2022 LSBC 44
Hearing File No.: HE20210012
Decision Issued: November 14, 2022
Citation Issued: June 4, 2021
Citation Amended: March 11, 2022

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL

HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

POUYA (JASON) SHABESTARI

RESPONDENT

CORRECTED DECISION: PARAGRAPH [64] OF THE DECISION WAS AMENDED ON NOVEMBER 16, 2022

DECISION OF THE HEARING PANEL

Hearing date:	May 30, 2022
Written submissions:	July 11, 2022
Panel:	Lindsay R. LeBlanc, Chair Linda Berg, Public representative William R. Younie, KC, Lawyer
Discipline Counsel:	Barbara Lohmann
Counsel for the Respondent:	Jessica Lithwick
Written reasons of the Panel by:	William R. Younie, KC

INTRODUCTION

[1] On May 27, 2021, the Discipline Committee authorized a citation, which was issued on June 4, 2021 (the "Citation") and amended on March 11, 2022 (the "Amended Citation"), alleging against the Respondent that, contrary to section 38(4) of the *Legal Profession Act*, SBC 1998 c. 9 (the "*Act*"):

> Between approximately August 2018 and October 2018, he provided assistance to SM, who was then a student enrolled in the Law Society's Professional Legal Training Course, with his writing assessment when he knew or ought to have known that such assistance could aid, facilitate or encourage dishonesty, contrary to one or more of rules 2.1-5(b), 2.1-5(f), 2.2-1, 2.2-2 and 3.2-7 of the *Code of Professional Conduct for British Columbia* (the "*BC Code*").

[2] The hearing in this matter proceeded on May 30, 2022. By agreement, the Law Society and the Respondent submitted for the Panel's consideration an agreed statement of facts (the "ASF"). Oral submissions were made, followed by subsequent written submissions delivered by both parties.

[3] Both parties jointly submit, pursuant to Rule 5.6.5 of the Law Society Rules, that we:

(a) find that the Respondent admits the allegation in the Amended Citation;

(b) find, based on the admitted facts, that the Respondent committed professional misconduct, contrary to section 38(4) of the *Act*; and

(c) order disciplinary action against the Respondent of a fine of $12,000 and an order for costs of $3,000, both payable within 60 days or such other date as this Panel may order.

[4] Counsel for the Law Society seeks an order that an individual identified in the ASF not be identified in this decision.

[5] The Respondent requests that any reference to the Respondent's professional conduct record ("PCR") be omitted in these reasons.

[6] The Respondent admits that he was served with the Citation on June 4, 2021 and with the Amended Citation on March 11, 2022, in accordance with Rule 4-19 of the Rules.

[7] For the following reasons we:

(a) accept the ASF and the Respondent's admission of a discipline violation;

(b) find that the Respondent's conduct constitutes professional misconduct;

(c) find that the proposed disciplinary action would neither bring the administration of justice into disrepute, nor be contrary to the public interest; and

(d) impose the proposed disciplinary action.

[8] Further, we order that the name of the individual identified in the proceeding, including in the ASF, and referred to as SM, be anonymized in these reasons, and we deny the Respondent's request to omit his PCR from these reasons.

FACTS

[9] The relevant facts set out below are a summary of those stated in the ASF.

[10] The Respondent was admitted as a member of the Law Society of British Columbia on December 19, 2014.

[11] Following his call date, the Respondent practised as an employee and an associate lawyer with various law firms in British Columbia, practised as an independent contractor and operated a sole practice. The Respondent has practised, and continues to practise, primarily civil litigation, including personal injury matters and commercial law.

[12] The Respondent was employed as an independent contract lawyer with Remedios & Company ("Remedios") from November 2, 2017 to February 21, 2019.

[13] Prior to his admission to the Law Society, the Respondent attended the Law Society Professional Legal Training Course ("PLTC") in May 2014.

[14] During the time the Respondent attended PLTC, there was a Student Handbook that contained a Professional Integrity Policy (the "Policy").

[15] The Policy, at pages 7 and 8 of the Student Handbook, states in part:

> **3. Professional Integrity**
>
> Students must complete assessments and examinations with professional integrity. <u>All assessment work and examination writing efforts must be their own.</u> Each individual is being assessed for licensing purposes.
>
> **Students must not give, receive or permit any assistance whatsoever in Assessments or Examinations.**
>
> …
>
> Examples of violation of the Professional Integrity policy include:
>
> …
>
> - looking at, discussing or otherwise communicating with another person any portion of the content, issues or organization of the assessment;
>
> …
>
> Other forms of 'cheating' are also in breach of the Professional Integrity Policy. Apparent breaches of this policy will be reviewed by the Deputy Director of PLTC and will be referred to the Law Society Credentials Committee. A student found 'cheating' will stand failed in the assessment or examination in question. The student may also be required to re-attend PLTC in its entirety and/or serve extended articles. Further penalties may be imposed, including publication of the case.
>
> [emphasis in original]

[16] The Respondent submitted his writing assessment to PLTC on July 2, 2014 (the "Respondent's Writing Assessment").

[17] In 2018, during the Respondent's employment with Remedios, he met SM, an articled student with a law firm associated with Remedios.

[18] During his articling year, SM attended the February 2018 session of PLTC.

[19] SM failed his first and second attempts at the PLTC writing assessment.

[20] In August 2018, SM informed the Respondent that he had failed to pass the PLTC writing assessment twice and that he would only have one further opportunity to pass the writing assessment (the "Third Assessment").

[21] On August 22, 2018, the Respondent emailed the Respondent's Writing Assessment to SM.

[22] The Respondent admits that providing SM with the Respondent's Writing Assessment was a violation of the Policy, although it is not an act that is specifically articulated in the Policy.

[23] On October 14, 2018, SM and the Respondent met in Vancouver, British Columbia where the Respondent reviewed SM's draft Third Assessment and provided oral comments to SM about his draft Third Assessment.

[24] The Respondent was unaware, but admits that he ought to have known, that on October 14, 2018, he was reviewing and providing comments on the draft Third Assessment that SM intended to submit to PLTC.

[25] The Third Assessment was submitted by SM to PLTC on October 15, 2018.

[26] Subsequently, between February 25, 2020 and March 16, 2020, the relationship between the Respondent and SM deteriorated. During that time, the Respondent and SM exchanged several email and text messages. These communications included an email where the Respondent alleged that there was an agreement between SM and the Respondent, which stipulated that SM would pay the Respondent $10,000 as consideration for the Respondent tutoring SM to complete his PLTC writing assessment.

[27] The Respondent filed a Notice of Civil Claim in the British Columbia Supreme Court Registry on May 1, 2020, which was served upon SM on May 19, 2020. SM subsequently filed a Response to Civil Claim on June 5, 2020. As of the date of the hearing in this matter, nothing further had occurred with respect to this litigation.

[28] The Respondent admits that his conduct in providing SM with the Respondent's Writing Assessment and reviewing SM's draft Third Assessment, when he ought to have known that such assistance could aid, facilitate or encourage dishonesty, constitutes professional misconduct, contrary to section 38(4) of the *Act.*

ISSUES

[29] The issues for consideration are:

(a) Are the facts set out in the ASF to be accepted?

(b) Should the Panel accept the Respondent's admission of professional misconduct?

(c) Is the proposed disciplinary action appropriate?

LEGAL FRAMEWORK

Joint submissions

[30] Joint submissions regarding disciplinary action are statutorily prescribed by Rules 5.6.5(1) to (3), which state:

> **5-6.5** (1) The parties may jointly submit to the hearing panel an agreed statement of facts and the respondent's admission of a discipline violation and consent to a specified disciplinary action.
>
> (2) If the panel accepts the agreed statement of facts and the respondent's admission of a discipline violation
>
> (a) the admission forms part of the respondent's professional conduct record,
>
> (b) the panel must find that the respondent has committed the discipline violation and impose disciplinary action, and
>
> (c) the Executive Director must notify the respondent and the complainant of the disposition.
>
> (3) The panel must not impose disciplinary action under subrule (2) (b) that is different from the specified disciplinary action 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 consented to by the respondent would be contrary to the public interest in the administration of justice.

[31] The leading decision on joint submissions in regulatory proceedings *is R. v. Anthony-Cook*, 2016 SCC 43, where the court said at paras. 32 and 33:

> Under the public interest test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. But what does this threshold mean? Two decisions from the Newfoundland and Labrador Court of Appeal are helpful in this regard.
>
> In *R. v. Druken*, 2006 NLCA 67 at para. 29, the court held that a joint submission will bring the administration of justice into disrepute or be contrary to the public interest if, despite the public interest considerations that support imposing it, it is so 'markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning of the criminal justice system'. And, as stated by the same court in *R. v. B.O.2*, 2010 NLCA 19, at para. 56 (CanLII), when assessing a joint submission, trial judges should 'avoid rendering a decision that causes an informed and reasonable public to lose confidence in the institution of the courts'.

[32] Prior Law Society discipline decisions have applied what is properly identified in submissions as the *Anthony-Cook* test, when assessing the appropriateness of joint submissions for both conditional admissions under the former Rule 4-30, and joint submissions under the present Rule 5.6.5.

[33] Recently, in *Law Society of BC v. Davison*, 2022 LSBC 23, the *Anthony-Cook* test was discussed in the context of a Law Society disciplinary proceeding and joint submissions under Rule 5-6.5 and said, in part:

> [10] Rule 5-6.5 respects the principles that parties be allowed to provide certainty to alleviate the negative aspects involved in requiring witnesses to testify and to create efficiencies in the system: *Law Society of BC v. Lang*, 2022 LSBC 04, at paras. 27 to 28, citing *Law Society of Upper Canada v. Archambault*, 2017 LSDD No. 100, at para. 15. The principles that support approving a joint submission on sentencing were discussed by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43, at para. 34: '[a] joint

> submission should not be rejected lightly … Rejection denotes a submission that is so unhinged from the circumstances of the case that its acceptance would lead reasonable and informed persons aware of all the relevant circumstances to believe that the proper functioning of the regulatory system has broken down. This is an undeniably high threshold.
>
> [11] 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. As in *R. v. Anthony-Cook*, Rule 5-6.5(3)(b) also imposes a high threshold before a joint submission on disciplinary action is to be rejected by the Panel.

[34] Subsequent to *Davison*, the Supreme Court of Canada released its ruling in *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29.

[35] In *Abrametz*, the central issue before the court was whether a lengthy delay in a discipline proceeding brought by the Law Society of Saskatchewan was inordinate and amounted to abuse of process warranting a stay of proceedings.

[36] *Abrametz* was recently referred to, and commented on, in *Law Society of BC v. Seeger*, 2022 LSBC 29, at para. 12, where the panel said:

> Additionally, we note that the Supreme Court of Canada has recently sounded a note of caution about the ready transplantation of precepts of criminal law to professional disciplinary proceedings: *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29 at paras. 48 and 54. The question of whether the 'public interest' test as set out in *Anthony-Cook* should continue to be applied in the context of proceedings before this Tribunal is best left to a case in which it is necessary to decide the issue.

[37] On considering the question of whether the *Anthony-Cook* test is still to be considered in proceedings before this Tribunal, we hold that the *Anthony-Cook* public interest test still applies in the context of Rule 5.6.5 proceedings.

[38] *Abrametz* did not consider or revisit the public interest test specifically established in *Anthony-Cook.* The principle issue in *Abrametz* was the appropriateness of a stay of proceedings based on inordinate delay, and not whether a joint submission in a discipline proceeding on sanction was appropriate, and what the criteria for accepting or rejecting the proposed disciplinary action is. Rule 5-6.5 legislatively mandates and directs this Tribunal, when considering joint submissions, to only reject the proposed disciplinary action if it is contrary to the public interest in the administration of justice.

[39] The wording of Rule 5-6.5 is virtually identical to that of the *Anthony-Cook* public interest test, leading further support to our conclusion that *Anthony-Cook* is still applicable.

Onus of proof and test for professional misconduct

[40] The Law Society bears the onus of proving on a balance of probabilities that the facts alleged constitute professional misconduct: see *Foo v. Law Society of British Columbia*, 2017 BCCA 151:

> [63] It is common ground that the civil burden of proof applies to discipline proceedings. As the hearing panel in *Law Society of British Columbia v. Daniels*, 2016 LSBC 17 stated:
>
> > [16] A hearing of a citation by a Law Society hearing panel is a civil and not a criminal proceeding. There is only one civil standard of proof at common law, and that is proof on a balance of probabilities, and factual conclusions in a civil case must be made by deciding whether it is more likely than not that the event occurred (*FH v. McDougall*, 2008 SCC 53 at paras. 40 and 44). In this matter, the Law Society carries the burden of proof to establish on a balance of probabilities the facts that it alleges constitute professional misconduct or a breach of the Act or Rules.

Test for professional misconduct

[41] There is no statutory definition of professional misconduct. However, it is well settled by prior decisions that professional misconduct is a marked departure from that conduct reasonably expected of lawyers.

[42] In *Law Society of BC v. Seeger*, 2022 LSBC 08, the definition of professional misconduct is identified and stated as follows:

> [15] Professional misconduct is a marked departure from that conduct the Law Society expects of lawyers*: Law Society of BC v. Martin*, 2005 LSBC 16, at para. 171. The test is objective. The panel must 'consider the appropriate standard of conduct expected of a lawyer, and then determine if the lawyer falls markedly below that standard': *Law Society of BC v. Edwards*, 2020 LSBC 21, at paras. 44 to 46.

ANALYSIS

Professional misconduct

[43] We find that the ASF has no evidentiary conflicts, there are no issues of credibility, and there are sufficient facts established from which a proper determination of whether the Respondent's conduct amounts to professional misconduct can be made.

[44] PLTC is a mandatory step in the legal education of lawyers in British Columbia. Students complete PLTC prior to, during, or at the end of their term of articles.

[45] The Law Society is responsible for the establishment and maintenance of PLTC. Both the Law Society and the public reasonably expect lawyers to support all requirements of the lawyer education process, including PLTC. Lawyer conduct must never undermine the PLTC process or requirements, and lawyers must conduct themselves in a manner that does not encourage a PLTC participant to complete any required task or assignment, except in strict accordance with applicable PLTC policies and rules.

[46] The concept that lawyers' conduct must be consistent with and not undermine all components of lawyer legal education, including PLTC, is supported by the prescribed statutory objects and duties of the Law Society. Specifically, sub-sections 3(b), (c) and (e) of the *Act* state:

Object and duty of society

> **3** It is the object and duty of the society to uphold and protect the public interest in the administration of justice by
>
> …
>
> (b) ensuring the independence, integrity, honour, and *competence* of lawyers,
>
> (c) establishing standards and programs for the *education*, professional responsibility and *competence of lawyers* and of applicants for call and admission,
>
> …
>
> (e) supporting and assisting lawyers, *articled students* and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.
>
> [emphasis added]

[47] The Amended Citation alleges that the Respondent's assistance to SM contrived one or more of rules 2.1-5(b), 2.1-5(f), 2.2-1, 2.2-2 and 3.2-7 of the *BC Code*.

[48] Rules 2.1-5(b), 2.1-5(f), 2.2-1, 2.2-2 and 3.2-7 of the *BC Code* are as follows:

> 2.1-5 (b) It is the duty of every lawyer to guard the Bar against the admission to the profession of any candidate whose moral character or education renders that person unfit for admission.
>
> 2.1-5 (f) All lawyers should bear in mind that they can maintain the high traditions of the profession by steadfastly adhering to the time-honoured virtues of probity, integrity, honesty and dignity.
>
> **2.2-1** A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity.
>
> **2.2-2** A lawyer has a duty to uphold the standards and reputation of the legal profession and to assist in the advancement of its goals, organizations and institutions.

> **3.2-7** A lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud.

[49] In assisting SM in completing his PLTC writing assessment, the Respondent acted without integrity. The Respondent's conduct was improper and reflects unfavourably upon both the Respondent and the legal profession and does not inspire the respect and trust of the community. Public confidence in the legal profession is diminished when lawyers act to assist students when lawyers ought to know that such actions facilitate dishonesty.

[50] The ASF establishes that the Respondent assisted SM with his PLTC writing assessment when the Respondent ought to have known that such assistance could aid, facilitate, or encourage dishonesty. Such conduct is a marked departure from that conduct the Law Society reasonably expects of lawyers.

[51] The Respondent's conduct is exacerbated when considering that he sought to financially benefit from his facilitation of the dishonest conduct.

[52] In his letter to the Law Society dated May 27, 2022, which forms part of the ASF, the Respondent admits that his conduct constitutes professional misconduct.

[53] Accordingly, we find that the Respondent's conduct constitutes professional misconduct.

DISCIPLINARY ACTION

[54] Any disciplinary action order must accord with section 3 of the *Act* and the stated object and duty of the Law Society to uphold and protect the public interest in the administration of justice.

[55] In *Law Society of BC v. Hordal*, 2004 LSBC 36, at para. 51, the review panel cites with approval this quote from MacKenzie, *Lawyers and Ethics*: *Professional Responsibility and Discipline*, loose-leaf (Scarboro: Carswell, 1993), at p. 26-1:

> The purposes of law society discipline proceedings are not to punish offenders and exact retribution, but rather to protect the public, maintain high professional standards, and preserve public confidence in the legal profession.

[56] While each case is to be assessed individually, a non-exhaustive list of 13 factors to consider in determining the appropriate disciplinary action are identified in *Law Society of BC v. Ogilvie,* 1999 LSBC 17. However, in *Law Society of BC v. Dent*,

2016 LSBC 45, the panel determined it was "… time to consolidate the *Ogilvie* factors" into the following four categories:

(a) nature, gravity and consequences of conduct;

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

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

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

[57] The Law Society submits that six of the *Ogilvie* factors are relevant here, being:

(a) the nature and gravity of the misconduct;

(b) the experience of the respondent;

(c) the previous character of the respondent;

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

(e) the presence or absence of other mitigating or aggravating factors; and

(f) the range of sanctions imposed in similar cases.

[58] The Respondent makes submissions with respect to the same *Ogilvie* factors, and in addition, the following:

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

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

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

(d) the possibility of remediating or rehabilitating the respondent; and

(e) the need for specific and general deterrence.

[59] While we have carefully considered these submissions, we consider it proper to determine the appropriate disciplinary action by applying the consolidated *Ogilvie* factors, and additionally considering the range of sanctions imposed in similar

cases. In discussing these factors, we acknowledge that in applying any *Ogilvie* factor, joint submissions regarding disciplinary action are only to be rejected if they are contrary to the public interest and the administration of justice.

Nature, gravity and consequences of conduct

[60] Both the Law Society and the Respondent submit that the Respondent's conduct was serious. We agree with these submissions.

Character and professional conduct record of the respondent

[61] The Respondent has been a lawyer since 2018. At the relevant times, the Respondent was not far removed from his own PLTC experience, which provided him with reasonably recent knowledge of the PLTC requirements and policies in place during his PLTC attendance.

[62] The Amended Citation is the only citation issued against the Respondent.

[63] The Respondent's submissions include a request that his PCR be omitted from these reasons. The Respondent submits that his prior PCR is so dissimilar to the conduct admitted by the Respondent that it need not be particularized, and he further submits that it is embarrassing. For the reasons below, we deny the Respondent's request to omit references to his PCR.

[64] The Respondent's prior PCR is as follows:

Date	**Action**
September 24, 2020	Minutes of the Practice Standards Committee with recommendations from Practice Review
October 20 and 21, 2020	Administrative suspension for failure to complete and file his trust report for the period ending February 29, 2020
October 23, 2020 to January 8, 2021	Administrative suspension for failure to provide records for a Compliance Audit
August 13, 2021	Administrative suspension for failure to complete and file his trust report for the period ending February 28, 2021

[65] The Respondent's prior PCR is a relevant and aggravating factor. While administrative in nature, the suspensions are more than trivial. The suspensions resulted in the removal of the Respondent's authority to practise due to his failure, despite prior written notice from the Law Society on two occasions, to comply with certain of the rules requiring the Respondent to file annual trust account reports.

[66] Given our ruling, the Respondent's PCR is a relevant consideration and the public interest, and that of the legal profession, requires these reasons to be transparent and understandable. A failure to refer to the Respondent's PCR would be contrary to these requirements of transparency and the need for both the public and other lawyers to know all the underlying basis for these reasons.

Acknowledgment of the misconduct and remedial action

[67] The Respondent has admitted his conduct constitutes professional misconduct. In so doing, a full hearing was avoided, saving time and obviating the requirement for witnesses to attend and testify. The Respondent's admission permitted the hearing to proceed efficiently and expeditiously.

[68] The Respondent's acknowledgment is a mitigating factor in the Respondent's favour.

Public confidence in the legal profession

[69] The Law Society submits the proposed disciplinary action supports the need to ensure public confidence in the legal profession. The Respondent submits that the proposed disciplinary action is amply sufficient to satisfy the need to ensure public confidence.

[70] We agree with these submissions. The proposed fine is significant, will have general deterrent value, and will give the public confidence that the profession will meet its obligation to ensure that all persons applying for membership have completed their educational training in accordance with the rules and policies established by the Law Society.

Range of sanctions in similar cases

[71] There have been no decisions in British Columbia similar to the facts presented in this case. In their submissions, both counsel referred to two decisions from

Ontario, being *Law Society of Upper Canada v. Smith*, 2008 ONLSHP 65 and *Law Society of Ontario v. Ranjan*, 2019 ONLSTH 90.

[72] In *Smith*, the respondent prepared and sold academic papers while attending Osgoode Hall Law School and while he was a student member of the Law Society of Upper Canada ("LSUC"). This conduct was investigated after the respondent became a member of LSUC. Based on a joint submission, the panel in *Smith* imposed a $10,000 fine and a reprimand. The panel in *Smith* stated, in part, that the respondent's conduct " … placed a number of institutions and individuals in significant jeopardy ...": see *Smith*, at p. 3.

[73] Unlike *Smith*, in the present case, the Respondent was not a student but had been a lawyer and a member of the Bar for over three years at the time of the relevant misconduct. The respondent in *Smith* had no prior conduct history; the Respondent's prior conduct history has been identified. The respondent in *Smith* acted knowingly, in contrast to the Respondent's admission that he ought to have known his conduct would assist SM.

[74] In *Ranjan*, the allegation against the respondent was that he engaged in professional misconduct, or conducting unbecoming a licensee, by facilitating academic dishonesty by twice selling assignments to Manitoba law students. LSUC sought an 18-month suspension. The respondent's position was that a reprimand was sufficient.

[75] The panel in *Ranjan* determined that a reprimand and an $8,000 costs award in favour of LSUC was an appropriate penalty. In *Ranjan*, the panel was dealing with two incidences over a brief period of time.

[76] The panel in *Ranjan* noted that the respondent had little Canadian experience, or practical understanding of the legal system, and had received no mentorship or guidance. The same cannot be said of the Respondent who attended PLTC, articled in British Columbia and since his call date, has practised exclusively in this jurisdiction.

[77] While neither *Smith* nor *Ranjan* are factually similar to this matter, these decisions confirm that conduct, which is contrary to or undermines lawyer education requirements, should be considered serious.

Application to redact name from reasons

[78] The Rules start with a presumption that discipline hearings be open to the public. Rule 5-8(1) states:

> **5-8** (1) Every hearing is open to the public, but the panel or review board may exclude some or all members of the public.

[79] The Law Society seeks an order that SM's name be anonymized.

[80] The Law Society submits, in part, that:

(a) SM's privacy interest outweighs the public interest of openness;

(b) knowledge of SM's identity is not required to understand the decision;

(c) knowing the Respondent provided assistance to a PLTC student is all that is required;

(d) SM is not the subject of the Amended Citation and his privacy interests need respect; and

(e) the decision to anonymize the names of students receiving assistance was also made in both *Smith* and *Ranjan*.

[81] Statutory authority for the order sought is found in Rule 5(2)(a), which states:

> **5-8** (2) On application by anyone, or on its own motion, the panel or review board may make the following orders to protect the interests of any person:
>
> > (a) an order that specific information not be disclosed despite Rule 5-9 (2) *[Transcripts and exhibits]*.

[82] The Law Society's submissions include reference to *Law Society of BC v. Dhindsa*, 2019 LSBC 36, upheld on review, 2020 LSBC 49.

[83] In *Dhindsa*, the panel describes the test to be met before an order under Rule 5-8(2)(a) is made:

> [64] The burden to establish a basis for sealing such information is on the person seeking the sealing order. This order at first instance conflicts with the general public interest in openness of hearings. For the Respondent to succeed, he must demonstrate that the public's interest in openness should be displaced by a superior societal interest. This requires a weighing of the conflicting interests of privacy and openness. This also requires consideration of the importance of the information in the public's need to know in order to understand the decision as a whole. Where persons

> other than the Respondent have privacy interests, those should be respected where they do not frustrate the public need to understand the decision.

[84] Weighing the public and private interests in this case, there is no need for the public to know SM's identity by name. SM's name is not required for the public to understand this decision as a whole, and in no way is the public's need to understand the decision frustrated by anonymizing SM's name.

CONCLUSION AND SUMMARY OF ORDERS MADE

[85] Based on the ASF and the application of all applicable principles, and after full consideration, we find that the proposed disciplinary action is appropriate and not contrary to the public interest in the administration of justice.

[86] The following orders are made:

(a) pursuant to section 38(5)(b) of the *Act*, the Respondent pay a fine in the amount of $12,000, and pay costs to the Law Society in the amount of $3,000, both amounts payable within 60 days of the release of this decision; and

(b) pursuant to Rule 5-8(2) of the Rules, the name of the person identified in these reasons as SM be anonymized.