2025 LSBC 02
Hearing File No.: HE20240002
Decision Issued: January 2, 2025
Citation Issued: March 13, 2020

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL

REVIEW BOARD

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

SAMUEL THEODORE GRAY COLE

RESPONDENT

DECISION OF THE REVIEW BOARD

Hearing dates:	October 3, 2024
Board:	Herman Van Ommen, KC, Chair Karen Ameyaw, Lawyer Karen Kesteloo, Public representative Jaspreet Singh Malik, Bencher Krista Simon, Lawyer
Discipline Counsel:	Ilana Teicher
Counsel for the Respondent:	Patrick Sullivan

INTRODUCTION

[1] This is a review of a disciplinary action decision issued by a hearing panel on February 2, 2024.

[2] By a citation issued on March 13, 2020, (the "Citation") the Law Society made the following allegations against the Respondent:

1. Between approximately March 19, 2014 and April 3, 2014, you counseled and or facilitated KR, the principal of your client C Ltd., a publicly listed entity, to indirectly purchase shares of C Ltd. when you knew, or ought to have known, that indirect participation by the principal in the private placement financing contravened the directive of a securities regulator, contrary to rules 2.2-1 and 3.2-7 of the *Code of Professional Conduct for British Columbia* [(the "*Code*")].

   This conduct constitutes professional misconduct, pursuant to section 38(4) of the *Legal Profession Act* [(the "*Act*").

2. Between approximately February 4, 2014 and April 3, 2014, you counseled and or facilitated KR, the principal of your client C Ltd., a publicly listed entity, to indirectly purchase shares of C Ltd., without making reasonable inquiries as to whether KR was in possession of material undisclosed information regarding C Ltd. such that KR's direct or indirect participation in the share purchase may contravene section 57.2(2) of the *Securities Act*, RSBC 1996, c. 418, contrary to rules 2.2-1 and 3.2-7 of the [*Code*].

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

3. On or about March 10, 2014 and April 2, 2014, you assisted your client C Ltd., a publicly listed entity, in filing documents with a securities regulator that represented there was no undisclosed material information about C Ltd., without making reasonable inquiries about the accuracy of those representations in circumstances where inquiries were required, contrary to rules 2.2-1 and 3.2-7 of the [*Code*].

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

HISTORY OF PROCEEDINGS

[3] The facts and determination hearing took place over the course of six days, on February 22 to 26, 2021 and April 12, 2021. Reasons were issued on October 13, 2021 (*Law Society of BC v. Cole*, 2021 LSBC 40 (the "F&D Decision")), and at paragraph 67 the Hearing Panel found professional misconduct on allegation 1. The Hearing Panel found that the Respondent's conduct contravened rules 2.2-1 and 3.2-7 of the *Code*. Allegations 2 and 3 were dismissed.

[4] The Respondent appealed the F&D Decision. A hearing before a panel of the Court of Appeal was held on February 13, 2023. In reasons issued on May 16, 2023 (*Cole v. The Law Society of British Columbia*, 2023 BCCA 199 (the "Appeal")), the Court of Appeal dismissed the appeal, finding that the Respondent (appellant on appeal) failed to establish any palpable or overriding errors in the Hearing Panel's finding of fact, or the inferences it made based on those findings of fact.

[5] The disciplinary action hearing ("DA Hearing") took place on November 6, 2023, and the decision of the Hearing Panel was issued on February 2, 2024 (the "DA Decision"). The Hearing Panel ordered the Respondent be suspended for four months, to commence on March 1, 2024 along with a fine of $20,000, payable within six months of the end the suspension or any other agreed upon date. The Respondent was ordered to pay costs of $29,842.50 payable within six months of the end the suspension or any other agreed upon date.

[6] Following this, the Law Society issued a Notice of Review, dated March 1, 2024. The suspension and payment of the fine have been stayed pending this review. The issue to be considered on review was stated as:

1. Did the hearing panel err in ordering a suspension and a fine?

[7] The order sought by the Law Society in the Notice of Review was stated as follows:

1. [T]hat the current disciplinary action of a four-month suspension and $20,000 fine be substituted with a suspension of a term greater than four months.

ISSUES

[8] The issues to be decided on this review are:

1. Did the Hearing Panel err in ordering both a suspension and a fine?

2. Did the Hearing Panel err in failing to provide adequate reasons for ordering both a suspension and a fine?

STANDARD OF REVIEW

[9] Section 47 of the *Legal Profession Act* (the "*Act*") permits a review board to confirm the decision of a hearing panel or substitute it with a decision the hearing panel could have made.

[10] In *Harding v. Law Society of British Columbia*, 2017 BCCA 171, at paragraphs 7 and 8, the court adopted the reasoning in *Law Society of BC v. Hordal*, 2004 LSBC 36, at paragraphs 9 through 11, wherein the review board described the standard of review as follows:

> [9] In *Hops*, [1999] LSBC 29, while considering the appropriate scope of review for "findings of proper standards of professional and ethical conduct", the Benchers adopted the language of the Honourable Mr. Justice Branca when he wrote in *Re: Prescott* (1971) 10 D.L.R. (3d) 446, at 452:
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> > "The Benchers are the guardians of the proper standards of professional and ethical conduct. The definition in my judgment shows that it is quite immaterial whether the conduct complained of is of a professional character, or otherwise, as long as the Benchers conclude that the conduct in question is "contrary to the best interests of the public or of the legal profession". The Benchers are elected by their fellow professionals because of their impeccable standing in the profession and are men [and women] who enjoy the full confidence and trust of the members of the legal profession of this Province."
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> [10] It follows from that observation that the Benchers must determine whether the decision of the Hearing Panel was "correct", and if it finds that it was not, then the Benchers must substitute their own judgment for that of the Hearing Panel as is provided in Section 47 (5) of the *Legal Profession Act*.
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> [11] There is a clear caveat articulated in the authorities to the general application of the correctness test in cases where the Hearing Panel has had the benefit of the *viva voce* testimony of witnesses and have had the opportunity to assess the credibility of those witnesses by observing their demeanor in the proceedings. In those cases the Benchers ought to accord some deference to the Hearing Panel on matters of fact where determinations have been made by a Hearing Panel on factual matters in dispute.

[11] Furthermore, in *Law Society of BC v. Berge*, 2007 LSBC 7, the review board described the standard of review (correctness) in this way:

> [20] This standard permits the Benchers to substitute their own view for the view of the Hearing Panel as to:
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> i) whether the Applicant's conduct constitutes conduct unbecoming a lawyer; and/or
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> ii) whether the penalty imposed was appropriate.
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> [21] The standard of review described above is subject to one qualification, namely, that where issues of credibility are concerned, the Benchers should only interfere if the Hearing Panel made a clear and palpable error. See *Law Society of BC v. Hops*, [1999] LSBC 29 and *Law Society of BC v. Dobbin*, [2000] LSDD No. 12.

[12] Thus, the *Hordal*/*Berge* standard of correctness is the standard of review to be applied by this Review Board. With reference to *Harding*, deference will be accorded to the Hearing Panel for determinations of matters of fact based on the assessment of witness credibility absent any clear and palpable errors.

[13] In determining whether a particular sanction is correct, a review board must consider whether the sanction falls within a reasonable range of sanctions applied in similar situations. A review board should not "tinker" with a decision if the sanction falls within the reasonable range of outcomes. If the sanction is within a reasonable range, then it is correct. If it is not, then the review board should substitute its own judgment. (*Hordal,* at para. 19; *Law Society of BC v. Nguyen,* 2016 LSBC 21, at para. 32; *Law Society of BC v. Faminoff,* 2017 LSBC 4, at para. 79)

THE PROFESSIONAL MISCONDUCT AND DISCIPLINARY DECISIONS

Principles and F&D Decision

[14] Evidence was presented at the facts and determination phase of the hearing of the Citation on February 22 through February 26, 2021, including the evidence of five witnesses. Oral arguments were made April 12, 2021.

[15] The Hearing Panel found that the Respondent's conduct contravened rule 2.2-1 and rule 3.2-7 of the *Code.* Rule 2.2-1 states that a lawyer has a duty to act honourably and with integrity in all aspects of the practice of law.

[16] The Commentary to rule 2.2-1 explains why honesty and integrity is important to the legal profession:

> [*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.*
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> [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.*
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> [3] Dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice. Whether within or outside the professional sphere, if the conduct is such that knowledge of it would be likely to impair a client's trust in the lawyer, the Society may be justified in taking disciplinary action.
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> [emphasis added]

[17] Rule 3.2-7 prohibits a lawyer from engaging in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud.

[18] The Hearing Panel made findings of fact that are relevant to this Review Board's decision, some of which are highlighted below. The circumstances of the misconduct are set out in the F&D Decision, the written reasons on Appeal, as well as the DA Decision.

[19] This Review Board relies on the chronology of events set out at paragraphs 18 through 44 of the F&D decision and will not repeat them here. The Hearing Panel noted that the Respondent's evidence accorded with that chronology, however it did not find the Respondent to be a credible witness, describing him, at para. 46, as:

> …evasive and selective in his answers. He gave the impression that he was using his knowledge and experience as a lawyer to tailor his evidence rather than answer honestly and completely.

[20] Evaluating all the evidence, the Hearing Panel found that the Respondent counselled the principal of his client, KR, to circumvent the securities regulator's

directive by having another person take part in the private placement financing on his behalf. The Hearing Panel points to some of the specific evidence at paragraph 53 of the F&D Decision in support of its finding. The Hearing Panel also found that the Respondent facilitated KR indirectly taking part in the private placement. The Respondent was intimately well-informed in respect of every aspect of the acquisition, and while there was no formal retainer, the evidence supports that there was a reasonable expectation that the Respondent was rendering legal services to KR.

The Appeal

[21] The Respondent filed a notice of appeal on November 12, 2021, seeking to set aside or quash the Hearing Panel's determination of professional misconduct on allegation 1.

[22] An application by the Law Society to seek an extension of time to file a cross-appeal was dismissed.

[23] In Reasons for Judgment dated May 16, 2023, the Court of Appeal dismissed the appeal, as the Respondent failed to establish a palpable or overriding errors in the Hearing Panel's findings of fact or inferences based on those facts.

Principles and the DA Decision

[24] In the DA Decision, the Hearing Panel framed the questions for consideration as follows, at para. 1:

> What is the appropriate disciplinary action for a lawyer who knowingly and purposely circumvents the directions of a [securities] regulator for the attempted benefit of their client?

[25] The sanction following a determination of misconduct must relate to a purpose of the discipline process. There are two main purposes: the first is protection of the public, including public confidence in the disciplinary process and public confidence in lawyers generally; and the second is rehabilitation of the lawyer who has committed the misconduct (*Nguyen,* at para. 20).

[26] Section 38(5) of the *Act* provides that when an adverse determination is made against a respondent following a disciplinary hearing, a hearing panel must order one or more of the following disciplinary actions:

(a) a reprimand,

(b) a fine not exceeding $50,000,

(c) limitations or conditions on practice,

(d) a suspension from the practice of law or from one or more fields of law, and

(e) disbarment.

[27] A hearing panel may also require a respondent to submit to the jurisdiction of the Practice Standards Committee, appear before a board of examiners, or practice only in certain practice settings. In addition, a panel "may make any other orders and declarations and impose any conditions or limitations it considers appropriate" (*Act*, s. 38(7)).

[28] Both parties presented a broad range of decisions, although no decision closely fit the circumstances and all were distinguishable.

[29] The Law Society's submission on disciplinary action was that the circumstances called for a twelve-month suspension, on the basis of the serious nature of the ethical failures. The Law Society submitted that other lawyers must know that such misconduct will result in a serious sanction, and that the public must be protected from such ethical failures.

[30] The Law Society offered the following decisions for consideration:

(a) *Law Society of Upper Canada v. Di Francesco*, 2003 CanLII 33487 (one-month suspension);

(b) *Law Society of British Columbia v. Gregory*, 2022 LSBC 17 (two-months);

(c) *Law Society of BC v. Hsu*, 2019 LSBC 29 (three-month suspension with a practice restriction);

(d) *Law Society of BC v. Rai*, 2011 LSBC 2 (three-month suspension);

(e) *Law Society of Upper Canada v. Peddle*, 2001 CanLII 21502 (three-month suspension);

(f) *Law Society of BC v. Nielsen*, 2009 LSBC 8 (six-month suspension);

(g) *Law Society of Upper Canada v. Tucciarone*, 2005 ONLSHP 36 (six-month suspension);

(h) *Yungwirth v. Law Society of Upper Canada*, 2004 ONLSAP 0001 (12-month suspension); and

(i) Law Soci*ety of Alberta v. Ralh*, 2023 ABLS 9 (18-month suspension).

[31] There were several cases cited where disbarment was ordered.

[32] The Respondent agreed a suspension was appropriate but submitted that a two-month suspension coupled with a $20,000 fine was appropriate. The Respondent pointed to the genuine efforts he has made to rehabilitate himself which mitigates the sanction, as well as the passage of time since the misconduct.

[33] The Respondent offered up twenty-six cases, including the following:

(a) *Law Society of BC v. MacGregor*, 2019 LSBC 26 (15-day suspension);

(b) *Law Society of BC v. Chiang*, 2013 LSBC 28, 2014 LSBC 55 (one-month suspension);

(c) *Law Society of BC v. Galambos*, 2007 LSBC 31 (one-month suspension);

(d) *Law Society of BC v. Shursen Hultman*, 2014 LSBC 13 (one-month suspension);

(e) *Law Society of Upper Canada v. Sussman*, [1995] LSDD No 17 (one-month suspension);

(f) *Law Society of BC v. Kirkhope*, 2013 LSBC 35 (45-day suspension);

(g) *Law Society of BC v. Hittrich*, 2021 LSBC 16 (2-month suspension); and

(h) *Law Society of BC v. Vlug*, 2018 LSBC 26 (four-month suspension).

[34] As well, there were cases referenced where only a fine was ordered.

[35] This Review Board considered all of the cases presented by the parties.

[36] The Hearing Panel framed its conclusions as follows, at para. 30 of the DA Decision:

> Considering all the decisions we have been presented with, in the Panel's view the range of suspensions for a *clear, knowing breach of a regulator's direction* in the context of what was otherwise a legitimate attempt to create a successful business where the lawyer has acknowledged their misconduct and taken appropriate steps

> to rehabilitate themselves, is *four to eight months*. The Respondent *cannot be put at the absolute bottom of this range.* His misconduct was serious, he does not have the mitigation of an admission at the outset of this matter. Because of the passage of time the Panel accepts that the inclusion of a fine in the amount of $20,000 in addition to a four-month suspension will meet the public interest of general deterrence. This is one of those exceptional cases where more than one type of disciplinary action can be appropriately included to meet the public interest. The Panel emphasizes that this unusual sanction is only appropriate because of the unique facts of this case.
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> [emphasis added]

DECISION AND ANALYSIS OF REVIEW BOARD

Law and Application of Legal Principles

[37] The language of the *Act* is permissive and provides that a sanction may be composed of "one or more" disciplinary actions. Thus, panels have acknowledged that it is not accurate to say that a combined fine and suspension is never available (*Nguyen*, at para. 35).

[38] Panels recognize that if misconduct is serious enough to warrant a suspension, a fine is inadequate. A suspension sends a stronger message of disapproval than a fine and is therefore a more suitable form of disciplinary action to address serious misconduct. (*Law Society of BC v. May*, 2024 LSBC 25 at para. 76) Imposing a fine in addition to a suspension will often serve no practical purpose because it has been determined that a suspension is the appropriate means of protecting the public and promoting the lawyer's rehabilitation (*Nguyen, Hordal*).

[39] As the review board in *Nguyen* explained, imposing more than one type of disciplinary action may not promote the policies underlying the *Act,* where one single type of disciplinary action is best suited for doing so. As a result, ordering any additional disciplinary actions will not have a salutary effect. As sanctions, a fine and a suspension "are generally seen to fall at different locations on an escalating range of restrictions or impositions that may be placed on a lawyer in order to achieve the goals of the disciplinary process" (*Nguyen*, at paras. 37 to 38).

[40] Thus, a fine and a suspension will most often represent alternative forms of sanction, with a suspension being appropriate in more serious cases of professional misconduct (*Nguyen*). A review board should consider the following factors in determining whether to impose a suspension versus a fine: (a) elements of dishonesty; (b)

repetitive acts of deceit or negligence; and (c) significant personal or professional conduct issues (*Law Society of BC v. Martin,*2007 LSBC 20, *Nguyen)*.

[41] In the Respondent's case, the Hearing Panel acknowledged the guidance from *Nguyen* that the imposition of both a suspension and a fine "should only be done where it demonstrably fits the principles underlying a disciplinary action." There is a concern that the use of a fine in combination with a shorter suspension "could be seen as allowing lawyers to 'pay to practice' and thereby undermine the confidence in the legal profession" (DA Decision, para. 26).

[42] The Hearing Panel considered the four general categories of factors, known as the *Ogilvie* factors, be considered when determining the appropriate disciplinary actions:

(a) nature, gravity and consequences of the 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.

(Law Society of BC v Ogilvie, 1999 LSBC 17 at para. 10; *Law Society of BC v Dent*, 2016 LSBC 5 paras. 19 to 23)

[43] The Hearing Panel characterised the misconduct as a serious breach of the Respondent's ethical obligations. The Respondent engaged in activities and behaviours that are never acceptable for lawyers. No one was attempting to defraud anyone, although the Respondent's conduct had serious consequences for his client, KR, who was sanctioned by the securities regulator.

[44] The Hearing Panel considered that the Respondent does not have a professional conduct record. He tendered two supportive letters from colleagues at his current law firm. The Respondent acknowledged his misconduct at the DA Hearing, and explained that he had taken steps to rehabilitate himself and that he understands the gravity of his conduct.

[45] The Hearing Panel identified the following mitigating, neutral and aggravating factors in the DA Decision, at para. 7:

(a) It is mitigating that the Respondent has accepted responsibility for his misconduct.

(b) The Respondent's efforts to rehabilitate himself is a mitigating circumstance.

(c) A neutral circumstance is that the Respondent was not taking part in a fraudulent scheme. KR was genuinely attempting to create a successful luxury luggage company. He had sought the Respondent's advice for that purpose and was trying to get the business off the ground. There was no attempt by anyone involved to defraud anyone.

(d) That the Respondent was a junior lawyer at the time of these events is a neutral factor. Lawyers are expected to restrict their practices to areas in which they are competent. Being a junior lawyer is an explanation but not an excuse and does not mitigate the seriousness of his conduct.

(e) The passage of ten years since these events is a neutral factor. The length of time to adjudicate the complaint neither mitigates nor aggravates the circumstances of this case. However, it is a factual circumstance of this case that the Panel must consider in the context of all the facts of the case.

(f) An aggravating factor is that the Respondent approached accomplishing the reverse takeover and the private placement with AW as a nominee without regard to his ethical obligations. The Respondent was intent on accomplishing his client's objectives at all costs. The Respondent facilitated a direct violation of the regulator's direction that no insiders take part in the private placement and in the course of doing so filed materials with the regulator that contained false information.

Analysis: Did the Hearing Panel err in ordering both a suspension and a fine?

[46] The starting point for determining appropriate disciplinary action is the protection of the public interest in the administration of justice (*Law Society of BC v. Lessing*, 2013 LSBC 29 at para. 54). The Hearing Panel appropriately applied the *Ogilvie* factors and concluded that the misconduct in question was serious and required a commensurate sanction. There is no doubt that a suspension is required in these circumstances.

[47] The Hearing Panel acknowledged that the imposition of a fine and a suspension is unusual and should only be done where "it demonstrably fits the principles underlying a disciplinary action." Fines are a lesser form of sanction than suspensions and use of a fine could be seen as allowing lawyers to "pay to practice", which undermines confidence in the legal profession (DA Decision, para. 26, citing *Nguyen*).

[48] The public must be able to rely on lawyers to practice with integrity. Lawyers who counsel and/or facilitate breaches of law or other rules or regulations must know that they will lose the privilege of practicing law.

[49] The Hearing Panel considered the effect of a suspension on the Respondent's legal practice and acknowledged that speculation about the effect of a suspension on the lawyer's future ability to practice should be considered; however, it is one of a number of factors to be considered. The Hearing Panel was alive to the significant hardship a lengthy suspension will have on the Respondent, but there was little evidence on this point beyond what could reasonably be characterized as generic.

[50] The Respondent was cross-examined on his affidavit in the DA Hearing. He was given an opportunity to describe the impact different lengths of suspension would have on himself, his firm and his clients. Generally-speaking, he described anything more than four months as having a significant impact. He described that he would likely have to give up his partnership and position at the firm, and "find something likely quite different to do with my career." This very strong statement of hardship was not corroborated by any other evidence.

[51] The Respondent tendered evidence from two senior lawyers at his firm who addressed the issue of hardship. In an affidavit dated sworn on August 9, 2023, David Budd provided the following evidence:

> 27. If Sam were suspended for a significant period of time, it would be detrimental to both his clients and to Cassels. His clients would lose the benefit of a trusted advisor, one whom in many cases has been working with them for years, which may adversely affect their ability to appropriately respond to legal issues and matters that arise during the term of his suspension. …

[52] In a letter to the Law Society dated August 16, 2023, Jeff Durno stated that the longer the suspension the greater the impact on the Respondent, his clients and others at the Respondent's firm, and that "a lengthy suspension would be very difficult if not impossible to recover from in our field of work." He wrote that:

> I, and others at the firm, will be able to manage some of Sam's clients and ongoing files during a short suspension period, but it will be difficult to continue to do so for more than a couple months before we will risk losing clients for Sam and for the firm. The fact is, deals and transactions happen quickly in the securities market and clients need to act within limited windows of opportunity. …

[53] There was information in Mr. Durno's letter regarding the Respondent's positive working relationships with members of the staff of the TSX Venture Exchange. However, there was no evidence from staff or a client, nor evidence of specific transactions or deals anticipated in the near future. Without more specific evidence, this Review Board is left to consider the hardship caused, generally, by time away from legal practice. Lawyers who step away from their regular practice for reasons related to illness or injury, maternity and parental leave, or even an education leave, whether an associate lawyer, associated counsel or a partner, are able to return and resume their practice. If there was some specific hardship to the Respondent, such as loss of employment or a partnership position, then that evidence should have been tendered. To be clear, this type of evidence is not necessarily determinative of the sanction, in this or any other case, before a hearing panel. Furthermore, the stigma of a suspension for a finding of professional misconduct is a neutral factor for our consideration.

[54] On another point, this Review Board notes that there is a striking inconsistency in the Hearing Panel's findings and the order. The conduct of the Respondent was serious enough to warrant a suspension. The Hearing Panel found that the appropriate range of sanction was a suspension falling somewhere between four and eight months and that the Respondent was precluded from serving a suspension at the bottom of that range because of the seriousness of the misconduct. And yet, the ultimate order of a suspension was for four months – the very bottom of the range.

[55] The Hearing Panel stated that allowing lawyers to "pay to practice" undermines public confidence in the legal profession, and yet it appears that the fine imposed, in addition to the shortest suspension in the noted range, is permitting just that.

[56] A hybrid sanction is appropriate in an exceptional case. There is no explanation or further analysis of the decision to order both a fine and a suspension or to reconcile the combination of sanctions. The result is a lack of a rationale or explanation for ordering a suspension and a fine.

[57] The Law Society submits that a sanction that combines both a suspension and a fine, falls outside the range of reasonable sanctions and is therefore "incorrect". It argues that the *Martin* test is met and a suspension is best suited for addressing the seriousness of the misconduct and the goals of sanctioning. Accordingly, an additional fine does not address any sanctioning goals that are not covered by a suspension.

[58] The Law Society frames its submission as follows:

> …It was deceitful, intentional, and evidenced moral turpitude. It manifested in a number of ways, over a period of months. It engaged significant professional conduct issues, as honesty, integrity and the counselling and facilitating of

> dishonest conduct offend the core values of the legal profession. A suspension higher than four months is required to address the serious misconduct issues in this case, and as a fine serves no apparent sanctioning purpose and was only included in order to shorten a lengthier suspension, one should not have been ordered at all.

[59] The Respondent suggests this Review Board's task is "to consider whether the sanction as a whole meets the underlying principles of protecting the public and rehabilitating the lawyer at issue", citing *Nguyen*. The Respondent submits that there is no evidence of a shift away by panels from ordering a combination of sanctions, and instead submits that recent decisions have encouraged panels to use s. 38(7) creatively to further the purposes of disciplinary action, with reference to *Law Society of BC v. Gurney (Re)*, 2017 LSBC 32. Of note, in *Gurney* the Respondent was suspended for a six-month period for financial misconduct; a payment was ordered representing a fee paid to him as a result of the professional misconduct. The hearing panel in that case outlined its rationale for ordering the payment and thus, the disgorgement of the fee was directly tied to the misconduct in question.

[60] The Review Board agrees with the Respondent that, in the appropriate circumstances, a fine or other type of sanction can serve a further practical purpose once a suspension is ordered. However, the facts of this case do not support it.

[61] The Respondent argued that this is not a circumstance such as in *Hordal,* where a fine was instituted in place of a period of suspension even though a longer suspension was required. However, this is not evident from the decision of the Hearing Panel.

[62] The Respondent submits that in determining that he no longer poses a threat to the public, the panel implicitly recognized that a longer period of suspension was not required to achieve the sentencing goals and that a combined sanction would more properly meet those underlying principles in the unique circumstances of this case. The panel's decision to order a suspension of four months and a fine of $20,000 is within the reasonable range of sanctions in the circumstances and the combined sanction is reasonably necessary to meet the underlying principles of the sanctioning process. As such, the panel's sanctioning decision was correct in the circumstances.

[63] However, this submission fails to take into account the fact that the Hearing Panel specifically outlined a range of discipline options based on the cases presented by the parties, and stated that the Respondent's sanction should not be at the bottom of that range. The most reasonable interpretation is that the Hearing Panel has, in fact, substituted some additional period of suspension with a fine.

[64] The Respondent argues that the panel's decision was reasonable, since he no longer poses a threat to the public and the panel implicitly recognized that a longer period of suspension was not required to achieve the sentencing goals and that a combined sanction would more properly meet those underlying principles in the unique circumstances of this case.

[65] There are two challenges with this argument. Firstly, it is *not* implicit in the decision that the Hearing Panel recognized that a longer period of suspension was not required. By contrast, as noted above, the Hearing Panel specifically noted the range of appropriate suspensions and stated that the appropriate sanction in light of the Respondent's misconduct must not be at the bottom of the range.

[66] Secondly, neither the Hearing Panel, nor the Respondent in submissions, has identified what unique circumstances exist in this case, such that the exceptional sanction of a combined suspension and fine is appropriate.

[67] Public protection can only be met through the imposition of a suspension of enough length that will not only deter the Respondent from committing misconduct in the future but will also deter other lawyers from counseling and facilitating dishonest conduct. Importantly, the sanction ordered must also uphold public confidence in the administration of justice and in the legal profession generally. The fine ordered by the Hearing Panel is not tied to any aspect of the misconduct or the intended underlying goals of the sanction.

[68] On the totality of the evidence, this Review Board accepts that a combination of suspension and fine/payment could be appropriate in certain circumstances, but in the Respondent's case it is not appropriate, and thus the decision of the Hearing Panel is not correct.

Review Board's Decision on Disciplinary Action

[69] This Review Board finds that the Hearing Panel made an error when it ordered a hybrid sanction (combination of suspension and fine). This Review Board finds that the Hearing Panel made an error in the range of appropriate sanctions to be considered. Neither the circumstances surrounding the misconduct or of the Respondent, nor the highlighted mitigating factors, amount to exceptional circumstances such that a combination of suspension and fine is appropriate.

[70] With consideration of the *Ogilvie* factors, this Review Board finds as follows, some of which are adopted from the DA Decision:

(a) It is mitigating that the Respondent has accepted responsibility for his misconduct, but only to a minor degree since the admissions came in 2023, only after an unsuccessful appeal.

(b) The Respondent's efforts to rehabilitate himself is a mitigating circumstance.

(c) A neutral circumstance is that the Respondent was not taking part in a fraudulent scheme. The client was genuinely attempting to create a successful luxury luggage company. He had sought the Respondent's advice for that purpose and was trying to get the business off the ground. There was no attempt by anyone involved to defraud anyone.

(d) While there was no attempt to harm anyone, there was harm. An aggravating circumstance is that there was direct harm to the client, who underwent investigation by the regulator and was sanctioned for his involvement in the scheme, impacting his ability to work in his field for several years.

(e) It is a neutral factor that the Respondent was a junior lawyer at the time of these events. Lawyers are expected to be competent. Being a junior lawyer is an explanation but not an excuse and does not mitigate the seriousness of his conduct. All lawyers are expected to be honest and carry out their duties with integrity.

(f) That the Respondent is now a more senior lawyer, a partner, practicing at a large firm with an established practice is a neutral factor. In some respects, a suspension at a more junior level of practice could create more hardship as compared to the Respondent's current situation in a large firm where he has more resources to take care of his practice and his clients while suspended.

(g) The passage of ten years since these events is a neutral factor. The length of time to adjudicate the complaint neither mitigates nor aggravates the circumstances of this case. It is a factual circumstance of this case that the Panel must consider in the context of all the facts of the case, but it does not make this case unique or exceptional that supports a hybrid sanction.

(h) An aggravating factor is that the Respondent approached accomplishing the reverse takeover and the private placement with the nominee without regard to his ethical obligations. The Respondent was intent on

> accomplishing his client's objectives at all costs. The Respondent facilitated a direct violation of the regulator's direction that no insiders take part in the private placement and in the course of doing so filed materials with the regulator that contained false information.

[71] The appropriate discipline for the misconduct in question should be suspension. Having reviewed the authorities presented by counsel, this Review Panel finds that the appropriate range of sanctions to be considered is a suspension of four to twelve months. Decisions where disbarment was ordered are not applicable, nor are decisions where the suspension is less than four months or where there is only a fine ordered. Decisions where a lawyer did not knowingly participate in a fraudulent scheme are not as assistive. In the Respondent's circumstances, if a suspension was supplemented with a fine, it would amount to the "pay to practice" approach that we are cautioned to avoid.

[72] To the extent that the Hearing Panel found that the Respondent's suspension should not be at the lowest end of the range, this Review Board agrees. The Respondent knowingly counselled a client to carry out something contrary to a regulatory body's regulations. The client faced serious repercussions before the regulator. The conduct was carried out over a period of weeks/months, was serious, purposeful, planned and misleading. This is very serious misconduct for anyone, but even more so for a member of the legal profession.

[73] This Review Board finds that a six-month suspension is the appropriate sanction in this case. The seriousness of the misconduct warrants a suspension of this length. A lesser suspension does not acknowledge the gravity of the misconduct in this case. A fine does not supplement a shorter suspension, nor does it meaningfully add to the aim of protection of the public or deterrence.

Did the Hearing Panel err in failing to provide adequate reasons for ordering both a suspension and a fine?

[74] Having found that the Hearing Panel erred in ordering the suspension and fine, this Review Board finds it unnecessary to consider whether the Hearing Panel also erred in respect of the adequacy of its reasons.

CONCLUSION

[75] This Review Board concludes that the Hearing Panel erred in ordering both a suspension and a fine. Having found so, this Review Board concludes that the Hearing Panel's decision should be set aside and substituted with its own decision.

[76] This Review Board orders that the Respondent be suspended for a period of six months, to commence on a date that is 60 days after the date of this decision is issued, or on any other date agreed to by the Law Society.

[77] Having found that the Hearing Panel erred in ordering the suspension and fine, this Review Board finds it unnecessary to consider whether the Hearing Panel also erred in respect of the adequacy of its reasons. However, this Review Board notes that vague references to "uniqueness" and "exceptional" circumstances at play in this case - without explanation - was not helpful to this Review Board's task of reviewing the prior decision.

COSTS

[78] The Review Board will consider costs by way of written submissions.

[79] The Law Society shall have until February 3, 2025 to either file a consent order as to the costs of the review or to file a draft Bill of Costs and its submissions on costs. The Respondent shall have until February 24, 2025 to file any responding materials and the Law Society shall have until March 3, 2025 to file a reply.