



DISCIPLINE CASE *DIGEST*

Case 17-09

Member:	Anand Varuun Persad
Jurisdiction:	Winnipeg, Manitoba
Called to the Bar:	June 21, 2001
Particulars of Charges:	Professional Misconduct (41 Charges): <ul style="list-style-type: none">▪ Breach of Rule 2.1-1 of the <i>Code</i> [breach of integrity – misappropriation] [x5]▪ Breach of Rule 2.1-1 of the <i>Code</i> [breach of integrity – misleading clients] [x5]▪ Breach of Rule 3.2-1 of the <i>Code</i> [quality of service] [x8]▪ Breach of Rule 7.2-5 of the <i>Code</i> [duty to lawyers – failure to respond to communications] [x3]▪ Breach of Rule 2.1-1 of the <i>Code</i> [breach of integrity] [x2]▪ Breach of Rule 3.4-1 of the <i>Code</i> [conflict of interest] [x2]▪ Breach of Rules 5-64(3) and 5-64(4) of the <i>Rules</i> [failure to respond to the Law Society] [x4]▪ Breach of Rule 2.1-1 of the <i>Code</i> [breach of integrity – misleading Law Society] [x2]▪ Breach of Rule 2.1-1 of the <i>Code</i> [breach of integrity – misleading counsel] [x4]▪ Breach of Rule 2.1-1 of the <i>Code</i> [breach of integrity – misleading court] [x2]▪ Breach of Rule 3.7-9 of the <i>Code</i> [failure to comply with requirements upon being discharged by client]▪ Breach of Rule 5-43(1)(c) of the <i>Rules</i> [breach of trust accounting rules]▪ Breach of Rule 5.1-1 of the <i>Code</i> [duty to court]▪ Breach of Rule 7.2-11 of the <i>Code</i> [breach of trust condition]
Plea:	Guilty
Date of Hearing:	February 9, 2018
Panel:	<ul style="list-style-type: none">▪ Grant Mitchell, Q.C. (Chair)▪ Victor Bellay▪ Carmen Nedohin (Public Representative)
Counsel:	<ul style="list-style-type: none">▪ Rocky Kravetsky for The Law Society of Manitoba▪ Gavin Wood for the Member
Date of Decision:	Written Reasons for Decision: March 13, 2018
Disposition:	<ul style="list-style-type: none">▪ Disbarment▪ Costs of \$25,000.00

**Integrity / Quality of Service / Duty to Lawyers /
Conflict of Interest / Duty to Law Society / Duty on Discharge /
Breach of Trust Accounting Rules / Duty to Court /
Breach of Trust Condition**

Facts

Overview

Over a period of approximately three years from 2013 to 2016, Mr. Persad misconducted himself in 11 different matters, affecting 13 clients, the result involving breaches of various provisions of four different Chapters of the *Code of Professional Conduct*. Mr. Persad's misconduct demonstrated a lack of integrity and deficiencies in service to his clients. He was charged in four separate Citations containing two, six, one and 32 charges respectively, each with several particulars.

Client No. 1 ("C1")

Mr. Persad accepted a retainer to act on an urgent basis to seek to set aside a Variation Order made in respect of spousal support and, in the interim, to seek to stay enforcement of the Order. Mr. Persad did not file any documents in court to do either. Over a period of nine months, Mr. Persad made a series of false representations to C1, including that court documents had been filed, that a hearing had been held and that a decision was on reserve. During the course of the retainer, C1 made dozens of requests for information, but Mr. Persad either did not respond or responded with false information.

Client No. 2 ("C2")

After settling all other issues in a divorce matter, Mr. Persad accepted instructions to proceed with C2's divorce from his spouse on an uncontested basis. Mr. Persad received from opposing counsel the Notice Withdrawing Opposition to Divorce on March 11, 2015, but he did not prepare the necessary Affidavit of Petitioner's Evidence and draft Judgment until January 2016. In the meantime, Mr. Persad received a series of inquiries from opposing counsel to which he did not respond. In October 2015, Mr. Persad falsely told C2 that he was then still waiting for the Notice Withdrawing Opposition to Divorce from opposing counsel, but he did not otherwise respond to inquiries from C2 or otherwise communicate with him. The matter was only completed after a complaint to the Law Society.

Client Nos. 3 and 4 ("C3" and "C4")

In February 2015 at case conferences held within one week of each other, Mr. Persad double booked himself by agreeing to trial dates being set for two trials for the same week approximately one year later. Despite attending subsequent case conferences, Mr. Persad did nothing in the intervening year to address the scheduling conflict. In the meantime, an Interim Order was pronounced in C3's matter and despite the persistent inquiries from C3, Mr. Persad did nothing to have the Order taken out. Rather, he told C3 from time to time, that the Order had been filed and he was waiting to receive a copy from the court.

In the week before both trials were scheduled to proceed, Mr. Persad entered into settlement discussions in C3's matter and a settlement was reached just before the trials were both scheduled to begin. Mr. Persad did not tell C3 that as a result of the scheduling conflict he had created, he had a personal interest in settling the matter.

On the Monday that would have been the first day of the trials, counsel in C3's matter appeared before the scheduled trial judge to speak to the settlement. The judge required the clients to attend on the following morning to confirm their agreement and Mr. Persad said he would try to reach C3 to have him attend. When C3 was not present on Tuesday, Mr. Persad told the judge that he had spoken to C3 on Monday and that C3 had said that he would try to get out of work to attend and that he had again spoken to C3 earlier Tuesday morning and C3 had said that the earliest he could get to court would be 10:30 a.m., a half hour after court had opened. The judge then adjourned the matter until Thursday, so that C3 could be present. In fact, Mr. Persad had misled the judge. Mr. Persad had only spoken with C3 around 9:30 a.m. on Tuesday morning. When the judge became aware of this during the Thursday attendance, Mr. Persad acknowledged that he had misled the court on Tuesday and said that he would immediately contact the Law Society concerning that. He did not.

Mr. Persad did not at any time tell the judge in C3's matter that he was conducting C4's trial during the week in which the above appearances in C3's matter took place. He did not ever tell C3, C4 or opposing counsel in those cases that he was double booked for the week in which the trials were scheduled to take place.

Client No. 5 ("C5")

After a Final Order was pronounced in a family law matter providing for an equalization payment, pension sharing and costs, Mr. Persad was instructed by C5 to immediately enforce the Order. Mr. Persad did not, however, submit the Order for signing until seven months later. In the meantime, Mr. Persad misled C5 and then the Law Society as to the status of the Order, including by saying that it had been submitted and that he had followed up with the court registry. After Mr. Persad finally received the signed Order, C5 submitted it to her spouse's employer to give effect to the pension sharing and learned that her spouse had already accessed part of it. Mr. Persad then accepted instructions to seek a variation of the Final Order so as to recover the reduced pension share. After an uncontested appearance before a judge, Mr. Persad submitted a proposed Variation Order. He then received an inquiry from the judge seeking clarification as to the wording of the proposed Order. For several months thereafter, C5 made inquiries of Mr. Persad as to the Variation Order, but Mr. Persad did not respond. He then misrepresented to C5 that he had an appointment to see a judge concerning the variation, when there was no such appointment. For several more months thereafter, Mr. Persad did not respond to C5's inquiries. No response was made to the judge until after Mr. Persad withdrew from practice when another lawyer took conduct of the matter and dealt with it.

After the Final Order was signed, Mr. Persad accepted instructions to enforce other aspects of the Final Order. He told C5 that a "lien" had been prepared and filed against her former spouse's property, when that was not the case. Mr. Persad did deliver a Writ of Seizure and Sale to the sheriff and when proceeds were realized, he forwarded a copy of the sheriff's report to C5 but despite persistent inquiries from C5, did not account to her for the proceeds for six weeks.

Client No. 6 ("C6")

Mr. Persad accepted instructions from C6 to deliver a demand letter to her ex-spouse by a specific date with a specific deadline, but did not. When C6 learned that her instructions had not been followed, she attempted to contact Mr. Persad but he did not respond. C6 then terminated Mr. Persad's retainer and sought to recover her file and the retainer she had paid to Mr. Persad, but received no response from Mr. Persad. When Mr. Persad left one firm to join another, he took C6's file with him even though he was no longer her lawyer and had no authorization to do so. In response to C6's inquiries, the managing partner of the former firm attempted to recover the file from Mr. Persad. Mr. Persad did not respond to several requests from his former firm and when he did respond, he promised the return of the file by a specific date. He did not return the file as promised. When the file was eventually returned, it contained statements of account that had not been delivered to C6 and which described work that had not been done, but for which Mr. Persad had transferred funds. Upon review of the file, the former firm refunded the entire retainer amount to C6.

When a complaint was made to the Law Society concerning this matter, Mr. Persad did not respond to 14 day letters from the Law Society as required.

Client No. 7 (“C7”)

C7 retained Mr. Persad to assume conduct of an ongoing matter. C7 paid to Mr. Persad a cash retainer of \$2,000.00. Mr. Persad deposited only \$1,500.00 of the retainer into his firm’s trust account and immediately appropriated the balance to himself. Mr. Persad then issued an account for \$1,236.05 and transferred that amount from trust even though he had not yet begun to work on the matter.

At the time he was retained, there was a Summary Judgment pending against C7 with a hearing date approximately two and a half months away and filing deadlines for filing responding material approximately three weeks in the future. Mr. Persad accepted instructions to oppose the motion and to seek financial disclosure. He did not deliver a Notice of Appointment of Lawyer or otherwise advise opposing counsel that he had been retained. Mr. Persad prepared an Affidavit and C7 executed it a few days after the filing deadline. No attempt was made to file the Affidavit and no Motion for Financial Disclosure was prepared.

Mr. Persad contacted opposing counsel only the day before the contested Summary Judgment motion was to be heard. On that day, Mr. Persad filed a Brief saying that he had just been retained and was seeking an adjournment. At the hearing the next day, Mr. Persad pursued the adjournment request, representing to the court that he had just recently been retained. He did not say that he had a signed Affidavit of C7 on file. The adjournment was granted and Mr. Persad was given one week to file C7’s evidence. Costs were ordered payable by C7. Mr. Persad did not communicate with C7 after the adjournment and the client was not aware of the submissions that were made or of the costs that were awarded. A new hearing date was set for about 6 weeks later, but Mr. Persad did not tell C7 about the new hearing date. Mr. Persad did not file C7’s Affidavit before the new hearing date, despite several reminders and inquiries from opposing counsel. On the new hearing date, Summary Judgment was granted against C7 and additional costs ordered to be paid by him. Mr. Persad did not report to the client as to what had happened.

When the law firm discovered the manner in which the retainer funds had been paid, it brought its concerns to the attention of the Law Society and an investigation was initiated. Mr. Persad did not respond as required to 14 day letters sent to him by the Law Society in the course of the investigation.

Client No. 8 (“C8”)

Four Interac transfers totalling \$1,200.00 which were intended to be retainers were made to Mr. Persad by C8 and were sent to Mr. Persad’s law firm email address. Mr. Persad directed the Interac payments to his personal account rather than to his law firm’s account.

Client No. 9 (“C9”)

At Mr. Persad’s request, C9 sent to him an Interac transfer retainer of \$1,000.00, emailed to Mr. Persad’s law firm email address. Mr. Persad directed the Interac payment to his personal account rather than to his law firm’s account.

Client No. 10 (“C10”)

Over a period of about three months, Mr. Persad took three cash retainers from C10 totalling \$1,100.00. He did not deposit the retainer funds to his firm’s trust account but took the money for himself.

Upon being retained, Mr. Persad accepted instructions to commence divorce proceedings and to seek interim relief. Mr. Persad prepared documents for those purposes and C10 attended and signed the Petition and an Affidavit in support of the interim relief, but Mr. Persad did not attempt to file the documents in court for six weeks and when he did, they were rejected by the court and returned. Mr. Persad then made no effort to prepare or file corrected documents. In response to

inquiries from C10, Mr. Persad said that the documents had been filed and served. When Mr. Persad failed to provide a copy of the filed Petition to C10 after several requests, a lawyer acting for C10 in another matter attempted to obtain a copy from the court but it could not be found. Mr. Persad only filed the Petition after the other lawyer called his firm and requested the court file number. He never did file the Interim Motion or Affidavit. C10 then requested a copy of the trust ledger respecting his matter, but was not provided with it. C10's other lawyer made several requests, but also could not obtain the ledger. Assistance was sought from the Law Society and when a copy of the ledger was obtained from the law firm, it did not record the client's three retainer payments. A partner in the firm then confronted Mr. Persad concerning this, saying that the Law Society required the information. Mr. Persad then went to his office and placed an envelope containing \$1,100.00 in the client file. He then made a show of looking through the file and discovering the cash, expressing surprise that it was still in the file. The partner passed on to the Law Society that C10's money had been found in the file. Mr. Persad then falsely represented to the Law Society directly that the client's retainer funds had mistakenly been left in an envelope in the file.

Client Nos. 11 & 12 ("C11" and "C12")

Mr. Persad acted for C11 in a family law litigation matter and pursuant to an agreement with opposing counsel, he acted for both C11 and C11's spouse (C12) on the sale of their marital home. The agreement required that the net sale proceeds be held by Mr. Persad's firm to be paid out only by agreement or court order. C12's litigation counsel delivered transfer documents to Mr. Persad in trust on the condition that the net proceeds would be dealt with in accordance with that agreement.

A deposit cheque for \$10,000.00 was provided to Mr. Persad with the accepted Offer to Purchase as well as the transfer proceeds, with credit provided to the purchasers for the deposit. The \$10,000.00 deposit cheque was not deposited to the firm's trust account, Mr. Persad received the remaining balance to close and after agreed disbursements, there remained a little over \$45,000.00 in the firm's trust account. When Mr. Persad later changed firms, he continued to act for C11 against C12 in the litigation matter and Mr. Persad sent a letter to C12's litigation lawyer seeking agreement to transfer the net proceeds from the house sale to his new firm to be held on the same conditions as at his former firm. When C12's lawyer did not immediately respond, Mr. Persad wrote on a copy of the letter an agreement to the transfer with the initials of the C12's lawyer and sent that to his former firm representing that it was evidence of the agreement of C12's lawyer. The former firm then paid over the remaining trust funds to Mr. Persad's new firm. Without the consent or knowledge of C12 or her lawyer, Mr. Persad then paid out half of the funds from trust to his litigation client.

Mr. Persad had made no effort to find the initial deposit cheque and did not attempt to have it replaced. It was found in his file after he withdrew from practice.

When it came to light that Mr. Persad had transferred half of the trust funds to C11, C12 complained to the Law Society. In response to a 14 day letter, Mr. Persad falsely represented to the Law Society that the handwritten authorization to transfer funds from his former firm was placed on the letter by the opposing lawyer and falsely represented that the opposing lawyer had consented to the subsequent payment of half of the trust funds to Mr. Persad's litigation client.

Mr. Persad did not respond to a 14 day letter sent to him during the course of the Law Society's investigation.

Client No. 13 ("C13")

Mr. Persad was retained by C13 for the purpose of seeking an Order of joint custody of her children with her former partner. She paid a \$3,500.00 retainer to Mr. Persad. C13 was thereafter served with a Petition and within three days of receiving it, Mr. Persad issued an account to C13 for services including drafting an Answer, a Notice of Motion and Affidavit and he transferred \$2,019.00 from trust to pay the account. In fact, Mr. Persad had not drafted any court documents prior to the date of the account.

When no Answer was filed within the time allowed after service, opposing counsel gave Mr. Persad notice that if he would note default if no Answer was filed by a specified date. Mr. Persad did not file an Answer by the extended deadline and default was noted. Mr. Persad was given notice by letter that a hearing would be held consequent on the default in a little over two months. He did not tell C13 that default had been noted and did not tell her that a hearing had been scheduled. Mr. Persad did, however, send C13 two further statements of account. The hearing was scheduled for a Monday. On the preceding Friday afternoon, Mr. Persad sent an email to opposing counsel seeking consent to an adjournment on the basis that he was unaware that the hearing had been scheduled. Mr. Persad said he would be seeking to have the default set aside. Opposing counsel refused to consent and Mr. Persad appeared in court on Monday. He did not then seek an adjournment. Mr. Persad falsely represented to the court that letters from opposing counsel had not come to his attention. He then told the court that C13 consented to an Order of sole custody in favour of her former partner when C13 was unaware of the noting in default, was unaware of the hearing and had not consented to such an Order. When C13 found out about the Order, Mr. Persad told her it was only temporary and would be reviewed after certain other matters were resolved. Mr. Persad became aware shortly thereafter that the other matters were resolved but took no steps to seek to vary the custody Order. In the meantime, opposing counsel sent to him a form of Consent Order for his endorsement, but Mr. Persad did not respond. Opposing counsel then submitted the form of Order to the court. The judge wrote to counsel saying that she would sign the Order unless she received an objection from Mr. Persad by a specific date. Mr. Persad did not respond to the judge's letter in any way and the Order was signed without the judge having any input from him.

Throughout his representation of C13, the only information Mr. Persad provided to her was that he was working on resolving custody issues in her favour. He told her on three occasions that hearings had been scheduled when they had not. On each occasion, C13 attended the courthouse and Mr. Persad gave her false reasons why the supposed hearings could not proceed as supposedly scheduled. On one occasion, Mr. Persad had C13 sign an Affidavit for use on such a hearing but the Affidavit was never filed in court.

Relying on the Order of sole custody, C13's former partner moved out of the Province with the children. It was only after learning of that move, that Mr. Persad took any steps to vary the custody Order to which he had consented. In response to that motion, the opposing party filed an Affidavit setting out the facts surrounding the noting in default, the communications between counsel, the fact of the consent and that nothing had been heard from Mr. Persad in the four months after the Consent Order was pronounced. Mr. Persad did not provide a copy of this Affidavit to C13. An emergency motion for return of the children to the Province was then scheduled and was not successful. After that decision, Mr. Persad had C13 sign another Affidavit, but it was not filed in court.

C13 only became aware of what had actually happened when she changed counsel and new counsel obtained the file. A complaint was then made to the Law Society. During the course of the investigation into the complaint, Mr. Persad received but did not respond as required to 14 day letters from the Law Society.

Plea

Mr. Persad entered a guilty plea to the 41 charges of professional misconduct.

Decision and Comments

At the hearing, Mr. Persad admitted the facts. He asked to be permitted to resign rather than be disbarred. A doctor's letter was filed. Mr. Persad also submitted that during the period of time that he engaged in the admitted misconduct, he was experiencing stressful personal circumstances. The Panel observed that the presumed consequence of failures to act with integrity as demonstrated in this case, is disbarment and that a lesser consequence is available only if there are exceptional extenuating circumstances. The Panel commented that the doctor's letter did not opine that Mr. Persad's misconduct was caused by any medical condition. The Panel adopted comments from a prior decision, noting that lawyers must be worthy of being trusted to the ends of the earth no matter what difficulties they face. Neither the information from the doctor, nor the

personal circumstances as described at the hearing, were determined to constitute exceptional extenuating circumstances.

Penalty

The Panel ordered that Mr. Persad be disbarred and his name struck from the Rolls of the Law Society. In addition, the Panel ordered that Mr. Persad pay the sum of \$25,000.00 to the Law Society as a contribution to the costs associated with the investigation and prosecution of these matters.