

2024 LSBC 18
Hearing File No.: HE20220022
Decision Issued: March 25, 2024
Citation Issued: June 1, 2022

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

NICKOLAUS HAROLD MACDONALD WEISER

RESPONDENT

**DECISION OF THE HEARING PANEL
ON DISCIPLINARY ACTION**

Hearing date: January 4, 2024

Panel: Gurminder S. Sandhu, KC, Chair
Darlene Hammell, Public representative

Discipline Counsel: Ilana Teicher

No one appearing on behalf of the
Respondent

Written reasons of the Panel by: Gurminder S. Sandhu, KC

BACKGROUND

[1] This Panel must determine the appropriate disciplinary action, having found in reasons issued on August 15, 2023 (the “F&D Decision”)¹ that the Respondent committed professional misconduct in relation to the six allegations in the citation (the “Citation”). The Citation is paraphrased as follows:

1. Between approximately January 2019 and May 2019, in relation to his file #62419, the Respondent used his law firm’s trust account for his personal financial benefit and in the absence of substantial or any legal services when he did one or more of the following, contrary to one or more of Rules 3-60(4) and 3-60(5) of the Law Society Rules (the “Rules”) and rules 2.2-1 and 3.2-7 of the *Code of Professional Conduct for British Columbia* (the “BC Code”):
 - (a) used the trust account to receive and disburse some or all of approximately \$198,000 of his own funds in one or more of the instances set out in Schedule “A”;
 - (b) used the trust account to receive funds paid to him personally from the proceeds of a cannabis business, when he knew or ought to have known that the business was not licensed by the federal or provincial government and that using his trust account would conceal or disguise the source of those funds;
 - (c) maintained more than \$300 of his own funds in the trust account; and
 - (d) drafted one or more of the following documents regarding purported loans from B Corp. to LP, when he knew or ought to have known that there were no such *bona fide* loans and the documents were false or misleading:
 - (i) Letter of Intent dated January 21, 2019;
 - (ii) Promissory Note dated January 22, 2019;
 - (iii) Direction to Pay dated January 21, 2019;
 - (iv) Direction to Pay dated February 14, 2019;
 - (v) Direction to Pay dated March 6, 2019;
 - (vi) Direction to Pay dated April 3, 2019; and

¹ *Law Society of BC v. Weiser*, [2023 LSBC 32](#) (F&D Decision).

- (vii) Direction to Pay dated May 22, 2019.
2. Between approximately October 2020 and February 2022, in the course of an investigation into his conduct by the Law Society of British Columbia, the Respondent made one or more of the following representations in relation to his file #62419, which he knew or ought to have known were false or misleading, contrary to one or both of rules 2.2-1 and 7.1-1 of the *BC Code*:
 - (a) that he had obtained instructions from B Corp. to prepare documentation for a loan from B Corp. to LP;
 - (b) that he did not request to use LP's personal bank account (the "LP Personal Account") to deposit funds from a purported loan from B Corp. to LP of approximately \$198,000 (the "B Corp. Funds");
 - (c) that, between approximately January to July of 2019, he did not use, directly or indirectly, the LP Personal Account;
 - (d) that he did not know what LP did with the B Corp. Funds;
 - (e) that he was not aware of cheques or bank drafts issued from the LP Personal Account to pay his personal expenses, including expenses related to his law practice;
 - (f) that he had discussed or reached an agreement with LP for her to provide "administration services" to his law practice; and
 - (g) that, between July 2018 to July 2019, general accounting services and other administrative services for his law practice were provided by LP.
 3. Between approximately July 2018 and June 2019, the Respondent failed to maintain the minimum required general account records, contrary to Rule 3-69 of the Rules.
 4. Between approximately February 2019 and September 2019, the Respondent acted in a conflict of interest when he entered into agreements to borrow funds from one or both of his clients, V Ltd. and S Ltd., contrary to one or more of rules 3.4-1, 3.4-26.1, 3.4-28, 3.4-29, and 3.4-31 of the *BC Code*.
 5. Between approximately October 2015 and November 2016, the Respondent acted in a conflict of interest when he represented his client CM in an estate matter and he did one or both of the following, contrary to one or more of rules 2.1-3(b), 3.4-1, and 3.4-2 of the *BC Code*:

- (a) represented his client S Ltd. in relation to a loan of approximately \$80,000 from S Ltd. to CM, which loan was secured by a mortgage registered against property owned by CM; and
 - (b) represented B Corp. in relation to a loan of approximately \$60,000 from B Corp. to CM, which loan was secured by a mortgage registered against property owned by CM.
6. Between approximately August 2018 and January 2020, the Respondent acted in a conflict of interest when he represented his client BM as the borrower and his client B Corp. as the lender with respect to the same loan, contrary to one or more of 2.1-3(b), 3.4-1, 3.4-2, and 3.4-5 of the *BC Code*.

[2] At the direction of the Tribunal Chair the disciplinary action phase of this Hearing will proceed with two panel members due to the unavoidable absence of one of the panel members. Pursuant to Rule 5-3(1) and Rule 5-3(2) of the Law Society Rules (the “Rules”), this Panel will proceed with the remaining members for the purposes of completing this Hearing.

PROCEEDING IN THE ABSENCE OF THE RESPONDENT

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

[4] Rule 10-1(1)(b) of the Rules permits any notice or document to be served in a proceeding on a respondent by the various methods specified, including by sending it by registered mail, ordinary mail or courier to the respondent’s last known residential address and by electronic mail to the respondent’s last known electronic mail address.

[5] The Law Society tendered the Affidavit of Julie Erskine affirmed December 18, 2023. Based on that evidence, on November 9, 2023, the Notice of Hearing was sent to the Respondent’s home address by Xpresspost - a delivery service provided by Canada Post that provides the shipper with tracking information and proof of delivery.

[6] The Affidavit of Julie Erskine affirmed December 18, 2023 further states that the Notice of Hearing was also sent to the Respondent by email on November 9, 2023.

[7] This Panel, at the commencement of this Hearing, ruled that it was satisfied that the Respondent was properly served with the requisite Notice of Hearing pursuant to Rule 10-1(1)(b) of the Rules.

[8] This Panel further determined that in all the circumstances it was appropriate and in the public interest to proceed with this Hearing in the Respondent's absence pursuant to section 42(2) of the *Act*.

POSITION OF THE PARTIES

[9] The Respondent did not attend the disciplinary action hearing on January 4, 2023, nor has he provided any submissions on the appropriate sanction.

[10] The Law Society submits, having regard to the totality of the circumstances including the Respondent's consistent unwillingness to comply with the Law Society as regulator, his serious misconduct, and his significant prior professional conduct record ("PCR"), that the Respondent is ungovernable and the appropriate disciplinary action is disbarment.

[11] In the alternative, the Law Society submits that if the Panel does not find that the Respondent is ungovernable, in light of his PCR, the seriousness of the misconduct in the present matter, and the importance of general and specific deterrence and preserving public confidence in self-regulation, the appropriate disciplinary action is, nonetheless, disbarment.

[12] The Law Society also seeks costs of \$16,668.75, payable within 30 days of the Panel's issuance of a decision, or on such other date as the Panel may order.

Ungovernability Principles

[13] Following a finding of a disciplinary violation under section [38\(4\)](#) of the *Act*, a hearing panel must impose one or more of the sanctions set out in section [38\(5\)](#) of the *Act*. The available sanctions range from a reprimand to disbarment.

[14] A hearing panel's ability to impose disciplinary action on the basis of ungovernability is set out in Rule [5-6.4](#) of the Rules.

[15] Ungovernability is not defined in the Rules, but past Tribunal decisions are of assistance in determining whether to make a finding of ungovernability.

[16] A finding of ungovernability will be made where there is evidence of a consistent unwillingness to comply with the Law Society as regulator, or a wanton disregard and disrespect for the regulatory processes that govern the lawyer's conduct.²

² See, for example: *Law Society of BC v. Lessing*, 2022 LSBC 19 ("*Lessing 2022*") at para. [36](#).

[17] Ungovernability was discussed in *Hall 2007*, a case that involved misconduct described as “pervasive, extremely serious and, in the case of the failure to maintain proper books and records, extended over a period of years”.³ The panel held at para. 27:

The foregoing cases suggest that the relevant factors upon which a finding of ungovernability might be made will include some or all of the following:

1. A consistent and repetitive failure to respond to the Law Society's inquiries.
2. An element of neglect of duties and obligations to the Law Society with respect to trust account reporting and records.
3. Some element of misleading behaviour directed to a client and/or the Law Society.
4. A failure or refusal to attend at the discipline hearing convened to consider the offending behaviours.
5. A discipline history involving allegations of professional misconduct over a period of time and involving a series of different circumstances.
6. A history of breaches of undertaking without apparent regard for the consequences of such behaviour.
7. A record or history of practising law while under suspension.

[18] An eighth consideration was added to the *Hall 2007* factors in *Welder 2015*:

... the number of citations and conduct reviews the Respondent has acquired in his professional conduct record.⁴

[19] Once a finding of ungovernability is made, disbarment must follow as it is the only disciplinary action that will effectively protect the public.⁵

³ *Law Society of BC v. Hall*, 2007 LSBC 26 (“*Hall 2007*”), at para. 2.

⁴ *Law Society of BC v. Welder*, 2015 LSBC 35 (“*Welder 2015*”), at para. 32. The 8th consideration has been accepted in *Law Society of BC v. McLean*, 2016 LSBC 6 (“*McLean 2016*”), *Law Society of BC v. Fogarty*, 2021 LSBC 25, and *Law Society of BC v. Guo*, 2023 LSBC 46.

⁵ *Law Society of BC v. McLean*, 2015 LSBC 30 (“*McLean 2015*”), at para. 52. See also: *Hall 2007*, *supra* at para. 29 and *Guo*, *supra* at para. 215.

Application of Ungovernability Principles

A consistent and repetitive failure to respond to Law Society inquiries

[20] A different hearing panel found in *Weiser 2022 F&D*⁶ in relation to the hearing of a citation issued against the Respondent on October 5, 2021 that the Respondent committed professional misconduct for 16 instances of failing to respond to the Law Society from August 2020 to May 2021. As a result, he was suspended for three months.⁷

[21] Between March 2021 and June 2022, the Respondent was administratively suspended five times for failure to respond or provide records to the Law Society.

[22] The Respondent was administratively suspended again from August 15 to 17, 2023, and from both September 18, 2023 and November 14, 2023 to the present for failure to provide records to the Law Society.

[23] Effective January 1, 2024, the Respondent became a former member of the Law Society for non-payment of fees.

[24] The Law Society submits that during the course of this proceeding, the Respondent has ignored the majority of the Law Society's correspondence. The last communication from the Respondent to the Law Society in this proceeding was on September 15, 2023.

[25] According to the Law Society, the Respondent has demonstrated a consistent and repetitive failure to respond to Law Society inquiries and communications, as shown by the findings of professional misconduct against the Respondent in *Weiser 2022 F&D*⁸ as well as his ongoing behaviour throughout this proceeding.

[26] Counsel for the Law Society submits and this Panel agrees that if the Law Society cannot impress upon lawyers the obligation to respond fully and promptly in investigations, this will frustrate the very essence of its ability to protect the public.

An element of neglect of duties and obligations to the Law Society with respect to trust account reporting and records

[27] This Panel has found that the Respondent committed professional misconduct relating to his trust account obligations by: (a) using his trust account to receive and disburse approximately \$198,000 of his own funds; (b) using the trust account to receive funds paid to him personally as proceeds of an unlicensed cannabis business, in order to

⁶ *Law Society of BC v. Weiser*, [2022 LSBC 50](#) (“*Weiser 2022 F&D*”)

⁷ *Law Society of BC v. Weiser*, [2023 LSBC 29](#) (“*Weiser 2023 DA*”).

⁸ *Weiser 2003 F&D*, [2022 LSBC 50](#) and *Weiser 2023 DA*, [2023 LSBC 29](#).

disguise the source of those funds; and (c) maintaining more than \$300 of his own funds in the trust account (allegation 1 of the Citation). To support disbursement of the funds from his trust account, the Respondent created false documents indicating fake loans, purportedly made from a company he had a beneficial interest in to his romantic partner at the time (“LP”).

[28] This Panel also found that the Respondent failed to maintain the minimum required general account records between approximately July 2018 and June 2019 (allegation 3 of the Citation). Specifically, due to the Canada Revenue Agency’s garnishment of the Respondent’s law firm’s general account, the Respondent used LP’s personal bank account as his firm’s general account, keeping none of the required records.⁹

[29] In addition, the Discipline Committee authorized a conduct review in October 2023 relating to the Respondent’s misuse of his trust account.

Some element of misleading behaviour directed to a client and/or the Law Society

[30] It is clear from this Panel’s findings of professional misconduct that the Respondent has been dishonest with the Law Society.

[31] The Respondent misled the Law Society repeatedly, for over one year during the investigation into his conduct so as to conceal the misuse of his trust account (allegation 2 of the Citation). Specifically, the Respondent made the following representations to the Law Society that he knew were untrue:

- (a) that he had instructions for a purported loan to LP;
- (b) that he did not request to use LP’s personal bank account to deposit funds from a purported loan;
- (c) that he did not use LP’s personal bank account to directly or indirectly pay his own personal expenses;
- (d) that he did not know what LP did with loan funds;
- (e) that he was not aware of cheques or bank drafts issued from LP’s personal bank account to pay the Respondent’s personal expenses and practice-related expenses;

⁹ F&D Decision at paras. [129 to 131](#).

- (f) that he had hired LP to provide administrative services to his law firm; and
- (g) that LP provided general accounting and other administrative services to the Respondent's law firm.

[32] This Panel found that these misrepresentations were intended to obfuscate the fact that there were no actual *bona fide* loans as purportedly documented in the various loan documents drafted by the Respondent, and that the Respondent knew this when he drafted these documents. Thus, not only did the Respondent mislead the Law Society during the course of the investigation, but he set out to document a fabricated narrative about legitimate loans in order to prevent the Law Society learning about or investigating the misconduct.

[33] Additionally, in doing so, the Respondent involved LP and signed on her behalf on several loan documents without her knowledge or authorization.

A failure or refusal to attend at the discipline hearing convened to consider the offending behaviours

[34] The Law Society submits that the Respondent failed to attend the disciplinary action phase of the hearing of another citation issued against him on November 8, 2021. The Respondent provided no excuse or explanation for his non-attendance, and the hearing proceeded on November 20, 2023.

[35] In the within proceeding, despite being served notice, the Respondent did not appear before this Panel on November 8, 2023, when the Law Society applied to convert the manner of hearing from a hearing in writing to an oral hearing by videoconference.

[36] The Respondent has also failed to attend at this Hearing on January 4, 2024, and there is no evidence before the Panel that would offer any excuse or explanation for his failure to attend.

A discipline history involving allegations of professional misconduct over a period of time and involving a series of different circumstances

[37] The Law Society submits and the Panel accepts that since 2018 to the date of this Hearing, the Respondent's PCR consists of a conduct review in August 2018, five administrative suspensions between March 2021 and June 2022, Practice Standards recommendations made since January 2022, a suspension of three months as sanction for findings of professional misconduct, a failure to pay hearings costs, a decision on facts and determination issued pursuant to section [38\(4\)](#) of the *Act* in another citation matter,

and three more administrative suspensions including one in August 2023 and two that remained in force as of December 31, 2023. This record is summarized below:

- (a) *Conduct Review (August 2018)*:¹⁰ the Respondent attended a conduct review to discuss his conduct in providing a loan without ensuring the client had obtained independent legal advice, failing to make reasonable efforts to obtain and record the occupations of all directors and shareholders of a client that was an organization, and failing to respond promptly and completely to the Law Society. The Subcommittee Report concluded that the Respondent admitted his conduct, confirmed he would not allow any of these issues to occur again, and would introduce a new office policy to ensure compliance with [Rule 3-103](#) regarding corporate client identification and verification. On the basis of these factors, the Subcommittee recommended no further disciplinary action;
- (b) *Administrative Suspensions (2021 to 2022)*: the Respondent served five administrative suspensions for failure to produce documents to the Law Society, as follows: (i) March 19 to 24, 2021; (ii) May 5 to 12, 2021; (iii) October 12 to 15, 2021; (iv) March 23 to 28, 2022; and (v) June 3 to 6, 2022;
- (c) *Practice Standards Recommendations (January 2022)*: the Practice Standards Committee made recommendations regarding stress management, understanding conflicts of interest, file tracking and accounting knowledge to be implemented by the Respondent;
- (d) *Practice Standards Order (December 2022)*: the Practice Standards Committee made an order imposing conditions or limitations on the Respondent's practice pursuant to [Rule 3-20](#). The order required the Respondent to implement various recommendations regarding stress management, understanding conflicts of interest, file tracking and accounting knowledge within 14 days;
- (e) *Determination of Professional Misconduct and Disciplinary Action re citation issued on October 5, 2021 (December 2022/July 2023)*:¹¹ on December 7, 2022, the Respondent was found to have committed professional misconduct for engaging in the practice of law while suspended and for failing to respond and cooperate in the Law Society's

¹⁰ PCR of Nickolaus MacDonald Weiser as at December 19, 2023. The conduct review was held August 23, 2018. The Conduct Review Subcommittee Report is dated September 21, 2018.

¹¹ *Weiser 2022 F&D*, 2022 LSBC 50; *Weiser 2023 DA*, 2023 LSBC 29.

investigation. On July 25, 2023, the hearing panel ordered the Respondent be suspended for three months;

- (f) *Failure to Pay Costs Resulting from Hearing (August 2023)*: The costs ordered against the Respondent on July 25, 2023 were due August 1, 2023. As of the date of these submissions, the Respondent has not paid the outstanding costs of \$11,384.38;
- (g) *Determination of Professional Misconduct re citation issued November 8, 2021 (March 2023)*:¹² On March 10, 2023 the Respondent was found to have committed professional misconduct for the following acts:
 - (i) acting in a conflict of interest when he jointly represented a company in which he had a direct or indirect financial interest, and an individual client, in the preparation of a loan, a mortgage in favour of the company registered against the individual client, and a foreclosure proceeding;
 - (ii) acting in a conflict of interest when he jointly represented a company in which he had a direct or indirect financial interest and the executor of an estate in respect to a loan from the company to the executor;
 - (iii) acting in a conflict of when he jointly represented the borrowers in a transaction, and the lender, a company in which he had a direct or indirect financial interest;
 - (iv) acting in a conflict of when he jointly represented the borrowers and the lender in the same refinancing transaction;
 - (v) borrowing \$366,545 from his client; and
 - (vi) failing to act honourably and with integrity when he purported to commit another individual to be the personal guarantor for a loan renewal without the knowledge or consent of that individual, by affixing his name above the individual's printed name.

The disciplinary action phase of the hearing occurred on November 20, 2023 and in the hearing panel's reasons issued February 16, 2024, the Respondent was suspended from practice for eight months.¹³ As the

¹²*Law Society of BC v. Weiser*, 2023 LSBC 10 (“*Weiser March 2023*”).

¹³*Law Society of BC v. Weiser*, 2024 LSBC 06.

decision had not yet been issued at the time of this disciplinary action Hearing, this Panel will only consider the facts and determination decision, *Weiser March 2023*, in our analysis of ungovernability.

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

[38] The Law Society submits and this Panel finds that the Respondent has had ample time and opportunities to rehabilitate himself. He has taken no steps to do so. To the contrary, the Respondent continues to breach serious professional obligations and to damage the reputation of the profession. The Law Society's many efforts to regulate the Respondent's conduct have not succeeded.

A record of having practiced law while suspended

[39] It was found in *Weiser 2022 F&D*,¹⁴ that the Respondent committed professional misconduct by engaging in the practice of law while suspended over a period of five days in 2021.

The number of citations and conduct reviews the Respondent has acquired in his professional conduct record

[40] The Panel finds that it is evident from the various levels of intervention set out in the Respondent's PCR that the Law Society has made efforts to provide guidance and directions to the Respondent, in order to avoid re-occurrence of misconduct and for the Respondent to take his obligations seriously.

[41] The Panel finds that the Law Society's interventions appear to have had no effect on the Respondent, as he has routinely demonstrated that he is either unwilling or unable to comply with the recommendations made and the standards expected of a member of the legal profession.

¹⁴ *Weiser 2022 F&D*, 2022 LSBC 50.

Conclusion on Application of Ungovernability Factors

[42] This Panel finds that the Respondent's serious and extensive PCR - covering a wide range of misconduct over several years - demonstrates a clear pattern of disregard for his professional obligations to the public and the profession.

[43] This Panel finds that the Respondent's PCR is a highly aggravating factor and warrants the strongest message to the profession that such repetitive misconduct will not be tolerated, as it is irreconcilable with the Law Society's overarching duty to uphold and protect the public interest in the administration of justice.

[44] The Panel finds that the Respondent has demonstrated a consistent and repetitive pattern as evidenced by his PCR and the professional misconduct findings made in the present proceeding.

[45] This Panel concludes that the foregoing reasons evidence that the Respondent has demonstrated a consistent and repetitive disregard and disrespect for the regulatory processes that govern him. This Panels finds that the Respondent is ungovernable.

SANCTIONS - FORMER LAWYER

[46] Pursuant to section [38\(4\)\(b\)\(v\)](#) of the *Act*, a hearing panel has the jurisdiction to make a finding of professional misconduct against a former member.

[47] The definition of "lawyer" in the *Act* includes, for the purposes of Parts 4 to 6 and 10 of the *Act*, former members of the Law Society.

[48] In *Law Society of BC v. Tak*,¹⁵ a hearing panel held that the disciplinary provisions of the *Act* and Rules apply to former members.

APPROPRIATE SANCTION

[49] The Law Society submits that where a panel has made a finding of ungovernability, the case law indicates that the appropriate disciplinary sanction is disbarment.

[50] "Disbar" is defined in the *Act*: "disbar means to declare that a lawyer or former lawyer is unsuitable to practise law and to terminate the lawyer's membership in the society".

¹⁵ [2014 LSBC 57](#).

[51] This Panel accepts the Law Society's submission that the public will not have confidence in a self-regulating profession if its ungovernable members are permitted to continue to practice or, in the case of former members, if a clear declaration is not made that the ungovernable member is not suited to the practice of law.

[52] *Law Society of BC v. Ogilvie* stated:

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.¹⁶

[53] An order disbaring a former lawyer is also appropriate having regard to the general principles of sanctioning which include:

- (a) protection of the public interest, including preserving public confidence in the legal profession by protecting the reputation of the profession in general, and preserving public confidence in the disciplinary process;
- (b) specific deterrence, in that it will be clear to this respondent that his conduct was insupportable; and,
- (c) general deterrence, as other members of the profession will be made aware that this type of misconduct will not be tolerated.

[54] The issue was also considered in *Law Society of BC v. Power*,¹⁷ in which a former lawyer was disbarred. In *Power*, the panel held:¹⁸

Although it may appear odd that a Panel may suspend or disbar a non-member, the *Act* requires that it be done if that is the appropriate penalty.

When imposing a penalty appropriate to the circumstances, a panel sends an important message to lawyers as well as to the public that such conduct is deserving of that kind of penalty. Such orders also have a practical effect. If a lawyer who has been disbarred applies for reinstatement a credentials hearing must be held (Rule 2-52(6)). A lawyer who is suspended or who has been disbarred may not perform legal services, even for free, for anyone (*Legal Profession Act*, s. 15(3)).

¹⁶ [1999 LSBC 17](#), at para. 19.

¹⁷ [2009 LSBC 23](#).

¹⁸ *Power*, *supra*, paras. 45 to 46.

[55] Having found that the Respondent is ungovernable, a public declaration that the Respondent is unsuitable to practice law is necessary to protect the public interest and maintain public confidence in the disciplinary process, as well as public confidence in the legal profession generally.

[56] This Panel concludes that the Respondent be disbarred.

ASSESSMENT OF SANCTION ABSENT UNGOVERNABILITY FINDING

[57] If this Panel is incorrect in our finding that the Respondent is ungovernable, it is necessary to consider the appropriate disciplinary action in the absence of a finding of ungovernability.

[58] A disciplinary sanction imposed following a finding of professional misconduct must fulfill the Law Society's statutory duty to uphold and protect the administration of justice. This duty includes protecting the public from professional misconduct and maintaining public confidence in the profession and the Law Society's discipline process.

[59] The review panel in *Law Society of BC v. Lessing*¹⁹ ("*Lessing 2013*") noted that the following (non-exhaustive) factors ought to be considered on sanction, as discussed in *Ogilvie*²⁰ (the "*Ogilvie factors*"):

- (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;
- (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;

¹⁹ [2013 LSBC 29](#) ("*Lessing 2013*").

²⁰ *Ogilvie*, *supra* [1999 LSBC 17](#).

- (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.²¹

[60] The *Lessing 2013* review panel observed that not all *Ogilvie* factors would come into play in all cases and the weight to be given to these factors would vary from case to case,²² but noted that the protection of the public (including maintaining public confidence in the disciplinary process and public confidence in lawyers generally) and the rehabilitation of the lawyer were two factors that, in most cases, would play an important role. The review panel stressed, however, that where there is a conflict between these two factors, the protection of the public, including protection of public confidence in lawyers generally, will prevail.²³

[61] In *Law Society of BC v. Faminoff*,²⁴ a review board confirmed that a decision on sanction is “an individualized process that requires the hearing panel to weigh the relevant factors in the context of the particular circumstances of the lawyer and the conduct that has led to the disciplinary proceedings”.²⁵ The panel further noted that a consideration of aggravating and mitigating circumstances will assist in determining the range of appropriate sanctions.²⁶

[62] The Law Society submits that the *Ogilvie* factors support the proposed sanction of disbarment.

Global Sanction

[63] It is submitted by the Law Society and this Panel agrees that in cases such as this one, involving multiple proven allegations of professional misconduct, the preferred and usual approach is to arrive at a disciplinary action that is suitable for all of the misconduct viewed globally.

²¹ *Lessing 2013*, *supra* [2013 LSBC 29](#) at para. [55](#).

²² *Lessing 2013* at para. [56](#).

²³ *Lessing 2013*. at para. [60](#).

²⁴ [2017 LSBC 04](#).

²⁵ *Faminoff*. para. [84](#).

²⁶ *Faminoff*. para. [87](#).

[64] As stated in *Law Society of BC v. Gellert*,²⁷ “the extent to which the public needs protection, and the manner by which such protection is best provided, must ultimately relate to the entire scope of the misconduct in issue and not to each particular wrongdoing viewed piecemeal”.²⁸

Nature and Gravity of the Misconduct

[65] The nature and gravity of the misconduct is the prime determinant of the disciplinary action to be imposed.²⁹ The Respondent’s misconduct, over the course of a number of years, is extremely serious.

[66] This Panel made the following key findings regarding the nature and seriousness of the proven misconduct:

1. Concerning allegations 1 (a) and (b), we stated:

The Respondent knew that the Store was not licensed and that funneling the funds through his trust account would conceal or disguise the source of those funds.³⁰

...

The Panel finds that the Respondent’s disregard for the trust accounting rules demonstrated a failure to appreciate the special character of a lawyer’s trust account, which has the capacity to harm the public’s confidence in lawyers to properly handle trust funds, and damages the reputation of the profession as a whole.

The Panel finds that the Respondent’s behaviour is also evidence of his lack of integrity by using his trust account for manifestly improper purposes.³¹

2. Concerning allegation 1(c), we stated:

The Respondent’s conduct related to his breach of Rule 3-60 occurred over a number of months; nevertheless, the Panel finds that it was serious behaviour as it was prompted by his scheme to disguise the source of his own funds and disburse them back to himself as and when he wished.

²⁷ [2014 LSBC 5](#).

²⁸ *Gellert*, at para. 37.

²⁹ *Gellert*, at para. 39.

³⁰ F&D Decision, para. 59.

³¹ F&D Decision, paras. 70 to 71.

The Panel further finds that the dishonest circumstances of the Respondent's use of his trust account and the fact that he disbursed the funds back to himself when he found convenient, as well as the fact that he maintained nearly two hundred thousand of his own dollars in trust, is clearly a marked departure from the standard of conduct expected of lawyers.³²

3. Concerning allegation 1(d), we stated:

The Respondent's file purporting to reflect the BLP Loan was entirely fictitious and the Respondent created the seven documents in issue to disguise the source of funds paid to him. The fictitious nature of the documents is supported by the evidence that the Respondent signed five of the seven documents without LP's knowledge or consent.

There were no anticipated or realized loans between B Corp. and LP. The Respondent created these false documents to create a guise of legitimacy to otherwise improper transactions.³³

...

The Respondent's dishonesty in signing the name of LP without her knowledge or consent, on documents he prepared to document fake loans, further demonstrates a flagrant failure of his duty of integrity.

Such conduct brings the profession into disrepute and harms the administration of justice. Upholding the collective reputation of the profession requires the maintenance of high professional standards; there must be a well-founded confidence in the public that any lawyer whom they instruct will be a person of unquestionable integrity, probity and trustworthiness.

Preparing false documents is on its own impermissible and contrary to a lawyer's duty of integrity.³⁴

4. Concerning allegation 2, we stated:

False information precludes the Law Society from effectively regulating its members and fulfilling its statutory mandate to protect the public, and offends a lawyer's duty to comply with the Law Society's regulation of the lawyer's practice.

³² F&D Decision. para. [81 to 82](#).

³³ F&D Decision. paras. [98 to 99](#).

³⁴ F&D Decision paras. [101 to 103](#).

Ultimately, if the Law Society cannot count on candid replies by members to its communications, it will be unable to uphold and protect the public interest which is its paramount duty. The obligation to provide such replies is the cornerstone of the independence and self-governance of the legal profession.³⁵

5. Concerning allegation 3, we stated:

The Respondent's breach of Rule [3-69](#) is serious. Having regard to the *Lyons* factors and the particular circumstances of this case, including the improper use of the LP Personal Account to hide the source of the Store Funds and the fact that at the time of using the LP Personal Account, his own general account was under [Canada Revenue Agency] garnishment, the Panel finds that the Respondent's failure to properly maintain his general account records was intentional and as such is conduct that is a marked departure from what is expected of the legal profession and constitutes professional misconduct.³⁶

6. Concerning allegation 4, we stated:

The conduct (i.e., borrowing from a client) unequivocally amounts to professional misconduct, as it blatantly violates the prohibition in the *Code*. The Panel finds that this is a marked departure from the conduct the Law Society expects of its members.³⁷

7. Concerning allegations 5 and 6, we stated:

These clients were completely dependent on the Respondent to defend their legal interests, and he took advantage of this to structure the matters in a way that served his own personal financial benefit and did not take into account his undivided duties of loyalty.

The public must be able to trust that, as fiduciaries, lawyers will act to serve the best interests of their clients; without this trust, the profession and the public at large will both be harmed. This is conduct that must be unreservedly denounced.³⁸

[67] The Respondent's misconduct evidenced a deeply concerning lack of integrity, including elements of protracted dishonesty, a lack of regard for the regulator, deceit, and a failure to appreciate the consequences and gravity of his misconduct.

³⁵ F&D Decision. paras. [126 to 127](#).

³⁶ F&D Decision para. [138](#).

³⁷ F&D Decision. para. [165](#).

³⁸ F&D Decision. paras. [215-216](#).

[68] Integrity is the fundamental quality of a member of the legal profession.³⁹ If integrity is lacking, the lawyer's usefulness to the client and reputation within the profession is destroyed, regardless of how competent the lawyer may be.⁴⁰

[69] Upholding the collective reputation of the profession requires the maintenance of high professional standards; there must be a well-founded confidence in the public that any lawyer whom they instruct will be a person of unquestionable integrity, probity and trustworthiness.⁴¹

Character and Professional Conduct Record of the Respondent

[70] This Panels finds that the Respondent's PCR is a significant aggravating factor. It displays a pattern of failing to cooperate with the Law Society and demonstrates the Respondent's failure to respond positively to prior remedial and disciplinary attempts to address his failure to meet the minimum accepted standards of practice. Progressive discipline has had little impact on the Respondent.

[71] Progressive discipline means that a lawyer who has had prior discipline may be subject to more significant disciplinary sanction than someone who has had no prior discipline.⁴²

[72] The increased sanction that results from the application of progressive discipline is one way to address the various objectives of the discipline process, including deterrence and ensuring public confidence in the legal profession. It sends a message to the public and the legal profession that the Law Society will not tolerate lawyers who repeatedly ignore their professional responsibilities.⁴³

[73] In light of the PCR, the events that gave rise to this Citation cannot be considered in isolation. The disciplinary action in this case demands a sanction that will exemplify to the Respondent and other members of the profession that they cannot ignore their regulatory obligations.

[74] This Panels finds that Respondent's PCR raises ongoing concerns that the Respondent still does not understand or properly handle conflicts of interest arising in his practice.

³⁹ *BC Code* section 2.2-1 [Commentary \[1\]](#).

⁴⁰ *BC Code* section 2.2-1 [Commentary \[1\]](#)

⁴¹ See, for example, *Law Society of BC v. Dhindsa*, [2020 LSBC 13](#), at para. [40](#).

⁴² See: *Law Society of BC v. Batchelor*, [2013 LSBC 09](#), at para. [49](#).

⁴³ *Batchelor* at paras. [48](#) and [50](#).

[75] The fact that the Respondent had been practising law for nearly 30 years at the time of the misconduct is a further aggravating factor. As a senior and experienced practitioner, the Respondent should not have conducted himself in this manner.

[76] Another consideration that weighs in favour of a more significant disciplinary sanction is the Respondent's lack of integrity. Here, the misconduct evidencing the Respondent's lack of integrity occurred from January 2019 to February 2022, a prolonged period involving his misuse of his trust account, preparation of false documents, and signing LP's name without her knowledge or consent.

Acknowledgement of the Misconduct and Remedial Action

[77] The Respondent could have gained some deterrent or remedial benefit from the events that formed his PCR. Nonetheless, the Respondent's pattern of acting in conflicts of interest and without integrity is demonstrated by the similar conduct evident in his PCR.

[78] As stated by the hearing panel in *Law Society of BC v. Vlug*:⁴⁴

...[T]o us the larger concern is that the Respondent has displayed a pattern of behavior that falls far below the standard of conduct expected of any lawyer. It cannot be minimized. Simply put, the Respondent is not entitled, in these circumstances, to say that he did not appreciate the gravity of the improper conduct of which this Panel found him guilty because he was awaiting the outcome of an earlier panel's decision.⁴⁵

[79] Moreover, the Respondent has provided no evidence of rehabilitation or remediation and has not acknowledged his misconduct or provided any evidence of how he plans to behave differently in the future.

[80] This Panel finds the Respondent's pattern of conduct to be troubling as it raises serious concerns about whether the Respondent is capable of being rehabilitated and whether conditions on the Respondent's practise of law would be effective. The Law Society submits and this Panel agrees that if the Respondent cannot be relied on to behave differently in the future, he should no longer be allowed to practice.

⁴⁴ *Law Society of BC v. Vlug*, [2014 LSBC 40](#).

⁴⁵ *Vlug* at paras. [37](#) and [38](#).

Public Confidence in the Legal Profession and the Disciplinary Process

[81] The public depends on the Law Society to regulate and supervise lawyers to ensure they carry out their duties ethically and responsibly. Members of the public must have confidence in the ability of the Law Society to regulate and supervise the conduct of lawyers, for 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.⁴⁶

[82] The Respondent has directly and indirectly benefited from his conduct, which was carefully structured, involved significant sums of money, and included evasive and dishonest behaviour that was repeated over a period of years. Deterrence necessitates a serious sanction in these circumstances.

[83] The Law Society submits and this Panel agrees that public confidence in the integrity of the legal profession will be eroded if the sanction imposed in these circumstances does not reflect the seriousness with which the Law Society and the legal profession view the misconduct of the Respondent.

[84] The sanction imposed in this case must send a strong message to the public and to the legal profession that the Law Society will not tolerate lawyers repeatedly ignoring their professional responsibilities and Law Society disciplinary measures.

Appropriate Sanction

[85] This Panel's role is to select a sanction that is most appropriate in the particular circumstances of the Respondent. In accomplishing this task, the range of sanctions in similar cases may offer guidance.

[86] Prior decisions concerning only breach of trust accounting rules, acting in conflict or failing to act as a gatekeeper are not helpful. The same is true of prior decisions dealing only with failing to respond or providing false answers.

[87] We will approach the appropriate sanction on a global basis, as was done in *Gellert*⁴⁷.

[88] In *Hall 2007*, the lawyer was disbarred on the basis of the following:

- (a) findings of professional misconduct with respect to 11 allegations involving failing to abide by Practice Standards directions, failing to

⁴⁶ *Ogilvie, supra*, at para. 19. See also *Dhindsa, supra*, at para. 33.

⁴⁷ [2014 LSBC 5](#).

keep records required by the Law Society, providing false and misleading reports, and practicing while suspended;

- (b) a PCR consisting of one conduct review, four citations that had proceeded through disciplinary action, and an interim suspension; and
- (c) the panel noted a “fundamental lack of honesty” on the part of the lawyer and that he showed “a general indifference and even contempt for matters of significance involving the Law Society”.

[89] In *Lessing 2022*, the lawyer was disbarred on the basis of the following:

- (a) findings of professional misconduct with respect to five allegations of failing to respond to the Law Society;
- (b) a PCR consisting of six conduct reviews, practice standards recommendations, five administrative suspensions, two citations in which disciplinary actions had been imposed; and
- (c) the panel found that his pattern of misconduct was escalating and that prior “remedial efforts have had no meaningful effect.”

[90] In the case at bar, the Respondent has been found to have committed professional misconduct by using his firm’s trust account for his personal financial benefit to receive and disburse his own funds (which were proceeds of an unlicensed cannabis business), drafting misleading documents as support for purported loans related to the funds, and making numerous misrepresentations to the Law Society, all to conceal the scheme he created to disguise the source of his own funds and disburse them back to himself as and when he wished. He breached trust accounting rules in regard to depositing and maintaining over \$300 of his own funds in trust and failing to keep the required general account records. Finally, he acted in conflicts of interest when arranging to borrow hundreds of thousands of dollars from his clients as well as acting for both parties in loan transactions without their knowledge and consent.

[91] This Panel concludes that even in the absence of the finding of ungovernability, and based upon the findings made by this Panel and a review of the authorities, disbarment of the Respondent is the only appropriate sanction that effectively safeguards the public and will address public confidence in the administration of justice. This Panel finds that the public would not be adequately protected by a suspension order or other conditions on practise. Even though the Respondent is a former member, disbarment is still necessary as it is consistent with the sanction that the Panel would have imposed had

the Respondent continued to be a practising lawyer and maintains public confidence in the regulation of lawyers who have committed professional misconduct.

[92] We order that the Respondent be disbarred pursuant to section 38(5)(e) of the *Act*.

COSTS

[93] The Law Society seeks costs of \$16,668.75, payable within 30 days of the Panel's decision, or on such other date as may be ordered. This amount has been calculated in accordance with the Tariff at [Schedule 4](#) of the Rules.

[94] Under [Rule 5-11\(3\)](#), a panel must have regard to the tariff when calculating costs. Pursuant to [Rule 5-11\(4\)](#), the costs under the tariff should be awarded unless the Panel determines it is reasonable and appropriate to award no costs or costs in an amount other than the amount permitted by the tariff.

[95] Pursuant to [Rule 5-11](#) of the Rules, this Panel orders that the Respondent pay \$16,668.75 within 30 days of the issuance of these reasons.