2024 LSBC 06
Hearing File No.: HE20210060
Decision Issued: February 16, 2024
Citation Issued: November 8, 2021

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL

HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

NICKOLAUS HAROLD MACDONALD WEISER

RESPONDENT

DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION

Hearing dates:	November 20, 2023
Panel:	William R. Younie, KC, Chair Kris Gustavson, Public representative Georges Rivard, Bencher
Discipline Counsel:	Ilana Teicher
No one appearing on behalf of the Respondent	

BACKGROUND

[1] The facts were set out at length in the facts and determination decision issued March 10, 2023 (*Law Society of BC v Weiser*, 2023 LSBC 10 (the "F & D Decision")) and, except where specifically referenced, will not be repeated in this decision.

[2] In summary, the Panel previously found that the Respondent's actions amounted to professional misconduct with regard to each of the following allegations:

(a) Between January 2013 and September 2016, the Respondent acted in a conflict of interest in concurrently representing I Inc., a company in which he had a financial interest, and the executor of the RD Estate in the preparation of a loan between the Respondent's company and the RD Estate; in the preparation of a mortgage in favour of his company and registered against the title in which the executor of the estate had an interest; and in a foreclosure proceeding.

(b) In or around September 2015, the Respondent acted in a conflict of interest in concurrently representing I Inc., a company in which he had a financial interest, and AB, the executor of the WB Estate in the execution of a $15,000 loan from I Inc. to AB.

(c) In September and October of 2013, the Respondent acted in a conflict of interest by concurrently representing the borrowers, SR and CR, and the lender, I Inc., a company in which he had a financial interest.

(d) In approximately September and October 2013, the Respondent acted in a conflict of interest when he jointly represented the borrowers in the transaction, SR and CR, and the lender, S Holdings.

(e) Between approximately August 2014 and June 2016, the Respondent borrowed some or all of $366,545 from his client, I Inc.

(f) On or about January 10, 2020, in relation to a loan renewal for U Ltd. the Respondent acted without integrity by committing LM to be the personal guarantor for the loan renewal without the knowledge or consent of LM.

[3] In its written submissions, the Law Society correctly summarizes the proven allegations of professional misconduct by the Respondent as four instances of acting in a conflict of interest, one improper borrowing from a client, and one instance of acting without integrity.

PROCEEDING IN THE ABSENCE OF THE RESPONDENT

[4] Section 42(2) of the *Legal Profession Act*, SBC 1998, s. 9 (the *"Act"*) permits a hearing panel to proceed with a hearing in the absence of a respondent if satisfied that the respondent was properly served with notice of a hearing.

[5] Rule 10-1(1)(b) of the Law Society Rules (the "Rules") permits any notice or document to be served in a proceeding on a respondent by the various methods set out therein, including by electronic mail to the last known electronic mail address of the respondent.

[6] The Law Society tendered in evidence at this hearing the Affidavit of Julie Erskine sworn November 15, 2023. The Panel finds, based on that evidence, that the Respondent was served on August 8, 2023, by email, with the Notice of Hearing for this disciplinary action hearing set for November 20, 2023. The Notice of Hearing was served within the time required, by service to the last known electronic mail address of the Respondent.

[7] The Panel, at the commencement of this hearing, ruled that it was satisfied that the Respondent was properly served with the requisite Notice of Hearing pursuant to Rule 10-1(1)(b) of the Rules. The Panel further determined in all the circumstances it was appropriate and in the public interest to proceed with this hearing in the Respondent's absence pursuant to section 42(2) of the *Act*.

POSITION OF THE PARTIES

[8] The Respondent did not attend the disciplinary action hearing on November 20, 2023.

[9] The Law Society submits that it is appropriate for the Panel to examine the proven allegations on a global basis and submits that in doing so a proper sanction is a six-month suspension.

[10] The Law Society further submits that the Respondent's conduct in the four instances of acting in a conflict of interest was egregious, the conflicts were obvious, they were undertaken without disclosing those conflicts to the clients affected or recommending the clients obtain independent legal advice. The Respondent failed to advise the clients of his financial interest in three of the matters, and he directly or indirectly benefited from certain of the transactions.

[11] The Law Society also submits that the Respondent's conduct in improperly borrowing money from a client was serious professional misconduct, the amount involved, being $366,545, is significant, there is no evidence before the Panel of

repayment, and the sanction imposed must make both the Respondent and the profession aware that such misconduct is unacceptable and requires a serious sanction.

[12] With respect to the Panel's determination that the Respondent acted without integrity in signing a loan agreement on behalf of both his corporate client and an individual guarantor, the Law Society submits the Respondent demonstrated a flagrant failure of his duty of integrity and it is serious misconduct.

[13] For the reasons set forth below, the Panel finds that an eight-month suspension is the appropriate penalty in this matter.

[14] The Law Society also seeks an order for costs in the amount $16,668.75 pursuant to Rule 5-11 and Schedule 4 of the Rules, payable within 30 days of the issuance of the disciplinary action decision in this matter. The Panel finds costs in the amount sought by the Law Society should be paid for the reasons set out below.

ANALYSIS-OGILVIE/DENT FACTORS AND RANGE OF SANCTION

[15] The possible disciplinary action to be imposed on the Respondent pursuant to section 38(5) of the *Act* range from reprimand to disbarment.

[16] The Law Society's principal obligation pursuant to section 3 of the *Act* is to uphold and protect the public interest in the administration of justice. Any disciplinary action must ensure the protection of the public and the promotion of the rehabilitation of the respondent lawyer, and where those two purposes conflict, the protection of the public and maintenance of the public confidence in the profession must prevail: *Law Society of BC v. Nguyen,* 2016 LSBC 21, at para. 36.

[17] The often-cited and often-followed decision of *Law Society of BC v. Ogilvie*, 1999 LSBC 17 sets out thirteen non-exhaustive factors for consideration by a panel when determining the appropriate sanction. In *Law Society of BC v. Dent,* 2016 LSBC 05, the thirteen *Ogilvie* factors were consolidated into the following four general considerations:

(a) the nature, gravity and consequences of the conduct;

(b) the character and professional conduct record of the respondent;

(c) acknowledgement of the misconduct and remedial action; and

(d) public confidence in the legal profession, including public confidence in the disciplinary process.

[18] In *Law Society of BC v. Faminoff,* 2017 LSBC 4, at para. 84, a decision referencing both *Ogilvie* and *Dent,* the panel stated that a decision on sanction is an "individualized process that requires the hearing panel to weigh the relevant factors in the context of the particular circumstances of the lawyer and the conduct that has led to the disciplinary proceedings". The panel further stated that a consideration of aggravating and mitigating circumstances will assist in determining the range of appropriate sanctions.

[19] Further, the Law Society submits, relying on *Law Society of BC v. Gellert*, 2014 LSBC 5, that the Panel should approach this matter by viewing the issue of sanction on a global versus a piecemeal basis. *Gellert* at para. 37 states that "the extent to which the public needs protection, and the manner by which such protection is best provided, must ultimately relate to the entire scope of the misconduct in issue and not to each particular wrongdoing viewed piecemeal."

[20] After full consideration the Panel is of the view that it is appropriate to examine the Respondent's conduct globally applying the consolidated *Ogilvie* factors.

Nature and gravity of the misconduct

[21] In *Gellert,* the panel stated that the nature and gravity of the misconduct will usually be of special importance, as it stands as a "benchmark" in assessing how to best protect the public and preserve its confidence in the profession. The objective of public protection is the prism through which all the *Ogilvie* factors should be applied.

[22] Rules 3.4-1 of the *Code of Professional Conduct for British Columbia* (the "*Code*") confirms that a lawyer must not act or continue to act for a client where there is a conflict of interest, except as permitted under the *Code.* Commentary 3 to this rule of the *Code* confirms it applies to a lawyer's representation of a client in all circumstances in which the lawyer acts for, provides advice to, or exercises judgment on behalf of a client. This Commentary also identifies a risk to the public where a lawyer does not comply with the rule, confirming that "[e]ffective representation may be threatened where a lawyer is tempted to prefer other interests over those of his or her own client: the lawyer's own interests, those of a current client, a former client, or a third party." A lawyer in their fiduciary relationship with their client has an undivided duty of loyalty and must act solely in the client's interest. That duty must never be compromised. As stated in *Law Society of BC v. Weiser,* 2023 LSBC 32, at paras. 198 to 198:

> [198] The duty of loyalty to a client is a core value of the profession. Lawyers are trained to think about and recognize conflicts; failing to identify a conflict of interest and acting in a conflict of interest is serious misconduct because the duties impacted by that misconduct "strike the core of the solicitor-client relationship. (*Law Society of BC v. Golden*, 2019 LSBC 15, para. 11)

> [199] With respect to the fiduciary relationship between a lawyer and their client, the Commentary to rule 3.4-1 notes that "[t]he rule governing conflicts of interest is founded in the duty of loyalty which is grounded in the law governing fiduciaries", and that in order to maintain public confidence in the integrity of the legal profession and the administration of justice, it is essential that lawyers respect the duty of loyalty and the related duty not to act in a conflict of interest.

[23] Even where lawyers are permitted to act in a matter where there is a conflict of interest, there must be express or implied consent from each client and the lawyer must reasonably believe they can represent each client without having a material adverse effect upon the representation of, or loyalty to, the other client. Further, a lawyer having an interest in a company, such as here where the Respondent had an interest in the lender company in three of the loan transactions, must disclose and explain to the client the nature of the conflict or potential conflict and recommend and require the client receive independent legal advice.

[24] When acting for more than one party, except where specifically permitted by the *Code* a lawyer is obliged to know they cannot act for both sides of a transaction, and must be, as stated in *Law Society of BC v. Guo,* 2023 LSBC 28, at para. 116, "on the alert" for real or potential conflicts of interest from the commencement of the retainer.

[25] The responsibility to identify real or potential conflicts before acting must fall solely on the lawyer. Obviously, the client is unable to make such determination, and as stated in *Golden,* at para. 13, in part "[l]awyers are trained to think about and recognize conflicts" of interest. Further, this determination must be made at the outset and before accepting any retainer it must be determined not just does a real conflict of interest present itself but whether any potential conflict of interest may arise if the retainer is accepted.

[26] As stated in *Law Society of BC v. Coglon,* 2006 LSBC 14, at para. 20, "[a] lawyer who places himself or herself in a position of conflict can never be sure in advance whether actions taken in this context will result in damage. … A lawyer must not be allowed to gauge the seriousness of a conflict with reference solely to the harm it may cause. Such would turn the avoidance of conflict into a game of probability in which lawyers play the odds, weighing potential benefits and liabilities in each conflict as it arises."

[27] The Respondent on four separate occasions and contrary to the *Code* acted in a conflict of interest by performing legal services to lender clients while simultaneously representing the borrower in each transaction. In three of these transactions, the Respondent had a financial interest in the lender company and personally benefitted from those transactions, which loan transactions the Respondent arranged and facilitated.

[28] Regarding the three occasions in which the Respondent acted for both the borrower and lender in which the Respondent had a financial interest, the Panel found that contrary to the *Code* the Respondent did not do any of the following:

(a) explain to each client the principle of undivided loyalty;

(b) advise each client that no information received from one of them as part of joint representation could be treated as confidential as between them;

(c) receive from all clients fully informed consent related to the course of action to be followed in the event the Respondent received from one client, in his separate representation of that client, information relevant to the joint representation; and

(d) secure the informed consent of each client (with independent legal advice, if necessary) as to the course of action that would be followed if a conflict arose between the parties.

[29] Regarding the instance in which the Respondent acted for both borrower and lender, but the Respondent did not have a financial or other interest in the lender, the Respondent failed to do any of the following:

(a) advise either client that the Respondent was representing both lender and borrower;

(b) disclose and explain to both his borrower or lender client either the nature of the conflicting interest or how or why a potential conflict might develop between the Respondent, the lender client or the borrower client regarding the loan from the lender to the borrower;

(c) recommend or require the respective clients obtain independent legal advice in relation to a refinancing matter of the borrowers or the loan transaction; and

(d) obtain either client's consent to the Respondent acting for both parties.

[30] The Respondent, a lawyer with almost thirty years practice experience when the earliest of the subject violations occurred, had at all material times significant experience as a general solicitor, including in the area of commercial lending transactions. As well, the Respondent confirmed to the Law Society's investigator during his June 27, 2021 interview that he was thoroughly familiar with loan guarantees.

[31] The Panel acknowledges that there are and will be instances when determining potential conflicts of interest before agreeing to act as counsel may be difficult, but that cannot be said to apply to the Respondent's four acts of professional misconduct when acting for both parties in the loan transactions. In the Panel's view, the potential and real conflicts of interest with respect to these loan transactions were, objectively, plain and obvious and should have been such to the Respondent before he agreed to act for the clients. With respect to the three noted instances of the Respondent acting for both lender and borrower when he had an interest in the lender company, one can simply ask the question: "What if the borrower defaulted in its loan obligations?" The potential conflict was obvious from the outset.

[32] The Panel found the Respondent committed professional misconduct when he borrowed a significant sum, being $366,545 from a corporate client. The Respondent's submission that the loans were forgivable and not repayable was rejected by the Panel. The Panel found the Respondent's acts were clear contraventions of rule 3.4-31 of the *Code* because, in part, the lender client was not an entity from which a lawyer may borrow money. There was no evidence in the facts and determination hearing (the "F & D Hearing") that the loan was repaid.

[33] The Panel further found the Respondent committed professional misconduct in acting without integrity when he executed a commercial loan renewal agreement on behalf of his corporate client and for an individual guarantor, when the Respondent had no authority or consent from the corporate client or the guarantor to bind either party to the particular commercial obligation. The principal balance of the loan was $1,015,367.99 at the time the Respondent executed the loan renewal agreement letter binding both borrower client and the individual guarantor.

[34] The Panel finds that when viewed together, the six separate acts of professional misconduct are grave and serious. The conflicts of interest are numerous and evidence a continuous pattern of disregard of the requirements of the *Code* and the interests of the clients. In each of the four loan transactions the Respondent received a benefit, acted deceptively for he did not disclose his personal interest in the lender, and put his personal interests before the clients' interests. Borrowing money from the client where prohibited was a significant breach of both the rules and the trust of the client. Executing the loan amending agreement involving a significant sum while simultaneously continuing to bind a separate individual to a concomitant full indemnity personal guarantee of the client borrower's loan obligations was an egregious act and a flagrant breach of the Respondent's duty mandated by the *Code* to carry on practice and discharge his responsibilities to his client and the public with integrity.

Character and professional conduct record of the Respondent

[35] The Law Society tendered the Respondent's professional conduct record (the "PCR") in this hearing and the Panel admitted same as an exhibit. The Law Society submits the PCR should be considered by the Panel to be an aggravating factor when determining the appropriate disciplinary action.

[36] Rule 5-6.4(5) of the Rules provides that a panel may consider the respondent's professional conduct record in determining a disciplinary action. Practice Direction 10.7(1)(f) and (2) of the LSBC Tribunal's Directions on Practice and Procedure (the "Practice Directions") notes that a panel may consider the professional conduct record of a respondent in the disciplinary action phase of the hearing.

[37] In the definition of "professional conduct record" in Rule 1 of the Rules and in Practice Direction 2.3, "professional conduct record" is explicitly defined as including Conduct Review Subcommittee reports and Practice Standard Committee recommendations.

[38] The Panel is mindful of the reasons in *Law Society of BC v. Lessing,* 2013 LSBC 29, where the panel discussed the use of the professional conduct record in a disciplinary action hearing and stated the following:

> [71] In this Review Panel's opinion, it would be a rare case for a hearing panel or a review panel not to consider the professional conduct record. These rare cases may be put into the categories of matters of the conduct record that relate to minor and distant events. In general, the conduct record should be considered. However, its weight in assessing the specific disciplinary action will vary.
>
> [72] Some of the non-exclusionary factors that a hearing panel may consider in assessing the weight given are as follows:
>
> (a) the dates of the matters contained in the conduct record;
>
> (b) the seriousness of the matters;
>
> (c) the similarity of the matters to the matters before the panel; and
>
> (d) any remedial actions taken by the Respondent.
>
> [73] In regard to progressive discipline, this Review Panel does not consider that *Law Society of BC v. Batchelor*, 2013 LSBC 9 stands for the proposition that progressive discipline must be applied in all circumstances. At the same time, the

> Review Panel does not believe that progressive discipline can only be applied to similar matters.
>
> [74] Progressive discipline should not be applied in all cases. A lawyer may steal money from a client. In such a case, we generally skip a reprimand, a fine or even a suspension and go directly to disbarment. Equally, a lawyer may have in the past engaged in professional misconduct requiring a suspension. Subsequently that lawyer may be cited for a minor infraction of the rules. In such a situation, progressive discipline may not apply, and a small fine may be more appropriate.

[39] The Panel has carefully reviewed all of the details of the PCR. The Law Society in its submissions summarized the Respondent's PCR. We find that summary is accurate and is as follows:

(a) Conduct Review (August 2018): the Respondent attended a conduct review to discuss his conduct in providing a loan without ensuring the client had obtained independent legal advice, failing to make reasonable efforts to obtain and record the occupations of all directors and shareholders of a client that was an organization, and failing to respond promptly and completely to the Law Society. The Subcommittee Report concluded that the Respondent admitted his conduct, confirmed he would not allow any of these issues to occur again and would introduce a new office policy to ensure compliance with Rule 3-103 regarding corporate client identification and verification. On the basis of these factors, the Subcommittee recommended no further disciplinary action.

(b) Administrative Suspensions (2021 to 2022): the Respondent served five administrative suspensions for failure to produce documents to the Law Society, as follows:

    (i) March 19 to 24, 2021;

    (ii) May 5 to 12, 2021;

    (iii) October 12 to 15, 2021;

    (iv) March 23 to 28, 2022; and

    (v) June 3 to 6, 2022.

(c) Practice Standards Recommendations (January 2022): the Practice Standards Committee made recommendations regarding stress

management, understanding conflicts of interest, file tracking and accounting knowledge to be implemented by the Respondent.

(d) Practice Standards Order (December 2022): the Practice Standards Committee made an order imposing conditions or limitations on the Respondent's practice pursuant to Rule 3-20. The order required the Respondent to implement various recommendations regarding stress management, understanding conflicts of interest, file tracking and accounting knowledge within 14 days.

(e) Determination of Professional Misconduct and Disciplinary Action (December 2022 and July 2023): on December 7, 2022, the Respondent was found to have committed professional misconduct for engaging in the practice of law while suspended and for failing to respond and cooperate in the Law Society's investigation. On July 25, 2023, the hearing panel ordered the Respondent be suspended for three months.

(f) Failure to Pay Costs Resulting from Hearing (August 2023): The costs ordered against the Respondent on July 25, 2023 were due August 1, 2023. As of the date of the Law Society's submissions, the Respondent had not yet paid the outstanding costs of $11,384.38.

(g) Determination of Professional Misconduct (August 2023): on August 15, 2023 the Respondent was found to have committed professional misconduct for the following acts:

    (i) using his firm's trust account for his personal financial benefit in the absence of legal services to receive and disburse $198,000 of his own funds which were proceeds of an unlicensed cannabis business and drafting seven misleading documents as support for purported loans related to the $198,000;

    (ii) making numerous misrepresentations to the Law Society during its investigation into the above conduct;

    (iii) failing to maintain the minimum required general account records required by the Law Society Rules;

    (iv) acting in a conflict of interest when he entered into agreements to borrow funds from his clients; and

    (v) acting in conflicts of interest when representing both parties in loan transactions.

(h) Administrative Suspensions (August, September, and November 2023): the Respondent served an administrative suspension from August 15 to 17, 2023 for his failure to produce documents to the Law Society. As of the date of these submissions, the Respondent has been serving two further administrative suspensions – one since September 18, 2023 and one since November 14, 2023 – for his failure to produce documents to the Law Society.

[40] The subject matter of the 2018 Conduct Review was the Respondent lending money to a client without ensuring the client had independent legal advice. The subject matter of both the January 2022 Practice Standards Recommendations and the December 2022 Practice Standards Order included understanding conflicts of interest.

[41] The Law Society correctly submits that the misconduct being considered by the Panel predates the Respondent's 2018 Conduct Review and the December 2022 Practice Standards Order, but further submits that the Respondent's conduct raises ongoing concerns that he does not understand or properly handle conflicts of interest, and shows a propensity to ignore conflicts of interest where he could personally benefit. The Panel concurs with this submission.

[42] The evidence establishes that the Respondent has engaged in a pattern of disregard for the mandatory conflict rules.

[43] The Panel finds that when viewed as a whole the Respondent's PCR is an aggravating factor.

Acknowledgement of the misconduct and remedial action

[44] By non-response to a Notice to Admit (the "NTA"), properly served on the Respondent on July 7, 2022, the facts supporting the Panel's findings of misconduct in the F & D Decision were admitted by the Respondent. The Respondent's deemed admissions included the specific admissions of acting in conflicts of interest, improper borrowing from a client, and executing the loan extension on behalf of the corporate client and the personal guarantor. A deemed admission of facts underlying misconduct can form an evidentiary basis for a panel to find an acknowledgement of misconduct. However, during the F & D Hearing, the Respondent attempted to refute the deemed admissions. The Respondent sought to testify at the F & D Hearing and further, the Respondent asked the Panel to permit the Respondent to file and rely on certain documentary evidence. No notice of the Respondent's intent to testify or introduce documents was provided to the Law Society prior to the first day of the F & D Hearing. The Respondent's applications to tender documentary evidence and testify during the F & D Hearing were denied for the reasons set forth in the F & D Decision.

[45] There is no evidence before the Panel indicating the Respondent has acknowledged his misconduct or undertaken remedial action to ensure the misconduct found by the Panel does not again occur.

Public confidence in the legal profession, including public confidence in the disciplinary process

[46] Based on the statutory obligations of section 3 of the *Act*, and as stated in *Ogilvie* and subsequent decisions, the Panel must consider the need to maintain the public's confidence in the ability of the disciplinary process to regulate the conduct of its members.

[47] While the need to protect the public and maintain confidence in the disciplinary process is always a factor requiring consideration, because of the nature, number and seriousness of the Respondent's failure to comply with his *Code* obligations, the personal benefit derived therefrom, and the Respondent's PCR, the need to protect the public and maintain its confidence suggest a need for a stronger sanction.

Range of sanctions

[48] The Law Society has referred the Panel to a number of decisions which it submits can assist the Panel in determining the appropriate disciplinary action. While the Panel will not reference every decision referred to by the Law Society in its submissions, the Panel confirms it has reviewed and carefully considered each decision.

[49] As stated in *Faminoff* with respect to range of penalty, at para. 77:

> [77] With regard to how precise the range must be, we agree with the Law Society's position that the range cannot be too wide to preclude a meaningful review. We also agree with the Respondent that the range should not be limited to a certain number of months (in the case of a suspension) or a certain dollar amount (in the case of a fine). Rather, defining the range involves reviewing similar cases, discarding ones that are outliers or factually distinguishable, and identifying the appropriate range based on the particular circumstances of the case.

[50] In *Law Society of BC v. Kornfeld*, 2020 LSBC 05, the lawyer, called to the Bar in 1983 and similarly to the Respondent an experienced lawyer, admitted to three instances of professional misconduct when she directly, or through her family, advanced funds for a short-term loan to allow the client to complete a transaction, following which the funds were repaid and the clients acknowledged gratitude. The lawyer failed to disclose her

conflict of interest or recommend and require the clients receive independent legal advice and their informed consent. The panel imposed a fine of $7,500.

[51] The panel in *Kornfeld* noted that sanctions in conflicts of interest cases range from a fine to a suspension, and that where suspensions are imposed there are normally aggravating factors such as the lawyer acting in a conflict where there is a personal or familial aspect, acting surreptitiously or deceptively, having a serious discipline history where the concept of progressive discipline requires a suspension, or having at least one prior related citation where the concept of progressive discipline requires a suspension. The panel in *Kornfeld* found the lawyer did not act deceptively nor have a serious prior history or citation that would trigger a suspension having regard to the concept of progressive discipline.

[52] The Panel finds the *Kornfeld* decision dealt with conduct that was less serious than that of the Respondent in this matter, and the Panel notes the lawyer in *Kornfeld* promptly acknowledged her misconduct, did not have a professional misconduct record of note, did not act in a deceptive manner, did not borrow from a client, and did not face an allegation of acting without integrity.

[53] In *Law Society of BC v. Hart,* 2020 LSBC 51, the lawyer committed professional misconduct when, over a number of years, he transferred client funds on ten occasions to a company he directly owned and controlled. That company then transferred the funds to the lawyer's law firm. Interest was paid. A complex system was set up to facilitate the transfers. The lawyer did not advise his clients of the loans, which were done out of complete self-interest. The lawyer also was found to have committed professional misconduct by appropriating client funds. The panel found the lawyer's conduct was a demonstrated attempted to avoid the Rules. The panel ordered the lawyer be disbarred. The Panel considers the totality of conduct detailed in *Hart* to be more serious than that of the Respondent.

[54] A fine of $12,000 was imposed in *Law Society of BC v. Laughlin*, 2020 LSBC 47. In that decision the lawyer had no prior professional conduct record and was found to act altruistically to assist clients. The lawyer in *Laughlin* admitted his professional misconduct, which was found to be multiple acts of acting in conflicts of interest. Further, the lawyer did not personally benefit from his misconduct.

[55] In *Law Society of BC v. Albas,* 2016 LSBC 36, the lawyer committed professional misconduct in twice improperly borrowing money from clients and providing legal services when he had a direct or indirect financial interest in the subject matter of the legal service, failed to disclose material facts to the court, failed to correct the record with respect to material facts, misled other counsel, and failed to report judgment debts to the Law Society. The lawyer acknowledged his misconduct and was remorseful. The panel

found the lawyer's professional conduct record demonstrated a propensity to ignore conflicts of interest in situations where he could personally benefit.

[56] When imposing a sanction of a four-month suspension, the panel in *Albas* confirmed, at para. 29, that "the public must know that this type of conduct will attract the most serious sanctions if lawyers choose to cross the line and borrow money from individuals who are their clients."

[57] The Law Society submits there are no similar fact scenarios to guide our determination of appropriate sanction for the Panel's finding of the Respondent acting without integrity.

[58] The Panel was referred to *Law Society of BC v. Bauder*, 2013 LSBC 07, where the lawyer was found to have committed professional misconduct when, in relation to his own property mortgage financing, he altered a Form C agreement for sale in fraudulently attempting to obtain mortgage financing by falsely altering the purchase and mortgage application documentation. Unlike the matter before the Panel, the lawyer in *Bauder*, while not newly called, had six years of experience, well less than that of the Respondent. The lawyer had no prior professional conduct record and he admitted his misconduct. The panel found in the circumstances of that case there was no need to specifically deter the lawyer from future misconduct, and the fact the lawyer was the only lawyer practicing in his vicinity was a mitigating factor.

[59] The panel in *Bauder* imposed a disciplinary action of a four-month suspension, stating the public need to be assured that they are protected from unscrupulous conduct even if it resulted in the community in which the lawyer resided being without a lawyer for a period of time.

DECISION ON DISCIPLINARY ACTION

[60] The Panel is mindful of its obligation to protect the public and maintain the public's confidence in the legal profession and to also consider the principles of both specific and general deterrence. The Panel finds that the Respondent's numerous acts of professional misconduct in acting when in conflict of interest, borrowing from a client and committing a client and an individual to a continuing commercial liability, when viewed globally, warrant the imposition of a suspension.

[61] As previously stated in these reasons, the Respondent's misconduct was grave and serious and the Respondent's PCR is an aggravating factor.

[62] The Law Society submits that a six-month suspension is an appropriate disciplinary action. With respect to this submission, the Panel is of the view that when

taken together with all factors to be considered, the submission underestimates the impact of the public confidence in the profession, the potential harm that could have occurred to the Respondent's clients, the deception of the Respondent's behavior in failing to advise his borrower clients of his personal interest in the loan transactions, and the previously described egregious act of executing the loan amending agreement on behalf of a client and another person. While recognizing the need to sanction all the acts of professional misconduct, there is especially a need to condemn the act of executing the loan amending agreement.

[63] Having duly considered all the relevant factors described above, the Panel orders that the Respondent be suspended from the practice of law for eight months commencing on the first day of the first month following the date these reasons are issued or another date as agreed between the parties in writing.

COSTS

[64] The Law Society seeks a costs order against the Respondent in this matter of $16,668.75 payable within thirty days of the issuance of this decision or such other date as the Panel may order.

[65] Rule 5-11(4) of the Rules stipulates that a panel may order a respondent to pay the costs of a hearing and fix a time for payment.

[66] Rule 5-11(3) of the Rules requires that subject to subrule (4), the panel must have regard to the tariff of costs in Schedule 4 in calculating any costs payable.

[67] Rule 5-11(4) states that a panel may order no costs or costs in an amount other than that permitted by the tariff if in the judgment of the panel, it is reasonable and appropriate to so order.

[68] The Law Society filed in this hearing a draft Bill of Costs in the sum of $16,668.75 which the Panel finds is in accordance with and as permitted by the tariff.

[69] The Panel finds it is appropriate to order costs against the Respondent in accordance with and as permitted by the tariff in the sum of $16,668.75 being the amount presented in the Bill of Costs submitted by the Law Society. The Panel orders the Respondent to pay costs of $16,668.75 within 30 days from the date these reasons are issued.