2024 LSBC 37
Hearing File No.: HE20230013
Decision Issued: August 27, 2024
Citation Issued: July 28, 2023

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL

HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

RENE JOAN GANTZERT

RESPONDENT

DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION

Written materials:	March 15, 2024 June 11, 2024 July 10, 2024
Panel:	Catherine Chow, Chair Ravi R. Hira, KC, Bencher Diane McRae, Public representative
Discipline Counsel:	Ilana Teicher
Respondent:	No appearance or written materials provided
Written reasons of the Panel by:	Ravi R. Hira, KC

OVERVIEW AND ISSUES

[1] The Respondent, René Joan Gantzert, was a sole practitioner called to the British Columbia Bar on February 27, 2004. He resigned from the Bar on July 13, 2020.

[2] In this matter, the Respondent settled a claim for injuries arising from a motor vehicle accident on behalf of his client, MJ. The Respondent received settlement funds in the amount of $18,200, which he deposited into his trust account. The trust account was depleted. The Respondent did not pay any of the funds to MJ. MJ left messages for the Respondent enquiring about her file and the status of the settlement. The Respondent failed to inform MJ of the status of the settlement. Approximately six years later, MJ learned that the Respondent had settled her claim and received the settlement funds and had not paid them to her. The issue to be determined by this Panel, as alleged by the Law Society of British Columbia ("Law Society"), is whether the Respondent's proven conduct constitutes professional misconduct.

[3] We agree and find that the Respondent unlawfully took all the settlement funds and did not account to his client for her share of the settlement funds. Then, he failed to respond to a message from his client enquiring about the settlement and failed to keep his client reasonably informed about the status of the settlement. This conduct is a marked departure from the standard expected of lawyers in British Columbia and constitutes professional misconduct.

CITATION AND SERVICE THEREOF

[4] The citation was authorized by the Discipline Committee on July 28, 2023 (the "Citation"). It sets out two allegations against the Respondent, namely:

1. between June 2017 and July 2020, in the course of representing your client MJ in a personal injury matter, you misappropriated or improperly withdrew some or all of $18,200.00 by withdrawing the funds from trust when you knew or ought to have known that you were not entitled to those funds, contrary to one or both of Rule 3-64 of the Law Society Rules ("Rules") and your fiduciary duties; and

2. between June 2017 and July 2020, in the course of representing your client MJ in a personal injury matter, you failed to provide the quality of service required of a competent lawyer contrary to one or both of rules 3.1-2 and 3.2-1 of the *Code of Professional Conduct for British Columbia* ("*BC Code*") by failing to do one or more of the following:

    (a) keep MJ reasonably informed about the status of MJ's matter;

(b) answer reasonable requests from MJ for information; and

(c) respond to MJ's telephone calls.

[5] The Citation alleges that this conduct constitutes professional misconduct contrary to section 38(4) of the *Legal Profession Act* ("*Act*").

[6] By letter dated July 28, 2023, the Respondent was served with the Citation in accordance with Rules 4-19 and 10-1, by posting the letter to his personal electronic member portal. The Citation was sent, also, to the Respondent's last known email address. While there is evidence that the delivery to his last known email address failed, we are satisfied that, pursuant to Rules 10-1 (b) (iii) and 10-1 (c), posting the letter on his personal electronic member portal and delivering it to his last known email address is proper service pursuant to the Rules. The Rules only require that the Citation has been served and does not require proof of receipt.

WRITTEN HEARING

[7] We find that the evidence shows the Respondent has not communicated with the Law Society since his July 2020 resignation. The Law Society, with notice to the Respondent, brought an application for an order that this matter proceed by written hearing. The Respondent did not attend the prehearing conference to hear the application. On January 11, 2024, the motions adjudicator, Mr. Herman Van Ommen, KC made an order that the merits of this matter would proceed as a hearing in writing and set dates for written submissions to be filed by the Law Society and the Respondent (the "January 11, 2024 Order"). The January 11, 2024 Order was posted on the Law Society's Tribunal website. As an additional precaution and further notice to the Respondent, counsel for the Law Society wrote to the Respondent on February 27, 2024, advising of the January 11, 2024 Order that the hearing was proceeding in writing. The February 27, 2024 letter was posted on the Respondent's personal electronic member portal and sent to his email address.

[8] Additionally, on February 28, 2024, this Tribunal's Hearing Administrator sent an email to the Respondent confirming the January 11, 2024 Order and providing a link to the Order on the Tribunal Website. In her email, the Hearing Administrator made it clear that if the Respondent failed to follow the January 11, 2024 Order, the Hearing Panel may proceed in his absence.

[9] The January 11, 2024 Order provides that the Law Society is to deliver its written submissions on or before March 25, 2024 and the Respondent shall deliver his written submissions within two weeks after the date on which the Law Society files its

submissions. The Respondent is also granted leave to apply for an extension to file written submissions if desired.

[10] The Law Society filed its written submissions on March 15, 2024. The Respondent had until March 29, 2024 to file submissions. As that date was Good Friday, a statutory holiday, he could have filed submissions, without leave, by the next business day, Tuesday, April 2, 2024. The Respondent has filed no written submissions whatsoever.

[11] Section 42(2) of the *Act* authorizes a panel to proceed with a hearing in the absence of a Respondent if the panel is satisfied that the Respondent has been served with notice of the hearing. We are satisfied that the Respondent had due notice of this hearing upon the posting of the January 11, 2024 Order, by the February 27, 2024 letter from the Law Society notifying the Respondent of the January 11, 2024 Order, and the February 28, 2024 letter from the Hearing Administrator also notifying him of the January 11, 2024 Order.

[12] In short, we find that the Respondent had at least 30 days notice since February 27, 2024 of the written hearing procedure, and did not contact, respond, nor file any submissions by April 2, 2024 or at all.

[13] Prior to the rendering of this decision by this Panel, the decision in *Law Society of BC v. Weiser*, 2024 LSBC 31, was issued on June 19, 2024. In *Weiser,* the panel was found not to have jurisdiction to proceed with a written hearing unless the panel is satisfied that the Respondent was served with written notice of the hearing at least 30 days before the hearing commenced.[1] In *Weiser*, the panel noted that Rule 5-4.1 (2) requires a 30-day notification in writing of the date of the hearing.[2]

[14] On July 8, 2024, the Panel requested written submissions from the Law Society and the Respondent regarding the application of *Weiser* to this hearing. We have received written submissions from the Law Society and none from the Respondent.

[15] Pursuant to the January 11, 2024 Order, the facts and determination hearing was to commence after the Respondent delivers his written submissions. The last day for doing so was April 2, 2024. The Respondent had notice from at least February 27, 2024, if not earlier, that the hearing was proceeding in writing with a schedule for written submissions and the hearing thereafter. Put simply, he had 30 days notice of the commencement of this hearing.

[16] In any event, the Panel is satisfied, having considered *Weiser*, that it is in the public interest to proceed with this hearing. The Respondent has had ample notice and has not

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[1] *Law Society of BC v. Weiser*, 2024 LSBC 31 at para 28.
[2] *Weiser*, supra at para 28.

responded to any written communication from the Law Society since July 2020.[3] While the January 11, 2024 Order directing a written hearing did not specify a date for the commencement of the written hearing, through the Panel's additional requests to the parties, we are satisfied that the requirements of service and notice have been met.

EVIDENCE

[17] The evidence herein consists of a Notice to Admit ("NTA") and affidavits from paralegals, employed by the Law Society, who have access to and reviewed the entirety of the Law Society file regarding the Respondent. The affidavits from the paralegals set out the procedural background and provide evidence of service.

[18] On December 6, 2023, the NTA was served on the Respondent by posting it on his personal electronic member portal and notifying him of the same by email. In accordance with the Rules 5-4.8 (2) and 10-1 (7.1), service of the NTA was deemed effective on December 7, 2023. Pursuant to Rule 5-4.8 (4), the Respondent had 21 days to respond to the NTA. No response was provided. Accordingly, pursuant to Rule 5-4.8 (7), the Respondent is deemed to have admitted the truth of the facts and the authenticity of the documents in the NTA.

[19] The deemed admissions in the NTA prove:

(a) The Respondent was called to the British Columbia Bar on February 27, 2004.

(b) Between June 1, 2010 and July 13, 2020, the date of his voluntary resignation, the Respondent practised as a sole practitioner through his Law Corporation.

(c) At all material times, the Respondent operated a general account and trust account at Envision Financial.

(d) The Respondent has not responded to Law Society correspondence during the investigation into his conduct at issue in this Citation, Law Society correspondence regarding the Citation, or otherwise contacted the Law Society on this matter or this hearing.

(e) In 2016, MJ retained the Respondent to represent her in a personal injury claim against a motor vehicle driver insured by the Insurance Corporation of British Columbia ("ICBC").

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[3] *Law Society of BC v. Hopkinson,* 2020 LSBC 54 at paras 2 to 7.

(f) The Respondent advised MJ that he would provide her with updates regarding her claim.

(g) The Respondent was retained on a contingency fee retainer with the Respondent to receive between 20 percent and 30 percent of any settlement funds garnered from ICBC for the claim.

(h) The last communication between MJ and the Respondent was in June 2017. The Respondent called her and told her that he would settle her claim that day. In that conversation MJ authorized the Respondent to settle her claim and obtain funds from ICBC.

(i) The Respondent did not tell MJ about the amount of the settlement. In fact, at no time did he tell MJ about the amount of the settlement.

(j) On June 28, 2017, the Respondent and ICBC agreed that MJ's claim would be settled by ICBC paying $18,200 ("Settlement Funds").

(k) On June 29, 2017, ICBC delivered a cheque in the amount of $18,200 to the Respondent and requested that the Respondent have MJ sign a Release provided with the cheque.

(l) On June 30, 2017, the Respondent deposited the Settlement Funds in his trust account. At no time did the Respondent return the Release to ICBC.

(m) Between June 30, 2017 and January 31, 2021, the Respondent withdrew funds from his pooled trust account depleting the balance which included the Settlement Funds.

(n) None of the Settlement Funds were given to MJ, and the Respondent did not account to MJ at any time of the status or use of the Settlement Funds.

(o) After the June 2017 conversation between MJ and the Respondent, noted above, MJ telephoned the Respondent on two occasions, once in 2018 and again in September 2022. The Respondent did not answer or return her calls. The Respondent has had no contact with MJ since the June 2017 conversation.

(p) In March 2023, after contacting the Law Society and being referred to the custodian of the Respondent's files, MJ learned that her claim had been settled in June 2017 and the Settlement Funds had been paid by ICBC.

[20] While the Respondent is deemed to have admitted in the NTA that he knew that he was not entitled to all of the Settlement Funds, it is patent on the admitted facts that he wrongfully took those funds. The Envision Financial statements show that in January 2020 the balance in the Respondent's trust account was reduced to zero. It is also clear that the Respondent failed to keep his client apprised about the status of her file and did not return her telephone call.

PROFESSIONAL MISCONDUCT

[21] The onus of proving professional misconduct is on the Law Society. The standard of proof is a balance of probabilities. The Law Society must establish on a balance of probabilities the facts that it alleges constitute professional misconduct.[4] The evidence must be scrutinized with care and must always be sufficiently clear, convincing, and cogent enough to satisfy the balance of probabilities test.[5]

[22] While professional misconduct is not defined in the *Act*, Rules, or the *BC Code*, the test for determining whether conduct constitutes professional misconduct is "whether the facts as made out disclose a marked departure from the conduct the Law Society expects of its members."[6] The test for professional misconduct is objective. A panel must consider the appropriate standard of conduct expected of a lawyer to determine if the lawyer falls markedly below that standard.[7]

[23] Proof of intentional malfeasance or behaviour that is disgraceful or dishonourable is not a requirement for a finding of professional misconduct.[8] *Mala fides* is not a necessary ingredient for professional misconduct to be established.[9]

ALLEGATION 1: MISAPPROPRIATING OR IMPROPERLY WITHDRAWING THE SETTLEMENT FUNDS

[24] Rule 3-64 (1) states:

> 3-64 (1) A lawyer must not withdraw or authorize the withdrawal of any trust funds unless the funds are
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> (a) properly required for payment to or on behalf of a client or to satisfy a court order,

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[4] *Foo v. the Law Society of British Columbia*, 2017 BCCA 151 at para 63.
[5] *Law Society of BC v. Schauble*, 2009 LSBC 11 at para 43.
[6] *Law Society of BC v. Martin*, 2005 LSBC 16 at para 171.
[7] *Law Society of BC v. Campbell*, 2023 LSBC 52 at para 53; and *Law Society of BC v. Kim*, 2019 LSBC 43.
[8] *Campbell*, at para 52.
[9] *Law Society of BC v. Guo*, 2023 LSBC 28 at para 36.

(b) the property of the lawyer,

(c) in the account as the result of a mistake,

(d) paid to the lawyer to pay a debt of that client to the lawyer,

(e) transferred between trust accounts,

(f) due to the Foundation under section 62 (2) (b) *[Interest on trust accounts]*, or

(g) unclaimed trust funds remitted to the Society under Division 8 *[Unclaimed Trust Money]*.

[25] Trust funds are sacrosanct. The proper handling of trust funds is a core function of a lawyer's fiduciary duty to the client. Wrongfully taking trust funds damages the client and has a seriously deleterious impact on the legal profession's reputation.[10]

[26] While recognizing that a breach of the Rules, in and of itself does not constitute professional misconduct, here the "marked departure" test has been clearly made out. The Respondent took his client's settlement funds, the entire amount of $18,200. The Respondent should have responded to his client's call, and he certainly should have produced an invoice or account showing the use of the settlement funds for payments for disbursements or to himself for legal fees, and then forwarded the balance to the client. The Respondent did none of these steps and depleted the trust account instead. He knew he was not entitled to all of the Settlement Funds when he withdrew those funds. This is misappropriation of trust funds by any definition of that term.[11]

[27] Put simply, taking the whole of MJ's settlement funds, $18,200, is misappropriation, a breach of a lawyer's fiduciary duty to their client, a breach of trust, and a deliberate violation of Rule 3-64 (1). Without any doubt, the Respondent's conduct constitutes professional misconduct. Lawyers cannot take settlement funds belonging to their clients.

ALLEGATION 2: QUALITY OF SERVICE

[28] Rule 3.1-2 of the *BC Code* requires that a lawyer must perform all legal services undertaken on behalf of a client to the standard of a competent lawyer. Rule 3.1-1 of the *BC Code* defines a "competent lawyer." The definition includes "communicating at all relevant stages of a matter in a timely and effective manner."[12]

[10] *Law Society of BC v. Gellert*, 2013 LSBC 22 at para 73.
[11] *Law Society of BC v. Guo*, 2023 LSBC 49 at paras 8 to 16.
[12] Rule 3.1-1 (d) of the *BC Code.*

[29] Rule 3.2-1 of the *BC Code* states that "[a] lawyer has a duty to provide courteous, thorough and prompt service to clients." It continues and states that the quality of service required "is service that is competent, timely, conscientious, diligent, efficient and civil." The commentary to rule 3.2-1 of the *BC Code* expands upon the quality of service and provides examples thereof.

[30] Amongst other things, the above rules of the *BC Code* clearly state that a lawyer must communicate with the client in a timely and effective manner, provide courteous and prompt service to the client, and service that is timely, diligent, efficient and civil.

[31] We agree with Law Society's submissions that many hearing panels have found professional misconduct where lawyers deliberately failed to communicate with their clients and/or failed to keep their clients reasonably informed. Failure to respond in a timely manner to a client's enquiries has been held to be a failure to do something quite elementary. Lawyers must, in addition to doing the necessary legal work carefully, keep the client properly informed.[13]

[32] Further, we agree with the Law Society's submissions that the Respondent left MJ completely in the dark. Almost six years after the settlement of her claim, MJ found out what happened on her claim by contacting the Law Society and the custodian of the Respondent's files. A basic expectation of any lawyer is that they keep their client informed in a timely manner regarding the progress and status of the client's file. Another basic expectation is that lawyers return all reasonable enquiries from their clients in a timely matter. The Respondent did neither.

[33] In our view, a lawyer should provide a copy to the client of all correspondence, documents, materials, pleadings, and the like, promptly upon request or in some cases, shortly after transmission or receipt thereof. Further, such a lawyer should, absent special circumstances, respond to all client enquiries within one week if not sooner. Special circumstances may include heavy workload, vacation, illness, public emergency, trial or other court commitments, and/or unusual personal circumstances, but such circumstances do not negate the lawyer's obligation to do so at the next earliest opportunity. As set out in the *BC Code*, the same strictures and expected courtesies apply to messages and communications from other lawyers. These standards for the quality of service and timeliness of response between lawyer and client, or between lawyers, have been long held in the profession, which will benefit from their continual upholding.

[34] We find that the Respondent did not keep his client reasonably informed about the status of the matter and did not answer her telephone call from 2018. This is a breach of

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[13] *Law Society of BC v. Epstein*, 2011 LSBC 12 at paras 20 to 21; and *Law Society of BC v. Palmer*, 2022 LSBC 47at paras 59 to 61 and 66.

his duty to provide courteous, thorough, and prompt service to clients, service that is competent, timely, conscientious, efficient and civil contrary to the *BC Code*. His failure to communicate with his client is a marked departure from the standards expected of a lawyer and constitutes professional misconduct.

SUMMARY

[35] The Respondent was retained by MJ to pursue a personal injury claim for damages arising from a motor vehicle accident. On June 29, 2017, he obtained a settlement of $18,200 which he deposited into his trust account. The Respondent did not account to his client and did not give her the settlement funds less his contingency fee. By depleting his trust account he took all the Settlement Funds. He did not advise MJ of the status of her claim or of the settlement. He did not return her telephone call. Almost six years after the June 2017 settlement, she finally found out that her claim had been settled but no funds have been paid to her.

[36] We find the Respondent's conduct with respect to the Settlement Funds breached Rule 3-64 and his fiduciary duty owed to this client and constitutes professional misconduct. Because he ignored his client's message and failed to keep her apprised of the settlement, we find the Respondent failed to provide the quality of service of a competent lawyer contrary to rules 3.1-2 and 3.2-1 of the *BC Code*, constituting professional misconduct.

[37] We find allegations 1 and 2 in the Citation to have been established.