2018 LSBC 30
Decision issued: October 5, 2018
Citation issued: February 1, 2018
Hearing in writing ordered: August 8, 2018

THE LAW SOCIETY OF BRITISH COLUMBIA

In the matter of the *Legal Profession Act,* SBC 1998, c. 9

and a hearing concerning

STEPHEN NEIL MANSFIELD

RESPONDENT

DECISION OF THE HEARING PANEL

Written materials:	July 31, 2018
Panel:	Nancy Merrill, QC, Chair William Sundhu, Lawyer Robert Smith, Public representative
Discipline Counsel:	Kathleen M. Bradley
Appearing on his own behalf:	Stephen N. Mansfield

BACKGROUND

[1] Pursuant to Rule 4-30, this Hearing Panel was appointed to assess conditional admissions of disciplinary violations and to determine the appropriateness of the disciplinary action consented to by Stephen Neil Mansfield (the "Respondent").

[2] The Law Society applied for an order that this hearing be conducted in writing, pursuant to the Practice Direction dated April 6, 2018, which allows parties to apply for a hearing in writing with respect to a citation.

[3] In his letter to the President of the Law Society dated July 24, 2018, the Respondent consented to the application by the Law Society that the hearing be conducted in writing without the need for an oral hearing.

[4] The first issue that this Hearing Panel must determine is whether to grant the application to proceed on written materials. In doing so, we must consider:

(a) Whether we need further evidence or submissions on any issue in order to do justice between the parties; and

(b) Is there a material deficiency in the evidence or submissions such that we are unable to render a decision?

[5] Having reviewed the written materials, this Hearing Panel determined that there was no further evidence or submissions required by way of an oral hearing in order to do justice between the parties.

[6] The Hearing Panel further determined that there was no material deficiency in the material submitted, which included a Joint Book of Exhibits, consisting of the citation, the letter from the Respondent to the President of the Law Society dated July 24, 2018, the Agreed Statement of Facts dated July 25, 2018 and the Professional Conduct Record of the Respondent.

[7] The Hearing Panel granted the application to conduct the hearing in writing.

[8] Under Rule 4-30, the Hearing Panel must either accept or reject the conditional admission of a disciplinary violation and the proposed disciplinary action to which the Respondent has consented.

[9] Then Respondent admits that he committed professional misconduct as follows:

(a) On or about November 16, 2016, he intentionally misappropriated $200,000 that he received in trust for his client, contrary to Rule 3-64 of the Law Society Rules;

(b) On or about November 25, 2016, he intentionally misappropriated $200,000 that he received in trust for a second client, contrary to Rule 3-64 of the Law Society Rules; and

(c) Between October 12, 2016 and November 9, 2016, he received a $5,000 retainer from the second client and

i. intentionally misappropriated $5,000 by depositing those funds into his general account when he was not entitled to those funds;

ii. failed to deposit the retainer into his pooled trust account, contrary to Rule 3-58 of the Law Society Rules; and

iii. failed to deliver a bill to his client, contrary to s. 69 of the *Legal Profession Act*.

[10] The Respondent consents to an order that he be disbarred.

[11] The Hearing Panel concluded that the conduct admitted to by the Respondent constituted professional misconduct and that the appropriate disciplinary action is disbarment.

FACTS

[12] The Respondent confirmed that he was served with the citation on February 1, 2018.

[13] The Respondent was called and admitted as a member of the Law Society of British Columbia on May 14, 1993.

[14] From May 14, 1993 until December 31, 1997 the Respondent worked at three small to medium sized firms in Vancouver and Burnaby, British Columbia.

[15] From January 1, 1998 to June 2013, the Respondent practised in partnership with another lawyer under the name "Bayshore Law Group" in Vancouver, British Columbia.

[16] After June 2013, the Respondent worked as a sole practitioner, continuing to utilize the name "Bayshore Law Group".

[17] The Respondent practised predominantly family law over the course of his career.

[18] The Respondent became a former member of the Law Society of British Columbia on January 1, 2017 after his membership ceased for non-payment of fees.

[19] The Respondent was retained by TH in a divorce matter. The opposing party was ordered by the Supreme Court of British Columbia to pay TH $200,000 in child support.

[20] The Respondent received the $200,000 in child support from opposing counsel, and deposited it into his trust account on November 16, 2016.

[21] On November 16, 2016, the Respondent withdrew $200,000 from his trust account and purchased a bank draft in that amount, payable to a third party unrelated to his client. The Respondent admitted that he intentionally misappropriated $200,000 from his client TH in order to "meet a debt."

[22] In October 2016, the Respondent was retained by YZ in a family law matter, who provided a $5,000 retainer to the Respondent.

[23] On October 28, 2016, the Respondent deposited the $5,000 retainer into his general account rather than his trust account. At no time did YZ authorize the Respondent to access the retainer before performing any legal work.

[24] The Respondent admitted that he misappropriated the retainer funds by depositing them into his general account when he was not authorized or otherwise entitled to do so.

[25] The Responded further admitted that he failed to deposit the retainer funds into his trust account and that he did not deliver a bill to YZ in relation to the retainer funds.

[26] In November 2016 the Respondent encouraged YZ to settle matters with his ex-wife. Ultimately a settlement was reached, which included payment of $200,000 to YZ's former spouse.

[27] The Respondent admits that he encouraged YZ to propose the settlement and pay the funds into the Respondent's trust account in order replace TH's money, as TH had been requesting her $200,000 in child support.

[28] On November 23, 2016 YZ provided the Respondent with $200,000 in bank drafts, which the Respondent deposited into his trust account on November 25, 2016.

[29] The Respondent intentionally misappropriated almost all of the settlement funds provided by YZ as follows:

(a) On November 25, 2016 the Respondent wrote a cheque in the amount of $20,000 from his trust account payable to "Bayshore Law Group" and deposited it into his general account;

(b) On November 29, 2016 the Respondent wrote a cheque in the amount of $7,500 from his trust account payable to "Bayshore Law Group" and deposited it into his general account; and

(c) On December 12, 2016 the Respondent wrote a cheque in the amount of $170,000 from his trust account payable to TH.

[30] The Respondent has admitted that his conduct in doing so constitutes professional misconduct.

ANALYSIS

[31] The term "professional misconduct" is not defined in the *Legal Profession Act*, the Law Society Rules or the *Code of Professional Conduct for British Columbia.*

[32] The test for determining whether conduct constitutes professional misconduct is set out in the often cited *Law Society of BC v. Martin*, 2005 LSBC 16:

> … whether the facts as made out disclose a marked departure from that conduct the Law Society expects of its members; if so, it is professional misconduct.

[33] In the *Martin* decision, the panel observed that a finding of professional misconduct did not require behaviour that was disgraceful or dishonourable. Rather:

> The real question to be determined is essentially whether the Respondent's behaviour displays culpability which is grounded in a fundamental degree of fault, that is, whether it displays a gross culpable neglect of his duties as a lawyer.

[34] We conclude that the conduct of the Respondent constitutes professional misconduct. He intentionally misappropriated over $400,000 from his clients, including withdrawing retainer funds when he was not authorized to do so and prior to delivering a bill to his client, contrary to the Law Society Rules.

[35] This is a marked departure from that conduct the Law Society expects of lawyers. Accordingly, we accept the Respondent's admissions of professional misconduct.

[36] The Law Society is seeking the disbarment of the Respondent. The Respondent agrees to an order that he be disbarred. The Hearing Panel finds that this is an appropriate remedy.

[37] In *Law Society of BC v. Ogilvie*, 1999 LSBC 17, the factors to be considered in determining appropriate disciplinary action are listed. *Law Society of BC v. Faminoff*, 2015 LSBC 20 confirmed these factors and the Review Board in *Faminoff*, 2017 LSBC 04 also found that a consideration of aggravating and mitigating circumstances will assist in determining the appropriate sanction.

OGILVIE FACTORS

[38] The first applicable factor from *Ogilvie* is the nature and gravity of the misconduct. The Hearing Panel finds that misappropriation of clients' trust funds is the most serious and egregious conduct a lawyer can engage in.

[39] In *Law Society of BC v. Tak,* 2014 LSBC 57, a hearing panel found that:

> Wrongly taking clients' money is the plainest form of betrayal of a client's trust and is a complete erosion of the trust required for a functional solicitor-client relationship. The public is entitled to expect that the severity of the consequences reflect the gravity of the wrong. In the absence of multiple, significant mitigating factors, public confidence in the profession and its ability to regulate itself would be severely compromised if anything short of disbarment is ordered for misappropriation of client funds.

[40] And in *Law Society of BC v. Lebedovich,* 2018 LSBC 17 the panel observed that "misappropriation of a client's funds ... is the most serious misconduct a lawyer can commit." This Hearing Panel adopts that observation.

[41] The Hearing Panel does not accept that any penalty short of disbarment will adequately protect the public.

[42] The Respondent explained that his actions in intentionally misappropriating over $400,000 from two clients resulted from a gambling addiction. However unfortunate the Respondent's personal circumstances may be, the existence of a gambling disorder is not a mitigating factor justifying his conduct, nor do they suggest disbarment is not an appropriate sanction.

[43] The next *Ogilvie* factor to consider is the need to ensure public confidence in the integrity of the legal profession. The public must be satisfied that the Law Society regulates the profession in the public interest.

[44] As the panel in *Lebedovich* stated:

> The legal profession is self-regulated by the Law Society. The public must be satisfied that the Law Society has the public interest in mind as it regulates. The sanction imposed must reflect the seriousness with which the Law Society, and through it the legal profession, views the intentional misappropriation of trust funds.

[45] Anything less than disbarment in this instance would be wholly inadequate for the protection of the public and would fail to address the need to ensure public confidence in the integrity of the legal profession.

[46] The third *Ogilvie* factor relevant to the analysis of whether disbarment is an appropriate sanction in this case is the professional conduct record of the Respondent.

[47] The Respondent's professional conduct record consists of four conduct reviews and one set of recommendations made by the Practice Standards Committee.

[48] The Respondent's professional conduct record is somewhat dated and not relevant to the issues before us. As such, we have not relied upon the Respondent's professional conduct record in making our determination.

[49] The fourth *Ogilvie* factor to be considered is the range of sanctions imposed in similar cases. Many authorities support disbarment where a lawyer has intentionally misappropriated trust funds, particularly when significant amounts of money are involved: *Law Society of BC v. Gellert*, 2014 LSBC 05, *Tak, Law Society of BC v. Harder,* 2005 LSBC 48, *Law Society of BC v. Ali*, 2007 LSBC 18.

[50] The final *Ogilvie* factor to be considered is the existence of any mitigating factors. As stated above, the existence of a gambling disorder to explain misappropriating client trust funds is not a mitigating factor.

[51] The Respondent cooperated with the Law Society investigation, admitted his misconduct, expressed remorse and apologized for his misconduct. Even if we accept, in the absence of any medical or corroborating evidence, that the Respondent suffers or has suffered from a gambling addiction, this does not justify wrongfully taking clients' money and does not constitute a mitigating factor.

[52] We accept the admissions of the Respondent that his conduct constitutes professional misconduct. We also find that the appropriate penalty in this matter is disbarment.

ORDER

[53] We find that the Respondent has committed professional misconduct pursuant to section 38(4)(v) of the *Legal Profession Act*.

[54] We order the Respondent to be disbarred under Rule 38(5)(e) of the *Legal Profession Act.*

[55] The Law Society does not seek costs of this hearing; however, we order that the Law Society is at liberty to apply for costs in this matter for 60 days after this decision is issued.

[56] The Law Society applies for an order under Rule 5-8(2)(a) that, if any person, other than a party, seeks to obtain a copy of any exhibit filed in these proceedings, client names, identifying information, and any information protected by solicitor-client privilege be redacted from the exhibit before it is disclosed to that person. We so order.