suited for all the misconduct viewed globally. It does not involve adding together an appropriate penalty for each instance of misconduct. (*Law Society of BC v. Guo*, 2023 LSBC 6, at para. 72)

[16] Although in our role as adjudicators we are not bound by precedent in our determination in this case, we nevertheless observe that prior LSBC Tribunal hearing panel decisions are useful in establishing guidelines, perspectives, and factors for our consideration.

[17] Counsel for the Law Society and the Respondent have referred to the decision of *Law Society of BC v. Ogilvie*, 1999 LSBC 17 ("*Ogilvie*"). *Ogilvie* has been mentioned in many LSBC Tribunal discipline hearings. It sets out a non-exhaustive set of thirteen factors that may be considered when determining an appropriate sanction to be imposed on lawyers who have been found to have engaged in professional misconduct. Not all *Ogilvie* factors are necessarily applicable to every case.

[18] Likewise, all counsel in this hearing noted the more recent approach of the panel in *Law Society of BC v. Dent*, 2016 LSBC 5 (*"Dent*"). The panel in that decision consolidated the factors in *Ogilvie* into four general categories, namely:

(a) nature, gravity and consequences of the conduct;

(b) character and professional conduct record of the respondent;

(c) acknowledgement of the misconduct and remedial action; and

(d) public confidence in the legal profession including public confidence in the disciplinary process.

[19] Given the multiple findings of professional misconduct in this case, and as suggested by counsel, we considered the four categories in *Dent*, and took a global approach in determining an appropriate sanction to be imposed on the Respondent.

Nature, gravity and consequences of the conduct

[20] In our opinion the nature, gravity and consequences of the conduct are fundamental elements in our consideration.

[21] As set out in our F&D decision, the Respondent has been found to have misappropriated client funds from his trust account on multiple occasions; breached undertakings in both commercial transactions and to the Law Society; failed to supervise his bookkeeper and office manager by providing that person with both pre-signed blank trust cheques and online access to his trust account; failed to retain all supporting documentation for his trust account, including bank deposit slips, in relation to some or all of 376 deposits; and failed to honour trust commitments given to legal counsel and a notary public.

[22] Although the above referenced examples are not the totality of the instances of professional misconduct the Respondent has been found to have committed, they are those of greatest concern to us because they posed a substantial and ongoing risk of damage to the integrity of the trust and confidence clients and members of the public require of lawyers.

[23] For context, we observe that on one occasion the Respondent enabled the unauthorized transfer from his trust account of one million dollars of a client's money to a numbered company of which the Respondent was an officer and director. Although the funds were eventually returned to the Respondent's trust account, this did not happen until two months after the unauthorized transfer of the money.

[24] On another occasion, the Respondent enabled an unauthorized payment of client funds to a relative involved in work on a townhouse project undertaken by the aforementioned numbered company of which the Respondent was an officer and director. This money was eventually returned.

[25] On another occasion, because of his deficient, reckless, and negligent supervision of his staff, the Respondent enabled the transfer of funds in his trust account belonging to a client, to make up a shortfall in his trust account for money belonging to another client. The money was eventually returned.

[26] The trust funds collectively misappropriated from the Respondent's trust account because of his deficient, reckless, and negligent supervision of his staff were in excess of one and a half million dollars. Fortunately, all of the money taken was eventually returned; no client lost their funds held in trust by the Respondent.

[27] In our view, the fact that no client ultimately lost their money held in trust does not alter the fact that the Respondent's reckless and negligent supervision of his staff enabled the misappropriated their funds, and does not ease the seriousness of this professional misconduct.

[28] In *Law Society of BC v. McGuire*, 2006 LSBC 20, the panel in that case stated in respect of a lawyer misappropriating client trust funds the following:

> Wrongly taking a client's money is the plainest form of betrayal of the client's trust. In our view, the public is entitled to expect that the severity of the consequences reflect the gravity of the wrong. Protection of the public lies not only in dealing with ethical failures when they occur, but also in preventing ethical failures.

We agree with these conclusions in *McGuire*. While we acknowledge the Respondent did not steal the funds misappropriated from his trust account, his admitted negligent and reckless conduct in supervising the use of his trust account demonstrated a pattern of practice that permitted misappropriation on multiple occasions, and put clients at risk of financial loss and harm.

[29] With respect to the Respondent's breach of two undertakings, we wish to make some observations about the importance of lawyer undertakings. In our opinion, lawyer undertakings are profoundly and fundamentally important, not only to the legal profession, but to client, and public interests. Countless corporate and personal transactions occur each year in B.C. where lawyer undertakings are foundational requirements to ensure confidence, reliability, and integrity of the economic system. In this context we think it is reasonable and accurate to observe that lawyer undertakings are an essential fibre in the overall substance of the rule of law.

[30] Consequently, breaches of an undertaking by a lawyer in the absence of the undertaking being waived or modified are a parlous form of professional misconduct.

[31] Our conclusion on the nature, gravity and consequences of the Respondent's multi-faceted professional misconduct is that it is serious, and inexcusable.

Character and professional conduct record of the respondent

[32] The Respondent's professional conduct record ("PCR") was exhibited in this hearing.

[33] The PCR disclosed that the Respondent appeared before a subcommittee of the Law Society's Discipline Committee for a conduct review on July 19, 2017 to discuss his misconduct in acting in an unprofessional and aggressive manner toward staff at a mortgage company. The Complainant attended the conduct review by telephone.

[34] The history discloses that the Respondent had attended the offices of the mortgage company because he was unhappy with its Discharge Policy. The Complainant reported while there, the Respondent's conduct was marked by being very aggressive, loud, upset, frustrated, combative, rude, insulting, and dominating; and the Respondent threatened to make a complaint about the mortgage company to FICOM (now renamed as the British Columbia Financial Services Authority (BCFSA).

[35] The Complainant asked the Respondent three times to leave the mortgage company's office, and then began to call the police, before the Respondent departed.

[36] Upon the Respondent acknowledging his inappropriate behaviour, and a suggestion to him that he consider making an apology to the Complainant, the subcommittee recommended no further action in its Conduct Review Report to the Discipline Committee.

[37] We observe the Respondent has always maintained a polite and respectful engagement with us throughout the hearing process, and there is no evidence that he has displayed any of the misbehavior of the kind canvassed in the Conduct Review report since that time. Accordingly, we do not consider the Conduct Review history to be an aggravating factor in our consideration of an appropriate disciplinary outcome in this case.

[38] On November 2, 2018, the Respondent gave an undertaking to the Executive Director of the Law Society entering into a Trust Supervision Agreement which included among other things, a provision that he would not hold in trust on any client matter more than $1,000 in client funds for more than seven business days, and to provide to the Law Society immediately upon request, information and documentation related to any trust transaction.

[39] The Respondent admitted in the F&D hearing that he had breached this undertaking. We find this admitted breach to be particularly troubling because it is evidence of a lack of compliance with his regulator and raises serious concerns about whether conditions on the Respondent's practice would be effective.

Acknowledgement of the misconduct and remedial action

[40] Following his resignation from the Law Society with the consent of the Executive Director on June 4, 2019, the Respondent, pursuant to the *Judicial Review Procedure Act*, then challenged the jurisdiction of the Law Society to continue with the citation against him in this matter. The court dismissed the Respondent's petition, thus confirming the authority of the Law Society to advance the citation.

[41] As mentioned earlier in these reasons, on the fifth and last day of the F&D hearing the Respondent acknowledged, and we accepted, his admission of all the allegations of misconduct in what became the Further Amended Citation. We were concerned soon thereafter however, to observe in his written closing submissions, that it appeared he was attempting to resile from his admission of responsibility for misappropriated client trust funds, and instead maintained that his misconduct was due to his inadequate supervision of staff in his law practice. In this context, he said in his written submissions as follows:

> The major submission that I will be making, if allowed, will be on the position of whether the allegations rise to the level of "misappropriation" which I submit they do not based on the facts and caselaw submitted by counsel.
>
> If the Panel determines that it will disregard any submissions given my previous admissions, then the bulk of this submission is irrelevant. However, if allowed, I will be asking this Panel to find that there was no misappropriation in the allegations made in the citation.
>
> … I accept full responsibility for my failures and those of my staff, which were also mine to take responsibility for. The failure of supervision was

> crucial and worthy of sanction. However, I submit that Counsel for the Law Society did not successfully make the case for misappropriation.

[42] In our opinion, these submissions show an inexplicable and continuing failure by the Respondent to acknowledge his professional misconduct after he had made, and we accepted, his unreserved admission of such professional misconduct before us on the fifth day of the F&D hearing.

[43] During the DA hearing where he was represented by counsel, the Respondent acknowledged his misconduct, and by implication his misappropriation of client funds. The written submissions of the Respondent included the following paragraphs:

> 2. Mr. Dhillon recognizes that his misconduct was serious. He failed to supervise his staff, provided pre-signed cheques and did not complete trust accounting processes mandated by the Law Society. His failures permitted his trust account to be misused.
>
> 3. Mr. Dhillon accepts that his misconduct warrants a serious penalty, but disbarment is not required to protect the public.
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> …
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> 47. Mr. Dhillon takes full responsibility for his misconduct. He recognizes that he was responsible for ensuring that his trust account was not misused and that his failure to supervise the use of his trust account and comply with Law Society trust accounting obligations facilitated the misuse of his trust account.

[44] We continue to have concerns that despite his admissions of misconduct, both at the F&D hearing and at the DA hearing, he appears still unwilling to acknowledge that he was personally responsible for the misuse of his trust account by failing to supervise staff, and writing blank trust cheques; and instead appears only willing to acknowledge that such misuse occurred vicariously.

Public confidence in the legal profession including public confidence in the disciplinary process

[45] The Law Society seeks an order disbarring the Respondent on the basis that, given the gravity of the professional misconduct, it is necessary to protect the public against risk, and maintain the public confidence in the lawyer disciplinary process.

[46] Counsel for the Respondent submitted that disbarment is not necessary in this case to maintain confidence in the legal profession, and that a period of suspension of eight to twelve months is appropriate.

[47] We have considered the Respondent's admission that he "misappropriated, improperly withdrew, or improperly authorized the withdrawal of monies from his pooled trust account on behalf of a client when he did not have sufficient funds to the credit of that client."

[48] In our view, there is a distinction between misappropriation and improper withdrawal of trust funds. We have considered the extract from the case of *Law Society of Ontario v. Deonarain* [2019] LSDD No.138 referred to us by counsel for the Law Society as follows:

> The Law Society submitted that there is a distinction to be drawn between misappropriation and unauthorized withdrawal of trust funds. In misappropriation … there is no justification whatsoever for the withdrawal and use by the Lawyer of funds in trust. It is tantamount to theft. In the case of unauthorized withdrawal of trust funds there is a purported justification for the withdrawal on the basis that legal services have been rendered by the lawyer to the client. The misconduct arises from the absence of adequate dockets, invoices and accounting records to explain and justify the amounts withdrawn.

[49] While we do not conclude that the discussion in *Deonarain* concerning the difference between misappropriation and unauthorized withdrawal of trust funds is exhaustive or complete, we think it is accurate in its acknowledgement that improper withdrawal of trust funds can occur by more than one means.

[50] Counsel for the Respondent submitted that in our F&D decision we did not find the Respondent intentionally misappropriated trust funds, or that we did not explicitly find that he had done so. At the F&D hearing, we accepted the Respondent's admission in cross-examination that he had misappropriated client trust funds through his negligence and/or his recklessness, and we found that the Respondent admitted all of the allegations of misconduct in the Further Amended Citation; there were no exceptions. We found that the Law Society proved all the allegations of misconduct in the Further Amended Citation.

[51] We agree with the perspective in *Law Society of BC v. Tak*, 2014 LSBC 57 at paragraph 35, where the panel stated that misappropriation is, "perhaps the most egregious misconduct a lawyer can commit".

[52] Counsel for the Respondent submitted that disbarment has been found to be inappropriate in cases of misappropriation where "exceptional circumstances" exist. In support of that submission, counsel referred us to *Law Society of BC v. Guo*, 2023 LSBC 6 ("*Guo 2*") where the Review Board stated, "exceptional circumstances … are situations that lead a panel to find disbarment is not required to protect the public from future acts of misconduct."

[53] Counsel for the Respondent submitted there are several exceptional circumstances that weigh against disbarment in this case, namely:

> a) Mr. Dhillon was likely suffering from an undiagnosed and untreated mental illness at the time the misconduct occurred;
>
> b) no client lost money as a result of his misconduct or had to take steps to recover their funds, all transactions involving the trust funds completed without adverse consequences to the clients;
>
> c) Mr. Dhillon had no dishonest intent – he did not deliberately misappropriate funds (which does not diminish his failure to monitor his trust account, but it is a distinguishing factor);
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> d) Mr. Dhillon is no longer a practicing member, so there is no need to protect his current clients;
>
> e) Mr. Dhillon has obtained treatment for his mental illness which has provided him with insight into the root causes of his misconduct; and
>
> f) Mr. Dhillon has contributed to his community by volunteering for community organizations.

[54] In our view, the presumptive sanction of disbarment and an accompanying evaluation of whether exceptional circumstances exist to counter that presumption are only pertinent when intentional misappropriation has been established. While we agree with the Respondent that this presumption does not apply in this case, we differ on the assertion that disbarment is "inappropriate" in other situations. Disbarment is warranted when no alternative sanction effectively safeguards the public, including the public interest in the administration of justice.

[55] In reviewing the Respondent's arguments about "extraordinary circumstances", we incorporated them into our *Ogilvie-Dent* analysis when considering the appropriate sanction in all the circumstances. However, we find that the circumstances outlined by counsel fail to mitigate the severity and overall impact of the Respondent's

professional misconduct and we remain unconvinced that the public would be adequately protected by a suspension order.

[56] Although his counsel submitted that the Respondent may have been affected by a mental illness at the time the professional misconduct occurred, we are not satisfied with the quality of the evidence in support of that submission, namely a report from a psychologist filed as an unopposed exhibit to the Respondent's affidavit at the DA hearing. Our concern with the report is that on a plain reading it contains contradictory opinions or conclusions about the Respondent's mental state during the time of his impugned conduct.

[57] On page 10 of the report the author states:

> To extent (*sic*) it is possible to discern on the basis of this assessment, Mr. Dhillon was suffering from recurrent hypomanic episodes for a prolonged period, or possibly from Bipolar 1 Disorder. His mood disorder did not essentially influence his psychological functioning in most everyday situations, but it did essentially impair his judgment and ability to apply professional standards with regards to trust accounting, practices in the firm, office practices, contacts with clients, record keeping, record safeguarding and other areas of practice.

[58] On page 9 of the report the author states:

> In my opinion, the reoccurring hypomanic condition of Mr. Dhillon did not significantly compromise his understanding and awareness of professional standards with regards to trust accounting, practices in the firm, office practices, contacts with clients, record keeping, record safeguarding and other areas of practice. Thus, he could rationally and logically grasp these standards.

[59] The author was neither called as a witness to clarify any portion of the report, nor required for cross-examination on its contents and conclusions. In the circumstances, we are not willing to give it significant weight. Given the contradictory conclusions in the report as outlined above, we are not satisfied the Respondent was suffering from a mental illness at the time of the misconduct that impaired or disabled him from understanding and meeting his professional obligations.

[60] As mentioned above, we incorporated the Respondent's arguments about "extraordinary circumstances", into our *Ogilvie-Dent* analysis when considering the appropriate sanction. In our opinion, however the remaining circumstances outlined

above by counsel do not mitigate against the severity and collectivity of the Respondent's professional misconduct, and they do not allay our concerns that the public would be sufficiently protected by an order suspending the Respondent. The return of misappropriated funds to trust and the absence of harm to clients are not mitigating factors in our opinion because accepting them as such could enable lawyers to evade accountability for their misconduct. Additionally, despite the Respondent having resigned as a member of the Law Society, a disbarment order is still necessary. This result aligns with the sanction that we would have imposed had he continued to be a practicing lawyer, and upholds public confidence in the regulation of lawyer conduct by the Law Society.

CONCLUSION

[61] Given the scope and seriousness of the Respondent's professional misconduct in this case, in our opinion a suspension is not sufficient to sustain public confidence in the Law Society's disciplinary process.

[62] In the result and pursuant to s.38 (5)(e) of the *Act,* the Respondent is hereby disbarred.

COSTS

[63] The Law Society has provided us with a bill of costs in accordance with the *Act* and the Law Society Rules and tariff. The Respondent does not take issue with the tariff units claimed, the disbursements sought, or the total amount of the costs at $31,501.48. We observe that the bill of costs spans the entirety of the disciplinary process up to and including the F&D hearing, and court reporter fees for both the F&D and DA hearings. Counsel for the Respondent submits however that we should not order the Respondent to pay any costs, or alternatively we should reduce the costs he must pay.

[64] In our opinion, the costs as presented are reasonable. Although the Respondent provided recent income tax returns showing minimal earnings in the last couple of years, he did not provide any evidence of his assets and liabilities, and accordingly we were not convinced of his inability to pay costs.

[65] In the circumstances, we hereby order the Respondent to pay costs in the amount as presented, namely $31,501.48. If the Respondent requires time to pay, we invite counsel to discuss a possible payment schedule, or other disposition of the costs order upon agreement.