2024 LSBC 02
Hearing File No.: HE20220032
Decision Issued: January 24, 2024
Citation Issued: October 25, 2022

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL

HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

GERALD EDWARD PALMER

RESPONDENT

DECISION OF THE HEARING PANEL ON A JOINT SUBMISSION PURSUANT TO RULE 5-6.5

Written materials:	October 26, 2023
Panel:	Sarah Westwood, KC, Chair Clarence Bolt, Public Representative Cindy Cheuk, Lawyer
Discipline Counsel:	Gagan Mann
Counsel for the Respondent:	Gregory T. Palm

INTRODUCTION

[1] BR retained Gerald Edward Palmer (the "Respondent") to assist with a separation agreement from his former spouse, WS, who was represented by counsel, NN.

[2] A client rightly counts on high quality service when retaining a lawyer. BR expected timely and informative updates on progress on the separation agreement. He also expected the Respondent to work with NN, his wife's counsel, to move the matter forward.

[3] Instead, the Respondent failed to provide BR with regular and up-to date information and to answer communications from NN. BR complained to the Law Society about the lack of action on his matter.

[4] After investigation, the Discipline Committee of the Law Society authorized a citation (the "Citation") alleging that the Respondent committed professional misconduct. The allegations in the Citation are as follows:

> 1. Between approximately December 2020 and June 2021, in the course of representing your client [BR] with respect to a separation agreement, you failed to provide [BR] with the quality of service expected of a competent lawyer, contrary to one or both of rules 3.1-2 and 3.2-1 of the *Code of Professional Conduct for British Columbia* [(the "*Code*")]. In particular, you failed to do one or more of the following:
>
> (a) keep [BR] reasonably informed about the status of the matter;
>
> (b) answer reasonable requests from [BR] for information;
>
> (c) take appropriate steps to communicate with opposing counsel regarding [BR]'s matter;
>
> (d) ensure that [BR]'s matter was attended to in a timely manner; and
>
> (e) provide [BR] with complete and accurate relevant information about the matter;
>
> This conduct constitutes professional misconduct, pursuant to s.38(4) of the *Legal Profession Act* [(the "*Act*")].
>
> 2. In the course of representing your client [BR] with respect to a separation agreement, you failed to respond promptly to one or both of communications

dated December 14, 2020, and January 4, 2021, from another lawyer that required a response, contrary to rule 7.2-5 of the *Code*.

This conduct constitutes professional misconduct, pursuant to s.38(4) of the *Act*.

[5] The Citation was authorized on October 18, 2022 and issued on October 25, 2022. The Respondent admits being served with the Citation on October 25, 2022 in accordance with Rule 4-19 and Rule 5-6.1 of the Law Society Rules (the "Rules").

[6] On October 4, 2023, the parties agreed to proceed by way of an Agreed Statement of Facts (the "ASF"). In the ASF, the Respondent admitted to the allegations in the Citation and consented to disciplinary action. The parties offered joint submissions by way of Rule 5-6.5.

[7] Under Rule 5-6.5, if the Panel accepts the ASF and the Respondent's admission of a discipline violation, the Panel must find that the Respondent has committed the discipline violation and impose disciplinary action. In addition, the Panel cannot impose a sanction other than that consented to by the Respondent unless, (a) each party has been given the opportunity to make submissions respecting the disciplinary action to be substituted, and (b) imposing the specified disciplinary action to which the Respondent has consented would be contrary to the public interest in the administration of justice.

[8] Therefore, this Panel must determine whether, on considering the relevant factors and the range of sanctions imposed in previous, similar cases, the proposed sanction is not contrary to the public interest in the administration of justice, and should be accepted.

[9] After deliberation, the Panel accepts the parties' joint submission and finds that the Respondent's conduct constituted professional misconduct. In addition, the Panel finds that the specified disciplinary action is not contrary to the public interest in the administration of justice. The Panel orders that the Respondent be suspended for a period of three months, commencing on the first day of the first month following the issuance of this decision or some other date as agreed between the parties in writing, and that the Respondent pay costs of $2,000, payable within 30 days of the issuance of this decision. Below are our reasons for this decision.

THE FACTS

Respondent Background

[10] The Respondent was called to the bar and admitted as a member of the Law Society of British Columbia on May 12, 1981.

[11] The Respondent is 68 years old and practises with three other lawyers in Abbotsford, British Columbia.

[12] The Respondent has a wide-ranging practice which, while primarily focused on residential and commercial real estate, and corporate and commercial law, also includes work in family law, wills and estates, and creditors' remedies law.

[13] The Respondent has a lengthy professional conduct record ("PCR"), from 1986 to 2023. Included in his PCR are the following, listed by date:

(a) 1986 - an admission of professional misconduct for unreasonably failing to respond promptly to the Law Society about concerns related to the breach of accounting rules. The Respondent accepted recommendations regarding practice reviews, attendance at CLE courses, a monthly independent review of his accounts for four months, and an undertaking not to engage in business ventures with his clients;

(b) 1995 – practice restrictions that resulted in an undertaking;

(c) 1986 – 1996 – referrals and oversight by the Practice Standards Committee (formerly the Competency Committee);

(d) 2002 – 2018 – five conduct reviews;

(e) 2014 – 2016 – referrals and oversight by the Practice Standards Committee;

(f) 2021 – 2022 – two administrative suspensions; and

(g) 2022 – 2023 - a finding of professional misconduct and a one-month suspension following a citation for, primarily, failing to keep his client reasonably informed about the status of the client's divorce matter, and for failing to answer the client's reasonable requests for information.

Background Facts

[14] In December 2020, BR retained the Respondent to provide independent legal advice in relation to a draft separation agreement (the "Agreement") between BR and his former spouse, WS, who was represented by counsel, NN. NN drafted the Agreement.

[15] The Respondent and BR did not enter into a written retainer agreement setting out the scope of the Respondent's services, his fees, or related matters. However, the

Respondent verbally informed BR that he would be billed at the conclusion of the matter, i.e., once the Agreement was finalized.

[16] In December 2020, the Respondent met with BR on at least two occasions (the "Meeting(s)"), during which the Respondent reviewed the Agreement and received documents and other information from BR.

[17] After the last Meeting, the Respondent understood that BR would speak to WS about changes to the Agreement. The Respondent told BR that he would contact NN to request the same changes. Once the Respondent received a reply from NN, he would contact BR. The Respondent expected that he and BR would meet again when BR received a revised agreement from NN.

[18] The Respondent telephoned NN in or around the second week of December and left a message identifying himself as BR's lawyer and suggesting changes to the Agreement.

[19] NN returned the Respondent's call on December 14, 2020, and also e-mailed him, indicating that this "is my last week in the office until January 4, 2020 [*sic*], therefore it is my hope that we can touch base on this prior to the New Year".

[20] The Respondent did not respond and has no record of any attempted response to NN's voicemail and e-mail.

[21] NN again attempted to contact the Respondent on January 4, 2021, but heard nothing in response. The Respondent has no record of any correspondence or other attempts to contact NN after the Respondent's initial telephone call.

[22] Between February and June, 2021, BR attempted to contact the Respondent for updates on his matter on at least six occasions, leaving messages with the Respondent's receptionist.

[23] The Respondent contacted BR on May 26, 2021 informing BR that he had not made any progress with NN. He did not tell BR that he had made no attempt to contact NN since his initial telephone call in December 2020. The Respondent confirmed with BR that he would contact NN for an update and would call BR back. The Respondent did not, subsequent to this call, contact NN.

[24] The Respondent did not call BR again until after BR complained to the Law Society.

[25] On June 14, 2021, WS e-mailed BR indicating that NN had not received anything from the Respondent. That same day BR telephoned the Respondent's office three times

with urgent requests to speak with the Respondent. BR left his contact information with the receptionist.

[26] Not hearing back from the Respondent, BR submitted a complaint regarding the Respondent to the Law Society on June 15, 2021.

[27] The Respondent has no record of any attempt to return BR's June 14, 2021 call. The Respondent's only record is of a return call after June 15, 2021, when BR advised him of the complaint and informed him that he no longer wished the Respondent to represent him.

[28] Subsequent to the Meetings, the Respondent took no steps to further BR's matter other than the telephone call to NN in December 2020. The Respondent charged BR no fees and did not issue BR a statement of account.

[29] Having discharged the Respondent, BR represented himself, corresponding with NN directly and obtaining independent legal advice on the matter from a lawyer at another firm. The Agreement was finalized in January 2022.

[30] BR notes the following impacts on him resulting from the Respondent's conduct:

(a) delay of negotiation and finalization of the Agreement;

(b) personal frustration;

(c) payment of higher property taxes on the former family property due to the delay in finalizing the Agreement; and

(d) inability to purchase a new home with the funds realized from his buyout under the Agreement because condominium prices had become unaffordable by the time the Agreement was finalized.

Admission of Misconduct

[31] In a letter (the "Admission Letter") dated October 17, 2023 and submitted as part of the ASF, the Respondent admitted the allegations in the Citation, admitted that the conduct constituted professional misconduct pursuant to section 38(4) of the *Act*, and consented to the specified disciplinary action of a three-month suspension and costs of $2,000. The Respondent further agreed to the matter proceeding by way of written materials without the need for an oral hearing.

ANALYSIS

Whether the Respondent's actions constitute professional misconduct

[32] "Professional Misconduct" is not a defined term in the *Act*, the Rules, or the *Code*. The decision in *Law Society of BC v. Martin,* 2005 LSBC 16 (para. 171*)* articulates the generally accepted test for professional misconduct as: "whether the facts as made out disclose a marked departure from that conduct the Law Society expects of its members."

[33] Expected behaviour for a lawyer is defined in rule 3.1-1 of the *Code* as: a "'competent lawyer' … has and applies relevant knowledge, skills and attributes in a manner appropriate to each matter undertaken on behalf of a client and the nature and terms of the lawyer's engagement." Among expected competencies, rule 3.1-1 of the *Code* specifies the following:

> …
>
> (b) investigating facts, identifying issues, ascertaining client objectives, considering possible options and developing and advising the client on appropriate courses of action;
>
> …
>
> (d) communicating at all relevant stages of a matter in a timely and effective manner;
>
> (e) performing all functions conscientiously, diligently and in a timely and cost-effective manner;
>
> …
>
> (h) recognizing limitations in one's ability to handle a matter or some aspect of it and taking steps accordingly to ensure the client is appropriately served;
>
> (i) managing one's practice effectively;
>
> …

[34] Rule **3.2-1 of the *Code* notes that: "**A lawyer has a duty to provide courteous, thorough and prompt service to clients. The quality of service required of a lawyer is service that is competent, timely, conscientious, diligent, efficient and civil." The Commentary on this rule adds the following:

> **[1]** This rule should be read and applied in conjunction with section 3.1 regarding competence.
>
> **[2]** A lawyer has a duty to provide a quality of service at least equal to that which lawyers generally expect of a competent lawyer in a like situation. An ordinarily or otherwise competent lawyer may still occasionally fail to provide an adequate quality of service.
>
> **[3]** A lawyer has a duty to communicate effectively with the client. What is effective will vary depending on the nature of the retainer, the needs and sophistication of the client and the need for the client to make fully informed decisions and provide instructions.
>
> **[4]** A lawyer should ensure that matters are attended to within a reasonable time frame. If the lawyer can reasonably foresee undue delay in providing advice or services, the lawyer has a duty to so inform the client, so that the client can make an informed choice about the client's options, such as whether to retain new counsel.

[35] The Law Society provided numerous cases applying the above principles, starting with *Law Society of BC* v. *Menkes*, 2016 LSBC 24, at para. 11, wherein the hearing panel stated that: "At the core of a lawyer's duty to his or her client is that a lawyer provides quality and appropriate legal services." The decision asserts that, in light of its importance to the public interest, a failure to provide adequate quality of service to the public is a marked departure of the standard that the Law Society expects of its members. Other jurisprudence confirms this general principle: *Law Society of BC* v. *McTavish*, 2018 LSBC 025; and *Law Society of BC* v. *Epstein*, 2011 LSBC 12.

[36] When considering the impact of one or more of the following:

(a) delay,

(b) failure to communicate with clients in a timely manner,

(c) failing to advance a client's matter, and

(d) failing to reply promptly to correspondence from opposing counsel,

many panels have found such behaviour to be a failure to deliver adequate quality of service and to be a marked departure from the standard expected of lawyers. The panels have made those findings against lawyers practising in a range of areas from family to wills and estates to patent law: *Law Society of BC* v. *Hart*, 2014 LSBC 17; *Law Society of BC* v. *Perrick*, 2014 LSBC 39 ("*Perrick F&D*"), *Law Society of BC* v. *Perrick* 2015

LSBC 43 ("*Perrick Review*"), *Law Society of BC* v. *Wesley*, 2015 LSBC 05; *Law Society of BC* v. *Vondette*, 2018 LSBC 36; *Law Society of BC* v. *Buchan* 2019 LSBC 18 ("*Buchan*") and 2020 LSBC 24 ("*Buchan 2*"); *Law Society of BC* v. *DiBella*, 2019 LSBC 32 ("*DiBella*"), 2021 LSBC 27 (*DiBella 2*); *Law Society of BC* v. *Hopkinson*, 2020 LSBC 17; *Law Society of BC* v. *Chiasson*, 2020 LSBC 32; *Law Society of BC* v. *Hossack*, 2021 LSBC 54 ; *Law Society of BC* v. *Lessing*, 2022 LSBC 02; and *Law Society of BC* v. *Palmer*, 2022 LSBC 47 ("*Palmer F&D*") and 2023 LSBC 24 ("*Palmer DA*").

[37] The above decisions demonstrate that lawyers can commit professional misconduct when they fail to serve their clients as competent lawyers, including instances where lawyers themselves are the cause of delay and inconvenience to their clients. It is a fundamental expectation that lawyers adequately communicate with their clients to obtain instructions, notify them of updates, and complete the work within a reasonable period.

[38] In the instant case, the Respondent took no substantive steps for over six months. He did not respond to BR's requests for information and progress updates and failed to keep BR reasonably informed about the status of his matter. He failed in his duty to communicate effectively with his client. The Respondent's lack of action and response caused prejudice to BR by delaying finalization of the Agreement and resulting in an increase in property taxes, an inability to afford a new condominium with his buyout funds, and additional frustration.

[39] The Respondent agreed to contact NN to discuss proposed changes to the Agreement and left one message with NN's office on or about December 11, 2020. However, the Respondent never responded to subsequent voicemail and e-mail communications from NN. He, thus, failed to meet his obligation to discuss the Agreement with NN, making it impossible for BR to move the matter forward and preventing timely completion of the Agreement.

[40] Hearing panels have found that failing to respond promptly to letters and telephone messages from opposing or former counsel may result in findings of professional misconduct (*Law Society of BC* v. *Niemela*, 2013 LSBC 15, *Law Society of BC* v. *McLean*, 2015 LSBC 01, and *Law Society of BC* v. *Sahota*, 2019 LSBC 08).

[41] This Panel agrees that, in all of the circumstances, the Respondent's behaviour meets the test for professional misconduct as set out in *Martin,* namely, that it constitutes a marked departure from the standard the Law Society expects of its members. This Panel accepts the Respondent's admission that his behaviour amounts to professional misconduct, both in relation to his failure to communicate appropriately with his client and his failure to respond to NN.

Whether the penalty proposed by the parties is an appropriate sanction

[42] Pursuant to Rule 5-6.5(3)(b) of the Rules, a hearing panel is prohibited from imposing disciplinary action different from the specified disciplinary action to which the Law Society and the Respondent have agreed unless the proposed disciplinary action is contrary to the public interest in the administration of justice.

[43] The above limitation on hearing panels' actions when considering joint submissions reflects principles set out by the Supreme Court of Canada in *R.* v. *Anthony-Cook*, 2016 SCC 43, paras. 32 to 44, to give deference to joint submissions. The principles include certainty for the parties, obviating negative aspects involved in requiring witnesses to testify and creating efficiencies in the system. Furthermore,

> …a joint submission should not be rejected lightly… Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. This is an undeniably high threshold…
> (*Anthony-Cook*, para. 34)

[44] Recently, the hearing panel in *Law Society of BC v Davison*, 2022 LSBC 23, at para. 11, interpreted the significance of the *Anthony-Cook* decision:

> In *R. v. Anthony-Cook*, at paras. 5, 29, and 31, the Supreme Court of Canada explained that the test to be applied to joint submissions on sentencing is a public interest test. The public interest test was stated as: "whether the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest." In the disciplinary context, the express wording of Rule 5-6.5(3)(b) is instructive and notably similar to the public interest test in *R. v. Anthony-Cook*. Rule 5-6.5(3)(b) expressly prohibits the Panel from diverging from the joint submissions on disciplinary action unless we find that the proposed sanction is contrary to the public interest in the administration of justice.

[45] The parties in the instant case propose a sanction of a three-month suspension and an order that the Respondent pay costs of $2,000.

[46] Whether a proposed disciplinary action is appropriate can be assessed by considering factors set out in *Law Society of BC* v. *Ogilvie*, 1999 LSBC 17, and consolidated by the panel in *Law Society of BC* v. *Dent*, 2016 LSBC 05, into four broad categories:

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

(b) the Respondent's character and professional conduct record (PCR);

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

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

With respect to proposed sanction, in light of the above categories, the Panel finds the following.

Nature, gravity and consequences of conduct

[47] As noted above, lawyers must provide courteous, thorough, and prompt service to clients, communicate effectively with clients and opposing counsel, and ensure that matters are attended to within a reasonable timeframe. Failure to do so is a serious shortcoming, striking at the heart of the public interest in the administration of justice and trust in lawyers and the legal system generally.

[48] The Respondent's failure, over six months, to provide the quality of service required of a lawyer for a matter that was relatively simple and straightforward is a grave dereliction of responsibility. The Respondent's delay and inaction prejudiced BR and his failure to communicate directly with NN at any time prevented a timely completion of the Agreement.

Character and professional conduct record of the respondent

[49] The Respondent's PCR is a highly aggravating factor. Of particular concern is the issuance of a previous citation during the same period as the events leading to the current Citation. The PCR demonstrates the Respondent's repeated failure to meet his professional duties as expected as well as a lack of positive response to remedial and disciplinary measures to address his conduct. It is apparent, based on nearly 40 years of non-responsive behaviour, that progressive discipline has not effectively addressed the Respondent's repeated failures to meet Law Society expectations of its members.

[50] The review panel in *Law Society of BC* v. *Lessing*, 2013 LSBC 29, at paras. 69 to 72, outlined the significance of the PCR as it relates to the concept of progressive discipline in determining appropriate disciplinary action:

> [69] What role does the professional conduct record play in determining a disciplinary action? The starting point is Rule 4-35(4), which reads as follows:

> The panel may consider the professional conduct record of the respondent in determining a disciplinary action under this Rule.

[70] Rule 1 explicitly defines a member's professional conduct record as including Conduct Review Subcommittee reports and Practice Standard Committee recommendations.

[71] In this Review Panel's opinion, it would be a rare case for a hearing panel or a review panel not to consider the professional conduct record. These rare cases may be put into the categories of matters of the conduct record that relate to minor and distant events. In general, the conduct record should be considered. However, its weight in assessing the specific disciplinary action will vary.

[72] Some of the non-exclusionary factors that a hearing panel may consider in assessing the weight given are as follows:

> (a) the dates of the matters contained in the conduct record;
>
> (b) the seriousness of the matters;
>
> (c) the similarity of the matters to the matters before the panel; and
>
> (d) any remedial actions taken by the Respondent.

[51] The Respondent's PCR demonstrates a pattern of delay and non-responsiveness. The behaviours alleged in the Citation cannot be considered isolated events. As noted by the hearing panel in *Palmer DA*, paras. 34 to 39, the Respondent has had repeated warnings and disciplinary action by the law Society to put measures in place to prevent a repeat of non-responsive behaviour. The Panel notes that both the Law Society's disciplinary approach and the Respondent's responses were not sufficient to deter the Respondent's problematic conduct. The persistence of such conduct, over the years and again manifest in these allegations, is a significant aggravating factor that leads to the expectation of progressive discipline and, specifically, a lengthier suspension.

[52] The Panel, thus, agrees with the parties' submission that the Respondent's PCR reinforces the need for significant disciplinary action to deter the Respondent, and lawyers generally, from the kind of non-responsive behaviour demonstrated by the Respondent. To the extent that it was open to the Law Society to be more aggressive in dealing with the Respondent's behaviour over the years, this Panel takes the view that the disciplinary action agreed upon by the parties is now reflective of an appropriate sanction. A three-month suspension sends a message to the public that the Law Society takes the Respondent's long-term behaviour seriously and will deal appropriately with lawyers who repeatedly ignore their professional responsibilities.

Acknowledgment of the misconduct and remedial action

[53] The Respondent admits the facts set out in the ASF and that his conduct constitutes professional misconduct. The Respondent's co-operation with a joint submission saved the Law Society time and resources by eliminating the cost of an oral hearing and the need for the parties to call witnesses. Moreover, the Respondent's admissions and consent to a three-month suspension permits the Law Society to publish the decision in a timely manner for the benefit of the public and of the profession.

[54] The Panel notes that there is no evidence of additional remedial efforts taken by the Respondent to address his repeated pattern of misconduct that might have supported a case for a less serious sanction. Neither the Respondent's acknowledgement of misconduct nor his assertion of a lengthy record of community and education service address the need for remedial actions to assist the Respondent in avoiding adding to a lengthy history of professionally inappropriate conduct. The absence of such efforts is of concern to this Panel and supports the seriousness of the agreed-upon sanction.

Public confidence in the legal profession

[55] For the public to have confidence in the administration of justice generally, it must have faith in the ability of the Law Society to regulate and supervise the conduct of its members. The public must have faith that the Law Society's disciplinary process, as set out in section 3 of the *Act*, will respond quickly in an efficient, fair, effective, and transparent manner when the public's rightful expectations of lawyer's responsibilities and obligations are not met.

[56] The public must have confidence that a lawyer who agrees to act on a client's behalf has both the time and skill to effectively carry out the matter. As stated by the hearing panel in *Palmer (F&D)* at para. 62:

> …when a lawyer expects that they cannot meet their professional obligations in a timely manner, they are to advise their client, seek assistance from other lawyers, refer the file to another lawyer or, at the very least, advise the client of such so that the client can make an informed choice on how to proceed.

[57] The Respondent did not advise BR of any difficulties he might have in fulfilling his professional obligations, leaving BR to struggle in isolation and uncertainty about the status of the Agreement. Such conduct negatively impacts the public's perception of a lawyer's trustworthiness and abilities. Similarly, the failure to respond promptly to professional communications that require a response is harmful to the proper functioning of the legal profession. Clients' repeated efforts in follow up communications increases

the cost of legal services and undermines public confidence in the ability of the legal profession to operate in an expeditious and cost-effective manner.

[58] Public confidence in the integrity of the legal profession will be undermined if sanctions do not reflect the seriousness of Respondents' misconduct. The proposed sanction in this case holds the Respondent accountable for his actions, and maintains the public's confidence in the ability of the Law Society to regulate the conduct of its members.

Range of sanctions

[59] In similar cases involving the failure to provide the expected quality of service, including a prior PCR containing allegations of similar conduct, the disciplinary actions imposed include suspensions ranging from one to four months, in some cases coupled with Practice Standards recommendations or other practice restrictions: *Buchan*, *Buchan 2*, *DiBella*, *DiBella 2*, *Hopkinson*, *Hossack*, *Palmer F&D*. In cases where a longer suspension was ordered, a lengthy and similar PCR was considered a highly aggravating factor: *Palmer DA*, *DiBella 2*, *Hopkinson*.

[60] An appropriate sanction for any case is an individualized decision that turns on its facts and circumstances. The nature of the misconduct here is serious and the protection of the public is paramount. Given the Respondent's PCR, which includes Practice Standards Committee recommendations, conduct reviews, disciplinary action, and a suspension relating to very similar conduct, a suspension at the higher end of the range is, as set out in the joint submissions, appropriate. This significant sanction is necessary to further the Law Society's statutory mandate of protecting the public and is in the interests of both specific and general deterrence.

DETERMINATION ON DISCIPLINARY ACTION

[61] As noted above, the Panel agrees with the parties' joint submission that the Respondent committed professional misconduct with respect to the allegations set out in the Citation. After reviewing and considering the relevant factors and the range of sanctions imposed in similar cases and previously on the Respondent, the Panel agrees with the joint submission of the Law Society and Respondent on a three-month suspension.

[62] The three-month suspension reflects a balancing of key considerations in this case and addresses the need for specific and general deterrence by not only speaking to the serious nature of the Respondent's misconduct, but also by upholding and protecting the Law Society's mandate to regulate lawyers in the public interest. This Panel therefore

finds that the agreed-upon sanction is not contrary to the public interest in the administration of justice and should be accepted.

COSTS

[63] The parties' joint submission requests an order for costs for $2,000, payable by the Respondent within 30 days of the issuance of the Panel's decision.

[64] Under Rule 5-11 the Panel has authority to order that the Respondent pay costs of the Hearing. A panel must have regard to the tariff of costs in Schedule 4 in calculating costs payable by a respondent, unless the panel finds that it is reasonable and appropriate to award no costs or costs in an amount other than that permitted by the tariff. In exercising its discretion under Rule 5-11(4), the Panel considered the factors set out in *Law Society of BC v. Racette*, 2006 LSBC 29, at paras. 13 and 14, including the following relevant factors:

(a) the seriousness of the offence;

(b) the financial circumstances of the Respondent;

(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.

[65] The Panel considered the following:

(a) the Respondent is in his 70's, but continues to practise full-time;

(b) the submission is a joint submission on costs, agreed to by both parties; and

(c) although the Respondent and Law Society agreed to proceed in accordance with Rule 5-6.5, which shortened the hearing time and resulted in significant savings in terms of expense and efficiency, the agreement came at a late stage in the proceedings, being made only a week before the hearing in full was set to proceed.

[66] In light of the above, the Panel accepts the joint request to award costs to the Law Society in the amount of $2,000, payable by the Respondent within 30 days of the issuance of this Panel's decision.

ORDERS

[67] The Panel orders that the Respondent:

(a) be suspended from the practice of law under section 38(5)(d) of the *Act* for three months, commencing on the first day of the first month following the issuance of the Panel's decision or another date as agreed between the parties in writing; and

(b) pay $2,000 in costs to the Law Society, inclusive of disbursements, within 30 days of the issuance of this decision.