2024 LSBC 49
Hearing File No.: HE20210010;
HE20210081
Decision Issued: December 20, 2024
Citation Issued: June 3, 2021;
December 13, 2021

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL

HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

WILLIAM CAREY LINDE

RESPONDENT

DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION

Hearing dates:	June 10, 27 and 28, 2024
Panel:	Thomas L. Spraggs, Chair Brian Dybwad, Lawyer Guangbin Yan, Public representative
Discipline Counsel:	Peter R. Senkpiel, KC Kayla K. Strong
Appearing on his own behalf	William Carey Linde

OVERVIEW

[1] These reasons address the issue of the appropriate disciplinary action and costs following this Panel's findings in the facts and determination phase of the hearing (*Law Society of BC v. Linde*, 2023 LSBC 13 (the "F&D Decision")). The F&D Decision considered two citations issued against the Respondent. The first citation was issued June 3, 2021 (the "First Citation") and the second was issued December 13, 2021 (the "Second Citation").

[2] The Panel's findings of professional misconduct in the F&D Decision flow from the Respondent's admitted breaches of various court orders arising from the Respondent's representation of a party in a family law dispute.

[3] In relation to allegation 1 of the First Citation, the Panel found, as admitted, that the Respondent breached court orders dated February 27, 2019 and April 15, 2019 by posting, or failing to remove, eight documents posted on-line, contrary to the terms of the orders. In relation to allegation 2 of the First Citation, the Panel found, as admitted, that the Respondent breached the same court orders by making several statements in two interviews, that were reproduced in postings on-line, contrary to the terms of the orders. In relation to allegation 1 of the Second Citation, the Panel found, as admitted, the Respondent breached a court order dated April 20, 2021 when he provided personal and health information to an American media outlet during a recorded interview contrary to the terms of the order. The Panel found the Respondent committed professional misconduct in relation to his proven conduct in allegation 1 and 2 of the First Citation and allegation 1 of the Second Citation. The Panel dismissed allegation 3 in the First Citation and allegation 2 of the Second Citation.

[4] The Law Society and the Respondent agree that the appropriate sanction, given the Panel findings, is a four-month suspension. The Panel accepts this joint proposal.

[5] The Law Society seeks costs and disbursements in the amount of $24,337.50. The Respondent put in evidence of his financial circumstances and seeks an order that each party bear their own costs. For the reasons set out below, the Panel orders the Respondent to pay costs of $12,168.75 within four months from the date of this decision.

BACKGROUND

[6] The background of these proceedings spans a considerable period of time and include the following on:

(a) June 3, 2021, the first citation was issued by the Law Society Discipline Committee.

(b) December 13, 2021, the Law Society Discipline Committee issued the second citation.

(c) April 6, 2022, a decision by Bencher LeBlanc was issued pertaining to preliminary and interlocutory matters: *Law Society of BC v. Linde*, 2022 LSBC 12.

(d) May 13, 2022, a further interlocutory decision was provided by Bencher LeBlanc: *Law Society of BC v. Linde*, 2022 LSBC 15.

(e) April 3, 2023, the Hearing Panel issued the F&D Decision.

(f) October 6, 2023, the Hearing Panel made a case management order with respect to the disciplinary action phase of the hearing following the parties' submissions.

(g) February 23, 2024, the Hearing Panel made a further order relating to preliminary applications to be determined prior to the disciplinary action phase of the hearing: *Law Society of BC v. Linde*, 2024 LSBC 10 ("*Linde DA preliminary applications*").

(h) At the conclusion of the in-person disciplinary action proceedings on June 28, 2024, the parties were invited to make written submissions and provide relevant evidence by way of affidavit to fully consider the issue of costs and disbursements. The Respondent filed an affidavit dated July 15, 2024 titled "Respondent's Affidavit Brief on Costs". The Respondent did not file separate submissions on costs. The Law Society provided submissions dated July 23, 2024.

LEGAL FRAMEWORK

[7] Section 38(5) of the *Legal Profession Act* (the "*Act*") provides this Hearing Panel with the jurisdiction to impose a disciplinary action following a determination that a lawyer has committed professional misconduct, including but not limited to a reprimand, fine, conditions or limitations on the lawyer's practice, suspension from practice, and disbarment.

[8] Furthermore, section 38(7) provides the Panel with the power to make any further orders and declarations and impose any conditions it considers appropriate.

[9] The purpose of the present disciplinary proceeding is the fulfillment of the Law Society's mandate to uphold and protect the public interest in the administration of

justice by ensuring the independence, integrity, honour and competence of lawyers. It is codified in section 3 of the *Act*.

[10] Section 3 states:

> **Object and duty of society**
>
> It is the object and duty of the society to uphold and protect the public interest in the administration of justice by
>
> (a) preserving and protecting the rights and freedoms of all persons,
>
> (b) ensuring the independence, integrity, honour and competence of lawyers,
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> (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,
>
> (d) regulating the practice of law, and
>
> (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.

[11] Hearing panels have previously commented on the application of section 3 of the *Act.* Notably and frequently considered are the reasons from *Law Society of BC v. Lessing*, 2013 LSBC 29. *Lessing* notes that the object and duties set out in section 3 of the *Act* were reflected in the factors described in the following passage from *Law Society of BC v. Ogilvie*, 1999 LSBC 17:

> [9] Given that the primary focus of the *Legal Profession Act* is the protection of the public interest, it follows that the sentence in process must ensure that the public is protected from acts of professional misconduct. Section 38 of the Act sets forth the range of penalties, from reprimand to disbarment, from which a panel must choose following a finding of misconduct. In determining an appropriate penalty, the panel must consider what steps might be necessary to ensure that the public is protected, while also taking into account the risk of allowing the respondent to continue in practice.
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> [10] The criminal sentencing process provides some helpful guidelines, such as: the need for specific deterrence of the respondent, the need for general deterrence, the need for rehabilitation and the need for punishment or denunciation. In the context of a self regulatory body one must also consider the need to maintain the

> public's confidence in the ability of the disciplinary process to regulate the conduct of its members. While no list of appropriate factors to be taken into account can be considered exhaustive or appropriate in all cases, the following might be said to be worthy of general consideration in disciplinary dispositions:
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> (a) the nature and gravity of the conduct proven;
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> (b) the age and experience of the respondent;
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> (c) the previous character of the respondent, including details of prior discipline;
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> (d) the impact upon the victim;
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> (e) the advantage gained, or to be gained, by the respondent;
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> (f) the number of times the offending conduct occurred;
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> (g) whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;
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> (h) the possibility of remediating or rehabilitating the respondent;
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> (i) the impact on the respondent of criminal or other sanctions or penalties;
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> (j) the impact of the proposed penalty on the respondent;
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> (k) the need for specific and general deterrence;
>
> (l) the need to ensure the public's confidence in the integrity of the profession; and
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> (m) the range of penalties imposed in similar cases.

[12] Further guidance about the purpose and goal of disciplinary action proceedings was considered by a review board in *Law Society of BC v. Nguyen*, 2016 LSBC 21. Para. 36 succinctly articulates those principles:

> [36] Still, disciplinary action chosen, whether a single option from s. 38(5) or a combination of more than one of the options listed, must fulfill the two main purposes of the discipline process. The first and overriding purpose is to ensure the public is protected from acts of professional misconduct, and to maintain public confidence in the legal profession generally. The second purpose is to

> promote the rehabilitation of the respondent lawyer. If there is conflict between these two purposes, the protection of the public and the maintenance of public confidence in the profession must prevail, but in many instances the same disciplinary action will further both purposes. See *Ogilvie*, paras. 9-10; *Lessing*, paras. 57-61.

[13] The hearing panel in *Law Society of BC v Dent,* 2016 LSBC 5, confirmed it was not necessary to go over each and every *Ogilvie* factor and proposed instead that, generally, these factors could be consolidated into four main headings:

(a) nature, gravity and consequences of conduct;

(b) 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.

[14] The hearing panel in *Dent*, at paras. 20 to 23, described these four consolidated factors as follows:

> **Nature, gravity and consequences of conduct**
>
> [20] This would cover the nature of the professional misconduct. Was it severe? Here are some of the aspects of severity: For how long and how many times did the misconduct occur? How did the conduct affect the victim? Did the lawyer obtain any financial gain from the misconduct? What were the consequences for the lawyer? Were there civil or criminal proceedings resulting from the conduct?
>
> **Character and professional conduct record of the respondent**
>
> [21] What is the age and experience of the respondent? What is the reputation of the respondent in the community in general and among [their] fellow lawyers? What is contained in the professional conduct record?
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> **Acknowledgement of the misconduct and remedial action**
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> [22] Does the respondent admit his or her misconduct? What steps, if any, has the respondent taken to prevent a recurrence? Did the respondent take any remedial action to correct this specific misconduct? Generally, can the respondent be rehabilitated? Are there other mitigating circumstances, such as mental health or addiction, and are they being dealt with by the respondent?

> **Public confidence in the legal profession including public confidence in the disciplinary process**
>
> [23] Is there sufficient specific or general deterrent value in the proposed disciplinary action? Generally, will the public have confidence that the proposed disciplinary action is sufficient to maintain the integrity of the legal profession? Specifically, will the public have confidence in the proposed disciplinary action compared to similar cases?

[15] This framework and the further analysis and discussion in our reasons below guide the Panel's consideration of the issues in this stage of the proceeding.

ISSUES

[16] There are two issues to resolve:

(a) Firstly, what is the appropriate disciplinary action in these circumstances?

(b) Secondly, what is the appropriate disposition for the issue of claimed costs and disbursements by the Law Society?

ISSUE 1: WHAT IS THE APPROPRIATE DISCIPLINARY ACTION

The Parties Submissions

[17] The parties are in agreement that the appropriate disciplinary action in this matter is a four-month suspension.

[18] Counsel for the Law Society has provided detailed submissions supporting this submission. Much of the analysis below follows the analysis of these submissions. Similarly, detailed submissions were provided by counsel for the Law Society on the second question of costs.

[19] The Respondent provided detailed written submissions and oral arguments at the hearing, highlighting his continued thematic approach to these proceedings. The Respondent's submissions focused on thoroughly explaining his perception of the merits of the issues in the family law matter that gave rise to the admitted court order breaches.

DISCUSSION

[20] The Respondent retired from practice and is now a former member.

[21] As discussed above, much of the time spent on the submissions of the Respondent has been made more complex and lengthy as the Panel finds that the Respondent has sought to justify the admitted breaches as a function of excessive zeal for the underlying cause the Respondent was advocating for in the family law matter.

[22] The Respondent's approach to this stage of the proceedings was further demonstrated in the failed application to have counsel for the Law Society removed in a preliminary application: *Linde DA preliminary applications*, paras. 17 to 20.

Nature, gravity and consequences of misconduct

[23] The Law Society submits that the seriousness of the misconduct should be the prime determinant of the disciplinary action to be imposed. The Panel accepts that this view is consistent with prior LSBC Tribunal decisions, as summarized by the hearing panel in *Law Society of BC v. Gellert,* 2014 LSBC 5.

[24] The Panel adopts the following passage from para. 39 of *Gellert:*

> We have taken the *Ogilive* factors into account in the Respondent's case. But not all of the factors deserve the same weight in all cases. For instance, the nature and gravity of the misconduct will usually be of special importance (*MacKenzie*, (*supra*), p. 26-1; *Law Society of BC v. Williamson*, 2005 LSBC 19, para. 36; *Law Society of BC v. Harder*, 2006 LSBC 48, para. 9; *Law Society of BC v. Goulding*, 2007 LSBC 39, para. 4; *Law Society of BC v. Skogstad*, 2009 LSBC 16, para. 6; *Law Society of BC v. McRoberts*, 2011 LSBC 4, para. 29), not only because this factor in a sense encompasses several of the others, but also because it represents a principal benchmark against which to gauge how best to achieve the key objective of protecting the public and preserving confidence in the legal profession. Indeed, this key objective is the prism through which all the *Ogilvie* factors must be applied, a message that shines through clearly in the discussion in *Ogilvie* itself at paras. 9 and 10, and has since been affirmed in other decisions such as *Lessing*, (*supra*), at paras. 57 to 61.

[25] The issue of the importance of maintaining public confidence in the legal profession is summarized at para. 19 of *Ogilive*.

> The public must have confidence in the ability of the Law Society to regulate and supervise the conduct of its members. It is only by the maintenance of such

> confidence in the integrity of the profession that the self-regulatory role of the Law Society can be justified and maintained.

[26] The Panel accepts the submission of the Law Society, and the importance of this public interest analysis. Another way to consider the public interest duties relates to the collective reputation of the legal profession as opposed to merely considering an individual respondent and the aggravating and mitigating factors relevant to an individual case.

[27] The authorities provide important distinctions in support of considering the collective reputation of the legal profession in contrast with governing criminal law sentencing principles.

[28] As stated by the Saskatchewan Court of Appeal in *Merchant v. Law Society of Saskatchewan*, 2014 SKCA 56 at para. 119:

> [119] The general approach to sentencing in disciplinary proceedings was explained by Wilkinson J.A. in *Merchant v. Law Society of Saskatchewan*, 2009 SKCA 33:
>
> > 98 However, the sentencing approach in disciplinary proceedings is different than in criminal courts. In *Law Society of Upper Canada v. Kazman*, [2008] L.S.D.D. No. 46, the Law Society Appeal Panel considered the philosophy of sentencing in disciplinary matters and its unique considerations. The panel quoted extensively from *Bolton v. Law Society*, [1994] 1 WLR 512 (CA). The critical distinction between sentencing in criminal matters and sentencing in disciplinary matters is highlighted in this paragraph:
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> > > [74] A criminal court judge… is rarely concerned with the collective reputation of an accused's peer group but is free to focus instead on the individual accused to the exclusion of most other considerations. On the other hand, law society discipline panelists must always take into account the collective reputation of the accused licensee's peer group - the legal profession. According to *Bolton*, it is the most fundamental purpose of a panel's order. This is a major difference between the criminal court process and a law society's discipline process. It is largely this difference that causes many principles of criminal law, such as mitigation, to have less effect on the deliberations of Law Society discipline panels. It is a difference easy to lose sight of, but one that should be ever in mind.

[29] The administration of justice relies on lawyers and parties in litigation to abide by court orders. Diligence, thoughtfulness, and prudence are minimum expectations in relation to compliance with court orders.

[30] The Law Society has submitted the following passage from *MacKenzie: Lawyers and Ethics*; *Professional Responsibility and Discipline*, (Carswell 1993), at para. 26:17, pages 26-43 and 26-44:

> Although most participants in the discipline process might agree that similar penalties should be imposed for similar cases of misconduct, penalties imposed for similar misconduct differ widely, both within and among jurisdictions. This is largely due to the fact that one of the main purposes of the process is to protect the public. It may be entirely appropriate that a lawyer who is proven to be incorrigible be disbarred for the same conduct for which a different lawyer is reprimanded if the discipline hearing panel is reasonably satisfied that the likelihood of recurrence is minimal in the latter case.
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> Factors frequently weighed in assessing the seriousness of a lawyer's misconduct include the extent of injury, the lawyer's blameworthiness and the penalties that have been imposed previously for similar misconduct. In assessing each of these factors, the discipline hearing panel focuses on the offence rather than on the offender and considers the desirability of parity and proportionality in sanctions and the need for deterrence. The panel also considers an array of aggravating and mitigating factors, many of which are relevant to the likelihood of recurrence. These aggravating and mitigating factors include the lawyers prior discipline record, the lawyer's reaction to the discipline process, the restitution (if any) made by the lawyer, the length of time the lawyer has been in practice, the lawyer's general character, and the lawyers' mental state.

[31] The Respondent has readily admitted and cooperated with parts of this process, namely admitting most of the voluminous Notice to Admit and conceding and agreeing to key points advanced by the Law Society. Somewhat paradoxically, the proceeding was made more complex by the Respondent through procedural motions and focusing submissions on tangential considerations.

[32] The Panel accepts that breaching a court order is one of the most serious forms of misconduct. The *Code of Professional Conduct for British Columbia* requires that lawyers obey court orders in accordance with their duties to the state and courts:

> 2.1-1 To the state
>
> (a) A lawyer owes a duty to the state, to maintain its integrity and its law. A lawyer should not aid, counsel or assist any person to act in any way contrary to the law.
>
> 2.1-2 To courts and tribunals
>
> (a) A lawyers conduct should at all times be characterized by candour and fairness. The lawyer should maintain toward a court or tribunal a courteous and respectful attitude and insist on similar conduct on the part of clients, at the same time discharging professional duties to his clients resolutely and with self respecting independence.

[33] The Panel accepts the submission of the Law Society that this form of advocacy, described throughout these proceedings as excessively zealous, went beyond the bounds of ethics. What became apparent at the hearing was that the Respondent has been able to leverage extra-legal considerations, such as the media, in prior cases, with some strategic benefit and success.

[34] The Panel finds that in the circumstances of this case it was a risky strategy to talk to the press about the case as it was currently before the courts and subject to restrictions. It is a cautionary tale to consider the risk of employing such extra-legal strategies as a legal advocate in similar circumstances to the instant case.

[35] As stated by the review panel in *Lessing*:

> [118] As to the breaches of the court orders and contempt finding, it is the particular duty of the Law Society to uphold and protect the public interest in the administration of justice by ensuring the independence, integrity, honor and competence of lawyers; *Legal Profession Act*, s. 3(b). A lawyer's failure to abide by court orders and being found in contempt cuts very close to the bone and requires a strong response.

[36] Of significant impact to the Panel in this matter is the awareness of the Respondent providing press interviews about sensitive topics restricted by Canadian court orders to American news outlets where the Respondent admitted there was no jurisdiction for the BC Supreme Court to govern. The Respondent has, throughout these proceedings, attempted to frame court orders and the disciplinary proceedings as some form of restraint on freedom of expression, something that is not borne out by reality.

[37] The Law Society submits that approximately four months after the facts and determination phase of this proceeding, the Respondent gave a 2-hour interview to an

Internet-based reporter, who was advised about the jurisdictional issue in a troubling way. The Law Society frames this is as reprehensible conduct. The Panel finds this conduct to be extremely disappointing. It raises a significant concern that the Respondent's conduct in breaching court orders will reoccur. Additionally, it raises concerns about the possibility of the Respondent's rehabilitation. Were it not for the fact that the Respondent is currently a former member, such behaviour would be relevant to the appropriate sanction and in particular whether conditions on practice should be imposed. In this case, concerns about rehabilitation and the likelihood of the misconduct reoccurring are best left to a credentials panel in the unlikely event the Respondent applies for reinstatement.

[38] The Panel also finds that while no evidence of actual harm has been submitted, it is patently obvious that very serious harm could have been occasioned as a result of the breaches. The very nature of the court orders dealing with private and personal information of a minor should have been dealt with much more care. The Panel has provided commentary in the F&D Decision. In the present analysis, the Panel finds that it was foreseeable that a breach could have resulted in harm, and it considers these circumstances in that light as an aggravating factor.

The Respondent's Character and Professional Conduct Record

[39] In the present matter, the Respondent has practiced law in British Columbia since 1971 with significant experience in family law. The Respondent has authored a book about divorce and has appeared as counsel frequently in the Courts.

[40] The Respondent has undoubtedly assisted many clients over his years of practice and sincerely assisted the clients he sought to serve. The Respondent has also worked through legal aid.

[41] The Respondent has however had a challenging experience with the Law Society of British Columbia since 1971.

[42] The Law Society cites commentary from *Lessing*, to guide this Panel's consideration of any relevant professional conduct record.

[43] At paras. 71 to 74 of *Lessing* the review panel stated:

> [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 is 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:
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> (a) the dates of the matters contained in the conduct record;
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> (b) the seriousness of the matters;
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> (c) the similarity of the matters to the matters before the panel; and
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> (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.

[44] The Law Society has submitted a summary of the Respondent's professional conduct record as of November 29th, 2023 ("PCR"). The Respondent's PCR includes ten conduct reviews, two conditions on practice, one instance of recommendations by practice standards and one administrative suspension. The conditions on practice required the Respondent to have either the Law Society, or a senior member of the bar, review advertising in advance. The conduct review report dated December 8, 1986 addressed the Respondent's conduct in giving a press conference and a radio interview. The report stated the following:

> [The Respondent] was clearly warned that unless he slowed down and exercised careful judgment in some of his marketing activities or some of his other, perhaps non-marketing activities in the media, he could very well find himself subject to further investigation and/or discipline by the Law Society. [The Respondent] indicate he fully understood this …

A subsequent conduct review dated June 24, 2003 addressed complaints about statements made on the Respondent's website. The Committee observed that the Respondent "has a philosophy in which he truly believes but that an ongoing unabated belief in the philosophy tends to create a loss of objectivity in the wording of his advertising copy."

[45] A thorough review of the professional conduct record reveals some common themes, namely interactions the Law Society has found problematic in relation to dealing with public communications and what can be described generally as advocacy zeal beyond the appropriate bounds of ethics. Accordingly, the Panel finds the professional conduct record to be an aggravating factor and a consideration in granting the Law Society it's requested four-month suspension.

Acknowledgement of the Misconduct and Remedial Action

[46] When a respondent acknowledges the misconduct and takes remedial action it can be a mitigating factor. As set out in these reasons and in prior decisions of this tribunal, the Respondent has on the one hand, accepted and admitted the breaches but then on the other hand, continues to obfuscate the issues and attempt to relitigate the issue that gave rise to the court order breaches. The Panel is unaware of similar circumstances before the Tribunal. While it is correct to find that the Respondent has admitted the misconduct, it is contextualized in a dominant focus on other considerations that detract from the admissions to some degree. At best, the Respondent's attempt to re-argue or justify the underlying issues surrounding the breaches is found to contextualize the breaches; at worst, it is a deflection technique that erodes the conduct acknowledgment.

[47] The Panel finds that in the totality of the circumstances of this hearing, the manner in which the proceedings unfolded do not demonstrate that the Respondent demonstrated meaningful acknowledgment of the misconduct.

[48] The Respondent continued to display excessive zeal, which was consistent with the behaviors that gave rise to the order breaches and on balance, consequently this is a neutral factor.

Public Confidence in the Legal Profession and the Disciplinary Process

[49] As set out earlier, Court orders must be obeyed. Failure to do so must result in sanction to some degree. Public confidence in the legal profession would otherwise be eroded

The Range of Penalties in other Cases

[50] In support of an order for a four-month suspension, the Law Society relies on *Merchant v. Law Society of Saskatchewan*, 2014 SKCA 56, in which the respondent was awarded a three-month suspension on each of two allegations to run concurrently because they were part of the same transaction. The first was for breaching a court order that required his firm to pay certain settlement proceeds into court and the second was for

counseling and/or assisting his client to act in defiance of the same order. The Law Society submits that as a result of the Respondent's repeated egregious behaviour and lack of understanding of his role as counsel, the sanction should be more severe.

[51] The Panel agrees with the parties that, except in the rarest of circumstances, a lawyer who fails to comply with court orders should face some sort of suspension.

[52] The Respondent does not rely on any other authorities but submits that a commitment to changing practices is evidenced by his retirement. The reality is that unless the Respondent re-applies to practice law, which is highly unlikely, the public interest is sufficiently protected with a four-month suspension on the terms sought by the Law Society.

[53] Having considered the totality of the evidence and the parties' submissions, the Panel finds that minimal risk to the public is a consideration, and the appropriate sanction on a global basis is the four-month suspension sought by the Law Society and agreed to by the Respondent. The Panel finds there is no reason to depart from the joint proposal by the parties.

ISSUE 2: WHAT IS THE APPROPRIATE COSTS ORDER?

[54] The jurisdiction to order costs flows from section 46 of the *Act* and Rule 5-11 of the Law Society Rules.

[55] The Panel may order the Respondent to pay tariff costs of a hearing and there is an ability to set a time for payment. The Rules require the Panel to have regard to the tariff and schedule 4 in the calculation of any costs award. The mandatory language requires compliance with this approach.

[56] However, a panel may order no costs or an amount other than that permitted by the tariff if in the judgment of the panel it is reasonable and appropriate to do so. As such, the Panel has the option of ordering some or all of the costs be reduced based on the Respondent's financial circumstances.

[57] The factors to consider when determining whether a costs order should depart from the tariff includes:

(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.

[58] The Law Society submits that there is no rational basis to depart from a tariff costs order.

[59] The Law Society submits that it was successful in proving professional misconduct against the Respondent. The Law Society relies on *Law Society of BC v. Huculak*, 2023 LSBC 5 at para. 66 for the proposition that if the Respondent does not pay costs, they are effectively paid by the profession's members.

[60] The Respondent proffered some evidence at the hearing and provided further evidence in his subsequently filed affidavit that the Panel finds sympathetic in terms of considering financial circumstances. The Respondent is now retired and not earning an income from the practice of law. The Respondent closed his practice in 2015 except for a few files and subsequently resigned from the practice of law in December 2023. The Respondent is renting a one-bedroom apartment. He has no assets other than a 2015 Ford Escape. His little income does not cover his living expenses.

[61] The Panel finds that the Respondent's approach to the tribunal proceedings caused delay and expense. This delay and expense is the same delay and expense the Respondent submits is unfair. Respectfully, the Panel finds that much of the delay in the proceedings was an insistence on seeking a public audience and the abandoned submission that the disciplinary process was an infringement on the Respondent's freedom of expression.

[62] The Panel also finds that a substantial amount of time was spent by the Respondent on irrelevant and highly inflammatory submissions. For example, during the facts and determination stage, the materials relating to the failed bias application contained nearly 350 pages of information. Inflammatory and disrespectful comments about the Law Society and a former Chief Justice of the Supreme Court of British Columbia were provided by way of reference to a "trigger warning" that need not be repeated for the object of these reasons.

[63] The Respondent ought not be relieved of the obligation for costs and disbursements that are fundamentally a result of strategic decisions to dispute the process in a manner that has been the cause of much of the delay and expense. The offence is serious, and the amount of the tariff costs is appropriate given the complexity of the dispute. This complexity was largely, if not entirely, attributable to how the Respondent sought to

argue the matter. However, the Respondent is no longer practicing and his financial circumstances are grave.

[64] Having fully considered the submissions of the parties and the further written submissions and authorities, the Panel orders the Respondent to pay 50% of the costs sought by the Law Society within four months from the date this decision is issued. This balances the Respondent's responsibility for the unnecessary complexity of the hearing with his current financial circumstances.

ORDER

[65] The Respondent is suspended for four months, which will commence on the first business day following the Respondent's reinstatement as a member of the Law Society of British Columbia, if the Respondent applies and his application for reinstatement is granted.

[66] The Respondent shall pay costs of $12,168.75 payable within four months from the date of this order.