

LAW SOCIETY OF ALBERTA
IN THE MATTER OF THE *LEGAL PROFESSION ACT*;
AND
IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF SHAWN BEAVER
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Hearing Committee:

Frederick R. Fenwick, Q.C., Chair
Douglas McGillivray, Q.C.
Nancy Brook

Appearances:

Counsel for the Law Society – Sharon Heine and Shanna Hunka
Counsel for Shawn Beaver – Simon Renouf, Q.C.

Hearing Dates:

November 14, 15, 17, 18, 25, 2016, and
January 23, 24, 25, 26, 2017
February 15, 2017 (Sanction Hearing)

Hearing Location:

Law Society of Alberta at 800 Bell Tower, 10104 – 103 Avenue, Edmonton, Alberta

HEARING COMMITTEE REPORT:

SANCTION

Introduction and Summary of Results

1. After hearing eight days of evidence and one day of closing submissions, the Committee found conduct deserving of sanction in respect of seven of 12 citations. The citations related to the misappropriation of client trust funds both within and outside of Mr.

Beaver's trust accounts, and failing to act with integrity. The matter of sanction was heard by the Committee on February 15, 2017.

2. Submissions at the sanction hearing centered around whether the appropriate disposition was a disbarment or, in the alternative, a further suspension and supervised return to practice.
3. After reviewing the evidence and submissions at the sanction hearing, the Committee ordered that Mr. Beaver be disbarred, assessed costs and ordered a referral to the Attorney General.
4. An oral decision on these matters was delivered by the Committee on the date of the sanction hearing, and these written reasons follow.

Evidence and Submissions

5. The Committee received:
 - (a) **Exhibit 109**, the Certificate of the Law society confirming that Mr. Beaver has no prior disciplinary record;
 - (b) **Exhibit 110**, a Statement of the Estimated Costs of the hearing in the amount of \$158,739.10.
6. The Committee also received comprehensive submissions, including medical and other evidence, together with legal submissions from both parties. They were not marked as exhibits at the hearing but for the purposes of the record the Committee now gives them numbers:
 - (a) For the LSA (**Exhibit 111**)

A submission including a report from Dr. [C.E.], a psychiatrist and addiction specialist.
 - (b) For Mr. Beaver (**Exhibit 112**)

Submissions including reports from:

 - (i) Dr. [B.K.], October 29, 2015, psychiatrist.
 - (ii) Dr. [S.D.], July 7, 2016, psychiatrist.
 - (iii) Dr. [B.F.], August 4, 2016, psychologist.
 - (iv) Dr. [K.P.], August 10, 2016, family physician.

- (v) Various letters from Alcoholics Anonymous Coordinators re meeting attendance.

Also submitted were 14 letters of reference from clients, professional colleagues, and a family member.

The medical report of Dr. [C.E] on behalf of the LSA and the four medical reports submitted by Mr. Beaver contain private medical information not only of Mr. Beaver but family members. At the request of Mr. Beaver and with the consent of the LSA, the medical reports will remain an official part of the record of these proceedings but will not be made available to the public.

Although it was not requested by counsel, the Committee notes that the reference letters provided concerning Alcoholics Anonymous attendance by Mr. Beaver contain identifying information and orders that they also not be made available to the public.

Sanctioning in Cases of Misappropriation and Lack of Integrity

- 7. The primary purpose of disciplinary proceedings is found in section 49(1) of the *Legal Profession Act*.

- 1. The protection of the best interest of the public (including the members of the Society) and
- 2. Protecting the standing of the legal profession generally.

The fundamental purpose of the sanctioning process is to ensure that the public is protected and that the public maintains a high degree of confidence in the legal profession.

Hearing Guide, para. 57.

- 8. The public confidence in the profession is fundamentally much more than simply brand awareness. Lawyers as officers of the court act as the traditional gatekeepers and organizers of the adjudicative process. In their advisory role lawyers must receive candid information from their clients and respect and observe the trust and confidentiality that is fundamental to their advice. In transactional work where the parties are most often not in obvious conflict, a solicitor must be relied upon to fulfill with integrity the financial and property transfers entrusted to them and to be alert and act with propriety when conflict does develop in some of those transactions. None of this works unless lawyers actually conduct themselves with integrity. The public (clients and non-clients), the courts, and professional colleagues must also be able to rely, without question, on lawyers conducting themselves professionally and with integrity:

This public dimension is of critical significance to the mandate of professional disciplinary bodies.” “The question of what effect a lawyer’s misconduct will have on the reputation of the legal profession generally is at the very heart of a disciplinary hearing

Adams v. The Law Society of Alberta,
[2000] A.J. No.1031 (Alta. C.A.)

And:

The requirement that lawyers must be of good character finds expression also in what is in most jurisdictions not coincidentally the first rule of professional conduct: lawyers must discharge with integrity all duties owed to clients, the court, the public, and other members of the profession. ‘Integrity’, the first commentary to this rule says, ‘is the fundamental quality of any person who seeks to practise as a member of the legal profession.’

Lawyers & Ethics: Professional Responsibility and Discipline,
by Gavin MacKenzie, at pages 23-2 to 23-3

9. The cases as digested in the Hearing Guide set out that suspension or disbarment would be the primary regulatory response for the protection of the public and the public’s confidence in the profession in circumstances of misappropriation of client funds:

It is important that there should be full understanding of the reasons why the tribunal makes orders which might otherwise seem harsh. . . . In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order of striking off. The second purpose is the most fundamental of all: to maintain the reputation of the solicitors’ profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled, but denied re-admission. If a member of the public sells his house, very often his largest asset, and entrusts the proceedings to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession’s most valuable asset is its collective reputation and the confidence which that inspires.

Bolton v. Law Society, [1994] 1 W.L.R. 512 at 519 (C.A.)

10. No doubt, a suspension or disbarment will seem punitive from a member’s point of view and factors such as mitigation, rehabilitation and previous good character will be urged

on a sanctioning committee. These factors are of course relevant but remain secondary to the stated regulatory requirement to protect the public and the standing of the legal community:

Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely, to be so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make the suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.

Bolton v. Law Society, supra

11. The facts disclose a significant misappropriation, arguably amongst the most serious. The Committee found that:

- Mr. Beaver misappropriated from his clients' funds, both within and outside of his firm's trust accounts, a substantial amount of money, over \$300,000.
- The misappropriations were more than a technical misappropriation as they included the use of funds for Mr. Beaver's personal benefit.
- The misappropriations continued for a substantial period of time.
- The misappropriations were covered up in Mr. Beaver's trust account by fictional accounting entries.
- The covering up, together with acknowledgements made to Mr. Beaver's paralegal, indicated dishonest intent and the knowledge of the dishonesty.
- The targets of the misappropriations included clients of Mr. Beaver, his associates and staff.

- The targets of the misappropriations included particularly vulnerable people, including disabled people and children.
 - Mr. Beaver only self-reported after being confronted by his associates.
 - A failure to act with integrity was common throughout the combined citations.
12. The task for the Committee and the focus of the submissions at the sanction hearing was whether under all of the circumstances, Mr. Beaver would be either disbarred or, alternatively, suspended for another period and given directions to return to practice with supervisory and rehabilitative conditions.
13. Mr. Beaver urged mitigating factors on the Committee, including:
- Mr. Beaver demonstrated prior good character, with more than 20 years of practice with no prior record of misconduct.
 - Mr. Beaver practiced law at an extremely high level and gave good service to his clients, as evidenced by the reference letters tendered at the sanction hearing. It was suggested that returning Mr. Beaver to practice would have positive access to justice benefits.
 - The misconduct was limited to approximately one year within his 20 year practice.
 - The one period of misconduct in a 20 year career coincided with, and is alleged to have been related to, a time of high personal stress in Mr. Beaver's life.
 - Mr. Beaver entered guilty pleas to a number of the citations and generally accepted his responsibility for the misconduct in his testimony before the Committee, including a detailed apology which Mr. Beaver entered as a statement (as opposed to cross-examined testimony) at the sanction hearing.
 - Although no restitution has been made, Mr. Beaver indicated his willingness and motivation to make restitution.
14. Further, Mr. Beaver suggested that the personal stress, together with medical diagnoses of depression and alcoholism, were correlated with the year of otherwise unexplained and out-of-character behaviour. Public protection would be adequately served by a period of suspension (as opposed to a disbarment), accompanied by a suite of practice conditions. The proposed practice conditions included medical and psychological supervision, practice supervision and isolation from financial transactions.
15. In summary, it was Mr. Beaver's position that he would not be a risk to the public if allowed to return to practice under supervision, once he had been removed from the stress of the difficult year(s) and had been treated for relevant medical conditions.

16. Mr. Beaver submitted a letter from a colleague offering to take Mr. Beaver on as an associate, supervised in practice and isolated from financial matters after the period of suspension that is proposed. The letter was written before the findings of this Committee on the citations, but it was stipulated as between the parties that the colleague had read the Hearing Committee Report and continued to offer Mr. Beaver a position.

Mitigating Factors

17. The Committee does not accept that misappropriations of this magnitude are mitigated by an otherwise unblemished 20 year career. Indeed a 20 year career of practicing at a high level could just as properly lead to a conclusion that Mr. Beaver, of all practitioners, ought to have known how far he had strayed. The central importance of integrity in the profession, the necessity for propriety and an accurate set of books when dealing with other people's money, and the requirement of compliance with trust accounting rules is no secret. The concepts are routinely taught at law schools, form part of the bar admission process, and are central in every iteration of the evolving Code of Conduct. Lawyers who misappropriate are regularly disciplined and the results of those hearings and sanctions are publicly available.
18. The fact that the misconduct was confined to one year is not seen in this case to be mitigating either. Any period of misappropriation ends with being caught, in this case by being forced into self-reporting by his associates. Mr. Beaver's declarations to his paralegal and his associates before the reporting lead to a conclusion that he would have continued the behaviour if he could have found a way to replenish the trust accounts sufficiently to make it another month or months.
19. The misappropriations did occur at a time of personal high stress for Mr. Beaver, a perfect storm of financial, personal and medical issues. The Committee members can be personally empathetic for this difficult time. But the stressors of Mr. Beaver's years of 2014 and 2015, downturns in the financial success of a practice, marital breakup and re-partnering, and the mortality of a loved family member are all part of the predictable demographic transitions of a modern long life. These transitions must be managed by us all with a view to fulfilling our obligations of integrity, notwithstanding the sometimes difficult reality of a horrible year ("...to the ends of the earth.... "as per *Bolton*).
20. Mr. Beaver did make a self-report (albeit after his associates forced the issue), gave several long and detailed statements to Law Society investigators, admitted some responsibilities in the Agreed Statement and generally accepted facts and responsibility in his testimony before the Committee in a forthright and non-evasive way. Further, Mr. Beaver gave a comprehensive statement of apology in the submission phase of the sanctioning hearing.

21. The Committee considers Mr. Beaver's acceptance of underlying facts and responsibility as adequate under the circumstances, but certainly less than enthusiastic. Mr. Beaver did make some admissions of fact and responsibility in the Agreed Statement but they were economical. The Committee accepts without reservation that Mr. Beaver has the right to put the Law Society to the proof of its case and finds no particular fault with his handling of the investigation and hearing. In the end, the reporting and conduct of these matters is a neutral factor in the Committee's considerations, neither aggravating nor mitigating.
22. The offer for future restitution seemed on its face a genuine offer, although no restitution had been yet made. The Committee finds the lack of present restitution and offer of potential future restitution to be similarly neutral.

Medical and Psychiatric Diagnoses as Related to the Misappropriations

23. Mr. Beaver urged the Committee to find that the sudden onset of the misappropriations were not a manifestation of a character flaw, but related or correlated to the diagnosed psychological and dependency issues. He is, therefore, capable of returning to successful practice as a lawyer and to provide restitution upon successful treatment.
24. Mr. Beaver submitted that such a resolution was considered possible in the recently decided case of *Law Society of Alberta v. Torske* [2015] L.S.D.D. No. 280.
25. Mr. Beaver offered medical and psychological evidence in support:
 - (a) Dr. [B.K.] – October 29, 2015.

Dr. [B.K.] conducted an independent medical examination of Mr. Beaver October 29, 2015 (16 months prior to the sanctioning hearing) for the purposes of Mr. Beaver's application for disability insurance after his suspension. It is not clear to the Committee that Dr. [B.K.] or Mr. Beaver's insurer had consented to the use of the IME in these proceedings, however the report was put before the Committee without objection by counsel for the Law Society. The report found that in the year prior to the IME (i.e. the year of the misappropriation behaviour), Mr. Beaver was in fact suffering from untreated Depressive Disorder and alcoholism.
 - (b) Dr. [S.D.] - July 7, 2016.

Dr. [S.D.] was Mr. Beaver's treating psychiatrist and reported that Mr. Beaver had received and been compliant with treatment for Major Depression and Alcohol Dependence. At that time, she was confident that Mr. Beaver was ready to return to running a law practice.

(c) Dr. [B.F.] - August 4, 2016.

Dr. [B.F.] was Mr. Beaver's treating psychologist between February 16 and August 4, 2016. Dr. [B.F.] opined that Mr. Beaver's severe depression, anxiety and stress, coupled with abuse of alcohol, would have adversely impacted his ability to function successfully in a law practice and would have impacted his judgment. Dr. [B.F.] went on to state that Mr. Beaver had made good progress in psychotherapy.

(d) Dr. [K.P.] - August 10, 2016.

Dr. [K.P.] is Mr. Beaver's GP. He confirms the treatment team, including Dr. [S.D.], Dr. [B.F.] and Alcoholics Anonymous, endorses Mr. Beaver's return to the practice of law and opined that the untreated depression and related cognitive decline had an effect on "the impugned actions you are now reviewing".

(e) In addition there were letters from chairpersons of Alcoholics Anonymous groups confirming Mr. Beaver's attendance at meetings.

26. The Committee noted the statements that Mr. Beaver's medical professionals reported concerning the nature of Mr. Beaver's issues with the Law Society:

(a) Dr. [K.P.]

"All of these events added to his increasing depression and cognitive decline, ultimately culminating in his approaching the Law Society in May 2015 to indicate that he had violated various conduct rules in his profession, including failure to follow trust accounting rules."

(b) Dr. [B.K.]

"He said he transferred funds from a client account to pay for his expenses without going through the proper itemization of costs and services. He stated that an auditor had posed questions about the irregularities and he made the decision to disclose his actions."

27. The Committee has found that Mr. Beaver's behaviours went well beyond accounting irregularities and failure to properly itemize costs and services. They involved the theft of money which would never have been justified by any proper accounting. Further, Mr. Beaver did not voluntarily disclose the misappropriations; he was backed into a corner by a combination of Law Society review and the specific prior report of his associates.

28. The Committee accepts that a physician's report may not contain an accurate transcript of all that a patient declares to them. We cannot go so far as to find that the economy of

these reported declarations from Mr. Beaver are dispositive proof of an acceptance of responsibility for the misappropriations, or not. But as the reports do not deal directly with the severity of the misappropriations, they are of limited assistance. They for the most part speak to the limited purpose of whether Mr. Beaver can competently perform the mechanics of a legal practice. They do not assist us with our decision about the potential to rehabilitate his integrity.

29. Mr. Beaver suggested in his submissions that *Torske* provided a precedent for a Hearing Committee accepting that a direct causal link between addiction behaviour and sanctionable behaviour may not be possible and that a looser correlation may be sufficient for mitigation consideration in a sanction hearing.
30. The Committee accepts that scientific or medical causation sufficient to prescribe medication or recommend a return to work will inevitably be different from legal causation, and that establishing a direct causal link may not be possible. Even so, the Committee finds that the medical and other evidence presented by Mr. Beaver is of little assistance in determining how to protect the public from a repeat of his behaviour or in determining how to uphold the reputation of the profession. More specifically:
 - (a) It is not clear from any of the reports that Mr. Beaver is completely medically rehabilitated.
 - (b) While certain of the medical service providers could opine that Mr. Beaver was ready, medically speaking, to return to the practice of law, none of them opined on the key issue. If he were to return to the practice of law, would subsequent clients of Mr. Beaver be at risk of losing their trust funds?
 - (c) It is not clear to the Committee that Mr. Beaver put the trust accounting/ misappropriation succinctly before his medical providers in order that they could opine on the difference between following the technicalities of trust accounting rules and, simply put, not stealing your client's money.
31. Further, statements made by Mr. Beaver to his paralegal and to medical providers refer most often to decisions that Mr. Beaver made which would have the effect of "ruining his life". The Committee is not convinced that Mr. Beaver yet fully appreciates that this hearing is not about his life, but about his breach of his fiduciary responsibility to put his clients' interests above his own. Mr. Beaver did make a detailed apology in sanctioning submissions which the Committee acknowledged was genuine, heartfelt and a good start. However, under the circumstances the Committee is not convinced that Mr. Beaver's rehabilitation has been completed or that he yet fully understands his fiduciary obligations or the scope of his breach.

32. The independent medical examination of Dr. [C.E.], submitted by the Law Society, reflects these doubts concerning rehabilitation of Mr. Beaver and the risk he represents (at page 28 of 39):

(d) ... Although Mr. Beaver's occupational capacity did not appear impaired at the time of the IME, based on the assessment, his occupational risk continues to be disproportionately elevated.

(e) Although he has made progress, maximum medical improvement has not been achieved. To date Mr. Beaver has not assessed sufficient intensity or duration of care to reasonably ensure the prevention of relapse to alcohol use. The ongoing consumption of alcohol in the context of an alcohol use disorder in a person performing safety sensitive or decision-critical duties (e.g. the practice of law) is foreseeably associated with an increased risk of future problem potential.

33. Dr. [C.E.] makes a distinction between Mr. Beaver's occupational capacity and his occupational risk. This distinction is consistent with the observation of the Committee that the ability to tend to the mechanics of practice is distinct from the ability to exercise judgment and integrity when confronted with "decision-critical duties". Taken as a whole, the medical evidence gives the Committee no particular assistance in assessing the future risk to clients or the effect of Mr. Beaver's conduct on public confidence in the profession:

(a) Mr. Beaver's medical reports provide no more than a correlation in time between the alcoholism, depression and the behaviour.

(b) It is not clear that Mr. Beaver's medical service providers were even in a position to opine on misappropriation issues.

(c) Dr. [C.E.]'s report raises the specific possibility of ongoing risk.

34. While medical reports may address the risk that a lawyer might repeat similar behaviour in the future, the reports cannot address our regulatory task to demonstrate to the public that this lawyer's conduct is dealt with in a fashion to ensure that the public (lawyers and non-lawyers) maintain a high degree of confidence in the profession.

35. Any substantial misappropriation of client money is damaging to the public confidence in the profession. Mr. Beaver's situation is especially damaging, arising at least in part from the high profile and responsibility of senior counsel:

99 Senior counsel bear a particularly heavy burden. They have the name recognition that attracts interest, and simultaneously draws the harsh glare of

publicity. As their reputations ebb or fall in the public domain, so may the profession's, and the tainted product is not subject to recall.

Wilkinson JA in *Merchant v. Law Society of Saskatchewan*, 2009 SKCA 33

36. Mr. Beaver is disbarred. The Committee finds disbarment to be the appropriate sanction on the following grounds:
- (a) The misappropriations were substantial, continued for an extended period of time, and included clients and especially vulnerable persons.
 - (b) During the substantial period of time of the misappropriations, active steps were taken to cover up the behaviour in a purposeful fashion, fundamentally different from any incidental failure to follow accounting rules
 - (c) The stressors alleged to have affected the behaviour were stressors to which any senior practitioner may be subject.
 - (d) The medical reports of Mr. Beaver contain no specifically articulated reason to believe that the public or the reputation of the profession is not in further danger.
 - (e) The medical report submitted by the Law Society suggests that the danger still exists.
 - (f) The larger issues of the “best interests of the public” and the “protection of the standing of the legal profession” require that this behavior be denounced with our highest sanction. The principles underly our specific regulatory task and are fundamental to the proper functioning of lawyers as the repositories of the trust of clients, colleagues and the courts.
 - (g) The method of returning to practice following a suspension or disbarment bears mentioning. Without entering into a minute examination of the sections of the *Legal Profession Act*, a suspension generally allows an administrative return to practice with the oversight of LSA staff and committees. A disbarred member may apply to the Benchers for reinstatement after one year, but the process is public and proceeds on notice to affected persons and the profession. It was submitted on behalf of Mr. Beaver that the route back to practice from a disbarment is so difficult and rare as to be a “faint hope”. Nevertheless, under these circumstances, it seems appropriate that Mr. Beaver’s potential return to practice should be through the process mandated by the statute for the most serious of cases, which this is.

Referral to the Minister of Justice

37. Section 78(6) of the *Legal Profession Act* provides that the Hearing Committee shall forthwith direct the Executive Director to send a copy of the hearing record to the Minister of Justice and Solicitor General when the Hearing Committee is of the opinion that there are reasonable and probable grounds to believe that the member has committed a criminal offence. The Law Society submitted that such report be made, and no submissions were made by counsel on behalf of Mr. Beaver. The Hearing Committee finds that reasonable and probable grounds exist, and that the report is therefore mandatory. We direct that the Executive Director to make a report to the Minister of Justice and Solicitor General as set out in section 78 of the Act.

Costs of the Hearing

38. The Estimated Statement of Costs (Exhibit 110) is in the amount of \$158,739.10. The Committee finds that some general adjustments to the amount of costs ought to be made:
- (a) Mr. Beaver was successful in his defence of some of the citations.
 - (b) Mr. Beaver made successful pre-hearing applications for further disclosure which required special hearings, briefs and travel;
 - (c) Notwithstanding his success on some of the citations, the major citations involving misappropriation and lack of integrity were proven by the Law Society.
 - (d) The Committee accepts that the Law Society, carrying the burden of proof in a complicated case was entitled to the assistance of some (but perhaps not all) of second counsel.

Costs are assessed against Mr. Beaver in the amount of \$120,000.00.

Closing matters, Exhibits and Reports

39. Notice shall be given to the profession. The Committee notes that a Notice to the Profession of Mr. Beaver's disbarment was published after the Committee's oral decision on sanction February 15, 2017.

40. Public access to transcripts, exhibits and reports will be subject to redaction by the LSA for privileged and confidential information, and the names of individuals. The medical reports and AA correspondence entered at the sanctioning hearing will not be made available to public access.

Dated at the City of Calgary in the Province of Alberta, this 9th day of March, 2017 by:

Frederick R. Fenwick, Q.C.

Douglas McGillivray, Q.C.

Nancy Brook