2025 LSBC 06
Hearing File No.: HE20230001
Decision Issued: February 26, 2025
Citation Issued: March 10, 2023

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

MERLE EVELYN CAMPBELL

RESPONDENT

DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION

Hearing date:	April 5, 2024
Written submissions:	December 13, 2024
Panel:	William R. Younie, KC, Chair Darlene Hammell, Public representative Gurminder Sandhu, KC, Bencher
Discipline Counsel:	Marsha Down
Counsel for the Respondent:	Russell Tretiak, KC

BACKGROUND

[1] On December 23, 2023, the Panel issued the facts and determination decision in this proceeding (the "F&D Decision"), and found that the Respondent had committed professional misconduct as follows:

> On December 9, 2022, in the course of the Respondent representing her client SS in a Supreme Court family law proceeding, the Respondent, while at the Vancouver courthouse:

(a) communicated with an opposing party in the absence of her counsel, knowing the opposing party was represented by counsel and without the consent of the opposing party's counsel, contrary to rule 7.2-6 of the *Code of Professional Conduct for British Columbia (*the "*Code*"); and

(b) communicated with the opposing party in a discourteous manner, contrary to rules 7.2-1 and 7.2-4 of the *Code*.

[2] The issue for the Panel's determination is the disciplinary action to be imposed upon the Respondent.

[3] The parties jointly submitted that the appropriate sanction is a one-month suspension. The parties disagree with respect to costs.

[4] The Panel received both oral and written submissions from the Law Society and written submissions from the Respondent. While we will not specifically reference all submissions made and authorities presented, the Panel has carefully reviewed and given full consideration to the same.

[5] For the reasons below, the Panel orders that the Respondent be suspended from the practice of law for one month and pay costs in the sum of $15,000.

SUMMARY OF F&D DECISION

Communicating with opposing party in the absence of her counsel, knowing of legal representation and without consent of counsel

[6] On December 12, 2022, the Respondent attended the Vancouver Supreme court on behalf of her client regarding an application in a highly contested family law matter. The other party (the "Complainant") was represented by counsel. On that day an articled student of the Complainant's lawyer was present with the Complainant in court, however counsel for the Complainant was not in attendance. The Respondent acknowledged that she was aware the Complainant was, at that time, represented by counsel.

[7] Following adjournment of the application, the Respondent approached the Complainant in an open seating area and commenced a brief conversation (the "Conversation") with the Complainant, who was with two other persons and not accompanied by the articled student. The Conversation is set out below.

Communicating with opposing party in a discourteous manner

[8] As the Panel found in the F&D Decision, the following brief Conversation occurred between the Respondent and the Complainant.

[9] The first part of the Conversation was admitted by the Respondent, and is as follows:

> Respondent: You're gonna take a hundred thousand dollars of your children's money, that they could get, just because you won't cooperate? This is money that would go to your family, and you are making sure that you're both losing it and your children lose it. I have never met anybody that's that angry, that's that vindictive, this is, what a way to get revenge, but you're getting the revenge against your children.
>
> Complainant: Can you put a mask on?
>
> Respondent: Pardon?
>
> Complainant: Put a mask on, you're very close to me.

[10] The Panel also found that the Respondent subsequently told the Complainant: "Good luck with your life."

JOINT SUBMISSIONS

[11] The Law Society submits that Rule 5-6.5 does not apply in this case but the Panel may apply either the public interest test in *R. v. Anthony Cook,* 2016 SCC 43, or the fair and reasonable test when determining whether to accept the joint submission. In this case, the Law Society submits that the Panel should accept the joint submission on sanction because it meets the public interest test. The Respondent did not make submissions on this issue.

[12] For the reasons set out below, the Panel finds that we need not determine which test applies as the joint submission is both in the public interest and fair and reasonable in all of the circumstances.

[13] Rule 5-6.5 of the Law Society Rules (the "Rules") permits joint submissions for disciplinary actions provided the requirements of that Rule is met. That Rule is as follows:

> Admission and consent to disciplinary action

> 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.
>
> (4) An admission of conduct tendered in good faith by a lawyer during negotiation that does not result in a joint submission under subrule (1) is not admissible in a hearing of the citation.

[14] Rule 5-6.5(1) requires a tendering of an admission and a consent to a specific disciplinary action.

[15] In this matter, there was a full facts and determination hearing. No admission and consent to a specific disciplinary action occurred prior to the hearing commencement and the F&D Decision. Accordingly, we agree with the Law Society that Rule 5-6.5 does not apply to the joint submission made by the parties.

[16] The Law Society correctly submits that Rule 5-6.5 effectively mirrors the public interest test established in the well-known decision of *Anthony Cook*.

[17] In *Anthony Cook*, at para. 34, the Court held that joint submissions should only be rejected if the proposed sanction is contrary to the public interest, being so unhinged from the circumstances of the offence and the offender that its acceptance would lead a reasonable and informed person, aware of all the relevant circumstances, to believe that the proper functioning of the justice system had broken down.

[18] There must be an admission of guilt before the limiting of discretion imposed on a sentencing body by the *Anthony Cook* decision applies.

[19] In *Law Society of BC v. Laughlin*, 2019 LSBC 42 ("*Laughlin*"), overturned on review, 2020 LSBC 47 ("*Laughlin Review*"), at the hearing before the hearing panel, the parties filed an agreed statement of facts, the respondent's admission of professional misconduct and a joint submission on disciplinary action. One of the issues before the review board in *Laughlin Review* was whether the original hearing panel erred in departing from the joint submission on disciplinary action.

[20] The Law Society in *Laughlin Review*, at para. 33, submitted that then recent decisions established a test to assess joint submissions made outside Rule 4-30 (now Rule 5-6.5) based on whether the proposed sanction was fair and reasonable (citing *Law Society of BC v. Di Bella*, 2019 LSBC 32). The Law Society further submitted that the review board should not apply the fair and reasonable test and should instead apply the *Anthony-Cook* public interest test. The review board found that the hearing panel was incorrect in departing from the joint submission regardless of which test applied. The review board overturned the original disciplinary action and determined that the joint submission proposed in that case was the appropriate sanction.

[21] In *Law Society of BC v. Seeger*, 2022 LSBC 29, the parties acknowledged that their joint submissions made following the facts and determination hearing did not fit the Rule 5-6.5 requirements for joint submissions. In rendering its decision, the panel referenced *Anthony Cook,* confirmed the *Anthony Cook* public interest test had been applied by other hearing panels such as in *Law Society of BC v. Clarke*, 2021 LSBC 39, and concluded at para. 11:

> We do not find it necessary to decide whether the sanction proposed in the Joint Submission meets the formulation of the "public interest" test set out in *Anthony Cook*, either *per se* or as applied in *Law Society of Upper Canada v. Archambault*, 2017 ONLSTH 86. For the reasons set out in more detail below, we are satisfied that the proposed disciplinary action protects the public interest within the meaning of s. 3 of the *Legal Profession Act* ("*Act*") and as developed in this Tribunal's case law. We are also persuaded that the proposed disciplinary action is fair and reasonable in all the circumstances.

ANALYSIS - *OGILVIE*/*DENT* AND OTHER FACTORS AND RANGE OF SANCTION

[22] The Law Society's principal obligation pursuant to section 3 of the *Act* is to uphold and protect the public interest in the administration of justice. Any disciplinary action must ensure the protection of the public and the promotion of the rehabilitation of the respondent lawyer, and where those two purposes conflict, the protection of the public and maintenance of the public confidence in the profession must prevail: *Nguyen v. Law Society of BC*, 2016 LSBC 21, at para. 36.

[23] The often-cited decision of *Law Society of BC v. Ogilvie*, 1999 LSBC 17 sets out 13 non-exhaustive factors for consideration by a panel when determining the appropriate sanction.

[24] In *Law* Society *of BC v. Dent,* 2016 LSBC 5, the 13 *Ogilvie* factors were consolidated into the following four general considerations:

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

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

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

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

[25] In *Law Society of BC v. Faminoff*, 2017 LSBC 4, a decision referencing both *Ogilvie* and *Dent*, the panel stated, at para. 84, 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". The panel further said, at para. 87, that a consideration of aggravating and mitigating circumstances will assist in determining the range of appropriate sanctions.

[26] The submissions of both the Law Society and the Respondent support the Panel determining the appropriate disciplinary action through the four merged considerations per *Ogilvie*.

[27] After full consideration, the Panel views it is appropriate to examine the Respondent's conduct globally applying the consolidated *Ogilvie* factors, and additionally consider the victim impact statement from the Complainant.

Nature and gravity of the misconduct

[28] As stated in *Law Society of BC v. McLeod*, 2022 LSBC 24, at para. 14, (citing *Law Society of BC v. Edwards*, 2020 LSBC 57, at para. 18) the seriousness of the misconduct is the prime determinant of the disciplinary action imposed against a lawyer.

[29] In *Law Society of British Columbia v. Gellert*, 2014 LSBC 5, at para. 39, the panel stated that the nature and gravity of the misconduct will usually be of special importance, as it stands as a "benchmark" in assessing how to best protect the public and preserve its confidence in the profession. The objective of public protection is the prism through which all the *Ogilvie* factors should be applied, including consideration of the victim impact statement completed by the Complainant in relation to this matter.

[30] The Law Society submits the actions of the Respondent in communicating with the Complainant in the absence of counsel is serious misconduct. The Respondent submitted her behaviour was an unfortunate mistake and a lapse in adherence to the rule prohibiting communication with an opposing party.

[31] Conduct like that of the Respondent can undermine the lawyer-client relationship and offends the boundaries of courtesies owed opposing counsel: F&D Decision, para. 60 to 61; *McLeod*, at para. 20.

[32] The Panel considers the Respondent's conduct as moderately serious. The conversation was brief, and while the Respondent's words were personal and conclusory of the Complainant's behaviour, the Respondent was not loud or threatening during the Conversation.

Character and professional conduct record of the Respondent

[33] The Respondent's professional conduct record (the "PCR") was provided to the Panel. The Law Society submits the PCR should be considered by the Panel to be an aggravating factor when determining the appropriate disciplinary action.

[34] The LSBC Tribunal Directions on Practice and Procedure (the "Practice Direction(s)") 10.7(1)(f) and (2) and Law Society Rule 5-6.4(5) authorizes a panel to, in its discretion in a disciplinary action hearing, consider the professional conduct record of a respondent in determining a disciplinary action.

[35] Practice Direction 2.3 and Law Society Rule 1 "professional conduct record" subparagraphs (f) and (i) states that a member's professional conduct record includes Practice Standards Committee (formerly known as the Competency Committee) recommendations and Conduct Review subcommittee reports.

[36] The Panel has considered *Law Society of BC v. Lessing,* 2013 LSBC 29, where the panel discussed the use of the PCR in a disciplinary action hearing and stated the following:

> [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.
>
> [73] In regard to progressive discipline, this Review Panel does not consider that Law Society of BC v. Batchelor, 2013 LSBC 9, stands for the proposition that progressive discipline must be applied in all circumstances. At the same time, the Review Panel does not believe that progressive discipline can only be applied to similar matters.
>
> [74] Progressive discipline should not be applied in all cases. A lawyer may steal money from a client. In such a case, we generally skip a reprimand, a fine or even a suspension and go directly to disbarment. Equally, a lawyer may have in the past engaged in professional misconduct requiring a suspension. Subsequently that lawyer may be cited for a minor infraction of the rules. In such a situation, progressive discipline may not apply, and a small fine may be more appropriate.

[37] The Law Society's written submissions include the following accurate summary of the Respondent's PCR:

> (a) Practice Standards Recommendations (then the Competency Committee) (April and October 1998): the Competency Committee made recommendations, including regarding the Respondent's practice areas, file management and firm finances to be implemented by the Respondent.

(b) Conduct Review (December 2002): the Respondent attended a conduct review to discuss her conduct regarding a letter she had written to the opposing party in acting for a client in a family law matter wherein she indicated that if a situation was not rectified, her client would be instructing her to lay criminal charges for theft or to bring a civil law suit against the opposing party for breach of fiduciary duty. The Subcommittee accepted that the Respondent would "be more careful in the future and avoid letters or communications of this sort." On this basis, the Subcommittee recommended no further disciplinary action.

[38] The Law Society submits in both this matter and the 2002 conduct review the Respondent acknowledged her conduct was unfortunate, and that both instances are examples of a failure to remain objective. We agree this submission properly characterizes the Respondent's conduct in this instance.

[39] The Panel was provided with a letter dated May 15, 2023, from the Respondent to the Law Society. In that correspondence, the Respondent listed significant volunteer activities she has undertaken. All of these activities reflect positively upon the Respondent's character.

[40] The Panel finds that the Respondent's PCR is a mildly aggravating factor and should be given some consideration. However, because of the lengthy period between the 2002 conduct review and the good character of the Respondent evidenced by her volunteer contributions, the Panel attributes little weight to the PCR in our determination of the appropriate sanction.

Acknowledgement of the misconduct and remedial action

[41] The Law Society submits the Respondent's testimony does not indicate that the Respondent is remorseful, and that specific deterrence is a relevant factor, and further submits that while the Respondent made an early admission, she was defensive more than remorseful about her choice of words and denied her words were untrue or inaccurate.

[42] The Respondent submits in part:

(a) her decision to speak to the Complainant was unfortunate and impulsive, and her choice of words was poor;

(b) her speaking to the Complainant was in breach of rule 7.2-6 of the Code and that she had knowledge of that rule at the time she breached same;

(c) she apologized to the Respondent and her counsel in writing by her letter dated March 8, 2023; and

(d) it is not anticipated the Respondent will make the same mistake and attempt to communicate with the client of another lawyer in the future.

[43] In her letter to the Law Society dated December 29, 2022 (the "December 29, 2022 Letter") the Respondent acknowledged she communicated with the Complainant in the presence of "others". By further letter dated February 9, 2023, to the Law Society (the "February 9, 2023 Letter"), the Respondent acknowledged she "did not follow the Code as set out".

[44] In her August 2, 2023 Response to the Notice to Admit the Respondent admitted that she communicated directly with the Complainant in the absence of her lawyer or her lawyer's articling student and without their permission, and also that at the time of the Conversation she was aware of rule 7.2-6 of the Code.

[45] To the extent that the Law Society's submissions with respect to this issue are directed towards the Respondent's evidence at the F&D Hearing, as also stated below in these reasons, the Respondent was entitled to a hearing and to dispute the allegations of professional misconduct. No criticism of the Respondent can be made for her proceeding to the F&D Hearing.

[46] The Panel finds the reference to "others" in her December 29, 2022 Letter excludes the Complainant's counsel and her articling student, and the Panel further finds the Respondent's reference to the "Code as set out" in her February 9, 2023 Letter to be a reference to rule 7.2-6 of the Code.

[47] The Panel notes the Respondent made certain admissions prior to the DA hearing in addition to those referenced above in these reasons, including much of the Conversation.

[48] The Panel finds that the cumulative effect of the December 29, 2022 Letter, the February 9, 2023 Letter and the Response to the Notice to Admit is that the Respondent took some responsibility for her conduct prior to the DA hearing in that she acknowledged she breached rule 7.2-6 and admitted much of the Conversation as alleged by the Law Society. A fundamental issue in the case was whether the acknowledged breach of rule 7.2-6 and the Respondent's words in the Conversation constituted professional misconduct.

[49] This case falls between those cases where a lawyer may deny most if not all of the alleged facts or deny that an allegation constitutes a breach of the rules of the Code and amounts to professional misconduct, and a case where there is a full admission of all facts

alleged in a citation and an acknowledgement that those alleged facts constitute professional misconduct.

[50] Given the December 29, 2022 Letter, the February 9, 2023 Letter, the Response to the Notice to Admit, and the Respondent's submissions in this matter, the Panel concurs with the submission that it is not anticipated that the Respondent will make the same mistake again and communicate with a client contrary to rule 7.2-6 of the Code, and specific deterrence is not a factor to consider in making the orders.

Public confidence in the legal profession, including public confidence in the disciplinary process

[51] Based on the statutory obligations of section 3 of the *Act*, and as stated in *Ogilvie* and subsequent decisions, the Panel must consider the need to maintain the public's confidence in the ability of the disciplinary process to regulate the conduct of its members. And as further stated in *Law Society of BC* v. *Dhindsa*, 2020 LSBC 13, at para. 33:

> The public depends on the Law Society to regulate and supervise its members to ensure they carry out their duties ethically and responsibly. It is only by maintaining the public's confidence in the integrity of the profession that the self-regulatory role of the Law Society can be justified and maintained.

[52] The Law Society submits the sanction must reflect the Respondent's serious misconduct and further must send a clear message to the public and the legal profession that lawyers ignoring their professional responsibilities will not be tolerated.

[53] The Respondent submits any process must ensure that the public is protected from acts of professional misconduct.

[54] The Panel acknowledges members of the public who are represented by a lawyer are put in a highly vulnerable position when another lawyer communicates directly with that person in the absence of their lawyer, and such conduct, if found to be professional misconduct, must be considered serious.

[55] The sanction for the Respondent's professional misconduct must ensure the public maintains confidence in the discipline process.

Victim impact statement

[56] The Complainant provided a signed victim impact statement to the Law Society dated February 8, 2024 (the "Statement"). The Panel was provided with the Statement.

After submissions, the Panel ruled it would admit certain parts of the Statement but ruled other portions inadmissible.

[57] The Law Society submits that impact statements are useful and should be considered for they allow complainants to participate in the Tribunal's process without having to directly confront respondents and thus are an additional factor for consideration by a discipline panel.

[58] In *Law Society of BC v. Davison*, 2022 LSBC 23, the parties made a joint submission under Rule 5-6.5 with respect to admissions and disciplinary action regarding several allegations of sexual harassment. In its decision the panel referenced the victim impact statements, but it is difficult from a review of that decision, possibly because the parties presented a joint submission on sanction, to determine what use was made of, and weight the panel gave to, the victim impact statements.

[59] In *Law Society of BC v. Heflin*, 2023 LSBC 22, the panel considered the appropriate disciplinary action with respect to a respondent whose conduct was found to be sexual harassment in the panel's earlier facts and determination decision. In the disciplinary action decision, the panel considered an unsworn document, being an email from the victim. The panel in its reasons stated it acknowledged the magnitude of the impact the lawyer's conduct had on the victim.

[60] The Law Society submitted it is reasonable to conclude that based on common human experience the Respondent's words had an impact on the Complainant. The Law Society submits that generally the Respondent's actions had a lasting negative effect on the Complainant. The Law Society also conceded, in the Panel's view quite properly, that some of the language used by the Complainant in the statement was hyperbolic.

[61] On full review of the Statement, the Panel finds that the Respondent's conduct did have a negative impact on the Complainant. However, the Panel is unable, on the basis of the Statement alone, to determine with any precision the degree of impact on the Complainant and for how long the Complainant was affected by the Respondent's words. Thus, the Panel considers the impact of the Respondent's conduct on the Complainant to be only a minor aggravating factor.

Range of Sanctions in Similar Cases

[62] The Panel was referred to several cases by the parties to support the joint submission of a one-month suspension as appropriate and in the range of sanctions previously imposed for similar misconduct.

[63] In *Law Society of BC v. Foo*, 2014 LSBC 21, a lawyer commented to a social worker that he would "shoot her" because she takes away too many kids. The lawyer's conduct was considered an aggravating factor as was his professional conduct record, which was more significant than that of the Respondent. The lawyer received a two-week suspension for his professional misconduct.

[64] In *Law Society of BC v. Johnson*, 2014 LSBC 50, a lawyer who committed professional misconduct by saying "fuck you", although provoked to do so, to a potential witness in a courthouse, and which lawyer had a more substantial and serious professional conduct record than the Respondent, received a one-month suspension. The panel stated that the range of appropriate sanctions ranged from a $1,500 fine to a three-month suspension.

[65] The panel in *Law Society of BC v. Hudson*, 2017 LSBC 17 stated there is no fixed range of discipline for incivility amounting to professional misconduct.

[66] In *Law Society of BC v. Lang*, 2022 LSBC 4 the lawyer was found to have committed professional misconduct for having communicated with another party, in the absence of her counsel, and for making discourteous and uncivil comments to another person related to the other party. The hearing panel accepted a joint submission of a $10,000 fine.

[67] In *Law Society of BC v. Harding*, 2022 LSBC 34, a lawyer committed professional misconduct on three occasions, all of which included making uncivil and untrue comments about other lawyers. The lawyer's professional conduct record was an aggravating factor. The panel stated in that case the appropriate sanction was a suspension in the range of two weeks to six months.

[68] In *McLeod*, the panel found the lawyer committed professional misconduct by failing to conduct himself with courtesy and good faith and by engaging in sharp practice. The lawyer's professional conduct record was more significant, and he failed to apologize for his conduct. The panel was of the view, similar to the panel in *Hudson*, that there is no fixed range of discipline for incivility amounting to professional misconduct. However, the panel goes on to say there is an increasing tendency of hearing panels to impose serious disciplinary action in situations where lawyers' conduct that is contrary to the core requirements of the legal profession threaten public confidence in lawyers.

[69] The Panel is satisfied the decisions suggest a wide range of sanctions from a fine to suspensions of various lengths for conduct similar to that of the Respondent that constitutes professional misconduct.

DECISION ON DISCIPLINARY ACTION

[70] The Panel accepts the joint submission of the parties and finds that the proposed one-month suspension is both in the public interest and fair and reasonable.

[71] The Panel orders that the Respondent be suspended from practice for one month. The Panel is informed that the Respondent retired from the practice of law as of May 31, 2024, and accordingly the suspension commencement date is the first business day following the date that the Respondent is reinstated as a member of the Law Society.

COSTS

Submissions

[72] The Law Society seeks a costs order against the Respondent in the sum of $19,460 payable within thirty days of the issuance of this decision or such other date as the Panel may order.

[73] A Bill of Costs dated April 4, 2024, was prepared by the Law Society. It seeks tariff items totaling $15,300 and disbursements amounting to $4,160. The particular tariff item amounts claimed are reasonable, and the disbursements the Panel finds were reasonably incurred.

[74] The Law Society submits there is no reason to deviate from the Tariff under Schedule 4 pursuant to Rule 5-11 of the Rules.

[75] The Respondent originally submitted that the Law Society not be awarded costs, subsequently submitted that the Law Society be entitled to one day of costs and the Respondent three days of costs, and asserted in her final submissions that the Law Society be denied its costs.

[76] The Respondent further submits:

(a) the conduct of the Law Society's case unnecessarily lengthened the hearing by introducing unnecessary evidence;

(b) the cross-examination of the Respondent was over-zealous and certain of that cross-examination was laborious, too general, unnecessary, unreasonable and ill-founded, thereby unnecessarily lengthening the matter; and

(c) the Law Society declined to accept the Respondent's acknowledgment of responsibility in the form of a "guilty plea" prior to the commencement of the hearing,

which cumulatively disentitles the Law Society from receiving costs or alternatively should reduce the costs to be awarded in favour of the Law Society and further award some costs to the Respondent.

[77] The Respondent further submits her reliance on the Objectives of the British Columbia Supreme Court Civil Rules (the "Civil Rules") and submits the Law Society seeks to rely on the general principles on the issues of cost as set out in the Civil Rules.

[78] In reply to the Respondent's submissions on costs, the Law Society further submits in part:

(a) the Respondent did not "plead guilty" and the matter proceeded on a contested basis and disputed the accuracy of certain proffered evidence;

(b) cost awards should not be reduced lightly, as such reduction is borne by the profession as a whole;

(c) the Law Society's conduct of the hearing did not unduly lengthen the hearing;

(d) this Panel has no jurisdiction to order costs against the Law Society; and

(e) the Law Society is not relying on the Supreme Court Civil Rules in support of its position on costs.

Analysis and determination re: costs

[79] Rule 5-11(1) of the Rules stipulates that a panel may order a respondent pay the costs of a hearing and fix a time for payment.

[80] Rule 5-11(3) of the Rules requires that subject to subrule (4), the panel must have regard to the tariff of costs in Schedule 4 in calculating any costs payable.

[81] Rule 5-11(4) states that a panel may order that the Law Society or a respondent recover no costs or costs in an amount other than that permitted by the tariff if, in the judgment of the panel, it is reasonable and appropriate to so order.

[82] Referencing the Respondent's submissions first, it is not appropriate or necessary to reference the Supreme Court Civil Rules when we determine costs in this matter. Rule

5-11 is a codification of costs issues in Law Society discipline matters: *Law Society of BC v. Boles*, 2018 LSBC 24. The Supreme Court Civil Rules have no application.

[83] The Panel rejects the Respondent's submission that the Law Society be ordered to pay the Respondent costs in the circumstances of the instant case. Rule 5-11(8) states that only if a citation is dismissed or rescinded after commencement of a hearing does a panel have the discretion to direct a respondent be awarded costs. That costs may be ordered against the Law Society if a citation is dismissed or rescinded, and not otherwise, was confirmed in *Boles*. However, the Panel has discretion under Rule 5-11(4) to order no costs, or costs different from the tariff amount, payable by the Respondent to the Law Society as discussed further below.

[84] While the Panel has determined that the tariff amounts and disbursements claimed in the Bill of Costs of the Law Society, were reasonable and necessary, the Panel refers to *Law Society of BC v. Tungohan*, 2023 LSBC 33, where, in discussing a panel's discretion regarding costs, at para. 47, the panel referenced *Law Society of BC v. Racette*, as follows:

> The Panel has a broad discretion to fix costs based on the circumstances before it. The panel in *Law Society of BC v. Racette*, 2006 LSBC 29, set out a list of non-exhaustive factors to consider:
>
> (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.

Seriousness of the conduct

[85] The seriousness of the conduct was previously referenced in these reasons and characterized as moderate.

Financial circumstances of the Respondent

[86] The Panel was not provided with a significant amount of information regarding the Respondent's financial circumstances. The Panel reviewed a 2023 profit and loss statement for the Respondent's 2023 professional income. The Respondent's net income

in 2023 was modest. The Respondent suffered health problems in early 2024 and retired from the practice of law as of May 31, 2024.

Total effect of the sanction

[87] As the Respondent is currently retired, a suspension will not have an impact unless and until she resumes practice. However, the modest income of the Respondent in 2023 and the absence of any legal professional income from June 1, 2024 onward will impact the Respondent's ability to pay costs.

Conduct of the parties

[88] Both parties submit the conduct of the other party should govern the awarding of costs.

[89] The Law Society submits the Respondent's contesting the particulars of the Conversation and her disputing the allegations of professional misconduct prolonged the hearing, but as the Respondent was entitled to contest the allegations and was entitled to a hearing, her doing so in and of itself cannot be criticized.

[90] The Panel is not satisfied that the Law Society's conduct of its case merits a reduction in costs otherwise awarded in favour of the Law Society. While the Law Society's cross-examination of the Respondent at the F&D Hearing was lengthy, it is to be remembered that, in comparison to the examination in chief, wider latitude is given to cross-examination and overall the cross-examination was appropriately conducted.

[91] The Panel does not accept the Respondent's submission that the Law Society rejected a "guilty plea" and thereby unnecessarily lengthened the DA hearing. The Respondent did not admit she committed professional misconduct, thereby necessitating the F&D Hearing.

[92] The Panel finds that the conduct of neither party impacts costs.

Determination on costs

[93] The Panel finds it reasonable and appropriate to award the Law Society $15,000 in costs payable by the Respondent on or before December 31, 2025.

ORDER

[94] The Panel orders that:

(a) the Respondent is suspended for one month, to commence on the first business day following her reinstatement to the profession if the Respondent applies and her application for reinstatement is granted; and

(b) the Respondent pay costs to the Law Society in the amount of $15,000, on or before December 31, 2025.