2023 LSBC 48
Hearing File No.: HE20210079
Decision Issued: November 20, 2023
Citation Issued: December 20, 2021
Citation Amended: October 17, 2022

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL

HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

RENE JOAN GANTZERT

RESPONDENT

DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION

Hearing dates:	September 8, 2023
Panel:	Gillian M. Dougans, Chair Guangbin Yan, Public representative Gaynor C. Yeung, Bencher
Discipline Counsel:	Kathleen M. Bradley
No one appearing on behalf of the Respondent	
Written reasons of the Panel by:	Gaynor C. Yeung

BACKGROUND

[1] The facts and determination decision in this matter was issued on February 24, 2023 (*Law Society of BC v. Gantzert*, 2023 LSBC 04) with respect to a citation issued December 20, 2021 (the "Citation"). The Respondent was found to have committed professional misconduct pursuant to section 38(4) of the *Legal Profession Act*, SBC, 1998, c. 9 (the "*Act*") on the grounds that he had:

(a) between December 2018 and July 2019, misappropriated $62,521.58 in client trust funds when he knew he was not entitled to those funds, contrary to Rule 3-64 of the Law Society Rules (the "Rules"), rule 2.1-3(h) of the *Code of Professional Conduct for British Columbia* ("*BC Code*") and his fiduciary duties; and

(b) between approximately May 2021 and December 2021, failed to cooperate with the ensuing Law Society investigation by failing to respond substantively or at all to an email dated May 27, 2021 and a letter dated June 17, 2021 from the Law Society, contrary to Rules 3-5(7) and (11) of the Rules, and rule 7.1-1 of the *BC Code*.

[2] The Respondent was called and admitted as a member of the Law Society of British Columbia on February 27, 2004. Prior to that time, he was a member of the Law Society of Manitoba, and was called to the Manitoba bar on June 22, 1995. At the time of the misconduct, he was a 25 to 28-year call. He ceased to be a member of the Law Society in July 2020.

PROCEEDING IN THE ABSENCE OF THE RESPONDENT

History of communication between the Law Society and the Respondent

[3] The Respondent failed to respond to all communications from the Law Society after July 2020, despite the Law Society becoming the custodian over the Respondent's law practice in February 4, 2021, and, as a result, taking considerable steps to contact the Respondent by attending at the Respondent's home on numerous occasions, attempting to communicate with the Respondent by e-mail, telephone, and indirect requests through lawyers known to the Respondent. The Respondent has similarly failed to respond to communications from Law Society counsel with respect to this disciplinary proceeding.

Applicable provisions

[4] Rule 5-6 (2.2) of the Law Society Rules provides: "If a respondent fails to attend or remain in attendance at a hearing, the panel may proceed under section 42."

[5] Section 42(2) of the *Act* states that if a hearing panel is satisfied that the respondent has been served with notice of the hearing, the panel may proceed with the hearing in the absence of the respondent and make any order that the panel could have made in the presence of the applicant.

[6] The LSBC Tribunal's Directions on Practice and Procedure state:

> 5.7 Where notice of an appearance has been given to a party and the party does not attend or does not participate, the panel may proceed in the absence of the party or without the party's participation.

[7] In applying section 42(2) of the *Act*, hearing panels have considered the following factors, however these factors are not meant to be a rigid checklist and all relevant factors may be considered:[1]

(a) whether the Respondent has been provided with notice of the hearing date;

(b) whether the Respondent has been cautioned that the hearing may proceed in his absence;

(c) whether the panel adjourned for 15 minutes in case the respondent was merely delayed;

(d) whether the respondent has provided any explanation for his non-attendance;

(e) whether the respondent is a former member of the Law Society; and

(f) whether the respondent has admitted the underlying misconduct.

[8] Pursuant to Rule 10-1 of the Rules, a recipient may be served with a notice or document by email sent to the last know electronic email address of the recipient.

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[1] *Law Society of BC v. Sahota*, 2023 LSBC 8 at paras. 50-51. See also: *Law Society of BC v. Hopkinson*, 2020 LSBC 17, *Law Society of BC v.Gellert,* 2013 LSBC 22 (facts and determination) and *Law Society of BC v. Gellert*, 2014 LSBC 5 ("*Gellert disciplinary action*"); *Law Society of BC v. Tak*, 2014 LSBC 27; *Law Society of BC v. Basi*, 2005 LSBC 41; *Law Society of BC v. McLean*, 2015 LSBC 6; *Law Society of BC v. Jessacher*, 2015 LSBC 43; and *Law Society of BC v. Pyper,* 2018 LSBC 28.

Under Rules 2-10 and 2-11 a lawyer must advise the Executive Director of any change in address or contact information. The LSBC Tribunal's Practice Direction 4.3 clarifies that service on a respondent at the address provided under Rules 2-11 and 2-12 is considered effective unless otherwise ordered. Service is also effective by mail, courier, fax, through counsel or a personal representative, or by posting it to an electronic portal operated by the Law Society to which the recipient has been given access and notification of the posting by any of the methods described above. Notification may be made by mail, courier, fax or email to a person's last known address.

Analysis of service

Whether the Respondent has been provided with notice of the hearing date

[9] The Law Society has two e-mail addresses for the Respondent. One is a yahoo.com e-mail address and one is a custom business email address. Messages to the Respondent's member portal are automatically sent to the Respondent's business email address.

[10] Following the issuance of the Panel's facts and determination decision, on June 8, 2023, the Law Society contacted the Respondent, at one or both of his e-mail addresses on multiple occasions with respect to his availability for the disciplinary action hearing.

[11] Auto-generated "undeliverable" messages were received by the Law Society in relation to the Respondent's yahoo e-mail address.

[12] Earlier in the disciplinary process, undeliverable messages were also received in relation to the Respondent's business e-mail address.

[13] The Law Society issued a Notice of Hearing indicating that a virtual hearing had been set for September 8, 2023, at 9:30 am, by Zoom and sent this document to the Respondent yahoo.com e-mail address. Further the Tribunal's public online hearing schedule displayed the date of the Hearing.

[14] The disciplinary action Notice of Hearing indicates that if the Respondent fails to appear at the Hearing "the Hearing Panel may proceed with the hearing in [his] absence and make any order that it could have made had [he] been present." A similar caution was set out at the bottom of the Citation (which was delivered to the Respondent on December 21, 2021, by couriered letter, e-mail, and by posting it on the Respondent's member portal).

[15] The Panel adjourned the Hearing on September 8, 2023, for 15 minutes, to ensure that the Respondent had not been unavoidably delayed. The Respondent did not attend and, to date, has not provided an explanation for his non-attendance.

Whether the Respondent has admitted the underlying misconduct

[16] Whether or not the Respondent has admitted the underlying misconduct is not a relevant factor at this phase of the proceedings as the Panel has made findings of professional misconduct. Pursuant to s. 38(5) of the *Act*, the Panel must determine the appropriate disciplinary action.

The public interest in proceeding

[17] In *Pyper,* the hearing panel considered whether it is in the public interest to bring the proceedings to a timely conclusion:[2]

> The Law Society also referred to factors relating to the public interest in bringing the proceeding to a conclusion. A significant time had elapsed since the events that gave rise to this proceeding, as well as since the proceeding was commenced. (The chronology of the proceeding is set out in the next section.)
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> Another relevant question is, "If not now, when?" If there were a realistic chance that circumstances might change in the near future so as to allow the Respondent to attend the hearing, there might be a reason not to proceed in his absence. However, it is unclear when, or whether, such a change in circumstances may come about.
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> The Panel concluded that, in light of all the factors, it was fair to give priority to the public interest in moving the proceeding forward. The decision was therefore to proceed with the hearing, despite the Respondent's absence.

Conclusion on service and proceeding in the Respondent's absence

[18] The Panel finds that notice of the disciplinary action hearing was given to the Respondent in accordance with Rule 10-1 of the Rules and that he had been cautioned that the hearing may proceed in his absence.

[19] The events captured by the Citation occurred between December 2018 and July 2019, and May 2021 and December 2021. The Law Society did not become aware

[2] *Pyper* at paras. 6-8.

of the Respondents misconduct, as alleged in the Citation and found by the Panel, until after July 2020. As noted above, the Law Society became the custodian over the Respondent's law practice on February 4, 2021. The Law Society commenced its investigation into the Respondent's handling of the settlement funds on May 4, 2021. The Citation was issued in December 2021. Almost two years have passed since the issuance of the Citation and approximately four and a half years have passed since the underlying misconduct first began. As a significant period of time has elapsed, and as the complainant had attended to give evidence at the disciplinary action hearing, the Panel finds that it is in the public interest to proceed with the hearing in the Respondent's absence.

POSITION OF THE PARTIES

[20] The Law Society submits that the appropriate disciplinary action is disbarment.

[21] The Law Society seeks costs of $8,420.04, calculated in accordance with the Tariff, and made payable within 30 days of the issuance of the Hearing Panel's decision on disciplinary action, or on any other date the Hearing Panel may order.

[22] The Respondent did not provide submissions nor attend the hearing.

ANALYSIS OF DISCIPLINARY ACTION

General Principles with Respect to Disciplinary Action

[23] Disciplinary proceedings address the Law Society's mandate as set out in section 3 of the *Act to* "uphold and protect the public interest in the administration of justice."

[24] The non-exhaustive factors to be considered when determining the appropriate sanction, set out in *Law Society of BC v. Ogilvie*,[3] and noted by the panel in *Law Society of BC v. Lessing*,[4] include:

(a) the nature and gravity of the conduct proven;

(b) the age and experience of the respondent;

(c) the previous character of the respondent, including details of prior discipline;

[3] 1999 LSBC 17.
[4] 2013 LSBC 29.

(d) the impact upon the victim;

(e) the advantage gained, or to be gained, by the respondent;

(f) the number of times the offending conduct occurred;

(g) whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;

(h) *the possibility of remediating or rehabilitating the respondent;*

(i) the impact upon the respondent of criminal or other sanctions or penalties;

(j) the impact of the proposed penalty on the respondent;

(k) the need for specific and general deterrence;

(l) the need to ensure the public's confidence in the integrity of the profession; and

(m) the range of penalties imposed in similar cases.

[emphasis in original][5]

Nature and gravity of the misconduct

[25] The seriousness of the misconduct is a prime determinant of the disciplinary action to be imposed, per the hearing panel in *Gellert disciplinary action*:

> We have taken the *Ogilvie* factors into account in the Respondent's case. But not all of the factors deserve the same weight in all cases. For instance, *the nature and gravity of the misconduct will usually be of special importance* [citations omitted], not only because this factor in a sense encompasses several of the others, but also *because it represents a principal benchmark against which to gauge how best to achieve the key objective of protecting the public and preserving confidence in the legal profession.* Indeed, *this key objective is the prism through which all of the Ogilvie factors must be applied*….[6]

[5] *Lessing, supra* at para. 55. See also *Law Society of BC v. Dent*, 2016 LSBC 5 at paras. 14-19.
[6] *Gellert disciplinary action,* 2014 LSBC 5 at para. 39.

[emphasis added]

[26] Misappropriation has been found to be one of the most serious acts of misconduct a lawyer can commit.[7] The hearing panel in *Tak* stated:[8]

> [35] Misappropriation of client trust funds is perhaps the most egregious misconduct a lawyer can commit. Wrongly taking clients' money is the *plainest form of betrayal* of a client's trust and is a *complete erosion of the trust* required for a functional solicitor-client relationship. The public is entitled to expect that the severity of the consequences reflect the gravity of the wrong. 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*.
>
> [emphasis added]

[27] The hearing panel in *Tak* also affirmed:[9]

> There should be no doubt that a strong message of general deterrence should be sent to other members of the Law Society in respect of misappropriating funds, and it should be unequivocal that such misconduct will almost certainly result in the revocation of the right to practise law.

[28] It has been noted that in misappropriating client funds there is a breach of trust to a person to whom a lawyer owes a duty of honesty and loyalty.[10]

[29] *Tak* and other decisions have found that, absent extraordinary mitigating factors, disbarment is the appropriate disciplinary action for the intentional misappropriation of client trust funds.[11]

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[7] *Law Society of BC v. Lebedovich*, 2018 LSBC 17 at para. 24, cited with approval in *Law Society of BC v. Mansfield*, 2018 LSBC 30 at para. 40. See also *Law Society of BC v. McGuire,* 2006 LSBC 20 at paras. 29-30; *Law Society of BC v. Tak*, 2014 LSBC 57 at paras. 35, 38; *Gellert disciplinary action, supra* at para. 44; and *Law Society of BC v. Briner*, 2015 LSBC 53 at paras. 64, 69.
[8] *Tak* at para. 35.
[9] *Tak* at para. 38.
[10] *Law Society of BC v. Kaminski,* 2018 LSBC 14 at para. 52, as cited in *Law Society of BC v. Gounden,* 2021 LSBC 7 at para. 60.
[11] See for example the decisions in *Tak*, *supra* at paras. 34-35, 71 and *Gellert disciplinary action, supra* at para. 42-44. Recently, in *Law Society of BC v. Hart*, 2021 LSBC 29 at para. 50, a hearing panel confirmed: "Without exceptional circumstances, disbarment is the penalty for misappropriation of funds."

[30] Failure to cooperate with the Law Society's investigation impedes the Law Society's ability to satisfactorily discharge its function of overseeing the conduct of lawyers. This too has been considered serious misconduct by previous panels.[12]

[31] The Panel finds that the Respondent's intentional misappropriation of client funds constitutes misconduct of a very serious nature. The severity of the Respondent's misconduct was further aggravated by his failure to respond to requests made during the course of the Law Society investigation.

The previous character of the respondent, including details of prior discipline

[32] The Respondent does not have a professional conduct record ("PCR") of prior discipline.

Advantage gained and impact on the victims

[33] The Respondent benefited financially through his misappropriation of over $62,000 of the complainant's money. The complainant was the Respondent's client in a personal injury action (the "Client").

[34] The Client attended as a witness and advised the Panel of the devastating impact that the Respondent's conduct had on her. The Respondent was an individual whom the Client had trusted for years as the Respondent had represented her in a claim for damages arising out of a motor vehicle accident. The Client had relied upon the Respondent to guide her through the stress of litigation. The Client testified that the Respondent was aware that she was a vulnerable individual, as the Respondent was aware the Client had undergone three surgeries, had been off work and on disability, and struggled coping with stress due to her anxiety. The Client advised that the Respondent had misappropriated funds that were to be paid back to the Client's employer and disability insurer. This led to immense stress and anxiety as the Client believed the Respondent had placed her long-term disability in jeopardy. Further, the Client was worried that her employer and disability insurer would sue her for the funds taken by the Respondent. The Client further testified that the Respondent had taken a larger fee than the Respondent was entitled to under the contingency fee agreement. However, the Client had been unable to find a copy of the executed contingency fee agreement. As a result of the Respondent's conduct, the Client felt betrayed and experienced significant financial stress, emotional upset, and anxiety.

[12] *Law Society of BC v. Marcotte*, 2010 LSBC 18 at para. 48, citing *Law Society of BC v. Cunningham*, 2007 LSBC 17 at para. 22.

[35] The Panel finds that the Respondent gained an advantage at the expense of his Client's financial and emotional wellbeing.

Acknowledgment of the misconduct

[36] The Respondent has failed to participate in the Law Society's investigative and disciplinary processes. The Panel finds an absence of any acknowledgement by the Respondent of his misconduct.

The need to ensure public confidence in the integrity of the profession

[37] The importance of public confidence in the integrity of the legal profession was discussed in *Ogilvie*:[13]

> The public must have confidence in the ability of the Law Society to regulate and supervise the conduct of its members. It is only by the maintenance of such confidence in the integrity of the profession that the self-regulatory role of the Law Society can be justified and maintained.

[38] This sentiment was echoed in *Lebedovich*:[14]

> … The legal profession is self-regulated by the Law Society. The public must be satisfied that the Law Society has the public interest in mind as it regulates. The sanction imposed must reflect the seriousness with which the Law Society, and through it the legal profession, views the intentional misappropriation of trust funds. …

[39] Without question, it is important that the public have every confidence that a lawyer who receives settlement funds on a client's behalf will hold the funds in trust and disburse them properly.

Sanctions imposed in similar cases

[40] The Panel notes that in matters involving deliberate misappropriation, it has been found that disbarment is necessary to protect the public and to ensure public confidence in the legal profession. In *Gellert disciplinary action,* a lawyer misappropriated over $14,000 in client trust funds, made discourteous and threatening comments regarding a Law Society auditor, failed to respond to communications from the Law Society, and breached three Law Society Rules by

[13] *Ogilvie* at para. 19, as cited in *Law Society of BC v. Sager*, 2020 LSBC 28 at para. 32.
[14] *Lebedovich* at para. 26, cited with approval in *Mansfield* at para. 44.

issuing trust cheques payable to "cash" and failing to maintain proper trust accounting records.[15] In ordering disbarment, the panel stated:[16]

> Finally, where a lawyer has deliberately misappropriated client funds, the application of principles and factors mentioned above *will usually result in disbarment* (*Law Society of BC v. Ali,* 2007 LSBC 57, paras. 7-12 and the authorities cited therein; *Law Society of BC v. Kierans,* 2001 LSBC 6, paras. 56-61; *Law Society of BC v. Hall*, 2007 LSBC 26, para. 26; *Law Society of BC v. Dennison*, 2007 BCSC 51, para. 4; *Law Society of BC v. King*, 2007 LSBC 52, para. 4; *Law Society of BC v. Blinkhorn*, 2010 BSCS 36, para. 7).
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> …
>
> Yet this sanction is usually imposed *for deliberate misappropriation* from a client – almost always where the amount is substantial (*Harder, (supra)* para. 9; MacKenzie, (*supra*), p.26-1) – because in such cases *disbarment is usually the only means of fulfilling the goal of the protecting the public and preserving public confidence in the legal profession*. Deliberate misappropriation of funds is among the very most serious betrayals of a client's trust and constitutes gross dishonesty. Disbarment absolutely ensures no further recurrence of such conduct on the part of the lawyer. It also promotes general deterrence (*McGuire v. Law Society of BC,* 2007 BCCA 442, para. 15; *Goulding, (supra),* para. 17; *Harder*, (*supra*), para. 57). And *disbarring a lawyer who has deliberately misappropriated client funds is usually the only way to maintain public confidence in the legal profession.*
>
> [emphasis added]

[41] In *Tak,* a lawyer misappropriated client funds, misled or attempted to mislead the Law Society, failed to respond to the Law Society, failed to respond to another lawyer, failed to report charges, failed to report an unsatisfied judgment, failed to remit GST and failed to abide by Law Society trust accounting rules.[17] The lawyer was a former member of the Law Society at the time of the hearing. He also had an extensive PCR that included three prior citations and a conduct review. The panel held that the lawyer should be disbarred.

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[15] *Gellert disciplinary action*.
[16] *Gellert disciplinary action* at paras. 42, 44, 46.
[17] *Tak*.

[42] In *Ogilvie,* a lawyer misappropriated $7,000 from clients by rendering accounts that misstated the services he had provided and then transferred trust funds in satisfaction of the fraudulent accounts.[18] He also failed to account for trust funds in relation to five other files that totaled $96,000. He failed to respond to the Law Society's investigation that arose from an audit of his practice that was conducted after the Law Society received complaints about the lawyer's conduct. The lawyer did not participate in the hearing as he had suffered a stroke approximately four years before the hearing and was no longer practising law. In ordering the lawyer disbarred, the hearing panel stated:[19]

> 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.
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> The public must have confidence in the ability of the Law Society to regulate and supervise the conduct of its members. It is only by the maintenance of such confidence in the integrity of the profession that the self-regulatory role of the Law Society can be justified and maintained.

[43] In *Harder*, the panel considered the following passage from MacKenzie, *Lawyers and Ethics: Professional Regulation and Discipline* at 26-1:[20]

> The seriousness of the misconduct is the prime determinant of the penalty imposed. In the most serious cases, the lawyer's right to practice 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 practice 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.

[44] In *Harder,* the Respondent had misappropriated client trust funds, failed to provide an acceptable quality of service, failed to remit collected PST and GST, and

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[18] *Ogilvie*.
[19] *Ogilvie* at paras. 18, 19.
[20] *Law Society of BC v. Harder,* 2006 LSBC 48 at para. 9.

breached various Law Society accounting rules which included a failure to account to clients, to maintain sufficient trust funds, to report trust shortages, and to prepare and deliver accounts to clients. He also failed to adequately supervise employees, and practised while uninsured. The lawyer was disbarred.

[45] In *Law Society of BC v. Ali*, a lawyer was disciplined for misappropriation in respect of six clients in which she transferred trust funds to her personal account without providing a reasonable explanation and without rendering accounts to her clients.[21] She did not attend the hearing, but stated through counsel that the transactions were mistakes on her part and that none were intentional, and that her record keeping system was entirely inadequate, "a fact she did not appreciate at the relevant time." The panel found that her failure to keep adequate records led to other trust shortages and created a situation in which it was not possible for the Law Society to quickly audit her books and records to determine the cause of each trust shortage. A complete reconstruction of the Respondent's trust records was necessary to determine what had occurred. The panel ultimately found that the lawyer's explanations were not credible and that the misappropriations were deliberate. The panel also made it clear that an intention to steal was *not* required:[22]

> A fundamental principle that governs the conduct of lawyers is that *trust funds are sacrosanct*. The Respondent has breached that principle repeatedly and over a significant period of time. The fact that the amounts involved were relatively small is irrelevant.
>
> The Respondent's conduct, whether deliberate or a matter of incompetence or negligence, is so gross as to prove a sufficient mental element of wrongdoing. The Respondent has shown a remarkable disregard and lack of attention to her obligations.
>
> [emphasis added]

[46] In *Ali disciplinary action,* the panel noted that the lawyer had no disciplinary history. At the time of the disciplinary action hearing, she had ceased to be a member. The panel was troubled by the fact that there was no evidence before it of mitigating circumstances that would explain the conduct of the respondent other than her actions were the result of mistakes. There was also no evidence that she had taken steps to rehabilitate herself. The hearing panel concluded:[23]

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[21] *Ali,* 2007 LSBC 57 at para. 2 ("*Ali disciplinary action*").
[22] *Ali,* 2007 LSBC 18 at paras. 104-105 ("*Ali facts and determination"*).
[23] *Ali disciplinary action*, at para. 30.

> The lack of any such evidence leads us to the conclusion that disbarment of the Respondent is necessary to protect the public interest, maintain the public trust and maintain the reputation of the profession. …

[47] In *Briner*, a lawyer misappropriated $50,439.44 received on behalf of a client, failed to cooperate with the Law Society, and breached various of trust accounting rules related to the recording and withdrawal of those funds.[24] His client was a private mortgage lender who made a loan through the lawyer's trust account. The lawyer deposited the client's pay-out funds to another client's ledger to cover an overdraft, then withdrew the funds without authorization. The lawyer was disbarred.

APPROPRIATE DISCIPLINARY ACTION

[48] The Panel finds that the intentional misappropriation of client funds by the Respondent and failing to co-operate with the Law Society's consequent investigation and discipline processes constitutes misconduct:

(a) at the most serious end of the spectrum of misconduct;

(b) by a senior member of the bar who knew or ought to have known that his conduct was improper;

(c) which allowed the Respondent to benefit financially, to the extent of $62,521.58, at the expense of harm to his client;

(d) which has yet to be acknowledged by the Respondent;

(e) which calls for serious sanctions, such as disbarment, in order to protect the public and to maintain the public confidence in the legal profession; and

(f) of the type which has resulted in disbarment in similar cases.

[49] The Panel accordingly finds that the appropriate sanction in all the circumstances of this case is disbarment.

[50] While the Respondent is already a former member of the Law Society, an order of disbarment is still required. It is the sanction that would have been imposed if the Respondent were still a practising member, it gives closure to the affected Client, it triggers the requirement to hold a hearing into the Respondent's character should

[24] *Briner* and 2015 LSBC 11.

he ever apply for reinstatement and serves as a general deterrent to other members of the profession.

COSTS

[51] Costs are not ordered as punitive measures for professional misconduct, but are ordered separately and independently from any sanction imposed. They are not intended to address the conduct that is the subject of the citation, but rather the costs of the hearing of the matter.[25]

[52] The Law Society seeks an order for costs in the amount of $8,420.04, which has been calculated in accordance with Schedule 4 - Tariff for Discipline Hearing and Review Costs of the Rules.

[53] The authority to order costs comes from section 46 of the *Act* and Rule 5-11 of the Rules. Under Rule 5-11, a hearing panel must have regard to the tariff when calculating costs. Pursuant to Rule 5-11(4) costs are to be awarded under the tariff unless the panel determines it is reasonable and appropriate to award no costs or costs in an amount other than that permitted by the tariff.

CONCLUSION

[54] The Panel makes the following orders:

(i) the Respondent is disbarred immediately, pursuant to section 38(5)(e) of the *Act;* and

(ii) the Respondent must pay costs of $8,420.04, within 30 days of the date this decision is issued, pursuant to Rule 5-11 of the Rules.

[25] *Law Society of British Columbia v. Foo,* 2015 LSBC 34 at para. 39.