2024 LSBC 05
Hearing File No.: HE20210047
Decision Issued: February 15, 2024
Citation Issued: October 7, 2021

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL

HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

PIR INDAR PAUL SINGH SAHOTA

RESPONDENT

DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION

Hearing dates:	August 30 and September 29, 2023
Written submissions:	October 27, 2023
Panel:	Monique Pongracic-Speier, KC, Chair Cyril Kesten, Public representative Michael F. Welsh, KC, Bencher
Discipline Counsel:	Jordanna Cytrynbaum Emilie Cox
Appearing on own behalf:	Pir Indar Paul Singh Sahota
Written reasons of the Panel on Disciplinary Action by:	Michael F. Welsh, KC

OVERVIEW OF ISSUES FOR DETERMINATION

[1] In our facts and determination decision ("F&D Decision") issued on March 3, 2023,[1] this Panel found that the Respondent had committed professional misconduct as set out in five allegations involving his conflicting role as counsel for, first the male spouse, and then the female spouse in the same family law litigation, in preparing and witnessing a release that contained untrue statements and in filing an affidavit that contained confidential client information. That professional misconduct will be detailed more fully later in this decision.

[2] As in our F&D Decision, the parties to that family law litigation (the "Family Claim") are referred to as the "Husband" and the "Wife" to protect their privacy and for ease of reference.

[3] The parties agree that a suspension is an appropriate disciplinary action (although the Respondent suggests a fine is preferable), but disagree significantly as to its duration. The Law Society seeks six months and the Respondent proposes four to six weeks.

[4] The Law Society also seeks increased costs totalling $30,127.50 payable within six months of this decision, based on what it submits are actions taken by the Respondent that delayed and obstructed the facts and determination hearing ("F&D Hearing") and these disciplinary action ("DA") proceedings.

[5] Based on our analysis set out in these reasons, the Panel determines that a five-month suspension is appropriate along with costs in the amount of $15,927.50, with time to pay.

FINDINGS IN F&D DECISION

[6] The Citation has five allegations and as noted, the Panel found all were made out on the evidence. In summary and in chronological order they are:

1. In October, 2020, when he knew the Husband, his former client in the Family Claim, had retained another lawyer, the Respondent caused his staff to communicate and meet with the Husband to have him sign a letter prepared by the Respondent or his staff (the "Release Letter"), where the Husband purportedly acquiesced in the Respondent acting for the Wife in the Family Claim, all without the knowledge or consent of the Husband's counsel.

[1] *Law Society of BC v. Sahota*, 2023 LSBC 8 (F&D Decision)

2. In October 2020, the Respondent prepared or had his staff prepare the Release Letter for execution by the Husband. The Respondent included statements in the Release Letter that the Husband did not discuss any matter related to property, finances, or employment with him, and that the Husband never disclosed or provided confidential documents to him. The Respondent knew or should have known those statements were misleading or untrue.

3. In October 2020, the Respondent failed to discharge his responsibilities honourably and with integrity when he represented in the Release Letter that he had witnessed the Husband's signature, when he knew or should have known that was not true.

4. Between February and April 2021, the Respondent acted in a conflict of interest when he represented the Wife in the Family Claim against the Husband.

5. In March, 2021, in response to an application to have him removed from representing the Wife, the Respondent filed or caused to be filed an affidavit that contained confidential information of the Husband.

[7] As set out in considerable detail in the F&D Decision, the Respondent decided not to attend the F&D Hearing and the Panel made an order that it proceed in his absence. The Respondent submitted at the DA Hearing that it was a breach of the principles of natural justice that the F&D Hearing was not adjourned and proceeded in his absence and he did not have a fair opportunity to cross-examine the Husband or to put forward his case. The Panel finds that the Respondent was given the opportunity to attend and cross-examine witnesses and put forward his case, but decided not to attend the Hearing. We will return to the history of these events and the Respondent's actions when we address the costs issue.

[8] The Respondent's DA submissions proffered a number of reasons and excuses for his non-attendance, and at times essentially sought to have the Panel reconsider its factual findings in the F&D Decision. The Panel told the Respondent that we would not revisit the findings in the F&D Decision at the DA Hearing. As much of the Respondent's submissions, written and oral, focused on rearguing the F&D Decision and whether the F&D Hearing should have proceeded without him, those submissions are not relevant to the question of the appropriate disciplinary action and we will not reference them.

[9] A synopsis of the findings in the F&D Decision significant at this DA phase of the Hearing, in the same chronological order, is as follows.

Communication and meeting with the Husband without notifying the Husband's current counsel

[10] The Panel found the following:

(a) "[T]he Respondent knew that the Husband was represented by Mr. Mann…. He nonetheless had [his assistant] communicate with the Husband directly…. This action was inconsistent with the requirements of the [*Code of Professional Conduct for British Columbia* (the "*BC Code*")]."[2]

(b) "The Panel does not accept as an excuse for the Respondent's behaviour the contention that the ongoing litigation between the Wife and the Husband was not discussed with the Husband…. The contention is disingenuous."[3]

(c) "The Panel has no hesitation in concluding that the Respondent's acts and omissions…were a marked departure from the conduct that the Law Society expects of a lawyer. It is elemental that a lawyer is not to communicate with a person represented by another lawyer, except through that lawyer or as otherwise provided for in the *BC Code*."[4]

The Release Letter contained misleading or untrue statements

[11] The Panel found the following:

(a) The Release Letter states, amongst other things, "that the Husband 'did not discuss any matter related to property, finances or employment' with the Respondent, and that the Husband 'never disclosed or provided documents … which could be of a confidential nature' to the Respondent".[5] "The Client Contact Form shows that the Respondent and the Husband discussed the Husband's employment. … The documentary evidence also shows that it is untrue to say that the Husband did not disclose or provide confidential documents to the Respondent".[6]

(b) "The Respondent knew or ought to have known the untruth of the impugned statements in the Release Letter."[7]

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[2] F&D Decision at para. 119
[3] F&D Decision at para. 121
[4] F&D Decision at para. 122
[5] F&D Decision at para. 149
[6] F&D Decision at paras. 151 to 152
[7] F&D Decision at para. 153

(c) "The Panel finds that the Respondent was the author of the impugned statements in the Release Letter. The Panel accepts the Husband's evidence that he did not collaborate with the Respondent on the creation of the Release Letter but that it was presented to him for signature."[8]

(d) "The impugned statements in the Release Letter are misstatements included in the text for the benefit of the Respondent. It was dishonorable for the Respondent to ask the Husband to endorse these false statements. The Respondent's conduct again shows a lack of integrity and is a marked departure from the conduct expected of a lawyer."[9]

Failure to act honestly and with integrity regarding the October 9 Meeting with the Husband to sign the Release Letter

[12] The Panel found the following:

(a) The Husband, who speaks elemental English and cannot read English, attended at the office of the Respondent alone and when the Respondent was not present. Only the Respondent's assistant was at that meeting. The assistant had the Husband sign a letter in English without translating it into Punjabi. The Husband did not know the import of the Release Letter and he could not read its contents. This Panel found that "the Respondent did not attend the meeting on October 9, 2020 and did not witness the Husband's signature on the Release Letter."[10] "…[T]he Respondent was not in attendance when the Husband signed the Release Letter and that the Respondent knew, or ought to have known, that the representation on the Release Letter that he had witnessed the Husband's signature was false."[11]

(b) "It follows by implication that the Respondent did not honestly endorse the Husband's signature on the Release Letter. Given the dishonesty inherent in the Respondent's conduct, the Respondent did not discharge his responsibilities honourably and with integrity. The Respondent's actions are a marked departure from the conduct expected of a lawyer."[12]

[8] F&D Decision at para. 154
[9] F&D Decision at para. 155
[10] F&D Decision at para. 136
[11] F&D Decision at para. 147
[12] F&D Decision at para. 148

Conflict of Interest, representing both parties to the Family Claim

[13] The Panel found the following:

(a) The Respondent's decision to represent first the Husband, and then the Wife, in the same litigation "represents a marked departure from the conduct expected of lawyers in British Columbia".[13]

(b) "By definition, a lawyer who departs from a fundamental professional duty departs markedly from the conduct expected of a lawyer. The lawyer's fundamental professional duties are the basal standards expected of lawyers. They do not admit to derogation." [14]

(c) "[T]he Respondent serially represented the Husband and Wife in the same Family Claim.… The conflict of interest is obvious."[15]

(d) "[T]he Respondent understood that his representation of the Wife in the Family Claim would create a conflict of interest."[16]

(e) "[T]he Release Letter falls 'notably short' and is 'entirely insufficient' to show the Husband's purported consent for the Respondent to act for the Wife." [17]

The Respondent filed an affidavit containing the Husband's confidential information

[14] The Panel found the following:

(a) When the Respondent refused to withdraw from acting for the Wife, counsel for the Husband brought a court application to have the Respondent disqualified. In response to that application the Respondent prepared and filed an affidavit of his assistant, K, (the "K Affidavit"). It contained confidential information the Respondent had obtained from the Husband.

(b) The confidential information included "the Client Contact Form, the [CFSCA] Safety Plan, the Respondent's statement of account to the Husband, the Respondent's time keeping records for the Husband's

[13] F&D Decision at para. 95
[14] F&D Decision at para. 113
[15] F&D Decision at para. 99
[16] F&D Decision at para. 100
[17] F&D Decision at para. 101

matter and the copy of the Husband's driver's licence exhibited to the K Affidavit … In addition, the paragraphs in the K Affidavit which describe: meetings between the Respondent and the Husband; what the Husband told the Respondent in those meetings; the Husband's objectives in the litigation of the Family Claim; the time the Respondent spent on the Husband's matter; and the Respondent's fees to the Husband, all disclose confidential information."[18]

(c) "The Respondent's publication of the Husband's confidential information in the K Affidavit is a marked – indeed, a rather stunning – departure from the standard of conduct expected of a lawyer in British Columbia … 'subversive of the privileged position of members of the legal profession'."[19]

[15] In written reasons ("Reasons"), the court restrained and disqualified the Respondent from acting for the Wife and sealed the court record, stating amongst other things: "The evidence before me … raises significant concerns to my mind about Mr. Sahota's understanding of what confidential information is, including information that is subject to solicitor-client privilege. This evidence in fact establishes solicitor-client information has now been shared, and furthermore that it has now been filed with the court and shared in these proceedings."[20]

DISCIPLINARY ACTION: THE LEGAL FRAMEWORK

[16] If a respondent lawyer to a citation is found to have committed professional misconduct, the panel must impose disciplinary action: *Legal Profession Act*, RSBC 1998, c 9 (the "*Act*"), s 38(5). The appropriate disciplinary action is within the discretion of the panel and may take various forms, alone or in combination. The forms are a reprimand, conditions or limitations on the lawyer's practice, remedial education, supervision, a fine, a suspension or most significantly, disbarment.

[17] The overriding purpose of the disciplinary process is to protect the public from acts of professional misconduct and to maintain public confidence in the legal profession. A second, and also important purpose is to promote rehabilitation. If these purposes come into conflict, protection of the public and the maintenance of

[18] F&D Decision, para. 158
[19] F&D Decision, para. 162
[20] See F&D Decision at paras. 87 to 89. For reasons of not disclosing the identities of the Husband and Wife, the citation for the Reasons is omitted.

public confidence in the profession will take precedence over rehabilitation. That said, in many instances, the same disciplinary action will serve both purposes.[21]

[18] In assessing disciplinary action, the panel considers the statutory objects of the Law Society. These are set out in section 3 of the *Act*. In relevant part, they provide:

> It is the object and duty of the society to uphold and protect the public interest in the administration of justice by
>
> (a) preserving and protecting the rights and freedoms of all persons,
>
> (b) ensuring the independence, integrity, honour and competence of lawyers,
>
> …
>
> (d) regulating the practice of law….

[19] Disciplinary action is individualized to each respondent lawyer and each set of facts.[22]

[20] A non-exhaustive list of 13 factors to consider has been developed by this Tribunal, known as the *Ogilvie* factors.[23] While all are important, not all apply or are of equal weight in every case, and a consolidated set of four categories is most often used:[24]

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

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

(c) the respondent's acknowledgement of the misconduct and any relevant remedial action; and

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

[21] Insofar as other more specific *Ogilvie* factors are relevant to this situation, we will reference and analyze them as well.

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[21] *Law Society of BC v Nguyen*, 2016 LSBC 21 at para 36.
[22] *Law Society of BC v. Lessing*, 2013 LSBC 29 at para 78; *Law Society of BC v. Faminoff*, 2017 LSBC 4 at paras. 83 to 85
[23] *Law Society of BC v Ogilvie*, 1999 LSBC 17
[24] *Law Society of BC v. Dent*, 2016 LSBC 5

[22] Two other principles inform our analysis. First is the principle of global assessment. This principle applies to cases involving multiple proved allegations of misconduct, as has been found here. It holds:

(a) the question of whether a suspension or fine should be imposed is best determined by considering the proven citations globally;

(b) the question of the length of a suspension should be determined on a global basis; and

(c) if it is decided to impose a fine, it should be done on an individual citation basis.[25]

[23] The rationale is that public protection is best provided when the sanction relates "to the entire scope of the misconduct in issue and not to each particular wrongdoing viewed piecemeal".[26]

[24] The second principle is progressive discipline. This principle holds that a lawyer who has previously been subject to disciplinary action, whether for the same or different conduct, will be subject to more significant disciplinary sanctions than a lawyer without a discipline history.[27] This principle is relevant because, as discussed later, the Respondent has a significant disciplinary history.

[25] Nevertheless these are both general principles, and ultimately it is for each hearing panel to determine the appropriate disciplinary action on an individual basis.[28]

[26] We now turn to the four categories of consolidated *Ogilvie* factors supplemented by two others from *Ogilvie* we have determined are relevant.

The nature, gravity, and consequences of the conduct

[27] As the Panel noted in the F&D Decision and summarized earlier, the Respondent's actions in this case, taken individually and holistically, are frankly startling, especially for someone with his length of call, not just in BC, but before that in India, some 40 years in total. They strike at the core of a lawyer's undivided duty of loyalty to a client, and show a complete lack of understanding by the Respondent of that fundamental duty. In defiance of this duty, the Respondent betrayed his former client by having him sign the "Release Letter", under false pretenses as to

[25] See: *Lessing*, [supra] at paras 75 to 78; *Law Society of BC v Gellert*, 2014 LSBC 5 at para 37.
[26] *Gellert*, [supra] at para. 37
[27] *Law Society of BC v Batchelor*, 2013 LSBC 9 at para 49; *Law Society of BC v Seeger*, 2022 LSBC 29 at para 19.
[28] *Lessing*, [supra] at para. 78.

its nature, and dishonestly signing it as witness, then in acting for the opposite party in the same dispute, and again in publicly disclosing his former client's confidential information in court. One can only hope that this is a singular event, not just for the Respondent but for the profession. As commentary to the *BC Code* states:

> The value of an independent bar is diminished unless the lawyer is free from conflicts of interest. The rule governing conflicts of interest is founded in the duty of loyalty which is grounded in the law governing fiduciaries. The lawyer-client relationship is a fiduciary relationship and as such, the lawyer has a duty of loyalty to the client. To maintain public confidence in the integrity of the legal profession and the administration of justice, in which lawyers play a key role, it is essential that lawyers respect the duty of loyalty. Arising from the duty of loyalty are other duties, such as a duty to commit to the client's cause, the duty of confidentiality, the duty of candour and the duty not to act in a conflict of interest. This obligation is premised on an established or ongoing lawyer client relationship in which the client must be assured of the lawyer's undivided loyalty, free from any material impairment of the lawyer and client relationship[29]

[28] Once his client, the Husband, retained new counsel the Respondent understood that he had to obtain the Husband's informed consent if he wished to act against him. The Respondent purported to obtain that consent by authoring the Release Letter containing statements that he knew or ought to have known were false about whether the Respondent had relevant confidential information arising from representing the Husband. Contrary to the Respondent's clear professional duties, he had his assistant obtain the Husband's signature without any explanation, and in fact according to the Husband' evidence that the Panel accepted, with her misrepresenting the nature and contents of the Release Letter. The Respondent then falsely signed himself as witness, all behind the back of the Husband's new lawyer. When that new counsel demanded he withdraw due to his painstakingly clear conflict of interest, he refused to back down. Instead, he aggravated his misconduct with an affidavit that again betrayed his former client by using his confidential information in court against him. That the Respondent was misguided vastly understates the case. He was either oblivious or knowingly unconcerned as to his fundamental duties under our Canons of Ethics.

[29] The nature and gravity of this misconduct is of the most severe, and clearly cost the Wife and Husband wasted money, time, and emotional energy. On the eve of the

[29] The *BC Code* (The Law Society of British Columbia, 2013) Commentary 5 to rule 3.4-1

hearing in the Family Law Proceeding, the Wife was without a lawyer. The Husband was betrayed by his former lawyer and had his confidential information used against him in a public courtroom by that lawyer. It also meant that the Husband and his lawyer were wastefully put to the task of bringing a court application that could only have one result; disqualification and removal of the Respondent as the Wife's lawyer.

The character and professional conduct record of the respondent

[30] The Respondent was licensed to practise law in India in or around 1983. He was called and admitted to the bar in British Columbia on August 11, 2006. The Respondent practised at two Lower Mainland firms in 2006 and 2007. On January 3, 2008, the Respondent opened Sahota Law Corporation Inc. and has since continued a sole practice through that corporation. At the times material to the events at issue in these proceedings, the Respondent's practice was focused on family and criminal law matters.

[31] The Respondent has a professional conduct record ("PCR") that starts in November 2005, prior to his admission to the bar in British Columbia, and contains five separate matters up to and including March 2019. Most significant are two citations leading to findings of professional misconduct for which he received suspensions from practice. The details of his PCR are in the chart below.

[32] In the discipline case from 2016 (the "First Discipline Decision") the Respondent was suspended for 90 days for seven instances of professional misconduct. All related to the Respondent's failure to maintain appropriate accounting practices. As described in the hearing panel decision, "[t]he Panel begins with an appreciation that the state of the financial records of the Respondent at all material times was beyond description. The English language has insufficient adjectives to pay proper respect to the mess that was the financial records of the Respondent for the period of time from the commencement of the private practice to the date of the completion of the Law Society visits to gather records and information."[30]

[33] The panel found that the Respondent was clearly "guilty of negligence and gross incompetence," and then went on to clarify that "[s]o comprehensively inept is he that it may not be appropriate to characterize his behaviour as negligent. Negligence suggests that there has been dereliction of a duty owed. That characterization requires there to be an understanding of an initial duty that is owed. Nothing in the evidence before us suggests that the Respondent was aware of

[30] *Law Society of BC v. Sahota*, 2016 LSBC 29 at para. 41 (the First Discipline Decision).

the duty owed to clients in the financial administration of his practice." [31] It arose to such an astounding level of misconduct as to amount to misappropriation of funds from his clients. "The sheer volume of the delicts establishes the necessary element of fault. This extent of trust account mismanagement must in itself demonstrate the necessary elements of wrongdoing and fault. More is not required."[32]

[34] The second (the "Second Discipline Case") resulted in a one-month suspension on a conditional admission for two breaches of trust conditions, a failure to respond promptly to opposing counsel, a failure to provide sufficient quality of service to a client, and a failure to properly supervise staff, all in the course of a botched real estate conveyance. The hearing panel stated: "The Respondent breached his undertakings, ignored opposing counsel, and failed both to manage his staff and to run a disciplined office. His conduct falls short of the quality of service expected of a competent lawyer."[33] The panel found the proposed one-month suspension was at the low end of an acceptable sanction, and in accepting it added an additional term prohibiting him from engaging in any capacity in any aspect of real estate transactions.

[35] The entire PCR is this.

Date	**Action**	**Details**
9/Nov/2005	Condition Practice (one additional month of articles be completed prior to application for call and admission)	The Respondent's employment constituted a breach of Rule 2-40 concerning multi-disciplinary practice. One additional month of articles were required before his admittance to the Law Society.
8/Jul/2010 – 25/Oct/2012	Recommendations made by the Practice Standards Committee under Rule 3-18 (then Rule 3-12) of the Law Society Rules	Practice supervisor assigned and the Respondent entered into a Practice Supervision Agreement. Recommendations 2 to 6 of a 2010 Investigation Report were accepted: 2. Action items regarding general file documentation; 3. Become familiar with the Law Society Rules respecting Client Identification and Verification;

[31] *Sahota* [supra] at para. 66 (the First Discipline Decision).
[32] *Sahota* [supra] at paras. 70 to72 (the First Discipline Decision).
[33] *Law Society of BC v. Sahota*, 2019 LSBC 8 at para. 25 (the Second Discipline Decision).

		4. Contact the Law Society Member Services Department to ensure receipt of all mail-outs; 5. Take the Building Your Practice online course; 6. Take an English writing course; and the Respondent agreed to provide a Compliance Report respecting the implementation of the recommendations. The Respondent agreed to a new Practice Supervisor and Practice Supervision Agreement, and submission of Compliance Reports; follow up Fire-side Chat timeline extended. The Respondent accepted recommendation to send confirmation letters regarding client instructions and advice provided; send closing letters and associated accounts; and amend billing practices. A follow-up practice review was scheduled and costs of $2,000 payable by the Respondent The Respondent accepted recommendation to follow a file checklist for each file; checklist required to be prepared and initialed by Respondent/staff; take the Small Firm Practice Course; release the Practice Supervisor from existing Agreement; and pay costs in the amount of $1,000.
1/May/2013	Failure to pay costs resulting from a 2nd follow-up Practice Review Report dated August 16, 2012	Costs ordered by Practice Standards Committee had not been paid in full by the May 1, 2013 due date.
25/Jul/2016	Determination of Professional Misconduct under s. 38(4)(b) of the *Act*	*Law Society of BC v Sahota*, 2016 LSBC 29 (First Discipline Decision -Decision of the Hearing Panel on Facts and Determination) The citation comprised seven separate allegations, some of which included several separate sub-allegations of misconduct. In total there were 52 factual incidents set out in the citation concerning:

		(a) Misappropriation or trust fund shortages; (b) Improper withdrawal of funds from the trust account; (c) Failure to immediately eliminate some of the trust shortages; (d) Failure to deposit funds to his trust account as soon as practicable; (e) Maintaining more than $300 of the Respondent's own money in his pooled trust account; and (f) Breaches of 14 different Law Society accounting rules. The Respondent was found to have committed professional misconduct with respect to all seven allegations (excepting four sub-allegations).
30/May/2017	Actions taken under s. 38(5) and (7) of the *Act*	*Law Society of BC v Sahota*, 2017 LSBC 18 (Decision of the Hearing Panel on Disciplinary Action) Suspension of one month Limitation on Practice Costs of $14,505.50
17/Jul/2018	Review Board upholds determination of professional misconduct made under s. 38(4)(b) of the *Act*	*Law Society of BC v Sahota*, 2018 LSBC 20 (Decision of the Review Board on July 17, 2018) Action taken by Review Board under s. 47 of the *Act* Suspension of 90 days, with credit for the 30 days already served Limitation and Condition on Practice
18/Mar/2019	Disciplinary action imposed by a hearing panel under Rule 5-6.5 of the Law Society Rules	*Law Society of BC v Sahota*, 2019 LSBC 08 (Second Discipline Decision -Decision of the Hearing Panel) Admission accepted, Suspension of one month Limitation on Practice

[36] The Law Society submits that the Respondent's PCR is an aggravating factor, militating in favour of an increased sanction. It submits that increase in sanction will accord with the principle of progressive discipline, meet the need for specific

deterrence, and ensure public confidence in the legal profession by signalling to the public and the legal profession that the Law Society will not tolerate lawyers who repeatedly ignore their professional responsibilities.[34]

[37] The Respondent submits that in the two prior professional misconduct cases, there was no *mala fides* on his part and he had no personal gain. He also emphatically states that there was no finding of misappropriation in the First Discipline Decision, saying the panel categorically found otherwise, and that he was simply careless and failed to follow "the rule".

[38] His interpretation of the First Discipline Decision flies in the face of its clear findings. As described in our decision at paras. 32 and 33 above, the hearing panel in the First Discipline Decision found the Respondent's conduct amounted to misappropriation of funds from his clients and stated that "[a] finding of professional misconduct without a matching determination of misappropriation does not sufficiently describe the extent to which the public trust has been abused in the circumstances of this citation."[35]

[39] In the Second Discipline Decision the Respondent again stresses that there was no fraud or misappropriation of funds, minimizing his conduct as a breach of undertaking to provide a document to another lawyer.

[40] His written submission concludes on this point, "[s]o, since there are two prior two (*sic*) citations, *it does not mean that the character of the Respondent is blameworthy*. In order to take into consideration the decisions of the disciplinary proceedings, the Respondent submits that allegations of those citations should also be taken into consideration" [emphasis added].

[41] It is clear from his submissions that the Respondent still does not understand the import of the prior findings of professional misconduct against him. His conduct was clearly blameworthy in both cases. This lack of understanding, combined with the Panel's findings in this case, raises concerns about the Respondent's fundamental lack of comprehension of the very basics of his duties and obligations as a lawyer. It is also clear that even with the significant efforts by the Practice Standards Committee noted earlier to provide him with the resources to become competent, that goal has not been realized.

[42] As the Law Society rightly points out, the Respondent's PCR and his miscomprehension of it are clear aggravating factors.

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[34] See *Law Society of BC v. Batchelor*, 2013 LSBC 09 at paras. 48 to 50.
[35] *Sahota* [fn 30] at para. 72 (the First Discipline Decision).

The respondent's acknowledgement of the misconduct and relevant remedial action

[43] The Panel must decide if the Respondent's general continued justification of his actions is an aggravating factor. In *Law Society of BC v. Jensen*,[36] to which the Respondent refers, the hearing panel stated the following when considering this *Ogilvie* factor:

> (g) *Whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of mitigating circumstances*
>
> The Respondent has consistently believed he made no error and what occurred did not amount to not (*sic*) professional misconduct. He is entitled to such belief. We came to a different conclusion. Although Mr. Jensen was obdurate and single minded, it was his belief. *In these circumstances* we do not consider this an aggravating factor. Sometimes there is a need for a hearing. *In other words, the case was no* (*sic*) *so clear that the lawyer should be sanctioned for defending the citation*.[37] [emphasis added]

[44] The Panel finds that the circumstances in *Jensen* differ from those here and that the panel's comments are based on and confined to the facts before it. The respondent lawyer was cited under the then-prevailing rules for failing to caution an unrepresented person, who was dealing with Jensen's client over money in Jenson's trust account, that her interests were not being protected by him. (The Rules have since expanded the duty to caution significantly) Apparently, on the facts Jensen believed and submitted to the panel that he had acted correctly, as the unrepresented person knew he was not her lawyer. Had the transaction proceeded he would have given her this caution in writing, but as it collapsed he did not do so. As the panel notes, a hearing was needed to determine if Jensen breached the Rule, as the conclusion was not obvious. The panel decided there was still room for his differing opinion at the disciplinary action stage, given he understood the Rule and would not make the same error again.

[45] The circumstances here are vastly different and encompass the fact that the breaches are painfully obvious and, despite the Respondent's half-hearted statements that he accepts responsibility, there is little to assure the Panel that he

[36] 2015 LSBC 10
[37] *Jensen,* [supra] at para. 7(g)

understands the nature of his failures to discharge his professional duties and has taken the steps to see they will not be repeated.

[46] In his written submission the Respondent says of the validity of the proven allegations of professional misconduct, "[t]his would have been addressed if an opportunity was given to the Respondent to address all those issues. But nonetheless, since the decision has been given, the Respondent accepts the responsibility and undertakes that in future, he will comply with all the rules and regulations of the Law Society."

[47] In his oral submissions the Respondent made very limited acknowledgements that he had misconducted himself. He mostly attempted to justify what had happened and reiterated that he had not had the opportunity to address the Panel in the F&D Hearing, which is not the case. He elected not to do so.

[48] The one concrete admission he made, about arranging for the Husband to attend his office without informing his lawyer, was that the Respondent accepted that doing so was "on the edge of the rule". He said that he should not have met with the Husband, but then tried to mitigate that admission by stating it was only to get the Release Letter. Even in this limited admission, he stuck to his contention that he in fact met with the Husband, contrary to our findings.

[49] Resorting to some hyperbole, the Respondent stated that if the Panel finds he was dishonest we should disbar him, even if neither he nor the Law Society is seeking that outcome. That is not an appropriate disciplinary action on the facts of this case, and it was unhelpful to suggest it.

[50] The Respondent referenced the case of *Law Society of BC v. Cruickshank*,[38] where the panel stated:

> At the disciplinary hearing, the Respondent expressed remorse and gave his assurance that appropriate office safeguards have been put in place, including the hiring of a bookkeeper. He also shared personal insight into why the events occurred as they did.

[51] The Respondent in his oral submission said that he too was remorseful, although "many might not believe me, but I am sorry and will take more care in future, be extra careful next time". He went on to say that it brings him shame to have to tell his children what this Panel found "against" him for "trying to help someone".

[38] 2013 LSBC 21 at para. 8.

[52] In his written submission the Respondent states that he "has learned his lesson that he cannot be driven by his emotions to help the members of the public". From these comments it is clear that he continues to see his professed good intentions as blunting our findings of professional misconduct. There is a well-known phrase about a certain road being paved with good intentions. Panels have noted that good intentions are no defence to allegations of professional misconduct, most recently in *Law Society of BC v. Guo.*[39] The Respondent cannot continue to justify his actions leading to the findings against him by his professed magnanimous motives:

> [302] Given that much of the Respondent's case is based on her good intentions and desire to help others, it is important to note that the presence of good faith intentions (*bona fides*) will not excuse conduct that is otherwise professional misconduct under this [*Martin*] test. Bad faith intentions (*mala fides*) are not a necessary ingredient to prove professional misconduct."

[53] It seems that the Respondent still does not understand that his failures to follow the rules in the *BC Code* amounted in the circumstances of this case to professional misconduct, as he goes on to say that "*he will have to follow* the strict professional rules established by the Law Society in his dealing with members of the society" [emphasis added], as if it were a stricture being imposed on him rather than something he would do of his own initiative.

[54] The Law Society submits that there is no evidence that the Respondent acknowledges his misconduct, nor of any remedial action that would function as a mitigating factor in the present case, and argues that the Respondent fails to understand, or refuses to acknowledge, the problematic nature of his actions. With this the Panel fully agrees. While acting from good motives can be a mitigating factor in a determination of a disciplinary action, refusal to acknowledge professional misconduct due to alleged good motives is not.

[55] The Panel notes that the Respondent, to a limited level, voiced words of contrition and an assurance that he will not repeat the conduct here, but in the Panel's view, there is no real understanding or willingness to change. The only real feeling the Respondent expresses is that he has been made to look shameful in front of his family over what he still believes were beneficial actions he took.

[56] He sees himself as the victim in what occurred, not the victimizer. The Panel sees it otherwise.

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[39] 2023 LSBC 30

[57] A subsidiary *Ogilvie* factor under this heading is the possibility of remediating or of rehabilitating the Respondent. As the Law Society notes, there is nothing the Respondent has done to try to remediate the consequences of his professional misconduct.

[58] Frankly, given his PCR, the significant but essentially unsuccessful Practice Standards efforts to assist him, his lack of comprehension of his past actions that led to the prior findings of professional misconduct, and his lack of any insight into why his actions in this case transgressed his professional duties, the Panel has no confidence in his rehabilitation. It seems the Respondent just does not "get it". Consequently this is a case where personal deterrence of the Respondent and general deterrence in the legal profession must be paramount to protect the public interest.

Public confidence in the legal profession, including the disciplinary process

[59] In *Law Society of BC v. Hill*,[40] the hearing panel emphasized the following with respect to the purpose of a sanction imposed for professional misconduct:

> [3] It is neither our function nor our purpose to punish anyone. The primary object of proceedings such as these is to discharge the Law Society's statutory obligation, set out in section 3 of the *Legal Profession Act*, to uphold and protect the public interest in the administration of justice. Our task is to decide upon a sanction or sanctions that, in our opinion, is best calculated to protect the public, maintain high professional standards and preserve the public confidence in the legal profession.

[60] As we have already noted, this Panel lacks confidence that the Respondent will learn from his actions. Given those concerns, the sanction imposed on the Respondent must be a serious deterrent to further misconduct. Lawyers from time to time get entangled in conflicts of interest for a variety of reasons. However this case is singular in the knot of conflicts into which the Respondent planned and put himself – to clients past and present, to the other counsel, in breach of his duty of integrity, and ultimately with an affidavit that contained improper material to his duty to the court. A message needs to be sent to him and the profession about the sanctity of the lawyer-client relationship, as well as the other duties under the Canons of Ethics. This is a factor that weights in favour of a more serious disciplinary action being imposed.

[40] 2011 LSBC 16

[61] The Law Society also raises an issue of the alleged conduct of the Respondent in this disciplinary process.

[62] It raises what it submits are numerous occasions where the Respondent set out to delay proceedings in this matter, by repeatedly not appearing and instead having his office legal assistant contact the Tribunal with proffered reasons, generally relating to health issues. It notes that when new dates then had to be set, the Respondent said his calendar was too full to set anything that was not months away.

[63] The Law Society submits that this series of events and pattern of behaviour on the part of the Respondent demonstrates a clear and concerning lack of respect for the Panel and the Tribunal's process and procedures. It also displays his unwillingness to cooperate with the Law Society more broadly. It states that these factors are relevant to assessing the appropriate disciplinary action.

[64] The Panel finds it unnecessary to address this issue as a factor in determining the appropriate disciplinary action. The facts of the delays in these proceedings are set out in detail in the F&D Decision and the issue is raised again by the Law Society in its submissions on costs. The Panel concludes that it is more appropriately addressed as a costs issue.

[65] The Panel also addresses two additional *Ogilvie* factors of relevance to this case.

The potential effect of the proposed disciplinary action on the respondent

[66] There is no doubt that a lengthy suspension will have a significant detrimental financial effect on the Respondent. He is a sole practitioner and will need to make arrangements for a caretaker for his practice if he is to maintain it. He states that he has two dependent children, one of whom is in medical school and the second writing the MCAT exams to become a doctor. Along with his wife, who is a teacher, he is supporting both. The Respondent testified that he has a recent history of serious illness, the details of which he asked the Panel to not disclose but which affected his practice, and is of ongoing concern to him.

[67] His status as a sole practitioner is a mitigating factor that the Panel takes into consideration and for which it has reduced to a limited extent the length of suspension from that sought by the Law Society. The Respondent's medical issues, insofar as they affect his ability to earn income have been factored in by the Panel as part of the issues he faces under suspension as a sole practitioner.

The range of disciplinary action imposed in similar cases

[68] This is an important factor to consider as the Respondent's submissions were largely composed of a review of cases based on which he maintains that the disciplinary action sought by the Law Society is excessive. The Panel will review the most relevant cases provided by both parties.

[69] The Law Society begins with the seminal review board decision in *Law Society of BC v. Martin*,[41] which states that the salient features when determining whether a suspension should be imposed include consideration of whether the misconduct contains: (a) elements of dishonesty; (b) repetitive acts of deceit or negligence; and (c) significant personal or professional conduct issues. It submits that in the present case, the Respondent has acted dishonestly and without integrity, and has a PCR setting out a history of professional concerns and misconduct. The Law Society submits that, considering the *Martin* factors, his actions cumulatively warrant a suspension.

[70] The Law Society then refers to a number of cases of conflict of interest and the disciplinary action imposed, the most pertinent of which are:

(a) *Law Society of BC v. Straith*,[42] - Two-month suspension on a joint submission for multiple instances of conflict and failing to give the client undivided loyalty, and an old and unrelated PCR.

(b) *Law Society of BC v. Welder*,[43] - One-year suspension for acting against a former client in a foreclosure, and a lengthy PCR. The Law Society unsuccessfully sought a declaration that lawyer was ungovernable and should be disbarred, with an alternative submission for a lengthy suspension.

(c) *Law Society of BC v. Schauble*,[44] - Four-month suspension for acting for both spouses in a conveyance and, when a dispute arose on division of the proceeds, seeking to mediate a resolution between them. The lawyer had a PCR. The hearing was based on a conditional admission and consent to disciplinary action.

(d) *Law Society of BC v. Nielsen*,[45] - Six-month suspension for acting for multiple parties in a complex real estate conveyance and assisting in a

[41] 2007 LSBC 20 at para. 41
[42] 2020 LSBC 11
[43] 2014 LSBC 20
[44] 2011 LSBC 27
[45] 2009 LSBC 08

fraudulent scheme, failing to properly advise a client, failing to provide proper quality of service, and breaching accounting rules. Again, it came before the panel on a conditional admission and consent to disciplinary action.

[71] On the matter of disclosing confidential client information, the Law Society refers to *Law Society of BC v. McCormick* [46] where the lawyer was suspended for 45 days for giving a media interview where she disclosed confidential details of her client's case.

[72] The Law Society provided decisions on lawyers providing false information to a court, but as the Respondent was not cited for this, the Panel will not review those decisions.

[73] On directly approaching a party who now has new counsel behind that counsel's back (amongst other allegations) the Law Society refers to *Law Society of BC v. Lott*,[47] where a $20,000 fine was imposed.

[74] The Law Society submits that the combination of findings of professional misconduct, taken together, and factoring in the PCR and the many aggravating and few mitigating factors, require an elevated sanction of a six-month suspension.

[75] The Respondent relies on 27 decisions, the primary of which is *Cruickshank*,[48] where the lawyer received a 45-day suspension for three findings of professional misconduct and three findings of a breach of the *Act* and Rules, including two of failing to serve clients in a conscientious, diligent, and efficient manner. The lawyer admitted most of the misconduct and breaches.

[76] The Panel has reviewed the 26 other decisions, including *Straith*[49] and *Nielson*[50] to which the Respondent also refers. We find the following are most relevant:

(a) *Law Society of BC v. Golden*,[51] - Fine of $20,000 where the lawyer was found to have been in a three way conflict of interest between spouses in family law proceedings and a third party to whom the wife owed money. The lawyer was also found to have provided poor service to the third party, found to have failed to warn the wife he was not protecting her interests in a power of attorney and promissory note to the third party,

[46] 2015 LSBC 28
[47] 2021 LSBC 4
[48] [supra] at FN 38
[49] FN 42
[50] FN 45
[51] 2019 LSBC 15

and to have improperly handled trust funds. The lawyer had a limited PCR with two conduct reviews and a Practice Standards referral.

(b) *Law Society of BC v. Culos*,[52] - $15,000 fine and practice supervision order where the lawyer in two separate client matters acted in a conflict of interest, first in helping one client by creating a trust to divert funds from an estate client and second in acting for a funeral home to collect money from his own client, using confidential client information to do so. He had a limited PCR consisting of a conduct review and Practice Standards referrals.

(c) *Law Society of BC v. Rai*,[53] - Three-month suspension for acting for multiple parties in a conflict of interest, failing to provide an adequate quality of service, failing to maintain responsibility for the conduct of files, and unknowingly participating in a mortgage fraud from lack of proper investigation on his part. The lawyer had a lengthy PCR including two prior proven citations and a three-year Practice Standards referral. He consented to the disciplinary action.

(d) *Law Society of BC v. Seifert*,[54] - Two-month suspension where the lawyer was in a personal conflict of interest with his client in acquisition of shares in a company in which he had a financial interest. The lawyer had no PCR and some 30 years of practice. The Law Society and the respondent lawyer jointly proposed the sanction imposed.

(e) *Law Society of BC v. Spears*,[55] - Two-month suspension, a reprimand, and a fine of $7,500 for six allegations of proven professional misconduct, mostly relating to trust accounting defaults, and one count of acting in a conflict of interest, on a consent to disciplinary action. There is no indication of a PCR.

(f) *Law Society of BC v. Scholz*,[56] - One-month suspension for conflict of interest acting for two clients where the lawyer had a personal financial conflict of interest, and where his conduct was in breach of a court order and contrary to the *Trustee Act*. The panel said, "… the duty of a lawyer to give each client undivided loyalty is fundamental".

[52] 2013 LSBC 19,
[53] 2011 LSBC 2
[54] 2009 LSBC 17
[55] 2006 LSBC 9
[56] 2008 LSBC 16

(g) *Law Society of BC v. Coglon*,[57]- One-month suspension where the lawyer with no PCR placed himself in a "hopelessly conflicted position" as between a corporate client and a personal client who was seeking to covertly acquire an interest in the corporate client. The lawyer then placed himself in a personal conflict of interest with the corporate client by amending an offering memorandum without disclosing the first client's investment. The amendment of the offering memorandum then placed the Respondent in a second position of conflict in that his own family had interests in the corporate client that might reasonably have been expected to affect his professional judgement. The lawyer had been out of practice for some three years when the suspension was imposed.

(h) *Yungwirth v. Law Society of Upper Canada*,[58] - Twelve-month suspension upheld on appeal where the lawyer, with no PCR and who was remorseful, was found to have been a dupe in a mortgage fraud scheme and also to have failed to serve his lender clients by failing to disclose material facts and to carry out their instructions. He acted in conflicts of interest and preferred the interests of his purchaser clients over the interests of his lender clients, purposely sought to mislead some of his clients, and participated in the swearing of false affidavits. The appeal panel in confirming the appropriateness of the sanction stated: "We simply do not accept that a lawyer no matter how long he has been in practice or how short does not know that he has a fiduciary responsibility to be honest and truthful with all of his clients and does not know that he should not commission false and misleading Affidavits."[59]

[77] Most of the other decisions to which the Respondent refers contain allegations dissimilar to those here. The Panel has reviewed them but finds them of limited assistance.

[78] As these decisions demonstrate, each one has its own accumulation of factors leading to its individual disposition. Other decisions can do no more than suggest a range of appropriate disciplinary action. In the Panel's view, taking into account: the facts of the case, the seriousness of the Respondent's misconduct and the multiple and compounding breaches of his duty of loyalty to his former client, the aggravating factors discussed above, and the absence of mitigating factors other than a certain financial toll that a suspension will likely take on the Respondent, the

[57] 2006 LSBC 14
[58] 2004 ONLSAP 1
[59] *Yungwirth* [supra] at para. 51

Panel determines a lengthier suspension is merited, but not quite of the length the Law Society seeks. We find that five months is appropriate to bring home to the Respondent, the profession, and the public the seriousness of his multiple instances of professional misconduct. Were it not for the difficulty the suspension will present for him as a sole practitioner, it would have been longer.

COSTS

Introduction

[79] As set out in Rule 5-11(1), a hearing panel may order a respondent pay the costs of the hearing but, in doing so, the panel must have regard to the tariff of costs set out in Schedule 4 of the Rules (Rule 5-11(3)). The tariff is therefore the starting point for assessing the costs payable in this matter.

[80] Nonetheless, Rule 5-11(4) provides:

> A panel or review board may order that the Society, an applicant or a respondent recover no costs or costs in an amount other than that permitted by the tariff in Schedule 4 [*Tariff for hearing and review costs*] if, in the judgment of the panel or review board, it is reasonable and appropriate to so order.

[81] The Law Society initially provided a draft Bill of Costs in this matter based entirely on the tariff; it sought costs of $20,900 plus disbursements of $3,727.50 for a total of $24,627.50. However, the Law Society at the same time argued that the Respondent had obstructed, and shown disrespect for, the Hearing process and that his conduct is relevant to, and should be reflected in, the disciplinary action.

[82] During the oral Hearing on September 29, 2023, we asked counsel whether the Law Society's position on costs would differ, if we were to disagree with the argument that conduct during the proceedings should inform the Panel's decision on sanction. The Law Society requested an opportunity to consider its position. We granted the request. Both parties subsequently filed supplementary submissions on costs.

[83] The Law Society's supplementary submissions ask the Panel to use its discretion to increase the costs to $26,400 ($30,127.50, inclusive of disbursements) payable in six months. The Law Society seeks the increased amount to account for a hearing day that was lost when the Respondent did not

attend on the grounds of illness ($3,000), and a lump sum of $2,500 for extra fees incurred for preparation time due to recurrent interruptions of the Hearing. The Law Society contends that the Respondent delayed and obstructed the Hearing process, and this should be reflected in the costs to be awarded.

[84] The Respondent argues that the costs sought by the Law Society are excessive. The Respondent also submits that due to his financial situation, costs should be reduced from the tariff amount; he seeks an order for what he calls "minimum costs". He stresses the financial burden of costs on his family and himself if he is suspended, including for his two sons pursuing post-secondary education with his support. He attaches his business and personal tax return assessments and a T4 for 2019, 2020 and 2021. He states he has a modest practice with net firm income of $9,548 in 2019, a net loss of $10,643 in 2020 and a net income of $22,354 in 2022. His personal income was $51,303 in 2019, $68,104 in 2020, and $76,822.24 in 2022. The Respondent did not lead evidence of his assets and liabilities, or of his total family income.

[85] The Respondent also submits that he did not obstruct or delay the Hearing. He says that the Hearing continuations were due to his ill health. The Respondent relies on the following from *Law Society of BC v. Tungohan*,[60] where the Review Board stated:

> [24] As noted above, it is our view that the escalation of costs in this case was largely based on the way that the Respondent conducted the hearing. However, we have also considered the Court of Appeal's comments regarding the hardship of a costs order for sole practitioners and others with limited means to pay. Further, we consider the evidence of financial hardship to the Respondent, which was not before the hearing panel.
>
> [25] Given all the circumstances, we conclude that the costs order in this case should be set aside. We exercise our discretion pursuant to Rule 5-11(4) to make an order for costs less than the bill of costs based on the tariff.

[86] The Hearing of the Citation proceeded by Zoom. On three occasions - in September 2022, December 2022, and August 2023 - the Respondent failed to attend scheduled Hearing sessions, claiming illness. On the first occasion, the Respondent advised the Tribunal in advance of the Hearing that he was ill. The Respondent was instructed by the Tribunal to bring an application to adjourn, supported by

[60] 2018 LSBC 15

evidence. He did not do so; he instead simply absented himself from the Hearing. On the second occasion, the Respondent did not appear at the start of the hearing day and later had his assistant email a terse doctor's note to the Tribunal stating that the Respondent had a viral illness. On the third occasion, the Respondent did not attend the scheduled Hearing but provided a doctor's note, completed a few days earlier, which stated that he was ill. The Respondent also apparently advised counsel for the Law Society the day before the August 2023 hearing date that he was ill.

[87] A hearing day in December 2022 was disrupted when the Respondent lost electrical power in his building before the lunch break. The Hearing was stood down and the Respondent attended the Law Society building where the Tribunal staff set him up with a computer to continue. Shortly after, the Respondent stated he could not conduct cross-examination as his notes were on his office computer and he did not have a printed copy; so the hearing was adjourned to the next day. The Respondent did not attend that continuation; this was one of the days the Respondent said he was ill.

[88] When the Hearing reconvened in January 2023, it proceeded without him, as the Respondent had gone on a holiday to a family event in the United States of America.

[89] A further fact relevant to the assessment of costs is that, before the Hearing sessions in December 2022, the Respondent brought an unsuccessful application to have the F&D Hearing proceed in person.[61]

Discussion

[90] The review board in *Tungohan* [62] stated:

> While a hearing panel is required to have regard to the tariff of costs, there is a broad discretion to fix costs based on the circumstances of the proceedings. A non-exhaustive list of the factors that may be considered in determining an order for costs are set out in *Law Society of BC v. Racette*:[63]
>
> (a) The seriousness of the offence;
>
> (b) The financial circumstances of the respondent;

[61] See *Law Society of BC v. Sahota*, 2022 LSBC 52.
[62] See FN 66, paras. 12 and 13.
[63] 2006 LSBC 29

(c) The total effect of the penalty, including possible fines and/or suspensions; and

(d) The extent to which the conduct of each of the parties has resulted in costs accumulating or conversely, being saved.

[91] It is also well settled that costs should not be ordered as a punitive measure for professional conduct. They are intended to address the costs of the hearing itself.[64]

[92] From the Law Society's perspective, the last of the *Tungohan* factors is significant in this case. From the Respondent's perspective the second and third factors are the most important.

[93] The Respondent's professional misconduct in this case is serious; the five-month suspension which we have imposed as disciplinary action reflects this fact. As noted earlier, the Panel appreciates that the suspension will significantly affect the Respondent financially, as he is a sole practitioner. However, given the limitations of the evidence the Respondent chose to lead about his financial circumstances, as noted in paragraph 84, we are unable, in the absence of knowing his overall financial picture, to make a more definite determination on how the suspension or costs award will affect him financially.

[94] As for the question of the Respondent's conduct during the Hearing, his failures to even appear on scheduled Hearing days to seek adjournments, and his stubborn refusal to follow the procedural directions provided to him by the Panel and Tribunal staff, are not to be commended. Nonetheless, taking all relevant circumstances into account –including the roles of illness and technological bad luck in prolonging the Hearing – we are not persuaded that an increased costs award, as requested by the Law Society in its supplementary submissions, is appropriate to compensate for costs thrown away in the proceeding.

[95] In addition, we would deny the Law Society's request for a lump sum award of costs for counsel fees. What the Law Society seeks in this regard is essentially an award of "special costs", but without any evidence to support the claim for $2,500. Absent appropriate evidence, the claim is essentially arbitrary.

[96] We also are not persuaded by the Respondent's plea for a "minimal" costs award. Instead, we are of the view that costs should be, guided by the tariff.

[97] The Law Society's draft bill of costs seeks the following: 5 units, of a possible 10, for preparation of the Citation, correspondence, conferences, instructions,

[64] *Law Society of BC v. Foo*, 2015 LSBC 34

investigations or negotiations after the authorization of the Citation to the completion of the discipline hearing; 10 units, of a possible 20, for preparation of the notice to admit; 5 units, of a possible 10, for contacting, interviewing and issuing summons to all witnesses; and 10 units, the fixed amount, for the interlocutory motion, made during the proceedings. The Panel allows these claims.

[98] The Law Society also claims the following: 2 units, of a possible 5, for prehearing conferences; 7 units, of a possible 10, for preparation of affidavits; and 150 units for attendance at the Hearing (5 days x 30 units per day). The claim for costs for prehearing conferences is disallowed, as no prehearing conference was held in this matter. The claim for affidavits is allowed at 2 units for the completion of two affidavits of service and a legal assistant's affidavit tendered by the Law Society in the interlocutory motion. The Panel allows 90 units for attendance at the Hearing on December 19, 2022, January 4, 2023, and September 29, 2023. In addition, however, the Panel will allow 9 units for costs thrown away for the Law Society's attendance on September 2, 2022, December 20, 2022, and August 30, 2023, when the Respondent was scheduled to attend but did not because he said he was ill. These costs thrown away are awarded by analogy to the 3 units granted for each adjournment application that is brought less than 14 days before a scheduled hearing date.

[99] In total then, the Law Society will be awarded costs of $12,200 (122 units x $100 per unit). The Law Society will also be awarded the disbursements claimed, all of which are for court reporting services. Accordingly, the Respondent will pay costs and disbursements in the amount of $15,927.50 within six months of the date that the suspension concludes, or such other period as may be agreed between the parties.

DISPOSITION

[100] The Respondent is suspended from the practise of law for a period of five months commencing at a date to be agreed on by the parties, or failing agreement, set by the Hearing Panel. That application must be brought in writing within 30 days of the date this decision is issued. The other party will have five business days to respond, with a further two business days for the applicant to reply. The application and any response must be supported by the evidence on which each party intends to rely.

[101] The Respondent is ordered to pay costs and disbursements in the amount of $15,927.50 within six months of the date the suspension concludes or such other period as agreed by the parties.