

2021 LSBC 49  
Hearing File No.: HE20190031  
Decision Issued: December 1, 2021  
Citation Issued: May 24, 2019

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL  
HEARING DIVISION

BETWEEN:

**THE LAW SOCIETY OF BRITISH COLUMBIA**

AND:

**PETER DARREN STEVEN HART**

RESPONDENT

**CORRECTED DECISION: Paragraph [22] was amended on December 1, 2021**

**DECISION OF THE HEARING PANEL  
ON FACTS AND DETERMINATION**

Hearing dates: September 14, 15, 16, 17 and 18, 2020  
January 11 and 25, 2021  
March 22, 23, 24, 25 and 26, 2021  
April 6 and 7, 2021  
May 17 and 18, 2021

Written Submissions: June 22, 2021

Panel: Bruce LeRose, QC, Chair  
Geoffrey McDonald, Lawyer  
Mark Rushton, Public representative

Discipline Counsel: Mandana Namazi and Ilana Teicher  
Counsel for the Respondent  
(September 14 to January 11, 2021): Peter Firestone  
Appearing on his own behalf  
(January 25, 2021 onwards): Peter Darren Steven Hart

Written reasons of the Panel by:

Geoffrey McDonald

## INTRODUCTION AND OVERVIEW

[1] Peter Darren Steven Hart (the “Respondent”) is before the Panel regarding a citation authorized by the Discipline Committee on May 2, 2019, issued on May 24, 2019 and served on May 24, 2019 (the “Citation”). The Citation makes the following three allegations:

1. In or between approximately March 2013 and October 2013, in the course of representing JQ (the “Client”) in a family law matter, you charged the Client fees of approximately \$1,020,000 plus taxes and disbursements, which were unfair and unreasonable, contrary to one or more of rule 3.6-1 and commentary [1] of rule 3.6-2 of the *Code of Professional Conduct for British Columbia* (the “Code”) and Rule 8-1 of the Law Society Rules (the “Rules”).

This conduct constitutes professional misconduct, or a breach of the Act or rules, pursuant to s. 38(4) of the *Legal Profession Act*.

2. In or between approximately March 2013 and November 2014, in the course of representing the Client in a family law matter, you failed to serve the Client in a timely, conscientious, diligent, and efficient manner so as to provide a quality of service at least equal to that which would be expected of a competent lawyer in a similar situation, contrary to rule 3.2-1 of the *Code*, and in particular by doing some or all of the following:
  - (a) failing to take adequate notes or otherwise document your communications with the Client;
  - (b) failing to ensure that all instructions from the Client were in writing or confirmed in writing;
  - (c) failing to follow the Client’s instructions to prioritize an application for interim spousal support;
  - (d) failing to bring an application for interim support at any time, and in any case, prior to the Client agreeing to convert her retainer to a contingent fee agreement;
  - (e) taking actions that were either contrary to the Client’s instructions or taken without consultation with the Client, or both, including doing some or all of the following:

- (i) adjourning the application for interim spousal support scheduled for approximately August 15, 2013; and
  - (ii) making settlement proposals to opposing counsel on some or all of the following approximate dates: August 26, 2013, September 2, 2013 and September 23, 2013;
- (f) failing to adequately communicate with the Client, to ensure that she had the information necessary to make fully informed decisions and to provide instructions, including:
- (i) failing to advise the Client that opposing counsel insisted on the Client's in-person appearance at mediation;
  - (ii) failing to respond to the Client's comments and questions on approximately October 1, 2013 in relation to several draft documents you intended to serve on opposing counsel;
  - (iii) failing to advise the Client that the mediation scheduled for October 2, 2013 had been cancelled and did not occur;
  - (iv) failing to inform the Client of settlement proposals you had made on her behalf, or to inform her when her instructions for settlement were inconsistent with the proposals you had made;
  - (v) failing to provide the Client with a copy of the draft memorandum of understanding, entered into on or about October 2-3, 2013, for her review, before you signed it, or promptly after you had signed it; and
  - (vi) failing to correct the Client's belief that despite the settlement and divorce order being completed, she was able to apply for spousal support in the future;
- (g) requesting that the Client agree to convert her retainer from hourly rate billing to a contingent fee agreement without doing one or more of the following:
- (i) taking all reasonable steps to ensure that the Client's decision in that regard was fully informed;

- (ii) producing or maintaining a proper documentary record of the advice given, analysis provided, discussions that took place, and instructions from the Client;
- (iii) taking steps to ensure that the Client knew she ought to obtain independent legal advice in respect of the proposed contingent fee agreement;
- (iv) meeting with the Client face-to-face prior to the Court approval of the contingent fee agreement;
- (v) providing comprehensive written advice to the Client; and
- (vi) obtaining an objective estimate of the legal fees and disbursements you expected to incur on the Client's file.

This conduct constitutes professional misconduct pursuant to s. 38(4) of the *Legal Profession Act*.

3. In or between approximately March 2013 and November 2014, in the course of representing the Client in a family law matter, you failed to act with honesty, candour and integrity, contrary to one or more of rules 2.2-1 and 3.2-2 of the *Code*, and in particular by doing some or all of the following:
- (a) misleading the Client into believing that her settlement could be valued at over \$8 million in the future, when you had no reasonable basis upon which to make such an assertion;
  - (b) knowingly taking actions and making settlement proposals that were contrary to the Client's instructions, without advising her that you had done so;
  - (c) advising opposing counsel that you had been "instructed to cancel the mediation" when you knew that these were not your instructions; and
  - (d) misleading the Client into believing that you would and could pursue spousal support on her behalf after the settlement and divorce order completed, and failing to correct these misrepresentations for approximately one year following the settlement.

This conduct constitutes professional misconduct pursuant to s. 38(4) of the *Legal Profession Act*.

- [2] The Respondent admitted that the Citation had been properly issued and served. At issue is whether the Respondent committed the acts set out in the Citation and whether those acts, if proven, amount to professional misconduct. For the reasons below, the Panel finds that the Respondent committed all the acts set out in the Citation and that those acts are professional misconduct. The Respondent took on a vulnerable client that he knew was struggling with mental health problems and knowingly acted contrary to the Client's instructions and without instructions. The Respondent manipulated the file for his own benefit and took a massive payment that he was not entitled to. More than failing to act without honesty, candour and integrity, the Respondent purposely deceived the Client for his own profit.

### **RESPONDENT DECLINES TO MAKE SUBMISSIONS**

- [3] The Respondent advised in a June 21, 2021 email that he would not tender any closing submissions with respect to the Citation and the evidence before the Panel. Where these reasons describe the Respondent's position on various issues, those are the positions that the Respondent took in his reply to the Notice to Admit (Exhibit 4 in these proceedings) or expressed during the hearing either personally or through his counsel.

### **ONUS AND STANDARD OF PROOF**

- [4] The Law Society must establish the facts necessary to establish the alleged professional misconduct (*Law Society of BC v. Martin*, 2005 LSBC 16 at para. 137(a)). The Law Society must prove the necessary facts on a balance of probabilities (*Foo v. Law Society of British Columbia*, 2017 BCCA 151 at para. 63). Professional misconduct is present when "... the facts as made out disclose a marked departure from that conduct the Law Society expects of its members ..." (*Martin* at para. 171).
- [5] The test for professional misconduct is objective. The panel must consider the appropriate conduct expected of a lawyer and then determine if the facts as proven are markedly below that standard (*Law Society of BC v. Kim*, 2019 LSBC 43 at para. 45).

### **BACKGROUND**

- [6] The allegations against the Respondent arose in the context of a family file. In early 2013, the Client had been referred to a junior associate in the Respondent's law firm. Though the Client resided in Ontario, her former spouse had instituted

proceedings in British Columbia – the province where they had primarily resided during the marriage.

- [7] The Client had been a senior executive in a mining corporation. Her former spouse was also a high earning executive with substantial assets valued between \$15 and \$17 million. The Client's mental health had deteriorated during the marriage. In the years leading up to their separation, she became unable to work, suffered a mental break down, attempted suicide and was involuntarily hospitalized. When the Respondent's firm took the Client on, she was still under psychiatric care, had no income and nearly no assets. The Client's primary concern was obtaining spousal support.
- [8] The Respondent's firm never obtained spousal support for the Client. In the seven months that the Respondent's firm acted on the file, with the exception of an application to approve a contingency fee agreement that entitled the Respondent's firm to 20 percent of any settlement, no applications, judicial case conferences, examinations for discovery nor mediations occurred. Disclosure remained incomplete and no expert reports were sought. The Respondent never met with the Client, communicating only through telephone, email and text messages.
- [9] After the contingency fee agreement was approved, the Respondent made several settlement offers on the Client's behalf. The Law Society (and the Client) allege that these offers were made without the Client's knowledge and instructions. The Respondent asserts that the offers were sent with the Client's informed instructions.
- [10] On October 3, 2013, the Respondent signed a Memorandum of Understanding with opposing counsel (the "MOU") which gave the Client approximately 30 percent of the asset pool and no spousal support. The MOU provided that the Client would receive a cash payment of \$1.5 million, RRSPs valued at approximately \$1.1 million and 30 percent of stock options and units. Her former spouse would hold those stock options and units in trust for the Client until such time as he deemed it appropriate to exercise the stock options. The Law Society alleges that this settlement was made without the Client's instructions and that the Respondent misled the Client, promising her that she would later receive spousal support. The Respondent asserts that the MOU and the subsequent settlement was approved by the Client. The Respondent further asserts that despite language in the MOU expressly stating that it was a final settlement, the MOU was not binding on the Client.
- [11] On October 17, 2013, the Respondent entered a consent order on the Client's behalf on the same terms as the MOU. The Law Society alleges that the Respondent

misled the Client about the terms of the settlement and its value. The Respondent asserts that the Client was fully informed and that he acted with instructions.

- [12] The Respondent did not use an accountant or other financial professional to value the settlement. Instead, the Respondent instructed one of his junior associates to estimate the total value of the settlement, including stock options and units. The junior associate estimated the settlement to be \$5.1 million.
- [13] The contingency fee agreement specified that the Respondent's law firm was to be paid as settlement funds were received. However, when the cash payment of \$1.5 million came into trust, the Respondent took far more than the 20 percent specified in the contingency fee agreement. The Respondent billed \$1,127,850.49 – 20 percent of the junior associate's estimated value plus taxes and disbursements. The Respondent claims that the Client instructed him in a telephone call to take his full fee up front despite the terms of the contingency fee agreement. The Client strenuously disputes this.
- [14] Following the settlement, the Client continued to correspond with the Respondent asking when she should expect steps to be taken to obtain spousal support. The Respondent replied to these correspondences in a manner that suggested obtaining spousal support was possible despite the settlement which expressly prohibited spousal support. The Respondent asserts that he was always careful to advise the Client that spousal support would only be possible if her former spouse had misled them about his income and work.
- [15] Eventually, the Client sought a fee review in the BC Supreme Court. Master Cameron struck down the contingency fee agreement as being unfair and unjust. The court found that the Respondent's law firm had obtained a very poor result for the Client – essentially, her worst case result had the matter proceeded to trial. Master Cameron reduced the Respondent's fees to \$125,000 and ordered him to refund the difference. By the time of this hearing, the Respondent had only refunded \$8,000.

## **ADMISSIONS**

- [16] On June 5, 2020, the Respondent and the Law Society made a joint submission and provided a draft consent order seeking to have the reasons of Master Cameron indexed as 2018 BCSC 1130 and 2018 BCSC 1428 respectively, as well as all the transcripts from the proceedings before Master Cameron admitted "... for the proof of the truth of their contents". The Panel Chair consented to the requested order on June 8, 2020. The Consent Order is Exhibit 6 in these proceedings.

[17] The Law Society has provided arguments regarding prior judicial reasons being binding on administrative hearings such as this one which address the same subject matter and evidence. The Panel agrees with the Law Society's submissions on this point. Further, throughout the hearing the Respondent was clear that he admitted and intended to be bound by Master Cameron's factual findings but took the position that those facts did not amount to professional misconduct. The Panel can and does rely on the findings made by Master Cameron in his reasons. Even if the Panel did not rely on Master Cameron's reasons, the evidence before the Panel overwhelmingly supports Master Cameron's findings.

[18] At the outset of these proceedings, the Panel was presented with the Law Society's Notice to Admit (Exhibit 3) and the Respondent's reply (Exhibit 4). In his reply, the Respondent admitted the vast majority of the factual circumstances but took the position that those facts were not professional misconduct. For example, the Respondent freely admitted that he failed to take notes, failed to confirm instructions in writing, failed to give comprehensive written advice to the Client, failed to document the Client's instructions and never met with the Client face-to-face even once. The disputed facts of significance to the allegations in the Citation were as follows:

- (a) The Respondent asserts that he was instructed by the Client to seek a settlement in the range of \$5 million (Exhibit 4, paragraphs 79 and 217);
- (b) The Respondent claims that each time he made offers to settle the file, he had instructions to do so by the Client (Exhibit 4, paragraphs 176, 178, 180, 198, 203, and 219);
- (c) The Respondent says that he was instructed to adjourn the judicial case conference, the application for spousal support and the mediation (Exhibit 4, paragraphs 112, 171 and, 172); and,
- (d) The Respondent claims that he was instructed by the Client in a telephone conversation to take the full contingency fee based on the \$5.1 million dollar valuation completed by his junior associate.

## **EVIDENCE**

[19] In addition to the admitted materials, seven witnesses testified. They were as follows:

- (a) GL – opposing counsel on the Client's file;



- (b) ER – a junior associate who assisted with the file. ER spoke to the application authorizing the contingency fee agreement and made the valuation of the settlement that the Respondent used to determine his fee;
- (c) KG – another junior associate at the Respondent’s firm and the first lawyer to work on the file;
- (d) the Client;
- (e) CW – the Respondent’s administrative assistant on the file;
- (f) MF – the Client’s former romantic partner following the breakup of her marriage; and,
- (g) the Respondent.

[20] Five of these witnesses, ER, KG, the Client, CW and the Respondent, had testified before Master Cameron and the Panel was provided with transcripts of their testimony. Many emails and letters were tendered that detailed the communications during the file. These communications included internal communications amongst the Respondent’s firm, communications with the Client and communications with opposing counsel. The communications give a clear picture of the instructions and information that the Respondent had received and actions that he took in response.

[21] Apart from the Respondent, all the witnesses gave clear, cogent, and credible evidence supported by contemporaneous documents describing the Respondent’s handling of the file. Their accounts were consistent with each other and the filed documents. The file had initially been referred to KG from a colleague in Ontario. Within a few months the Respondent had taken conduct of the file. KG and ER, who were both very junior lawyers with limited family law experience, relied on the Respondent for instructions on the file. KG and ER had very limited communication with the Client after the Respondent became the primary lawyer. The Respondent personally handled the settlement negotiations.

[22] The only conflict in the evidence was between the Client and the Respondent. The Client gave a detailed and compelling account of her interactions with the Respondent. Importantly, she testified that she was pressured by the Respondent to agree to the contingency fee agreement. She instructed the Respondent to seek spousal support, but he did not do so. Further, she did not instruct the Respondent to make the settlement he entered into on her behalf, was misled into believing it was worth much more than it was and that she would receive spousal support at a

later time. Importantly she did not instruct the Respondent to take the estimated full value of the contingency fee agreement up front. The Client's account is supported by the documentary evidence.

- [23] The Respondent's evidence was not credible. The Respondent freely admitted that he had not kept notes of important telephone calls and discussions. He explained that he relied on others to take notes for him. The Respondent described many of his telephone conversations as being after hours and away from the office as the reason he did not document them. He was evasive when presented with difficult evidence and could not explain inconsistencies between his testimony and email communications. He frequently claimed to have received verbal instructions to act despite emails from the Client giving contrary instructions.
- [24] For example, the Respondent claimed to have been instructed by the Client to settle the case. The email communications from the Client throughout the file, and even after the settlement, expressly stated that she desperately needed and wanted spousal support. The Respondent claimed to have received verbal instructions from the Client to make settlement offers that he believed to be worth approximately \$5 million. That claim is contrary to the Respondent's September 18, 2013 email in which he stated that they would not settle for less than half of \$17 million. It is also contrary to the Client's September 21, 2013 email giving explicit instructions for a settlement in the range of \$8 million. The Respondent also claimed the Client understood that the October 2, 2013 settlement meant she would not receive spousal support despite extensive email exchanges in which the Client expressly asked when and how they would obtain spousal support.
- [25] The Respondent's evidence was self-serving and contrived. Where it differs from the other witnesses, the Panel does not give any weight to the Respondent's evidence. The Panel prefers and accepts the evidence of the other witnesses and in particular accepts the evidence of the Client.

## **FACTUAL FINDINGS**

- [26] Shortly after the Client came to the firm, and at all material times relevant to the allegations in the Citation, the Respondent had control of and directed the file. The other lawyers were extremely junior and, excepting some preliminary steps taken by KG early in the file, their work was directed by the Respondent.
- [27] Throughout the file the Respondent failed to produce or maintain a reasonable documentary record of his communications with the Client. The Respondent failed to keep even basic notes of important conversations with the Client. He failed to

keep a sufficient record of the advice given, analysis provided, discussions and instructions from the Client.

- [28] The Respondent knew that the Client was under psychiatric care and incredibly vulnerable. The Respondent understood that the Client required detailed explanations of the legal advice he was providing. Despite this knowledge, the Respondent viewed the Client's mental illness and her need for detailed advice as a reason to act without instructions. The Respondent was dismissive of the Client's needs and viewed her with contempt.
- [29] The Respondent was aware that the Client was desperate for money and exceedingly vulnerable. The Respondent understood the Client's clear instructions to seek spousal support as quickly as possible but did not follow them. The Respondent did not prioritize the interim spousal support claim despite clear instructions to do so and correspondence from opposing counsel acknowledging that the Client was entitled to receive it.
- [30] The Respondent adjourned the application for interim spousal support scheduled for August 15, 2013 without communicating with the Client. The adjournment was contrary to all of the Client's previous instructions to seek spousal support as quickly as possible.
- [31] The Respondent was the architect of the contingency fee agreement. The Respondent knew that the Client would likely receive a settlement valued between \$3 million and \$8 million and that it was not a particularly complex file. A contingency fee agreement in these circumstances was not in her interest and was unfair. The Respondent sought the contingency fee agreement for his personal financial benefit at the expense of the Client's interest.
- [32] The Respondent did not take reasonable steps to ensure the Client was fully informed before entering into the contingency fee agreement. The Respondent failed to ensure that the Client received independent legal advice and did not encourage her to seek independent legal advice. The contingency fee agreement only required the Client to acknowledge that she "may" seek independent legal advice (Exhibit 36, paragraph 14). The Respondent did not provide any written assessment of expected legal costs nor other comprehensive advice regarding the Client's file that would allow her to make a reasonable assessment of the contingency fee agreement.
- [33] Once the contingency fee agreement was signed and approved by the court, the Respondent prioritized reaching a settlement over the Client's clear instructions to

obtain spousal support. The Respondent was acting for his own benefit and not in the interests of the Client.

- [34] In August and September 2013, the Respondent made settlement offers to opposing counsel without instructions to do so. Those settlement offers were contrary to the Client's instructions offering to settle for millions of dollars less than the Client had agreed to.
- [35] On October 2 and 3, 2013, the Respondent made a settlement without instructions. The settlement was substantially less than the Client had instructed the Respondent to reach. The settlement did not include spousal support which the Client had instructed the Respondent to seek.
- [36] At no time, before or after the settlement, did the Respondent obtain an accurate valuation of the settlement for the Client.
- [37] The contingency fee agreement only permitted the Respondent to take 20 percent of the funds received. The Client did not instruct the Respondent to take his full estimated fee based on the gross value estimate completed by ER. The Respondent, acting without instructions, improperly took the Client's funds for his own benefit.
- [38] After the settlement was complete, the Respondent continued to mislead the Client into believing that she would receive spousal support when the settlement prohibited her from receiving any.

## **APPLICATION OF THE FINDINGS TO THE CITATION**

### **Allegation 1: unreasonable fees**

- [39] The Law Society alleges that the Respondent charged the Client unfair and unreasonable fees. Rule 3.6-1 of the *Code* prohibits a lawyer from charging or accepting a fee or disbursement unless it is fair and reasonable and disclosed in a timely way. The Respondent admits the findings of Master Cameron that the fees were unfair and unreasonable. The issue is whether the fees were so unfair and unreasonable that they amount to professional misconduct.
- [40] The *Code* section 3.6-1, commentary 1, provides a non-exhaustive list of criteria to evaluate whether a retainer is fair and reasonable. That list includes the time and effort spent, the difficulty of the matter and the importance to the client, whether special skill or service has been required and provided, the results obtained, and the client's prior consent to the fee. Contingency fee agreements require an evaluation

of the likelihood of success, the expected value and the likelihood of costs to determine "... whether the fee, in all of the circumstances, is fair and reasonable"(Code Rule 3.6-2 commentary 1).

- [41] In this case, the retainer is absurdly unfair and unjust. The file was a straightforward family matter in which the Client was certain to receive a large settlement. No special skill or service was required or provided. The Respondent provided minimal work. Much of that work was done without instructions and/or contrary to the Client's instructions. The final settlement (which the Respondent entered into without instructions) was in all the circumstances an extremely poor result.
- [42] A particularly concerning aspect of this contingency fee is that the Client was pressured into entering into it on inaccurate information. Lawyers have obligations of loyalty and transparency to their client. Those duties require lawyers "... to be candid with the client on all matters concerning the retainer, including ensuring that in any transaction between the two from which the [lawyer] receives a benefit, the client has been fully informed of the relevant facts and properly advised upon them" (*Law Society of BC v. Penty*, 2015 LSBC 51 citing *Nathanson, Schachter & Thompson v. Inmet Mining Corporation*, 2009 BCCA 385 at paras. 48 and 49). In this case, the Respondent took advantage of a Client he knew to be under psychiatric care. The Respondent made false representations regarding the complexity and the expected cost of the litigation. He pressured her to enter into a lopsided contingency fee agreement that solely benefited the Respondent.
- [43] Finally, the Respondent took fees that he was not entitled to under the contingency fee agreement. The Respondent inappropriately took funds and falsely claimed he was instructed by the Client to take the money as an upfront payment of his estimated contingency fee.
- [44] For all of the above reasons, the Respondent's conduct with respect to the retainer is a marked departure from the conduct the Law Society expects of lawyers. The Law Society has proven that the Respondent committed professional misconduct with respect to the charging of unfair and unreasonable fees.

### **Allegation 2: quality of service**

- [45] The second allegation is that the Respondent failed to provide a quality of service at least equal to that which would be expected of a competent lawyer in a similar circumstance. There is no question that the Respondent committed all the acts described in sub-paragraphs (a) through (g) of this allegation. The Respondent was cavalier about his duties to serve the Client. Common sense requires a lawyer

working with a mentally ill client to take extra care to ensure the client has a good understanding of the case, the lawyer's advice and has provided clear instructions. Unfortunately, in this case, the Respondent appeared to view the Client's mental illness as a reason to act without instructions and put his own interests ahead of the Client's. The Respondent acted with a gross culpable neglect of his duties to his client.

- [46] The Law Society has proven the facts underlying count two of the Citation. Those facts establish that the Respondent did not provide the quality and service of a competent lawyer in similar circumstances and this failure was so egregious that it amounts to professional misconduct.

**Allegation 3: duty to act with honesty and integrity**

- [47] All lawyers are required to act with honesty and integrity – especially with respect to their clients. In this case, the Respondent purposely misled a vulnerable client for his own benefit. The Respondent misled the Client about the complexity and cost of her case and pressured her to enter into an unfair and unjust contingency fee agreement. While the Respondent represented to the Client that he was seeking spousal support and a large settlement, he was secretly making settlement offers for substantially less money and no spousal support. The Respondent made representations to opposing counsel claiming to have instructions that he did not have. After the Respondent entered into a final settlement agreement without instructions, he misled the Client into believing that she would receive spousal support at some later time. He was deliberately dishonest with the Client and acted contrary to her interests.
- [48] The Respondent's deliberate dishonesty to the Client falls grossly below the honesty and integrity that the Law Society expects of lawyers and is professional misconduct. The Law Society has proven the third allegation of the Citation.

**CONCLUSION**

- [49] Having reviewed all the evidence, this Panel finds that the Respondent has committed professional misconduct as set out in all three allegations of the Citation.