

2024 LSBC 48
Hearing File No.: HE20230012
Decision Issued: December 20, 2024
Citation Issued: July 27, 2023

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

MARC ANDRE ECKARDT also known as MARC ANDRE SCHEIRER

RESPONDENT

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

Hearing date: October 7, 2024

Panel: Nicole Byres, KC, Chair
Erwin Nest, Public representative
James Struthers, Bencher

Discipline Counsel: Mandana Namazi

No one appearing on behalf of the Respondent

INTRODUCTION AND BACKGROUND

[1] The Respondent was called to the Bar in California, USA in June 1996 and called to the Bar in Washington State, USA in November 2000. Following a credentials hearing, the Respondent was called to the Bar in British Columbia on January 5, 2015.

[2] On November 15, 2022¹ in an unrelated matter the Respondent was given a six-month suspension following a December 13, 2021 facts and determination decision² based in part on a finding the Respondent failed to act honourably and with integrity on November 22, 2018 when he consumed alcohol and sat in close proximity and put his arm around his client (collectively, this facts and determination decision and disciplinary action decision are referred to as “*Scheirer #1*”).

[3] On December 6, 2023³ in another unrelated matter, the Respondent was disbarred following a May 25, 2023 facts and determination decision⁴ that the Respondent committed conduct unbecoming and professional misconduct based on a November 27, 2020 conviction for sexual assault of a prospective client that occurred on February 28, 2018 (collectively, this facts and determination decision and disciplinary action decision are referred to as “*Scheirer #2*”).

[4] On June 2, 2023 the Respondent became a former member of the Law Society.

[5] The Law Society issued a citation on July 27, 2023 (the “Citation”) against the Respondent for sexually harassing his client, AR (the “Complainant”) between approximately January 2016 and November 2017 contrary to one or more of rules 2.2-1 and 6.3-3 of the *Code of Professional Conduct for British Columbia* (the “*BC Code*”) and his fiduciary duties, including through one or more of the following:

- (a) unwelcome comments,
- (b) unwelcome advances, and
- (c) unwelcome physical contact.

[6] On June 6, 2024, in the facts and determination decision of the Citation (“F&D Decision”) the Panel found that the Respondent sexually harassed the Complainant contrary to rules 2.2-1 and 6.3-3 of the *BC Code*. The Panel also found the Respondent’s conduct was a marked departure from conduct expected of a lawyer and constituted professional misconduct.

NON-ATTENDANCE BY THE RESPONDENT & DECISION TO PROCEED

[7] At the commencement of this disciplinary action hearing on October 7, 2024 (“DA Hearing”), the Respondent was not in attendance. The Panel stood down for 15 minutes

¹ *Law Society of BC v. Scheirer*, 2022 LSBC 46 (“*Scheirer #1 DA*”).

² *Law Society of BC v. Scheirer*, 2021 LSBC 51 (“*Scheirer #1 F&D*”).

³ *Law Society of BC v. Scheirer*, 2023 LSBC 50 (“*Scheirer #2 DA*”).

⁴ *Law Society of BC v. Scheirer*, 2023 LSBC 18 (“*Scheirer #2 F&D*”).

in case the Respondent was delayed, however the Respondent did not contact the Tribunal nor dial in to the Zoom hearing after the adjournment.

[8] The Panel considered the following to decide whether the DA Hearing should proceed in the Respondent's absence:

- (a) section 42(2) of the *Legal Profession Act* (the "Act") permits a panel to proceed with a hearing of a citation in a respondent's absence provided the panel is satisfied the respondent was served with the notice of hearing;
- (b) Law Society counsel informed the Panel that on June 21, 2024 the LSBC Tribunal sent a letter and Notice of Hearing to the Respondent via email, and that the Notice of Hearing referred to October 7 and 8, 2024 as the hearing date;
- (c) the Tribunal file contains the Tribunal's June 21, 2024 letter to the Respondent and the Notice of Hearing;
- (d) the Tribunal's email attaching its letter and Notice of Hearing was addressed to the Respondent's email address which the Respondent used to communicate with the Law Society;
- (e) Law Society counsel informed the Panel that on June 26, 2024 it corresponded with the Respondent using the same email address that the Tribunal used to send the Notice of Hearing;
- (f) on June 26, 2024, five days after the Notice of Hearing was sent to the Respondent, Leanne Hargrave, Senior Legal Assistant at the Law Society sent an email to the Respondent using the same email address that the Tribunal used to send the Notice of Hearing;
- (g) Affidavit #2 of Leanne Hargrave, affirmed September 26, 2024, attached the Respondent's June 26, 2024 email response to Leanne Hargrave's email of that same date; and
- (h) under Rule 10-1(1)(b)(iii) a recipient (including a former lawyer) may be served with a notice by sending it by electronic mail to the last known electronic mail address of the recipient.

[9] The Panel was satisfied that the Respondent had notice of the DA Hearing, and ordered that the DA Hearing proceed in the Respondent's absence.

GENERAL PRINCIPLES GOVERNING DISCIPLINARY SANCTIONS

Primary Purpose of Discipline and Considerations when Imposing Discipline

[10] The primary purpose of disciplinary proceedings is to fulfill the Law Society's mandate set out in section 3 of the *Act*: to uphold and protect the public interest in the administration of justice by ensuring the independence, integrity, honour, and competence of lawyers.

[11] *Law Society of BC v. Ogilvie*, 1999 LSBC 17 first articulated 13, non-exhaustive factors that should be considered when deciding on appropriate disciplinary sanctions. *Ogilvie* was followed in later decisions including the leading decision of *Law Society of BC v. Lessing*, 2013 LSBC 29.

[12] The *Ogilvie* factors were later consolidated into the following four general factors in *Law Society of BC v. Dent* 2016 LSBC 5, at paras. 19 to 23:

- (a) the nature, gravity and consequences of the conduct;
- (b) the character and professional conduct record of the respondent;
- (c) the respondent's acknowledgement of the misconduct and remedial action; and
- (d) public confidence in the legal profession, including public confidence in the disciplinary process.

[13] The review panel in *Lessing*, at paras. 57 to 61 also stated that the disciplinary action imposed must be consistent with the Law Society's mandate to protect the public interest, per section 3 of the *Act*, and stated that where there is a conflict between the protection of the public and rehabilitation, the protection of the public including protection of public confidence in lawyers generally will prevail.

[14] In 2022, the panel in *Law Society of BC v. Lee*, 2022 LSBC 5, at para. 9 summarized the approach panels should take when considering appropriate discipline, in light of *Dent* and *Lessing*:

... After *Lessing* and *Dent*, the modern approach is to group the various factors under four headings, recognizing that many of the *Ogilvie* factors overlap. Additionally, the modern approach recognizes two particular concerns: (a) the protection of the public, including public confidence in the disciplinary process and the legal profession; and (b) rehabilitation of the lawyer. Where those two concerns conflict, the protection of the public prevails.

[15] Subsections 38(5) and (7) of the *Act* govern the disciplinary actions available to this Hearing Panel, and such actions range from a reprimand to disbarment.

[16] In addition, the review panel in *Law Society of BC v. Faminoff*, 2017 LSBC 4, confirmed the following principles at paras. 84 and 87:

... Decisions on penalty are 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.

While there is no prescribed formula, the consideration of aggravating or mitigating circumstances will assist in determining the appropriate disciplinary action and which other cases are most similar in order to define the range of appropriate penalties.

Disbarment of a Former Member

[17] As noted in paragraph [3] of the decision above, the Respondent was previously disbarred on December 6, 2023 in relation to a separate citation and so the Respondent is a former member.

[18] Sections 1 and 38 of the *Act* and Rule 4-1(2) of the Law Society Rules (the “Rules”) establishes that the hearing panel has authority to discipline a former member of the Law Society under the following provisions:

- (a) section 1 of the *Act* defines “lawyer” to include a “former member” for the purposes of Part 4 (Discipline) and Part 5 (Hearings and Appeals) and the definition of “disbar” also includes a declaration against a former lawyer;
- (b) Rule 4-1(2) of the Rules confirms that the rules on discipline apply to a former lawyer;
- (c) once a panel has made an adverse determination against a respondent under section 38(4)(b) (such as a finding of professional misconduct or a breach of the *Act* or Rules), section 38(5) then requires a panel to impose one or more of the sanctions set out in that sub-section, including disbarment; and
- (d) section 38(4)(b)(v) confirms that if the respondent is an individual who is not a member of the society, conduct that would, if the respondent were a member, constitute professional misconduct, conduct unbecoming the profession or a breach of this *Act* or the rules.

ANALYSIS

[19] The Law Society's position is that, given the serious nature of the Respondent's misconduct, the Respondent's prior history, and the absence of any mitigating factors, disbarment is the appropriate disciplinary action. The Law Society also submits that disbarment will protect the public interest, including public confidence in the legal profession, and its ability to self-regulate.

[20] The Law Society also seeks costs of \$9,394.06 payable within one year of the date the Panel's decision is issued in this matter, or on such other date as the Hearing Panel may order.

Nature and Gravity of the Misconduct

[21] In the F&D Decision the Panel found the Respondent's conduct towards the Complainant during a June 2016 office visit and an October 2016 court appearance (collectively referred to as the "Misconduct") met the legal test of sexual harassment because the Misconduct was sexual in nature, unwelcome by the Complainant, and detrimentally affected the Complainant.

[22] The Misconduct occurred while the Respondent was in a solicitor-client relationship with the Complainant. In the F&D Decision, the Hearing Panel accepted the Complainant's evidence that in the aftermath of the June 2016 office visit she was "frozen with fear and petrified," and that she cried in her car⁵.

[23] The Hearing Panel also accepted the Complainant's evidence that she was afraid to say or do anything about the Misconduct for fear that she would not be able to get another lawyer because he had been appointed by legal aid, and because any complaint about the Respondent would be her word against that of the Respondent⁶. It was not until the Complainant learned about the May 25, 2023 facts and determination decision (the first phase of the hearing in *Scheirer #2*⁷) which found the Respondent had engaged in sexual assault of a prospective client, that the Complainant felt that she would be believed if she came forward with a complaint about the Misconduct.

[24] The Complainant also testified about her personal history of dealing with trauma and abuse while growing up and in her most recent relationship, and that her experience with the Respondent led to her feeling "helpless and invisible".⁸

⁵ F&D Decision, para. 67

⁶ F&D Decision, para. 22

⁷ *Law Society of BC v. Scheirer*, 2023 LSBC 18 (*Scheirer #2 F&D*).

⁸ F&D Decision, para. 70

[25] The Law Society submits that the nature and gravity of the Misconduct is extremely serious and requires a sanction of equal weight, and cited several cases in support of its submissions that lawyer misconduct arising from sexual harassment must be strongly denounced.

[26] The Panel found that the Misconduct was in breach of the Respondent's obligations under rules 2.2-1 and 6.3-3 of the *BC Code*, and that the Misconduct was a marked departure from conduct expected of a lawyer and constituted professional misconduct.

[27] Rule 2.2-1 of the *BC Code* requires lawyers to carry on the practice of law and discharge all responsibilities to clients honourably and with integrity. The importance of acting with "integrity" is explained in the commentary to this rule.

[1] Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. *If clients have any doubt about their lawyers' trustworthiness, the essential element in the true lawyer-client relationship will be missing.* If integrity is lacking, the lawyer's usefulness to the client and reputation within the profession will be destroyed, regardless of how competent the lawyer may be.

[2] Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer's irresponsible conduct. Accordingly, *a lawyer's conduct should reflect favourably on the legal profession, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety.*

[emphasis added]

[28] Sexual harassment is a form of discrimination based on sex, and therefore, the Misconduct also breaches the principles of the *BC Human Rights Code* which prohibits discrimination against a person regarding any service customarily available to the public.

[29] The Supreme Court of Canada in *R v. Kirkpatrick*, 2022 SCC 33 at para. 51 confirmed a person's right to consent to and set boundaries on which they are prepared to be touched:

... all persons are entitled to refuse sexual contact at any time, and for *any reason*... All persons 'have an inherent right to exercise full control over their own bodies, and to engage only in sexual activity they wish to engage in'. Each person's ability to set the boundaries and conditions under which they are prepared to be touched is grounded in concepts as important as physical inviolability, sexual autonomy and agency, human dignity and equality.

[emphasis in original; citations omitted]

[30] In *Law Society of Manitoba v. Davis*, 2001 MBL 4, at para.15, the hearing panel discussed the nature and severity of sexually harassing clients:

... There is an important bond of trust that exists between a lawyer and his or her client. This requires a lawyer to be above reproach at all times. Sexual harassment is a serious type of professional misconduct because it involves a breach of trust that fundamentally undermines the lawyer-client relationship. Moreover, in principle, this breach can be as serious, or more serious, as one resulting from the misappropriation of trust funds. Lawyers who abuse their positions of power and trust by sexually harassing their clients commit a serious breach of the standards of professional conduct which are required to be observed by all members of the Society. ...

[emphasis added]

[31] The Law Society submits that the Misconduct was further and markedly aggravated by the vulnerability of the Complainant. The Panel agrees, based on the Complainant's evidence that:

- (a) she was fearful of men because of violence and abuse she had suffered while growing up including while in foster care, and more recently at the hands of her former common law spouse; and
- (b) she was afraid that if she complained about the Respondent's conduct, she would not be believed and not then have the legal assistance that she required.

[32] For the reasons set out above, the Panel agrees with the Law Society's submission that the nature and gravity of the Misconduct is extremely serious and the Respondent's conduct in sexually harassing the Complainant must be strongly denounced.

Character and Professional Conduct Record of the Respondent

[33] The Respondent's professional conduct record ("PCR") is lengthy and contains a number of Practice Standards recommendations including a monitored recovery agreement, several undertakings limiting the Respondent's practise of law, and two prior citations, both of which resulted in findings of professional misconduct relating to inappropriate and offensive behaviour towards female clients. Details of the Respondent's PCR are described as follows:

Practice Standards recommendations – February 2019

- (a) The Respondent was referred to Practice Standards in January 2019. In February 2019, the Practice Standards Committee did the following:
- (i) ordered a Practice Review;
 - (ii) recommended that the Respondent enter into a monitored recovery agreement (the “MRA”) with undertakings; and
 - (iii) directed that, if the Respondent did not willingly enter into a monitored recovery agreement with undertakings, the Practice Standards Committee seek an Order requiring him to comply with one.

Practice Standards recommendations – September 2019

- (b) In September 2019, the Practice Standards Committee made the following additional recommendations that the Respondent: (i) review the MRA and in the future ensure that he remain fully compliant with his undertakings; (ii) provide a signed undertaking to the Practice Standards Committee that he will not practise criminal law; (iii) address inadequate task management by instituting an extensive Bring Forward system; and (iv) provide quarterly compliance reports to Practice Standards.

Condition/limitation on practice – undertaking of October 22, 2019

- (c) On October 22, 2019, the Respondent gave an undertaking not to practise criminal law until released from his undertaking by the Practice Standards Committee (the “Criminal Law Undertaking”).

Condition/limitation on practice – undertakings of January 26, 2021

- (d) On January 26, 2021, the Respondent gave the following undertakings in regards to his practice of law: (i) not to practise family law; (ii) not to meet with any person under the age of 19 years or a female of any age unless there is another person over the age of 19 years present at all times in the same room; (iii) not to meet with any person in his home or other private residence; (iv) not to meet with any person in his law office outside of the standard business hours of Monday to Friday from 9 am to 5 pm; (v) advise other lawyers in the same office building of his undertakings; and (vi) advise the manager of Monitoring and

Enforcement in writing, with at least 14 days' notice, if he intends to begin practicing in a new location.

Scheirer #1

Facts & Determination

- (e) In December 2021, a hearing panel made findings of professional misconduct in relation to the Respondent's failure to act honourably and with integrity when he met with his family law client at his home on November 22, 2018. The Respondent had consumed alcohol prior to the meeting, and then offered his client a martini, which she declined. Subsequently, the Respondent had another drink and changed from his business suit into shorts and an unbuttoned shirt. Then he sat in close proximity to his client on the couch where she was seated and placed his arm behind her. The client was uncomfortable and offended and fled from the Respondent's home. The Respondent also failed to provide his client with the requisite quality of service. The hearing panel noted that the Respondent's behaviour was inappropriate and offensive. It was dishonourable and clearly impacted the client's trust in him and in the profession more broadly.⁹

Disciplinary Action

- (f) In November 2022, a hearing panel ordered a six-month suspension and costs of \$24,084.86 in relation to the findings of professional misconduct. The hearing panel noted that the Respondent had not acknowledged his misconduct in any meaningful or significant way.¹⁰ It was clear the complainant was negatively affected by the Respondent's actions.¹¹ The hearing panel agreed with the Law Society's submission that an analogy could be drawn between cases dealing with sexual harassment/unwanted sexual touching and the findings of professional misconduct by the panel. Such treatment of a client by a lawyer is a serious breach of trust and can result in significant damage to a client's sense of personal integrity and dignity.¹² The panel commented that there is a strong public interest in deterring this kind of misconduct.¹³

⁹ *Law Society of BC v. Scheirer*, 2021 LSBC 51, at para. 37 (*Scheirer #1 F&D*).

¹⁰ *Law Society of BC v. Scheirer*, 2022 LSBC 46, at para. 41 (*Scheirer #1 DA*).

¹¹ *Scheirer #1 DA*, fn 11 above, at para. 36.

¹² *Scheirer #1 DA*, fn 11 above, at para. 38.

¹³ *Scheirer #1 DA*, fn 11 above, at para. 39.

Limitation on practice – undertakings of April 12, 2022

- (g) On April 12, 2022 the Respondent gave the following undertakings: (i) to not practise family law; (ii) to not meet with any person under the age of 19 years or a female of any age unless there is another person over the age of 19 years present at all times in the same room; (iii) to not meet with any person in his home or other private residence; (iv) to not meet with any person in his law office outside of the standard business hours of Monday to Friday from 9 am to 5 pm; (v) to advise other lawyers in the same office building of his undertakings; and (vi) to advise the manager of Monitoring and Enforcement in writing, with at least 14 days' notice, if he intends to begin practicing in a new location.

Practice Standards recommendations – May 2022

- (h) On May 25, 2022, the Practice Standards Committee recommended that the Respondent submit to a medical assessment by a specialist.

Practice Standards direction – September 2022

- (i) On September 22, 2022, the Practice Standards Committee directed that the Respondent enter into a new MRA reflecting recommendations from the medical specialist.

Resignation requiring consent – June 2, 2023

- (j) In March and April 2023, the Law Society consented to the Respondent's resignation as follows: (i) Executive Director's Consent to Resignation dated March 10, 2023; and (ii) the Discipline Committee's permission to resign as a member on April 27, 2023.

Scheirer #2**Facts & Determination**

- (k) In May 2023, a hearing panel found that the Respondent committed professional misconduct when he sexually assaulted a potential client – a crime for which he was criminally convicted and sentenced. The hearing panel found that the client was vulnerable and had come to seek legal advice from the Respondent. Instead, he took advantage of her vulnerability, touched her sexually, and implied that she needed to be

“nice” to him in order to have him assist her with her legal problem.¹⁴
 The hearing panel characterized the conduct as reprehensible, dishonourable and displaying a complete lack of integrity.¹⁵

Disciplinary Action

- (1) In December 2023, a hearing panel disbarred the Respondent in relation to the findings of professional misconduct in *Scheirer #2*.¹⁶ The hearing panel noted that the Respondent’s PCR was lengthy and included a prior citation for alarmingly similar conduct. The panel held that the Respondent’s conduct was predatory, reprehensible and should be given the highest possible sanction. The panel noted that the PCR was a significantly aggravating factor.¹⁷

Application of the PCR to consideration of appropriate discipline

[34] The review panel in *Lessing* considered the significance of a respondent’s PCR and its application to determining the appropriate disciplinary action. In particular, the review panel outlined four non-exclusionary factors that a hearing panel may consider in assessing the weight of a respondent’s PCR when assessing specific disciplinary action:¹⁸:

- (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.

[35] The Law Society’s submissions referred generally to the concept of progressive discipline when determining the appropriate disciplinary action. However, typically, progressive discipline is applied in situations where prior discipline did not deter a respondent from later, similar behaviour. That is not the case here. Although the events in the Citation (which the Hearing Panel found constituted sexual harassment) pre-dated all of the matters noted in the Respondent’s PCR, those events were not brought to the attention of the Law Society until after the Practice Standards Committee’s

¹⁴ *Scheirer #2 F&D*, at para. 38.

¹⁵ *Scheirer #2 F&D*, at para. 39.

¹⁶ *Scheirer #2 DA*, *supra*.

¹⁷ *Scheirer #2 DA*, at para.26.

¹⁸ *Lessing*, at para. 72

recommendations and orders, the Respondent's undertakings, *Scheirer #1*, and the Respondent's resignation as a member of the Law Society of BC.

[36] That said, the Panel does not believe it is appropriate to consider appropriate sanctions as if the Respondent was a "first offender". This is consistent with the decision in *Law Society of BC v. Taschuk*, 2000 LSBC 22 in which the respondent was found to have committed professional misconduct in 2000 by sharp practice that occurred in 1995. Like the Respondent, Taschuk had a clean professional conduct record at the time of his 1995 misconduct but he was subsequently reprimanded for another incident of sharp practice in 1996. On review of the hearing panel's decision to reprimand Taschuk, the review panel substituted a two months suspension and said the following at paragraph 45:

45. If we assessed Penalty without regard to the other matters, Mr. Taschuk would reap an insupportable benefit from the separation of the proceedings, irrespective of the order in which they were determined. In each of three cases he would have been treated as a "first offender". While that may be correct with respect to "previous convictions" in criminal law, such considerations must usually give way when an administrative body applies penalties with a view, principally, to upholding the public interest. In an appropriate case, such as where the member genuinely believed that he or she behaved correctly in the other cases taken to make up the pattern, and did not, until his or her view was corrected by the Hearing Panel, understand his or her actions to constitute professional misconduct, unfairness may result from looking to the pattern in imposing penalty. That is not the case here. In this case, the Hearing Panel gave Mr. Taschuk the most minimal penalty the law permits for professional misconduct, a reprimand. In the view of the Benchers, the seriousness of the professional misconduct and the pattern of other similar "sharp practice" professional misconduct which is now established about Mr. Taschuk, make the "stand alone" penalty of reprimand an inappropriately lenient disposition of this aspect of the Citation. A more severe penalty is required on these circumstances, notwithstanding the other, essentially-remedial, penalties imposed on Mr. Taschuk for the incompetency findings.

[37] Accordingly, the Panel views the first of the above noted *Lessing* factors (the dates of the matters contained in the PCR), and the fourth factor (any remedial actions taken by the Respondent) as being less relevant than the remaining factors, namely the similarity of the matters in the PCR to the matters before the Panel and the seriousness of the matters.

[38] The events that lead to *Scheirer #1* and *Scheirer #2* were similar to the events in this matter in that these matters all involved the Respondent preying on vulnerable female

clients. Such misconduct is serious and antithetical to the Respondent's obligations of integrity in accordance with rule 2.2-1 of the *BC Code* as well as his fiduciary duties, and were a direct violation of rule 6.3 of the *BC Code*.

Acknowledgement of the Misconduct

- [39] The Respondent testified at the facts and determination phase of the Hearing and apologized to the Complainant for making her feel uncomfortable in 2016 and for any discomfort that he put her under.¹⁹ Notably, this apology did not indicate any acknowledgement of his misconduct, but rather the effect of his actions on the Complainant. Thus, the Panel does not consider the apology to be an acknowledgement of his misconduct.
- [40] As noted, the Respondent did not attend the DA Hearing. In response to the Law Society's June 26, 2024 email notifying him of the Law Society's sanction position, the Respondent emailed Discipline Counsel on June 27, 2024 as follows: "I agree. Allegedly 8 years ago I hugged a client, who was w [sic] me for one year, and I allegedly touched her leg. Disbarment is appropriate". Thus, while the Respondent acknowledges that the Law Society is seeking the serious sanction of disbarment, he continues to avoid acknowledging the seriousness of the misconduct, and he demonstrates a lack of remorse.

Public Confidence in the Legal Profession and Disciplinary Process

- [41] The public must have confidence in the legal profession and in the ability of the Law Society to self-regulate the legal profession.
- [42] The need for public confidence in the legal profession and in the Law Society's ability to govern itself and disciplinary process underlies the primary purpose of disciplinary action as stated in *Law Society of BC v. Tak*, 2014 LSBC 57, at para. 26:

26 The primary purpose of disciplinary action is set out in the following decisions: *Law Society of BC v. Hordal*, 2004 LSBC 36 at paragraph 51; *Law Society of BC v. Gellert*, 2014 LSBC 05 paragraph 36; and *Law Society of BC v. Hill*, 2011 LSBC 16. In *Hill*, the hearing panel commented at paragraph 3 that:

It is neither our function nor our purpose to punish anyone. The primary object of proceedings such as these is to discharge the Law Society's statutory obligation, set out in section 3 of the *Legal Profession Act*, to

¹⁹ F&D Decision, 2024 LSBC 27, at para. 42

uphold and protect the public interest in the administration of justice. Our task is to decide upon a sanction or sanctions that, in our opinion, is best calculated to protect the public, maintain high professional standards and preserve public confidence in the legal profession.

...

[43] The Law Society's submissions highlighted the increased emphasis in recent years on addressing the issue of sexual harassment in the legal profession, including the Law Society of BC's efforts to address sexual harassment and other discrimination within the profession in order to ensure that legal services provided to the public are free from sexual harassment and discrimination.

[44] The Law Society referred to *Law Society of Ontario v. Suh*, 2023 ONLSTH 152, at paras. 15 to 16, where the tribunal made the following comments that are relevant here:

15 Disrespectful or abusive conduct, and verbal or physical sexual misconduct in particular, affect the reputation of the legal professions, and penalties must be calibrated to send a message that such conduct is serious and unacceptable. ... This is achieved in part by deterring both Mr. Suh and other licensees from engaging in conduct that denies the right of women who interact with members of the legal professions to equal treatment and respectful communications and actions from the licensees.

16 Tribunal panels, like the courts and society generally, are increasingly attuned to the abuse of power that can be exercised by persons in authority and the vulnerability of junior female employees and clients generally, and the obstacles that face these women in reporting this kind of behaviour, participating in investigations, and testifying at hearings. For all these reasons hearing panels must act decisively if they are to maintain public confidence in the regulation of the professions.

Appropriate Sanction

[45] The Panel agrees with the Law Society that the Respondent's misconduct has harmed the reputation of the profession and must be strongly denounced, and that a second disbarment will send a strong message of deterrence towards this type of misconduct and is necessary to maintain public confidence in the integrity of the legal profession.

[46] The public interest requires that the Respondent not be permitted to practice law and accordingly, the Panel orders that the Respondent be disbarred.

COSTS

[47] The Law Society seeks an order of costs in the amount of \$9,394.06, payable by the Respondent within one year of the Panel's issuance of a decision in this matter.

[48] The Panel accepts the Law Society's calculation of costs under the Tariff, and agrees that an award of costs in the amount sought by the Law Society is appropriate here.

ORDERS

[49] Applying the factors discussed, the Panel orders that:

- (a) the Respondent is disbarred pursuant to section 38(5) of the *Act*; and
- (b) pursuant to Rule 5-11 of the Rules, the Respondent must pay costs to the Law Society in the total amount of \$9,394.06 payable within one year of the date this decision is issued.