

2024 LSBC 38
Hearing File No.: HE20190068 and HE20190069
Decision Issued: September 5, 2024
Citation Issued: November 5, 2019

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

**TROY JOHN DUNGATE
AND
TREVOR SCOTT DUNGATE**

RESPONDENTS

**DECISION OF THE HEARING PANEL
ON DISCIPLINARY ACTION AND COSTS
ON A JOINT SUBMISSION PURSUANT TO RULE 5-6.5**

Written materials: April 16, 2024

Panel: Lindsay R. LeBlanc, KC, Chair
Cindy Cheuk, Lawyer
Paul Barnett, Public representative

Discipline Counsel: Michael D. Shirreff
Jessie I. Meikle-Kähs

Appearing on their own behalf: Troy John Dungate and Trevor Scott Dungate

INTRODUCTION

[1] In our decision on facts and determination, *Law Society of BC v. Dungate, 2023 LSBC 44* (the “F&D Decision”), the Panel found that the Respondents jointly committed professional misconduct in relation to the citation issued against them, for:

- (a) breaching an undertaking;
- (b) failing to treat a fellow member of the profession with courtesy and good faith; and
- (c) deliberately attempting to deceive a fellow member of the profession.

[2] The Law Society and the Respondents have put forward a joint proposal in writing on the disciplinary action and costs as follows:

- (a) six-week suspension for Troy John Dungate;
- (b) six-week suspension for Trevor Scott Dungate; and
- (c) \$33,860.16 in costs to be paid by Troy John Dungate and Trevor Scott Dungate, jointly.

[3] Under Rule 5-6.5 of the Law Society Rules (the “Rules”), the parties are permitted to jointly consent to a specified disciplinary action. A hearing panel is prohibited from imposing disciplinary action that is different from the specified disciplinary action consented to by the Respondent(s) unless the proposed disciplinary action is contrary to the public interest in the administration of justice.

[4] For the reasons set out below, the Panel accepts the proposed sanction and award of costs in the joint submission to be an appropriate sanction and not contrary to the public interest in the administration of justice.

[5] The parties requested that the suspension commence on May 1, 2024 for Trevor Dungate with Troy Dungate’s suspension to follow. Reasons of the Panel would be released after the commencement of the suspension. As the Respondents practise in a more remote area of the Province, where it may be more difficult to obtain such continuity on files, the Panel agreed with reasons to follow.

WHETHER THE SANCTION PROPOSED BY THE PARTIES IS CONTRARY TO THE PUBLIC INTEREST IN THE ADMINISTRATION OF JUSTICE

[6] The principles set out by the Supreme Court of Canada in *R. v. Anthony-Cook*, [2016 SCC 43](#), paras. 34 to 44, give deference to joint submissions. In *Anthony-Cook*, at para. 44, the Supreme Court of Canada noted “a high threshold for departing from joint submissions” recognizing the parties “are well placed to arrive at a joint submission that reflects the interests of both the public and the accused.”

[7] The *Anthony-Cook* test has been adopted by panels in numerous cases: see *Law Society of BC v. Clarke*, [2021 LSBC 39](#); and *Law Society of BC v. Lang*, [2022 LSBC 4 \(CanLII\)](#), 2022 LSBC 04. In *Clarke*, at para. 87, the panel applied the *Anthony-Cook* test in determining whether to accept a joint submission:

In sum, we conclude that the *Anthony-Cook* test should be used in determining whether to accept a joint submission made under Rule 4-30 [now Rule 5-6.5]. Accordingly, a joint submission will only be “contrary to the public interest in the administration of justice”, within the meaning of Rule 4-30(6)(b) [now Rule 5-6.5(3)(b)], where it is so unhinged from the circumstances of the discipline violation and the respondent that its acceptance would lead reasonable persons aware of all the circumstances, including the importance of providing certainty in resolution discussions, to believe that the proper functioning of the discipline system had broken down.

[8] The proposed disciplinary action can be assessed by applying the factors set out in *Law Society of BC v. Ogilvie*, 1999 LSBC 17, and consolidated by the panel in *Law Society of BC v. Dent*, [2016 LSBC 5 \(CanLII\)](#), into four broad categories:

- (a) nature, gravity and consequences of conduct;
- (b) character and professional conduct record of the respondent;
- (c) acknowledgment of the misconduct and remedial action; and
- (d) public confidence in the legal profession including public confidence in the disciplinary process.

Nature, Gravity and Consequences of Conduct

[9] In *Law Society of BC v. Gellert*, [2014 LSBC 5 \(CanLII\)](#), at para. 39, the panel found that the nature and gravity of the misconduct will almost always be an important factor as it stands as a “benchmark” in assessing how to best protect the public and preserve its confidence in the profession.

[10] The Respondents conduct falls into two types of misconduct: (i) breach of an undertaking; and (ii) making false or misleading statements to a fellow member of the profession.

Breach of undertaking

[11] Breach of an undertaking is serious misconduct.

[12] In *Hammond v. Law Society of British Columbia*, 2004 BCCA 560, the Court of Appeal characterized undertakings as being “solemn, if not sacred, promises made by lawyers”, which are “integral to the practice of law” at para. 55. The Court of Appeal held that “[w]hen a lawyer’s undertaking is breached, it reflects not only on the integrity of that member, but also on the integrity of the profession as a whole” at para. 56.

[13] Likewise, in *Law Society of British Columbia v. Heringa*, 2004, BCCA 97, at para. 10, the Court of Appeal adopted the hearing panel’s discussion of the importance of undertakings to the legal profession, specifically where the hearing panel stated:

[37] Undertakings are not a matter of convenience to be fulfilled when the time or circumstances suit the person providing the undertaking; on the contrary, undertakings are the most solemn of promises provided by one lawyer to another and must be accorded the most urgent and diligent attention possible in all of the circumstances.

[38] The trust and confidence vested in lawyer’s undertakings will be eroded in circumstances where a cavalier approach to the fulfillment of undertaking obligations is permitted to endure. Reliance on undertakings is fundamental to the practice of law and it follows that serious and diligent efforts to meet all undertakings will be an essential ingredient in maintaining the public credibility and trust in lawyers.

[14] In *Law Society of BC v. Aleksejev*, 2019 LSBC 34, the panel discussed the above Court of Appeal cases, as well as other Law Society decisions, and again emphasized the importance of undertakings to the workings of the legal infrastructure:

[13] Similar to physical infrastructure, the legal infrastructure underpinning social, political and economic relations, when functioning properly, does so largely under the public radar. The public may not understand the legalese underpinning such relations, but expects the infrastructure to work.

[14] Breaches of undertakings impact not only the legal profession but also public perception of and confidence in the country's legal system and the rule of law. Breaches of undertakings are betrayals of trust.

[15] In this matter, the seriousness of the misconduct is compounded by the length of time that the Respondents remained in breach of the undertaking. The breach was not resolved for over four years.

Making false or misleading statements

[16] As the Panel noted in the F&D Decision, when a lawyer provides misleading or false information, it undermines the public's perception of the profession. The public must have confidence in lawyers for the legal system to operate. Anything that undermines that confidence is of a serious nature.

[17] The Panel found the Respondents' conduct to be deliberate, calculated and with the intention to deceive for their own benefit. This is serious misconduct.

Character and Professional Conduct Record of the Respondents

[18] Troy Dungate was called to the Bar in May 2008 and has no prior professional conduct record with the Law Society.

[19] Trevor Dungate was called to the Bar in May 1999 and has a prior professional conduct record. A conduct review was held on February 28, 2018 which arose from circumstances in which he acted in a conflict of interest.

[20] The parties submit no difference in sanction should be applied as a consequence of the differing conduct records of the Respondents.

[21] The Panel accepts that Trevor Dungate's prior conduct review arose in different circumstances to the conduct at issue in the instant case and that a longer suspension is not required in the circumstances.

Acknowledgement of Misconduct and Remedial Action

[22] Prior to the conclusion of the facts and determination phase of the hearing, the Respondents did not acknowledge their misconduct and maintained their position that they did nothing contrary to the Rules or the *Code of Professional Conduct for British Columbia*. The Respondents were entitled to mount a robust defense of the citation.

[23] Following the Panel issuing the F&D Decision, the Respondents entered into the Rule 5-6.5 joint submission acknowledging the discipline violation and consenting to the specified disciplinary action. This acknowledgment of the misconduct at this later stage of the hearing of the citation does not favour a reduced sanction in this case.

Public Confidence in the Legal Profession

[24] The Panel has considered the following authorities provided to it in considering the appropriateness of the proposed disciplinary action:

- (a) *Law Society of BC v. Denovan Hall*, 2011 LSBC 16;
- (b) *Law Society of BC v. Wilson*, 2020 LSBC 20;
- (c) *Law Society of BC v. Heringa*, [2003] LSDD No. 58, 2003 LSBC 10;
- (d) *Law Society of BC v. Hardaal*, 2004 LSBC 36;
- (e) *Law Society of BC v. Goddard*, 2006 LSBC 12;
- (f) *Law Society of BC v. Martin*, 2007 LSBC 20;
- (g) *Law Society of BC v. Ahuja*, 2017 LSBC 26;
- (h) *Law Society of BC v. Simons*, 2012 LSBC 23; and
- (i) *Law Society of BC v. Nguyen*, 2015 LSBC 32.

[25] The Panel finds that the suspension of six weeks falls within the range of acceptable disciplinary action; addresses the seriousness of the misconduct and is consistent with protecting the public interest.

COSTS

[26] When calculating costs, the Panel is to have regard to the tariff of costs set out in Schedule 4 of the Rules.

[27] The Law Society has provided a bill of costs consistent with Schedule 4. The Respondents accept the bill of costs.

[28] It is noted that the bill of costs may be higher than for other proceedings of this length and complexity. This is due to the number of pre-hearing applications leading up to the hearing of this citation.

ORDERS MADE

[29] The Respondents are suspended from practice as follows:

- (a) Trevor Dungate from May 1, 2024 to June 11, 2024; and
- (b) Troy Dungate from June 12, 2024 to July 24, 2024.

[30] The Respondents must pay costs to the Law Society in the sum of \$33,860.16 within 90 days of the date this decision is issued.