2023 LSBC 05
Hearing File No.: HE20200065
Decision Issued: February 27, 2023
Citation Issued: August 26, 2020

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL

HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

LUBOMIR IHOR HUCULAK

RESPONDENT

DECISION OF THE HEARING PANEL ON DISCIPINARY ACTION

Hearing date:	December 9, 2022
Panel:	Jamie Maclaren, KC, Chair Michael Dungey, Public representative Andrew Mayes, Lawyer
Discipline Counsel:	Mandana Namazi
Counsel for the Respondent:	Scott Wright
Written reasons of the Panel by:	Andrew Mayes

BACKGROUND

[1] The Respondent was found to have committed professional misconduct relating to three allegations in a decision of this Panel reported in *Law Society of BC v. Huculak*, 2022 LSBC 26 (the "F&D Decision").

[2] The conduct found to be professional misconduct can be summarized as:

(a) In relation to 15 real estate transactions (the "Transactions") between January 2011 and May 2015, the Respondent failed to make reasonable inquiries of his clients despite overwhelming objectively suspicious circumstances. As a result, the Respondent failed as a lawyer to be on guard against becoming a tool or dupe of an unscrupulous client or other persons.

(b) In relation to one of the Transactions, the Respondent failed to identify and verify his clients, contrary to the Law Society Rules then in force in 2011.

(c) The Respondent misappropriated $4,711.58 in trust funds involving the creation of a false invoice for legal fees. The misappropriated funds were transferred to his general account in 2013.

[3] This Panel's task now is to determine what is the appropriate sanction for the misconduct found to have occurred as required by section 38(5) of the *Legal Profession Act*, SBC 1998, c. 9.

POSITION OF THE PARTIES

Law Society

[4] The Law Society submits that a global sanction of disbarment is the only sanction sufficient to protect the public interest. The Law Society also seeks an order for costs in the amount of $20,003.75, calculated in accordance with the Tariff.

[5] The Law Society submits that the circumstances require a deterrent impact to avoid similar conduct by the Respondent and lawyers generally.

[6] The Law Society seeks to stress that the risks created to society by the conduct of the Respondent, although dating back to as much as over a decade ago, have to be viewed with current knowledge of the extent and risks of money laundering in British Columbia. The Panel was referred to the interim and final reports of the Honourable Austin Cullen from the Commissions of Inquiry into Money Laundering in British Columbia in support of this submission.

[7] Counsel for the Law Society highlighted the following aggravating factors:

(a) The number of transactions involved was over the course of approximately four years. The conduct of the Respondent was therefore not an isolated occurrence.

(b) The Respondent abdicated his role as gatekeeper to prevent him from being used as a tool or dupe to unscrupulous clients or other persons.

(c) The Respondent's failure to properly identify his client, GK, put GK at risk of identity theft.

(d) The Respondent was found to have used dishonest and deceptive behaviour to cover up the misappropriation.

(e) Further, although the misappropriated money was paid into court by the Respondent, this only occurred some years later and only after the issue was discovered by the Law Society and the Respondent was questioned about it.

(f) The Respondent has a professional conduct record ("PCR") with the Law Society relating to failing to comply with client identification and verification rules. While a conduct review was held in 2019, after the Transactions at issue in this matter, the Law Society submits that the Respondent's response to this proceeding and public statements made since suggest that he continues to demonstrate an obstinate attitude toward a lawyer's duty to make reasonable inquiries of their clients.

[8] The Law Society submits that there is no evidence to support the Respondent having any mitigating factors to apply to his circumstances.

[9] Finally, it was submitted that the primary purpose of disciplining lawyers is to protect the public, and in the particular circumstances of the Respondent, a suspension from practice for a period of time would not meet that goal.

Respondent

[10] The Respondent proposes that the appropriate sanction in the circumstances is a one-month suspension of his right to practise, followed by a restriction on his right to practise in real estate matters. The Respondent submits that since all the files at issue in this matter were real estate matters, the public can be protected without any further restriction.

[11] Regarding an order for costs, the Respondent submits that an order to pay over $20,000 would be a very significant sum for a lawyer in his 80's who practises part-time. As a

result, the Respondent submits that no costs be ordered or, in the alternative, he be given one year to pay.

[12] The Respondent highlights in his submissions the following factors in support of the above proposed sanction:

(a) He is in his 80's.

(b) It was not proven on the balance of probabilities that the Respondent had subjective knowledge of the objectively suspicious nature of the Transactions. Thus, he should be viewed as less culpable than if it had been proven that he proceeded to act in the Transactions despite perceiving their circumstances as suspicious. In support of this submission, the Respondent relied on para. 66 of the F&D Decision wherein the Panel stated regarding the circumstances of the Transactions,

> "There is not enough evidence to determine if he ignored them as suspicious, or if he simply did not perceive them as suspicious."

(c) There was no finding of actual fraud or actual losses regarding the Transactions.

(d) Having been called to the bar in May 1963, he has practised for a lengthy period without a prior finding of professional misconduct.

(e) The $4,711.58 that the Panel found was misappropriated in July 2013 was paid to the court to the credit of the original legal proceedings, thus the rightful recipient of the funds was "made whole".

(f) He provided a number of positive character references to the Panel.

(g) His work as Honorary Consul to the Ukraine makes it vital that he continue to practise as a lawyer to assist *pro bono* the Ukrainian community with their legal and notary needs. The Respondent submits that there is no one else in the province of British Columbia who can offer the same services that he can.

(h) Given that the conduct in issue happened a long time ago, a short suspension of his right to practise is a sufficient sanction to maintain public confidence in the profession.

TEST TO BE APPLIED

[13] The decision in *Law Society of BC v. Dent,* 2016 LSBC 05 provides helpful guidance on how to assess the conduct of a respondent to determine the appropriate sanction. That

panel consolidated 13 non-exhaustive factors proposed in *Law Society of BC v. Ogilvie*, 1999 LSBC 17 into four classes of factors:

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

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

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

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

Nature, gravity and consequences of conduct

Failure to make reasonable inquiries and failure to comply with client identification verification ("CIV") obligations

[14] The Panel agrees with the Law Society that the lengthy period of time involved and the number of transactions at issue are significant aggravating factors.

[15] While there is no proof of actual fraud or money laundering, that is entitled to minimal weight in the Panel's analysis. While it would have been more aggravating if such proof was found, it is not necessary to the finding of professional misconduct that there be actual proof of fraud or money laundering. The Panel found that the Respondent's conduct created a risk to the public to such a degree that his inaction amounted to professional misconduct. It is the creation of that repeated risk that is to be sanctioned.

[16] There is no proof that the Respondent financially gained in any significant way from facilitating the objectively suspicious Transactions. While he received legal fees for much of the legal work, those fees are considered by the Panel to be minimal or, at most, moderate.

[17] The reports of Justice Cullen are instructive in identifying the extent of the risks created by the Respondent in failing to be vigilant to safeguard his trust account from the risk of being involved in money laundering. Illicit drug sales, human trafficking, terrorism and identity theft are but a few of the crimes supported and facilitated by money laundering.

[18] In the interim Cullen Report at p. 52 it is noted that:

- money laundering and its effects "corrode the very fabric of society" and make an impact on all spheres of a functioning democracy;

- where money launderers gain a stronghold in a country, province, or city, their influence will have significant adverse consequences for democracy and the rule of law….

[19] The Panel concludes that there was the potential for far ranging risks to British Columbia society created by the inaction of the Respondent.

[20] In the F & D Decision at paragraph 64, the Panel found that many of the Transaction circumstances lined up squarely with the Law Society's published risk factors for fraud and money laundering, and therefore amounted to objectively suspicious circumstances giving rise to the Respondent's duty to make inquiries. Nonetheless, the Respondent did not make any inquiries prior to acting or continuing to act in the objectively suspicious circumstances. The Panel could not determine if the Respondent proceeded to act while perceiving yet ignoring the circumstances as suspicious, or if he proceeded to act without even bothering to consider whether the circumstances were suspicious at all, i.e. with reckless or conscious disregard for his known duty to be alert for signs of fraud or money laundering. In either case, the Respondent's failure to investigate the suspicious circumstances was a marked departure from the conduct the Law Society requires of lawyers and, therefore, professional misconduct.

[21] For the purpose of determining the appropriate sanction for his professional misconduct, in the absence of conclusive evidence regarding his perceptions, the Panel must accept that the Respondent did not recognize the circumstances of the Transactions as objectively suspicious. Though such misconduct involves less culpability than had he knowingly facilitated the suspicious Transactions, it is still very concerning. He still failed to be on guard against becoming the tool of unscrupulous persons, and he still failed to carry out his gatekeeper function in relation to money laundering and fraud.

Misappropriation of funds

[22] The seriousness of the Respondent's misappropriation of funds cannot be underestimated.

[23] The Panel notes the following about this conduct:

(a) This conduct arose when the Respondent was representing clients DK and LK in the purchase of a property that was subject to foreclosure and a court-ordered sale by a property management company represented by lawyer JB. Given those facts, the Panel finds it more likely than not that the seller was in financial difficulty at the time of the 2012 sale.

(b) Due to an accounting error, on January 30, 2012, the Respondent issued a cheque for the purchase proceeds, which was short $4,711.58 of the amount owing.

(c) Despite the Respondent communicating with JB about the shortage and being informed in September 2012 that the $4,711.58 should be paid into court to the credit of ongoing legal proceedings, the Respondent did not do so.

(d) In July 2013, the Respondent knowingly created a false invoice in the amount of $4,711.58 and transferred that amount from his trust account to his general account.

(e) The Respondent had use of that sum until it was paid into court on June 22, 2020 to the benefit of the original legal proceedings. Conversely, the rightful recipient of the funds did not have the use or benefit of those funds until after that date.

(f) The payment was made only after the Law Society identified the issue and questioned the Respondent about it.

(g) Given the passage of time since the misappropriation, the Panel finds it more likely than not that had this issue not been identified by the Law Society and the Respondent questioned about it, these funds would have never been paid into court.

(h) The Panel rejects the submission that the victim was "made whole" with the payment into court. No interest was paid by the Respondent on the original sum to make up for the seven years he had the benefit of the misappropriated funds while the rightful recipient did not.

(i) The Respondent admitted in cross-examination in the hearing on Facts and Determination that, "Yes, I knew all along I wasn't entitled to those funds."

(j) The Respondent attempted to suggest to the Panel that he moved the funds to his general account on the advice of his accountant. However, his accountant was not called to present evidence at the Facts and Determination stage.

(k) In a character reference letter marked Exhibit 23 in this proceeding, the Respondent's accountant made statements about the accountant's involvement in the transfer of funds. Those statements were not made under oath or affirmation, nor were they subject to cross-examination. The Panel finds these statements to be of so little weight that the Panel cannot find the statements to have been proven as fact.

(l) Even if the Panel was to put more weight on the accountant's statements, they do not support the Respondent's suggestion that his accountant instructed or advised him to transfer the funds.

(m) In any event, as noted in the F&D Decision at para. 79:

> … no advice from his accountant would have absolved him of his professional responsibility to engage in proper trust accounting practices under the Rules.

Character and professional conduct record of the respondent

[24] The Respondent was called to the bar in 1963. He has been a sole practitioner since 1995. He practises part-time doing a mix of administrative law, criminal law, civil litigation, family law, motor vehicle accident litigation, residential real estate law, creditors' remedies and wills and estates.

[25] The Panel accepts that the Respondent was appointed the first Honorary Consul for the Ukraine in 2006. In that role he has provided since that date *pro bono* services to assist Ukrainian Canadians and others.

[26] The Respondent put before the Panel five character reference letters describing him as a person of integrity, high character, extreme honesty and someone who is trustworthy.

[27] Some weight will be put on those statements that directly address the Respondent's character. However, the weight to be given is not high because it is not clear whether the writers were fully apprised of the Respondent's misconduct prior to writing the letters.

[28] Further, character references are usually attributed limited weight and they are not determinative: *Law Society of BC v. Gregory*, 2002 LSBC 17 at para. 45; and *Law Society of BC v. Yen*, 2021 LSBC 30 at para. 30.

[29] The Respondent's lack of prior findings of misconduct is a neutral factor. A prior finding of misconduct would certainly be an aggravating factor. However, the absence of a record is not in and of itself mitigating. Lawyers are expected to act professionally, so acting as expected is not a mitigating factor.

[30] The Respondent's 2019 conduct review will be discussed later in these reasons.

Acknowledgement of the misconduct and remedial action

[31] The Respondent generally admits the vast majority of the evidence against him. However, he maintains for allegations 1 and 2 that there was nothing for him to see in the

Transactions that was suspicious, and that he had done enough to confirm his client's identity.

[32] Throughout the Law Society investigation, and during the Facts and Determination stage, the Respondent took a defiant and dismissive attitude toward the allegations and the suggestion that he had committed professional misconduct.

[33] This timeline is relevant:

(a) A compliance audit of the Respondent's practice was conducted in 2016.

(b) From that audit, one set of circumstances relating to violating CIV rules initiated a conduct review authorized on November 8, 2018. A conduct review was held on February 14, 2019 (the "Conduct Review Hearing"). Other issues were bifurcated from that process and resulted in the Citation issued in this case and the findings of this Panel.

(c) The report of the Conduct Review Hearing dated April 4, 2019 (the "Conduct Report") states at para. 16:

> He admitted he had breached the CIV rule, and explained that while he thought what he was doing to identify and verify clients was reasonable; he now understands that it was not and why it constituted a breach of the rules. He also stated that he now understood the purpose of the anti-money laundering rules.
>
> [emphasis added]

(d) Less than a month following the Conduct Report, the Respondent wrote a letter dated April 26, 2019 responding to the Law Society investigator's questions in this matter and stated:

> I don't understand why you are still pursuing me as if I was some kind of criminal or associating with criminals or money launderers. I have always prided myself in acting professionally and not gauging [*sic*] my clients as most of them are immigrants to Canada. I am also a one person practice without any secretarial help, which can be quite challenging. I am very disappointed in my Law Society that they don't recognize the challenges of a sole practitioner and have to resort to an investigation lasting now over 2 years, taking my time to answer your questions and somewhat precluding me from my livelihood and costing me huge legal fees in hiring a lawyer to be my spokesperson. I find this whole procedure to be most distasteful and bordering on persecution.

[emphasis added]

(e) The Citation in this matter was issued against the Respondent on August 26, 2020 and amended in its final form on August 4, 2021.

(f) The Respondent participated in a four-day hearing and submitted written submissions in reply to the Law Society's written submissions relating to conduct that this Panel ultimately found amounted to professional misconduct.

(g) On August 5, 2022, this Panel issued the F&D Decision finding that the Respondent committed professional misconduct.

(h) The Panel has evidence in this proceeding of the Respondent's statement to a news agency about the F&D Decision. The Respondent is quoted as emailing the news agency, "In my case, because I was working with an individual who was jailed in the U.S.A. and paid his dues to society, they basically said that I should not have taken any referrals from him." [emphasis added]. The Respondent admits that there is no reason to find this evidence unreliable. The Panel finds this quotation to have been proven as made by the Respondent.

(i) It was not argued by the Law Society at the Facts and Determination stage, nor was it found by this Panel, that the Respondent "should not have taken any referrals" from any individual. The Respondent was found to have committed professional misconduct in relation to the Transactions for failing to make reasonable inquiries in objectively suspicious circumstances and failing to make a record of the results of those inquiries.

[34] There is no admissible evidence that the Respondent has taken any courses or training to inform himself further on issues relating to the need to identify objectively suspicious circumstances, the importance of making reasonable inquiries and documenting those inquiries, and money-laundering. Thus, there is no evidence of rehabilitation.

[35] From the above, the Panel finds that the Respondent does not have insight into his conduct. Despite advising the conduct review panel that he understood the purpose of the anti-money laundering rules, his conduct since April 2019 indicates that he continues to have little understanding of the risks he created by his inaction.

[36] The Panel finds there to be a strong evidential basis to find that the Respondent is not amenable to rehabilitating his practice to avoid such behaviour in the future.

[37] The Panel has little faith in the Respondent that when faced with similar circumstances in the future, he will:

(a) be on guard against becoming the tool or dupe of an unscrupulous client or other persons;

(b) make reasonable inquiries prior to acting or continuing to act in circumstances that are objectively suspicious;

(c) make a record of the results of inquiries made; and

(d) decline to act or continue to act until there is a reasonable basis for believing the transaction at issue is legitimate.

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

[38] Previous panels have commented on the need for general and specific deterrence to be considered when sanctioning professional misconduct. This is particularly important in cases of misappropriation. Disbarment may be appropriate even in cases involving one act of misappropriation for a relatively small sum of money.

[39] For example, in *Law Society of BC v. Goulding*, 2007 LSBC 39, the panel commented:

> [4] In cases of misappropriation, the general principle is that disbarment is the appropriate penalty to protect the public, even if the possibility of recurrence is remote. This is required to protect the public's trust in the profession. This logic was adopted in *Law Society of BC v. Harder*, 2006 LSBC 48 at paragraph 9:
>
> > The seriousness of the misconduct is the prime determinant of the penalty imposed. In the most serious cases, the lawyer's right to practise will be terminated regardless of extenuating circumstances and the probability of recurrence. If a lawyer misappropriates a substantial sum of clients' money, that lawyer's right to practise will almost certainly be determined, for the profession must protect the public against the possibility of recurrence of the misconduct, even if that possibility is remote. Any other result would undermine public trust in the profession. (MacKenzie, *Lawyers and Ethics: Professional Responsibility and Discipline,* loose-leaf ed. (Toronto: Thomson Canada Ltd., 2005) at p. 26-1)
>
> [5] In an earlier decision of *Law Society of BC v. Ogilvie*, [1999] LSBC 17 at paragraph 18, the Panel stated:

> The ultimate penalty of disbarment is reserved for those instances of misconduct of which it can be said that prohibition from practice is the only means by which the public can be protected from further acts of misconduct. This is such a case. There is nothing before the panel to suggest that any penalty, other than disbarment, will ensure that the public is protected from future acts of misconduct on the part of Mr. Ogilvie. Nothing divulged about the circumstances of the misconduct, or Mr. Ogilvie's personal circumstances, suggests that disbarment is inappropriate.

[6] A Panel may decline to disbar where there is evidence that suggests that this penalty is not required to protect the public. In *Law Society of BC v. Hammond*, 2004 LSBC 32 at paragraph 25, the Panel concluded that:

> A careful review of the authorities with respect to instances of misappropriation which did not lead to disbarment indicates that in each such case there were exceptional circumstances.

[7] Disbarment has been imposed even in cases involving a small amount of money. In *Law Society of BC v. Currie*, [1994] L.S.D.D. No. 123, a lawyer was disbarred for taking $2,800 from a client from whom he had received it in trust. He had further misled his client on a number of occasions as to the reason for delay and had failed to respond to the Law Society. While this case is similar, there was no misleading conduct by the Respondent.

[40] The Panel also considers the comments in *Law Society of BC v. Briner*, 2015 LSBC 53 to be instructive:

> [62] We have considered the Respondent's position. We appreciate that the misappropriation occurred only once, and we further acknowledge that the Respondent's prior disciplinary record is not particularly relevant other than the fact that the Respondent had a conduct review just a few months before his misconduct in December of 2012.
>
> [63] We appreciate that disbarment is the most severe sanction that can be imposed and it has severe consequences for the Respondent.
>
> [64] However, misappropriation of a client's trust funds is very serious misconduct. There was a clear advantage gained by the Respondent by using his client's trust funds to cover an overdraft in another client's trust account (RD). This enabled the Respondent to bill RD and pay his account

> out of trust and also use those funds to pay third parties using funds that did not belong to RD.
>
> …
>
> [69] We also agree with the statements from other hearing decisions (previously referred to) that state that misappropriation of client funds leads to disbarment except in the most exceptional circumstances, and we highlight again the comments made by the hearing panel in *Tak*, at paragraph [35]:
>
> > In the absence of multiple, significant mitigating factors, public confidence in the profession and its ability to regulate itself would be severely compromised if anything short of disbarment is ordered for misappropriation of client funds.
>
> [70] This Respondent has not provided us with compelling evidence that any mitigating factors present were significant enough to overcome a decision to disbar.

[41] The Respondent put before this Panel a number of decisions in support of his submission that disbarment is not appropriate, and he sought to persuade the Panel that when considering the appropriate sanction, his *pro bono* work as Honorary Consul for the Ukraine is an important factor to consider. The Panel understood this submission to go not only to the good character of the Respondent, but also as a significant exceptional circumstance to overcome the precedents to disbar in circumstances of misappropriation.

[42] It was submitted by the Respondent that British Columbia residents and Ukrainians who may be coming to Canada to avoid the war in the Ukraine will be significantly inconvenienced if he is disbarred.

[43] This submission appears to be founded upon portions of two character reference letters. In one letter, the writer states, “There is no other lawyer/notary in British Columbia who is fluent in Ukrainian that can do the job that Mir is doing for his fellow countrymen in their hour of need.” In the other letter, the writer states, “There is no one in British Columbia that is fluent in Ukrainian and has the time to assist Ukrainians with their legal and notarial needs.”

[44] The Panel notes that these statements were made within character reference letters. These two individuals were not called as witnesses to testify for the Respondent and were not subjected to cross-examination.

[45] The Panel further notes that the statements quoted are opinions without additional detail provided regarding the full basis on which the writers formed the opinions.

[46] The Panel finds that such broad and expansive opinions presented in letter form are entitled to such limited weight that this Panel cannot find as fact that the Respondent is the only person in British Columbia who can assist with Honorary Consul duties.

[47] The Respondent relies on *Law Society of BC v. Lowe*, 2019 LSBC 37 where a lengthy pattern of deliberate misappropriation of $9,107.65 and mishandling of over $74,000 resulted in a suspension. However, in that matter, the lawyer was found to have an honest but mistaken belief that he was entitled to the funds. Those facts are distinguishable from that of the Respondent who knew all along that he was not entitled to the funds. Further, the Respondent in this matter has not gone as far as the lawyer in that case to acknowledge the misconduct and take steps for it to not be repeated.

[48] The Respondent also relies on *Law Society of BC v. Sas*, 2016 LSBC 03, *Law Society of BC v. Schauble*, 2009 LSBC 32, *Law Society of BC v. Pham*, 2015 LSBC 14 and *Law Society of BC v. Kaminski*, 2018 LSBC 14 to support his submission. However, this Panel finds those cases to be distinguishable from the conduct of the Respondent as they involved, for example, findings of exceptional circumstances where the misappropriations were for "administrative convenience" and related to funds that were actually owed for legal services.

ANALYSIS

[49] The parties agree that the primary purpose of sanctions is not to punish the respondent but to protect the public. When considering the protection of the public, the panel must consider the specific findings of facts in the matter, the subjective circumstances of the respondent at the time of the conduct at issue and their present subjective circumstances. The panel must consider the respondent's efforts to rehabilitate since being notified of the conduct at issue, and their efforts to rehabilitate since the determination that they committed professional misconduct.

[50] Para. 9 from *Ogilvie* provides this helpful statement:

> Given that the primary focus of the *Legal Profession Act* is the protection of the public interest, it follows that the sentencing process must ensure that the public is protected from acts of professional misconduct. Section 38 of the Act sets forth the range of penalties, from reprimand to disbarment, from which a panel must choose following a finding of misconduct. *In determining an appropriate penalty, the panel must consider what steps might be necessary to ensure that the public is*

> *protected, while also taking into account the risk of allowing the respondent to continue in practice.*
>
> *[emphasis added]*

[51] *The Panel finds that the Respondent continues to pose a risk to the public as a practising lawyer. That risk is not sufficiently diminished by restricting his practise from real estate transactions. The other areas of law that he would be entitled to practise in (administrative law, criminal law, civil litigation, family law, motor vehicle accident litigation, creditors remedies and wills and estates) would very likely involve the continued use of his trust account.*

[52] *Further, the duties of a lawyer to "know their client" and comply with rules about client identification are not limited to real estate transactions.*

[53] *The Panel finds it more likely than not that the Respondent would fail in his duty to make reasonable inquiries and record the information received.*

[54] *The Respondent as demonstrated from the time of the Law Society's investigation in 2018/2019 until present a defiant attitude toward any suggestion that he committed professional misconduct or that his practices should change. His lack of insight creates a continued risk to the public.*

[55] This Panel has not found any exceptional circumstances to exist that distinguish the Respondent's conduct from cases where disbarment was found to be an appropriate sanction for misappropriation.

[56] In the circumstances of this matter, the Panel finds that general and specific deterrence are appropriate considerations when considering how to best protect the public.

CONCLUSIONS ON DISCIPLINARY ACTION

Misappropriation of $4,711.58

[57] When considering the appropriate sanction for the misappropriation in this matter, this Panel must decide what sanction will be the most effective to protect the public.

[58] The panel's decision *in Law Society of BC v. McGuire*, 2006 LSBC 20 was upheld by the Court of Appeal in *McGuire v. Law Society of British Columbia*, 2007 BCCA 442. The Court of Appeal found no error in the panel's reasoning at para. 24 of the panel's reasons:

> …We accept that disbarment is a penalty that should only be imposed if there is no other penalty that will effectively protect the public. Protecting the public, however, is not just a matter of protecting [Mr. McGuire's] clients in future. Even if the latter could properly be done by imposing restrictions on [Mr. McGuire's] use of his trust account, we do not think that such a measure adequately protects the public in the larger sense. Wrongly taking a client's money is the plainest form of betrayal of the client's trust. In our view, the public is entitled to expect that the severity of the consequences reflect of the gravity of the wrong. Protection of the public lies not only in dealing with ethical failures when they occur, but also in preventing ethical failures. In effect, the profession has to say to its members, "Don't even think about it." And that demands the imposition of severe sanctions for clear, knowing breaches of ethical standards. A penalty in this case of a fine and a practice restriction is, in our view, wholly inadequate for the protection of the public in the larger sense.

[59] Looking at the facts of the misappropriation and having considered and weighed the following:

(a) the circumstances of the Respondent;

(b) the proven aggravating factors (of which the creation of the false invoice is significant);

(c) the proven mitigating factors;

(d) the lack of exceptional circumstances being established; and

(e) the need to deter the Respondent and other lawyers from intentionally and dishonestly misappropriating clients funds,

the Panel finds that a one-month suspension and a restriction on the Respondent's areas of practice following the suspension is not sufficient to protect the public.

[60] A restriction on areas of practice does not protect the public from the Respondent's misuse of trust funds in the future. As noted earlier in our reasons, all areas of practice in which the Respondent could continue to practise would involve the likelihood of having to receive and manage trust funds.

[61] Further, a one-month suspension and a restriction on practice in real estate matters following the one-month suspension are not sufficient sanctions to demonstrate to the Respondent and the profession as a whole that they must not even think about misappropriating trust funds to which they know they are not entitled.

Failure to make reasonable inquiries and failure to comply with CIV obligations

[62] This conduct was serious, not isolated, and as discussed earlier in this decision, the Respondent has been found by this Panel to be likely to conduct himself similarly in the future. Given our findings, the risk to the public is great if the Respondent was to continue to practise law.

DISCIPLINARY ACTION

[63] Having regards to the circumstances of the conduct found to be professional misconduct, the circumstances of the Respondent and weighing the risk to the public should the Respondent continue to practise as a lawyer, this Panel is driven to the conclusion that the only appropriate sanction on a global basis is that the Respondent be disbarred.

[64] The Panel wishes to add that while this conclusion was expressed above on a global basis, the misappropriation is so serious that it, on its own, is sufficient to justify disbarment.

COSTS

[65] The imposition of full costs must never be considered as an automatic decision. There must be a consideration of various factors before ordering costs including the seriousness of the conduct, the financial circumstances of the respondent, the impact of disbarment and the conduct of the respondent in creating or reducing costs of the hearings: *Law Society of BC v. Racette*, 2006 LSBC 29.

[66] The Panel has weighed the following:

(a) The Respondent is in his 80's.

(b) The Respondent has been practising law part-time, but will no longer be able to once disbarred.

(c) The Respondent advised that he has the ability to pay costs but will require a year to do so.

(d) The Respondent made many admissions, which facilitated the entry of evidence and reduced the length of the Facts and Determination Hearing.

(e) The Panel finds that the imposition of full indemnity for costs of $20,003.75 will have a significant impact on the Respondent, on top of being disbarred.

(f) The profession should not bear the full amount of costs involved in having the adverse decision made against Respondent.

[67] In the circumstances, the Panel orders that the Respondent pay costs of $10,001.88, payable within one year of the date of this decision.