

2025 LSBC 03  
Hearing File No.: HE20230013  
Decision Issued: January 14, 2025  
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 ON DISCIPLINARY ACTION**

Written materials: October 21, 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**

[1] In our decision on facts and determination, *Law Society of BC v. Gantzert*, 2024 LSBC 37 (“*F&D Decision*”), we found that the Respondent committed two instances of professional misconduct as follows:

- (a) between June 2017 and July 2020, in the course of representing his client in a personal injury matter, he misappropriated \$18,200 by withdrawing those funds from trust when he knew he was not entitled to those funds, contrary to Rule 3-64 of the Law Society Rules (the “Rules”) and his fiduciary duties; and

- (b) between June 2017 and July 2020, in the course of representing his client in a personal injury matter, he failed to provide the quality of service required of a competent lawyer contrary to rules 3.1-2 and 3.2-1 of the *Code of Professional Conduct for British Columbia* (“BC Code”) by failing to (a) keep the client reasonably informed about the status of her matter; (b) answer reasonable requests from the client for information; and (c) respond to the client’s telephone calls.

[2] The Respondent settled a personal injury claim on behalf of his client, MJ, and received settlement funds of \$18,200 into his trust account. The Respondent did not pay any of the funds to MJ, and by depleting his trust account unlawfully took all the settlement funds. He not only failed to tell his client about the settlement, the Respondent failed to respond to a message from her inquiring about the settlement.

[3] The Law Society submits that the appropriate disciplinary action for the proven misconduct is disbarment. Further, it seeks costs of \$4,000 calculated in accordance with the tariff, to be paid within 30 days of this decision, or on any other date ordered by this Panel.

[4] As this Panel stated in *F&D Decision*, trust funds are sacrosanct. The proper handling of trust funds is a core function of the lawyers’ fiduciary duty to the client. Wrongful taking of trust funds damages the client and has a seriously deleterious impact on the legal profession’s reputation.<sup>1</sup> Absent exceptional circumstances, disbarment is the presumptive sanction for willfully taking trust funds.<sup>2</sup> That sanction is necessary in order to ensure denunciation and deterrence, as well as to send the correct message to the profession and the public that this type of serious misconduct will result in serious consequences.

[5] For the reasons set out below, we order the disbarment of the Respondent and award costs as sought by the Law Society in the amount of \$4,000 payable within 30 days of the date this Decision is issued.

[6] Before our reasons on the sanction of disbarment, we address two preliminary issues: i) proceeding in the absence of the Respondent; and ii) jurisdiction over former members as the Respondent has been previously disbarred for taking trust funds.

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<sup>1</sup> *Law Society of BC v. Gantzert*, 2024 LSBC 37 (*F&D Decision*), para. 25.

<sup>2</sup> See *Law Society of BC v. Tak*, 2014 LSBC 57, at paras. 34 to 35, and 71 and *Law Society of BC v. Gellert*, 2014 LSBC 5 (“*Gellert*”), at para. 42 to 44. Recently, in *Law Society of BC v. Hart*, 2021 LSBC 29 at para. 50, a hearing panel confirmed: “Without exceptional circumstances, disbarment is the penalty for misappropriation of funds.”

## PROCEEDING IN THE ABSENCE OF THE RESPONDENT

[7] The Respondent has not communicated with the Law Society since his July 2020 resignation.

[8] Despite being properly notified, the Respondent did not file any materials or otherwise participate in the facts and determination phase of this hearing.

[9] On August 27, 2024 and September 9, 2024, the Respondent was notified of the issuance of the *F&D Decision* and of this Panel's direction that this disciplinary action phase would proceed by written submissions together with a schedule for written submissions.<sup>3</sup> The notifications were delivered to his last known email address and/or by posting it on his member portal. While there is evidence that delivery to his last known email address failed, we are satisfied, as we were in the *F&D Decision*, that such delivery is sufficient service pursuant to Rules 10-1(1)(b)(iii) and 10-1(1)(c).<sup>4</sup>

[10] This Panel was tasked with reviewing the service history in detail because the affidavit material filed by the Law Society was unclear on some aspects on the process of service. Some of the correspondence was sent to the Respondent's last known email address, other correspondence was sent to his member portal, and some correspondence was sent to both his last known email address and his member portal. In absence of a physical address or other forwarding location, concurrent fulsome service to the electronic addresses of the lawyer, the email address and the member portal, would save effort and time of the Panel to piece together the quality of service chain, and importantly, also safeguard against failures in service.

[11] Section 42(2) of the *Legal Profession Act* ("*Act*") authorizes the Panel to proceed with the Hearing in the absence of the Respondent if the Panel is satisfied that the Respondent has been served with the notice of this Hearing.<sup>5</sup> This Panel is satisfied that the Respondent had due notice of this Hearing via email and/or his member portal on August 27 and September 9, 2024. Accordingly, this Hearing can proceed and is proceeding in the absence of the Respondent, who has not participated.

## JURISDICTION OVER FORMER MEMBERS

[12] Pursuant to section 38(4)(b)(v) of the *Act*, this Panel was authorized to make its finding of professional misconduct, notwithstanding the fact that the Respondent is a

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<sup>3</sup> Affidavit #2 of Julie Erskine, affirmed October 7, 2024 ("*Erskine Affidavit #2*"), para 2, exhibit A; and paras 6 to 7, exhibit E.

<sup>4</sup> *F&D Decision*, para. 6.

<sup>5</sup> *F&D Decision*, para. 11.

former member. Following such a finding, section 38(5) of the *Act* requires the Panel to determine the appropriate sanction.

[13] On November 20, 2023, the Respondent was disbarred by another panel for misappropriating \$62,521.28 in trust funds belonging to another client.<sup>6</sup> Despite the previous disbarment, we are satisfied that section 38(5) of the *Act* requires this Panel to determine the appropriate sanction. Further, where the misconduct warrants a further disbarment, other hearing panels have imposed a second disbarment.<sup>7</sup>

## DISCIPLINARY SANCTION

[14] Once a finding of professional misconduct has been made, section 38(5) of the *Act* requires the imposition of sanctions. The Panel has discretion regarding the sanctions to be imposed. Sanctions cannot be arbitrarily imposed. Section 3 of the *Act* provides guidance. It states that the object and purpose of the Law Society is to uphold and protect the public interest in the administration of justice by, among other things, establishing standards of professional responsibility and competence for lawyers and regulating the practice of law.

[15] The object and duties imposed by section 3 of the Act are reflected by the set of non-exhaustive factors to be considered in determining the appropriate sanction listed in *Law Society of BC vs. Ogilvie*<sup>8</sup>, (“Ogilvie Factors”).

[16] *Dent* has consolidated the Ogilvie Factors from thirteen to four (“Dent Factors”):

- (a) the nature, gravity, and consequences of the conduct;
- (b) the 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.<sup>9</sup>

[17] Where multiple allegations of professional misconduct have been proven, the Panel must consider the totality of the proven misconduct to determine the appropriate sanction,

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<sup>6</sup> *Law Society of BC vs. Gantzert*, 2023 LSBC 4 (“*Gantzert 2023*”).

<sup>7</sup> See: *Law Society of BC vs. De Stefanis*, 2019 LSBC 14, at paras. 20 and 21; and *Law Society of BC vs. Comparelli*, 2020 LSBC 2, paras. 104, 106, and 107.

<sup>8</sup> 1999 LSBC 17.

<sup>9</sup> *Law Society of BC vs. Dent*, 2016 LSBC 5 (“*Dent*”), paras. 15 to 19.

rather than a piecemeal approach determining the sanction for each particular wrongdoing.<sup>10</sup>

## **NATURE, GRAVITY AND CONSEQUENCES OF THE MISCONDUCT**

[18] In considering the nature and gravity of the misconduct, wrongfully taking a client's settlement proceeds is one of the most serious acts of professional misconduct. Plainly, the Respondent stole from his client from a position of trust and ignored her inquiry about her settlement. Numerous hearing panels have found that misappropriation is the most serious misconduct that a lawyer can commit.<sup>11</sup> In addition to being the plainest form of betrayal of a client's trust, it is a complete erosion of the trust required for a functional solicitor client relationship. It is a breach of trust to a person to whom a lawyer owes a duty of honesty and loyalty.<sup>12</sup>

## **CHARACTER AND PROFESSIONAL CONDUCT RECORD**

[19] We considered the character and professional conduct record of the Respondent. We note that the Respondent was called to the Manitoba Bar on July 22, 1995. In July 2020, the Respondent ceased to be a member of the Law Society of British Columbia, and whole of the Respondent's professional conduct record is admitted as an exhibit.

[20] In *Ganzert 2023*, that panel found that the Respondent intentionally took \$62,521.58 of trust funds belonging to another client. The Panel also found that the Respondent failed to cooperate with the Law Society of British Columbia's investigation into the matter. The Respondent was disbarred and ordered to pay costs of \$8420.04 within 30 days of that Panel's decision. The costs remain unpaid.

## **ACKNOWLEDGEMENT OF THE MISCONDUCT AND REMEDIAL ACTIONS**

[21] The Respondent has not participated in the Law Society's investigation or this disciplinary process. There is no evidence of any mitigating factors, no acknowledgement and no remedial actions whatsoever.

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<sup>10</sup> *Gellert*, at para 37.

<sup>11</sup> *Law Society of BC v. Lebedovich*, 2018 LSBC 17 at para. 24, cited with approval in *Law Society of BC v. Mansfield*, 2018 LSBC 30 at para. 40. See also *Law Society of BC v McGuire*, 2006 LSBC 20, at paras. 29 to 30 ("McGuire DA"); *Law Society of BC v. McKinley*, 2020 LSBC 8, at para. 30; *Gellert*, at para. 44; *Law Society of BC v. Friedland*, 2021 LSBC 53, at para. 22; *Hart*, at para. 19; *Law Society of BC v. Guo*, 2023 LSBC 6, at para. 34; *Law Society of BC v. Becker*, 2021 LSBC 11, at para. 21; *Law Society of BC v. Knight*, 2021 LSBC 36, at para. 16; *Comparelli*, at para. 78.

<sup>12</sup> *Law Society of BC vs. Harder*, 2006 LSBC 48, para 9; *McKinley*, para. 22; *Tak*, paras. 35 and 38.

## **PUBLIC CONFIDENCE IN THE LEGAL PROFESSION AND DISCIPLINARY PROCESS**

[22] Using a global approach in applying the Dent Factors, we find there is no doubt that disbarment is the proper sanction for the Respondent. Trust funds are sacrosanct. Wrongfully taking a client's settlement proceeds is "the plainest form of betrayal of the client's trust."<sup>13</sup> The sanction of disbarment will protect the public interest and maintain public confidence in the legal profession and its disciplinary process.

## **CONCLUSION**

[23] Stated above, absent exceptional circumstances disbarment is the presumptive sanction for taking trust funds, and no exceptional circumstances are present in this case. Therefore, we order that the Respondent be disbarred.

## **COSTS**

[24] The Law Society seeks an order for costs in the amount of \$4,000 calculated pursuant to the Tariff for Discipline Hearing and Review, Schedule 4. Accordingly, we award costs in amount of \$4,000 to be paid within 30 days of the date these reasons are issued.

[25] We acknowledge and thank Counsel for the Law Society for her helpful submissions that were of great assistance to the Panel.

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<sup>13</sup> *McGuire vs. Law Society of British Columbia*, 2007 BCCA 442, para. 8, upholding *McGuire DA* and quoting paras. 22 to 24 of *McGuire DA*.