2018 LSBC 31
Decision issued: November 6, 2018
Citation issued: October 5, 2017

THE LAW SOCIETY OF BRITISH COLUMBIA

In the matter of the *Legal Profession Act*, SBC 1998, c. 9

and a hearing concerning

NIDA CHAUDHRY

RESPONDENT

DECISION OF THE HEARING PANEL

Written Materials:	July 10, 2018
Panel:	Elizabeth Rowbotham, Chair David Layton, QC, Lawyer Linda Michaluk, Public Representative
Discipline Counsel:	Alison Kirby
Appearing on her own behalf:	Nida Chaudhry

INTRODUCTION

[1] On October 5, 2017, the Law Society issued a citation (the "Citation") alleging that the Respondent had committed professional misconduct in seven different ways, each of which were related to the withdrawal of funds from her trust account or record keeping in relation to her trust and/or general accounts.

[2] These seven allegations of professional misconduct can be summarized as follows:

a. between July 2012 and February 2014, the Respondent misappropriated or improperly withdrew client trust funds by making 13 withdrawals from her trust account, contrary to Rule 3-56 of the Law Society Rules (the "Rules") [now Rule 3-64] ("allegation 1");

b. on three occasions between July 2012 and December 2013, the Respondent withdrew trust funds in purported payment of fees without first preparing a bill and immediately delivering the bill to her clients, contrary to Rules 3-56 and 3-57(2) [now Rules 3-64 and 3-65(2)] ("allegation 2");

c. on one or more of 62 instances spanning from June 2012 to February 2014, the Respondent withdrew trust funds when there were insufficient funds held to the credit of the client on whose behalf the withdrawal was made, contrary to Rule 3-56 [now Rule 3-64] ("allegation 3");

d. the Respondent failed to honour a trust condition imposed on her on August 2, 2012 by opposing counsel on a real estate file, contrary to Chapter 11, Rule 7 of the then in force *Professional Conduct Handbook* ("allegation 4");

e. on September 14, 2012, the Respondent affixed her electronic signature to a Form B mortgage filed with the Land Title Office when she did not have a copy of the mortgage in her possession, contrary to s. 168.3(3) of the *Land Title Act*, RSBC 1996, c. 250 ("allegation 5");

f. between June 2012 and April 2014, the Respondent failed to comply with Rule 3-56 [now Rule 3-64] by withdrawing funds from her trust account:

    i. by way of bank draft, on five occasions;

    ii. by way of cheques that were not marked "trust", on 136 occasions;

    iii. by way of electronic transfers without supporting documentation, on 82 occasions; and

    iv. in payment of her fees, without making the withdrawal by way of cheque to her general account, on 60 occasions ("allegation 6");

g. the Respondent failed to maintain her accounting records in accordance with the provisions of Part 3, Division 7 of the Rules by:

    i. between June 2012 and April 2014, not preparing monthly trust reconciliations of her pooled trust account within 30 days of the effective date of the reconciliation, or at all;

    ii. between June 2012 and April 2014, failing to record trust transactions for her trust account promptly and, in any event, not more than seven days after a trust transaction;

    iii. between June 2012 and April 2014, failing to maintain a book of entry or data source showing all trust transactions or a trust ledger showing separately for each client all trust funds received and disbursed;

iv. failing to retain all supporting documentation for her trust account, including cancelled cheques for June 2012 and bank deposit slips for June 2012 to April 2014;

v. between June 2012 and April 2014, failing to retain all supporting documentation for her general account including bank statements, cancelled cheques and bank deposit slips; and

vi. failing to keep file copies of bills purportedly delivered to four specific clients ("allegation 7").

[3] The Respondent has conditionally admitted all of the allegations in the Citation, and the parties agree that she should be disbarred as a result of this professional misconduct. For the reasons set out below, we have determined that the Respondent's conditional admission is appropriate and that her disbarment falls within the range of fair and reasonable disciplinary outcomes given the circumstances of this case. We have therefore ordered that the Respondent be disbarred.

Rule 4-30 Conditional Admission and Consent to Specified Disciplinary Action

[4] Pursuant to Rule 4-30, by letter dated May 30, 2018 the Respondent tendered to the Discipline Committee a conditional admission to the violations set out in the Citation and a consent to a specific disciplinary action, namely, disbarment.

[5] On June 7, 2018, the Discipline Committee accepted the Respondent's proposal and, pursuant to Rule 4-30(4), instructed discipline counsel to recommend its acceptance to the hearing panel established to conduct the hearing.

[6] Read together, Rules 4-30 and 4-31 permit a hearing panel to either accept or reject a proposal. It may not substitute a different adverse determination or a different disciplinary action from that recommended by discipline counsel.

[7] As explained in *Law Society of BC v. Rai*, 2011 LSBC 02, at paras. 6-8, before accepting a proposal under Rule 4-30, a hearing panel must be satisfied of two things: first, that the proposed admission on the substantive matter is appropriate; and second, that the proposed penalty is within the range of a fair and reasonable disciplinary action in the circumstances.

[8] In particular, it is not the hearing panel's task to decide whether it would have imposed exactly the same disciplinary action had the matter come before it on a contested hearing. Rather, the proposed disciplinary action is accorded deference. This approach allows the Discipline Committee and respondent to craft a creative and fair settlement, while at the same time protecting the public by ensuring that the proposed disciplinary action is

imposed only where it represents a fair and reasonable outcome in the circumstances (*Rai*, at para. 8).

Hearing on Written Materials Only

[9] On June 12, 2018, the Law Society applied to conduct this hearing on written materials only and without an oral hearing pursuant to the Practice Direction entitled "Application for a Hearing in Writing." This application was accompanied by all of the documents required to be considered in order to conduct the hearing on written materials only. It was also accompanied by a letter dated May 30, 2018 from the Respondent, consenting to the hearing proceeding solely by way of written materials.

[10] Given that there was no factual or legal issue with respect to which oral submissions or testimony were required to do justice between the parties (*Law Society of BC v. Lebedovich*, 2018 LSBC 17, at paras. 4-7), we granted the application to conduct the hearing on written materials only, marked the exhibits submitted and proceeded to decide the matter based solely on written materials.

Amendment of the Citation

[11] Many of the allegations in the Citation refer to specific provisions in the Rules that the Respondent is said to have breached. The numbering of most of these Rules changed between the time the alleged conduct occurred and the date of the Citation. After each reference to a Rule that is alleged to have been breached, the Citation therefore includes in square brackets the new numbering of the comparable Rule as it stood when the Citation was issued.

[12] For example, the introductory words of allegation 6 state that the Respondent "failed to comply with Rule 3-56 of the Law Society Rules [now Rule 3-64] and in particular you did one or more of the following:". Allegation 6 goes on to specify four breaches of particular subrules of Rule 3-56 as they stood at the time the alleged conduct occurred. In each instance, the reference to the subrule of Rule 3-56 is followed by a bracketed reference to what purports to be the new numbering of the comparable subrule – that is, the subrule of Rule 3-64 – as it stood when the Citation was issued.

[13] After granting the application to conduct the hearing on written materials only, we noticed that the references in allegation 6 to the four subrules of Rule 3-56 that the Respondent was said to have breached were incorrect. In each instance, however, the accompanying "square bracket" reference cited the correct subrule of Rule 3-64 as it stood when the Citation was issued. We also noticed that the "square bracket" reference in allegation 7(b)

cited two subrules of the current Rule, but that only one of these subrules was applicable to the conduct alleged.

[14] Rule 4-21 allows a hearing panel to amend a citation on its own motion after the hearing has begun, provided the respondent and discipline counsel are given the opportunity to make submissions regarding the proposed amendment. We therefore wrote to the Respondent and counsel for the Law Society proposing amendments to the Citation to correct the errors described above, and providing them with the opportunity to make written submissions if they so wished.

[15] Counsel for the Law Society made written submissions in support of the proposed amendments. The Respondent did not make any written submissions regarding this issue.

[16] Having given the parties an opportunity to make written submissions on the proposed amendments and having considered the written submissions received, we have amended allegations 6 and 7 to remedy the errors described above. These amendments were in the interests of justice. In particular, they corrected minor mistakes that we are satisfied did not mislead the Respondent regarding the nature and substance of the allegations against her, and they did not cause the Respondent any other unfairness.

The Respondent's Admissions

[17] On May 3, 2018, the Law Society served the Respondent with a Notice to Admit. As the Respondent did not respond to the Notice to Admit, pursuant to Rule 4-28(7), she is deemed to have admitted the truth of the facts set out in the Notice to Admit and the authenticity of the documents attached to it.

[18] In addition to admitting the facts recounted in the Notice to Admit, in her letter to the Law Society dated May 30, 2018, the Respondent admitted that she intentionally misappropriated client funds as set out in allegation 1 of the Citation and that she committed professional misconduct by committing the disciplinary violations alleged in allegations 1 to 7 of the Citation.

RELEVANT FACTUAL BACKGROUND

[19] The Respondent attended and passed the Law Society's Professional Legal Training Course in February 2011. She was called and admitted as a member of the Law Society on July 25, 2011.

[20] After her call, the Respondent practised for about 11 months with a small firm in the Lower Mainland.

[21] On June 4, 2012, the Respondent began practising as a sole practitioner through her law firm Infinite Law.

[22] On January 3, 2013, the Respondent completed the Small Firm Management Course as required by Rule 3-28.

[23] The Respondent's 2013 Annual Practice Declaration indicates that her practice was composed of the following areas: 60% family; 25% residential real estate; 6% corporate; 5% civil litigation (plaintiff); 2% creditor remedies; 1% motor vehicle (plaintiff); and 1% wills and estates.

[24] The Respondent remained a sole practitioner until February 3, 2014, at which point she joined a law firm in the Lower Mainland. In June 2015, the Respondent joined TWS Legal Consultants in Dubai, United Arab Emirates, and in November 2017, she became a non-practising member of the Law Society.

[25] During her 20 months as a sole practitioner, the Respondent operated a pooled trust account and a general account. Allegations 1, 2, 3, 6 and 7 in the Citation concern transactions and record keeping pertaining to these trust and general accounts.

[26] On January 17, 2014, a Law Society representative attended at the Respondent's office to conduct a compliance audit of her practice covering the period between June 2, 2012 and January 17, 2014. The compliance audit detected deficiencies in the Respondent's accounting records.

[27] Between April 22, 2014 and January 19, 2015, the Law Society conducted a follow up to its compliance audit.

[28] The results of the follow up audit led the Law Society to launch a disciplinary investigation concerning the Respondent. The investigation included a forensic audit of her practice covering the period June 4, 2012 to April 23, 2014. The Respondent was provided with a copy of the forensic auditor's written report, which she admits accurately reflects the state of her books, records and accounts during the period in question.

[29] In February 2016 and July 2017, the Respondent was interviewed by staff lawyers in connection with the disciplinary investigation. She was later provided with a copy of the transcript of each interview. The Respondent was given the opportunity to make any corrections to these transcripts, but did not do so.

ADMISSIONS OF PROFESSIONAL MISCONDUCT ARE APPROPRIATE

[30] We have determined that the Respondent's admissions of professional misconduct regarding the seven allegations in the Citation are appropriate.

[31] Before setting out our reasoning in respect of each allegation, we will briefly outline the legal test to be applied in determining whether the proven facts amount to professional misconduct.

Legal Test for Professional Misconduct

[32] The Law Society must prove professional misconduct on a balance of probabilities. The evidence "must be scrutinized with care" and "must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test." See *Law Society of BC v. Schauble*, 2009 LSBC 11, at para. 43.

[33] Professional misconduct is proven where the accepted facts disclose conduct falling markedly below the standard the Law Society expects of lawyers (*Law Society of BC v. Martin*, 2005 LSBC 16, at para. 171; *Re Lawyer 12*, 2011 LSBC 35, at para. 8). Such conduct displays culpability that is grounded in a fundamental degree of fault but need not constitute intentional malfeasance – gross culpable neglect of the respondent's duties as a lawyer also satisfies the test (*Martin*, at para. 154; *Law Society of BC v. Gellert*, 2013 LSBC 22 ("*Gellert* (F &D)"), at para. 67).

[34] A breach or breaches of the Rules will only constitute professional misconduct where the test set out in the preceding paragraph is met. In deciding whether the test is satisfied, all of the relevant circumstances must be considered including the number of breaches, their gravity and duration, the respondent's state of mind in committing them and any resulting harm to clients, other lawyers or the integrity of the legal profession and the administration of justice (*Law Society of BC v. Lyons*, 2008 LSBC 09, at para. 35).

Allegation 1: Misappropriation of Trust Funds

[35] The hearing panel in *Gellert* (F &D) said this at para. 71

> Misappropriation of a client's funds occurs where the lawyer takes those funds for a purpose unauthorized by the client, whether knowingly or through negligence or incompetence so gross as to prove a sufficient element of wrongdoing. As this definition indicates, there must be a mental element of wrongdoing or fault, yet it need not rise to the level of dishonesty as that term is used in criminal law. See *Law Society of BC v. Ali*, 2007 LSBC 18 ("*Ali* (F &D)"), at paras. 79-80; *Law Society of BC v. Harder*, 2005 LSBC 48 "*Harder* (F & D)", at paras. 55-56.

[36] See also *Law Society of BC v. Sahota*, 2016 LSBC 29 ("*Sahota* (F & D)"), at paras. 60-61, 65.

[37] Conduct meeting this definition is misappropriation regardless of whether the lawyer received any personal benefit. It also matters not that the lawyer intended to, or did return, the funds in short order. Nor does it matter that the amount involved was small or that the lawyer was acting in response to personal financial pressures. See *Gellert* (F & D), at para. 72; *Ali* (F & D), at para. 104; *Harder* (F & D), at para. 56; *Sahota* (F & D), at para. 61.

[38] The Respondent admits that she intentionally misappropriated client funds and committed professional misconduct by making 13 withdrawals from her trust account when she was not entitled to the funds. These withdrawals occurred between July 2012 and February 2014. By our calculation, the total amount misappropriated was $6,154.97.

[39] In eight of the 13 instances, the Respondent withdrew a total of $3,698.53 from trust without attributing the withdrawals to any specific client matter. She used these funds to pay personal or business expenses such as rent, networking group dues, trust administration fees and student loans (allegations 1(c)(ii), 1(e)-(k)).

[40] In another instance, the Respondent properly withdrew trust funds in payment of disbursements in connection with a client matter, but then improperly withdrew the same amount ($128.48) 11 days later when there were insufficient funds on deposit to the credit of the client on whose behalf the withdrawal was made (allegation 1(a)).

[41] In another instance, the Respondent double billed a client in the amount of $313.90 and then withdrew funds in payment of the second bill when there were insufficient funds on deposit to the credit of the client on whose behalf the withdrawal was made (allegation 1(d)).

[42] In another instance, the Respondent withdrew $1,049.61 from trust in purported payment of her fees and disbursements when she had not yet prepared and delivered a bill, had not rendered sufficient legal services to justify the withdrawal and held insufficient funds on deposit to the credit of the client on whose behalf the withdrawal was made (allegation 1(c)(i)).

[43] In another instance, the Respondent withdrew a total of $674.06 from trust in purported payment of her fees and disbursements when she had not yet rendered sufficient legal services to justify the amount of the withdrawals and had not delivered a bill to her client (allegation 1(b)).

[44] In another instance, the Respondent withdrew trust funds in purported payment of her bill to her client in an amount higher than that set out in her bill, which resulted in her receiving a payment of $290.39 to which she was not entitled (allegation 1(l)).

[45] All 13 withdrawals constituted a breach of Rule 3-56(1) [now Rule 3-64(1)] because the funds were not removed from trust for any of the purposes permitted by that provision. Each withdrawal also amounted to a breach of Rule 3-56(1.2)(a) [now Rule 3-64(3)(a)] because, at the time, the Respondent's trust accounting records were not current.

[46] Rule 3-56 [now Rule 3-64] is located within Part 3, Division 7 of the Rules. The Respondent admits that, at all material times, she knew that she was personally responsible for ensuring that the duties and responsibilities under Part 3, Division 7 of the Rules were carried out when she dealt with funds in a trust or general account or when she delegated to another person any of the duties or responsibilities under Division 7.

[47] Given the admitted facts, we conclude that the Respondent's proposed admission to the professional misconduct described in allegation 1 of the Citation, namely, misappropriation of client trust funds and breach of Rule 3-56, is appropriate and that the Law Society has met its onus of proving misconduct regarding this allegation.

Allegation 2: Withdrawals from Trust Prior to Delivering a Bill

[48] Rule 3-57(2) [now Rule 3-65(2)] prohibits a lawyer from making a withdrawal from trust in payment of fees without first preparing and delivering a bill for those fees to the client. Far from being a mere formality, this interdiction is closely tied to the lawyer's fiduciary obligation to account fully to the client for funds received (see now Rule 3-55) and to the client's right to challenge the reasonableness of the bill before a registrar (see now Rule 3-65(5) and s. 70 of the *Legal Profession Act*.

[49] On three occasions, the Respondent withdrew trust funds purportedly in payment of her fees without first preparing a bill and immediately delivering it to her clients, in breach of Rule 3-57(2). More particularly:

a. on July 13, 2012, she withdrew $679.57 held to the credit of a client in trust, but did not issue a bill corresponding to this payment until July 14, 2012;

b. on July 30, 2012, she withdrew $253.60 held to the credit of a client in trust, but did not issue a bill corresponding to this payment until August 14, 2012; and

c. on December 17, 2013, she withdrew $429.25 held to the credit of a client in trust, but did not issue a bill corresponding to this payment until December 20, 2013.

[50] Each of these withdrawals were also in breach of then Rule 3-56(1) [now Rule 3-64(1)] because the funds were not removed from trust for any of the purposes permitted by that provision.

[51] Rules 3-56 and 3-57 are located within Part 3, Division 7 of the Rules. As already noted, the Respondent admits that, at all material times, she knew that she was personally responsible for ensuring that the duties and responsibilities under Part 3, Division 7 of the Rules were carried out when she dealt with funds in a trust or general account or when she delegated to another person any of the duties or responsibilities under Division 7.

[52] The Respondent further admits that, in making the three withdrawals in question, she committed professional misconduct.

[53] Given the admitted facts, we conclude that the Respondent's proposed admission to the professional misconduct described in allegation 2 of the Citation is appropriate and that the Law Society has met its onus of proving professional misconduct regarding this allegation.

Allegation 3: Withdrawals from Trust When Insufficient Funds

[54] Rule 3-56(1.2)(b)) [now Rule 3-64(3)(b)] provides that no payment from trust funds may be made unless there are sufficient funds held to the credit of the client on whose behalf the funds are to be paid.

[55] On 62 occasions between June 2012 and February 2014, the Respondent withdrew trust funds when there were insufficient funds held to the credit of the clients on whose behalf the withdrawals were made, contrary to Rule 3-56(1.2)(b).

[56] The amount of the trust shortages resulting from these withdrawals ranged from $6.74 to $157,698.13. Six of the trust shortages exceeded $2,500, and their total amount was $213,731.85. While all of the shortages were eventually eliminated, the amount of time they remained unrectified ranged from 1 to 674 days. In 13 instances, the shortages were eliminated within 1 to 3 days. In 10 instances, the shortages were eliminated within 4 to 14 days. In six instances, the shortages were eliminated within 14 to 30 days. In 10 instances, the shortages were eliminated within 31 to 99 days, and in 23 instances, the shortages were eliminated within 100 to 675 days.

[57] Rule 3-66(1) [now Rule 3-74(1)] requires that a lawyer who discovers a trust shortage immediately pay enough funds into the account to eliminate the shortage. It appears that the 62 shortages were not identified and immediately eliminated by the Respondent because, as described below, she did not record the trust transactions, keep separate trust ledgers or perform monthly trust reconciliations.

[58] The Respondent's 62 breaches of Rule 3-56(1.2)(b) meant that trust funds held on behalf of other clients were improperly used to meet the obligations of the clients on whose behalf the trust funds were being withdrawn. In a number of instances, the withdrawals resulting in trust shortages were made for the purpose of paying the Respondent's accounts.

[59] As already noted, Rule 3-56 is located within Part 3, Division 7 of the Rules, and the Respondent admits that, at all material times, she knew that she was personally responsible for ensuring that the duties and responsibilities under Part 3, Division 7 of the Rules were carried out when she dealt with funds in a trust or general account or when she delegated to another person any of the duties or responsibilities under Division 7.

[60] The Respondent further admits that, in making the 62 withdrawals in question, she committed professional misconduct.

[61] Given the admitted facts, we conclude that the Respondent's proposed admission to the professional misconduct described in allegation 3 of the Citation is appropriate and that the Law Society has met its onus of proving professional misconduct regarding this allegation.

Allegation 4: Breach of a Trust Condition

[62] The Respondent acted for a seller in a residential real estate transaction scheduled to close on August 14, 2012.

[63] On August 2, 2012, the Respondent received a letter from the opposing lawyer in which he stated that the net sale proceeds would be forwarded to the Respondent in trust on her undertaking, among other things, to attend to the payment of the outstanding property utilities in the sum of $1,972.30, together with penalties and interest, if any, and provide the opposing lawyer's office with proof of same within a reasonable period of time.

[64] On August 14, 2012, the Respondent received the net sale proceeds from the opposing lawyer's office. However, she did not comply with her undertaking by paying the outstanding property utilities and providing the opposing lawyer's office with proof of same within a reasonable period of time.

[65] On November 5, 2012, the Respondent received an email from the opposing lawyer attaching a utility notice dated October 30, 2012 from the City of Surrey totalling $1,972.30.

[66] Despite receiving this reminder, the Respondent's undertaking remained unfulfilled at the time of her interview with a Law Society staff lawyer in July 2017.

[67] Chapter 11 of the *Professional Conduct Handbook*, which was still in force during the period covered by the Citation, sets out the obligations of lawyers with respect to

undertakings, and Rule 7 states that a lawyer must fulfill every undertaking given and scrupulously honour any trust condition accepted.

[68] Undertakings and accepted trust conditions are solemn promises made by one lawyer to another and must be accorded the most urgent and diligent attention possible in all circumstances. Their fundamental importance to the legal profession is well established and is an essential ingredient in maintaining the public's trust in lawyers. A cavalier approach to the fulfillment of undertakings and trust conditions is thus unacceptable and has no place in the practice of law. See *Law Society of BC v. Heringa*, 2004 BCCA 97, at paras. 10-11, 15.

[69] The Respondent admits that her failure to honour the trust condition imposed by opposing counsel with respect to this real estate transaction was contrary to Chapter 11, Rule 7 of the *Professional Conduct Handbook* and constitutes professional misconduct.

[70] Given the admitted facts, we conclude that the Respondent's proposed admission to the professional misconduct described in allegation 4 of the Citation is appropriate and that the Law Society has met its onus of proving professional misconduct regarding this allegation.

Allegation 5: Improper Filing of Form B Mortgage

[71] The Respondent acted for two clients in connection with a mortgage refinancing with a closing date of August 31, 2012.

[72] On August 25, 2012, the clients executed a Form B mortgage in favour of a trust company granting a mortgage over a property.

[73] On September 14, 2012, the Respondent prepared a revised Form B mortgage that corrected errors in the original Form B mortgage. As a result of these corrections, the revised Form B mortgage contained a different parcel identifier and legal description, a different interest adjustment date, last payment date and balance due date, additional modified terms and a different name of the borrower.

[74] On September 14, 2012, the Respondent affixed her electronic signature to the revised Form B mortgage and filed it in the Land Title Office on behalf of her clients.

[75] This filing expressly stated that the Respondent's electronic signature constituted a representation that she had complied with s. 168.3 of the *Land Title Act*, RSBC 1996, c. 250, and that she possessed a true copy, or a copy of a true copy, of the electronic version of the document.

[76] This representation was not true because the Respondent's clients had not executed the revised Form B mortgage prior to her filing it with the Land Title Office. In other words,

she did not possess a true copy, or a copy of a true copy, of the electronic version of the document.

[77] The Respondent's filing of the revised Form B mortgage was thus contrary to s. 168.3(3) of the *Land Title Act*, which states:

> (3) A subscriber must not incorporate his or her electronic signature into an electronic instrument unless
>
> (a) if Part 5 applies in relation to the electronic instrument, a true copy of the electronic instrument has been executed and witnessed in accordance with Part 5, and otherwise, a true copy of the electronic instrument has been executed in accordance with the enactment that applies in relation to the electronic instrument, and
>
> (b) the true copy referred to in paragraph (a), or a copy of that true copy, is in the possession of the subscriber.

[78] Although the Respondent's failure to comply with s. 168.3(3) did not result in any financial loss, her conduct visited serious harm on the integrity of the land title system, as described in *Law Society of BC v. Williams*, 2010 LSBC 31, at paras. 12-14:

> … [T]he electronic submissions provisions under Part 10.1 [of the *Land Title Act*] are important safeguards of the integrity of the land title system in British Columbia. As officers under the *Act*, members of the legal profession play a key role in ensuring the integrity of transfer documents and safeguarding the system from fraud.
>
> Given the importance of the role played by lawyers who act as officers, conduct related to the electronic submission of improperly executed document must be viewed as serious. …
>
> … [T]he submission of documents that are defective in their execution harms the land title system by eroding the reliability and authenticity of documents submitted for registration. Further, because the officer does not submit the originally executed document when an electronic document is submitted for registration, the defect is not apparent, and the Land Title Office cannot scrutinize the original document to ensure its registrability.

[79] The Respondent admits that, by affixing her electronic signature to the revised Form B mortgage without having a true copy of the document in her possession, contrary to s. 168.3(3) of the *Land Title Act*, she committed professional misconduct.

[80] Given the admitted facts, we conclude that the Respondent's proposed admission to the professional misconduct described in allegation 5 of the Citation is appropriate and that the Law Society has met its onus of proving professional misconduct regarding this allegation.

Allegation 6: Various Breaches of Rule 3-56 [now Rule 3-64]

[81] The proper handling of trust funds is an integral part of the practice of law (*Law Society of BC v. Tungohan*, 2017 BCCA 423, at para. 24). The public must be able to entrust property, and particularly money, to members of the legal profession knowing that it will be properly accounted for. Maintaining this confidence is imperative, not only with respect to each client, but also with respect to the public at large. The rules governing the withdrawal of money from a trust account play an important role in helping to ensure that client funds are properly handled and that the integrity of the legal profession is maintained. See *Law Society of BC v. Sahota*, 2018 LSBC 20 ("*Sahota* (Review)"), at para. 12; *Law Society of BC v. Lail*, 2012 LSBC 32, at para. 10; *Law Society of BC v. Tungohan*, 2015 LSBC 26, at para. 13.

[82] Rule 3-56(1.3) [now Rule 3-64(4)] limits the manner in which a lawyer can withdraw money from a trust account. It does not permit withdrawals by way of bank draft. Yet on five occasions in 2012, the Respondent used bank drafts to withdraw funds from her trust account in amounts totalling $1,136,265.77 (allegation 6(a)).

[83] Rule 3-56(2) [now Rule 3-64(5)] requires that funds withdrawn from a trust account by cheque be withdrawn with a cheque marked "trust". During the period covered by the Law Society's investigation, with the exception of the cancelled cheques for the month ended June 2012, which were not provided, none of the cheques issued from the Respondent's trust account complied with Rule 3-56(2). In total, 136 cheques were issued that were not marked "trust" (allegation 6(b)).

[84] Rule 3-56(3.1) [now Rule 3-64.1] permits a lawyer to make withdrawals from a trust account by electronic transfer only if specific supporting documentation is created and retained with respect to the transaction. In 82 instances, the Respondent withdrew funds from her trust account by way of electronic transfers without the required supporting documentation, contrary to Rule 3-56(3.1) (allegation 6(c)).

[85] Rule 3-56(3) [now Rule 3-65(1.1)] permits a lawyer to withdraw trust funds for the payment of fees only by way of cheque payable to the lawyer's general account. In 60 of the 82 instances mentioned in the preceding paragraph, the Respondent failed to withdraw funds from trust in payment of her fees by way of cheque payable to her general account, contrary to Rule 3-56(3) (allegation 6(d)).

[86] As already noted, Rule 3-56 is located within Part 3, Division 7 of the Rules and the Respondent admits that, at all material times, she knew that she was personally responsible for ensuring that the duties and responsibilities under Part 3, Division 7 of the Rules were carried out when she dealt with funds in a trust or general account or when she delegated to another person any of the duties or responsibilities under Division 7.

[87] The Respondent further admits that, in making the withdrawals described in allegation 6 of the Citation, she committed professional misconduct.

[88] Given the admitted facts, we conclude that the Respondent's proposed admission to the professional misconduct described in allegation 6 of the Citation is appropriate and that the Law Society has met its onus of proving professional misconduct regarding this allegation.

Allegation 7: Breach of Various Part 3 Division 7 Accounting Rules

[89] Proper record keeping through compliance with Part 3, Division 7 of the Rules is necessary to permit a lawyer to determine at any given moment how much money is held in trust for each client. Compliance substantially reduces the risk of loss and client dissatisfaction. For example, proper bookkeeping allows a lawyer to know whether there are sufficient funds held in trust to the credit of a client on whose behalf money is to be paid. It also permits discrepancies between trust ledgers and bank ledgers to be identified, which in turn, alerts the lawyer that the obligation to eliminate any trust shortages has been triggered. A failure to comply with accounting requirements may interfere with the Law Society's ability to fulfill its mandate of regulating lawyers' conduct in the public interest.

[90] It is thus no surprise that in *Sahota* (Review), at paras. 11 and 17, the review board confirmed that abiding and enduring breaches of Law Society accounting rules are a grave and serious matter and that a lawyer who does not know or understand these rules, or who negligently or deliberately fails to observe them, does so at his or her own peril.

[91] Between June 2012 and February 2014, the Respondent prepared no monthly trust reconciliations for her pooled trust account, contrary to Rule 3-65 [now Rule 3-73(5)] (allegation 7(a)).

[92] Between June 2012 and April 2014, the Respondent failed to record trust transactions for her trust account promptly and, in any event, not more than seven days after each trust transaction, contrary to Rule 3-63(1) [now Rule 3-72(1)(a)] (allegation 7(b)).

[93] Commencing in June 2012 and continuing to April 2014, the Respondent failed to maintain a book of entry or data source showing all trust transactions or a trust ledger showing separately for each client all trust funds received and disbursed or both, contrary to Rule 3-60(a) and (b) [now Rule 3-68(a) and (b)] (allegation 7(c)).

[94] The Respondent failed to retain all supporting documentation for her trust account including cancelled cheques for the month ended June 2012 and bank deposit slips for the period June 2012 to April 2014, contrary to Rules 3-59 and 3-60 [now Rules 3-67(3) and 3-68] (allegation 7(d)).

[95] The Respondent failed to retain all supporting documentation for her general account including bank statements, cancelled cheques and deposit slips, for the period June 2012 to April 2014, contrary to Rules 3-59 and 3-61 [now Rules 3-67(3) and 3-69] (allegation 7(e)).

[96] The Respondent failed to keep file copies of bills purportedly delivered to four of her clients, contrary to Rule 3-62 [now Rule 3-71] (allegation 7(f)).

[97] Taken together, the rule breaches set out in allegation 7 of the Citation demonstrate a widespread failure by the Respondent to maintain her books, records and accounts in accordance with Part 3, Division 7 of the Rules during the 22-month period under investigation by the Law Society.

[98] The Rules mentioned in allegation 7 of the Citation are located in Part 3, Division 7 of the Rules. The Respondent admits that, at all material times, she knew that she was personally responsible for ensuring that the duties and responsibilities under Part 3, Division 7 of the Rules were carried out when she dealt with funds in a trust or general account or when she delegated to another person any of the duties or responsibilities under Division 7.

[99] The Respondent further admits that, in breaching the Rules mentioned in allegation 7 of the Citation, she committed professional misconduct.

[100] Given the admitted facts, we conclude that the Respondent's proposed admission to the professional misconduct described in allegation 7 of the Citation is appropriate and that the Law Society has met its onus of proving professional misconduct regarding this allegation.

PROPOSAL WITHIN THE RANGE OF FAIR AND REASONABLE DISCIPLINARY ACTIONS

[101] As already noted, pursuant to the Rule 4-30 proposal, the Respondent has consented to an order that she be disbarred. For the reasons that follow, we have concluded that disbarment falls within the range of fair and reasonable disciplinary outcomes given the circumstances of this case.

General Principles

[102] The central goal of the discipline process is to protect the public and maintain public confidence in the administration of justice, including confidence in the legal profession (*Law Society of BC v. Hill*, 2011 LSBC 16, at para. 3). Other principles must also be considered, most particularly the respondent's prospects for rehabilitation, but where there is a conflict between protecting the public and rehabilitation, the former interest must prevail (*Law Society of BC v. Lessing*, 2013 LSBC 29, at paras. 13, 57-60; *Law Society of BC v. Nguyen*, 2016 LSBC 21, para. 36).

[103] Where, as here, a respondent has committed professional misconduct in a number of respects, each of which constitutes a separate allegation on a single citation, the assessment of the appropriate disciplinary sanction is usually made on a global basis. As stated in *Law Society of BC v. Gellert*, 2014 LSBC 05 ("*Gellert* (DA)"), at para. 37:

> In cases involving multiple allegations of professional misconduct and/or rule breaches, the usual approach is to arrive at a disciplinary action that is suitable for all of the incidents viewed globally [citations omitted]. A global approach tends to carry with it the benefit of simplicity and will, in most cases, be particularly well-suited to arriving at a result that furthers the objective of protecting the public. After all, the extent to which the public needs protection, and the manner by which such protection is best provided, must ultimately relate to the entire scope of the misconduct in issue and not to each particular wrongdoing viewed piecemeal.

[104] An extensive list of factors often considered at the penalty stage in disciplinary matters is provided in *Law Society of BC v. Ogilvie*, 1999 LSBC 17, at para. 10. This list is not exhaustive and the weight attributed to a factor may vary with the circumstances. Some of the factors may not be engaged in a given case. Others may overlap. Accordingly, not every factor need be expressly reviewed in a panel's reasons explaining why it has reached a particular determination regarding the appropriate disciplinary action. Moreover, the various "*Ogilvie*" factors are often consolidated into more general categories that cover the considerations most relevant to arriving at an appropriate sanction in a particular case. We have done so here.

Nature, Gravity and Consequences of the Conduct

[105] The most serious aspect of the Respondent's misconduct is her intentional misappropriation of $6,154.97 in client funds (allegation 1). Misappropriation is an egregious betrayal of the trust that clients place in their lawyers. The public's confidence in the legal profession requires that the sanction for misappropriation be significant. A significant sanction is also necessary to promote general deterrence and protect the public

from similar breaches in the future. The fact that the respondent has been rehabilitated and presents little or no risk of committing further misconduct is usually of little moment. Accordingly, absent rare and extraordinary circumstances, the appropriate disciplinary action for the intentional misappropriation of client funds will usually be disbarment, in particular where a substantial sum has been misappropriated. See *Law Society v. BC v. McGuire*, 2006 LSBC 20, at paras. 21-30; *Law Society of BC v. Goulding*, 2007 LSBC 39, at para. 4; *Law Society of BC v. Harder*, 2006 LSBC 48 ("*Harder* (DA)"), at paras. 55-64; *Law Society of BC v. Ali*, 2007 LSBC 57, at paras. 7-24 ("*Ali* (DA)"); *Gellert* (DA), at paras. 42-46; *Law Society v. BC v. Tak*, 2014 LSBC 57, at paras. 35, 45, 70-71.

[106] The Respondent's misappropriation of $6,154.97 in client funds was intentional. It was carried out by means of multiple improper withdrawals made over a 17-month period, and a substantial part of the funds were used to cover the Respondent's personal expenses. The amount in question – over $6,000 – is not insubstantial. As noted in *Gellert* (DA), at para. 48, disbarment has been imposed in other cases where similar or even lesser amounts of money have been intentionally misappropriated from clients. In this respect, see also *Goulding*, at para. 7, and *Ali* (DA), at para. 16.

[107] The other instances of professional misconduct committed by the Respondent are also serious. She paid herself with funds from trust without first delivering a bill to her clients. She also routinely removed funds from trust when the clients with respect to whom the funds were being withdrawn did not have sufficient money to cover the withdrawals. And over a substantial period of time, she failed to follow many of the required accounting procedures regarding both her trust and general accounts.

[108] The Respondent's conduct in breaching an undertaking, and in affixing her electronic signature on a mortgage document filed with the Land Title Office when she did not possess a true copy of that document, is also serious because it undermines the fundamental principle of trust in a lawyer's word that is necessary if the legal system is to function properly and maintain the public's confidence.

[109] On the other hand, there is no evidence before us to suggest that any client lost money as a result of the Respondent's misconduct, including, but not limited to, the misappropriation established with respect to allegation 1 in the Citation. To the contrary, when the Respondent closed her sole practice, she transferred the funds from her trust account to her new firm. When this transfer occurred, on April 21, 2014, there were trust shortages amounting to $8,694.27. The Respondent made up the entire shortfall on April 23, 2014 by writing a personal cheque to her new firm.

Acknowledgement of the Misconduct and Remedial Action

[110] Following the compliance audit, the Respondent hired a bookkeeper and took steps to bring her accounting records up to date. As just noted, in April 2014 she eliminated all of her trust shortages by means of a payment of $8,694.27 in personal funds.

[111] The Respondent is remorseful and has apologized for her misconduct.

[112] These are all mitigating factors.

Character of the Respondent and Her Professional Conduct Record

[113] We have been provided with minimal information regarding the Respondent, aside from a barebones review of her practice history. In particular, we have little information with which to assess her prospects for rehabilitation.

[114] The Respondent has no professional conduct record, and at the time her misconduct occurred, she was a fairly new call who had just started as a sole practitioner. These are mitigating factors. Yet, in the circumstances of this case, they do not carry significant weight. All lawyers, no matter their level of experience, must fully appreciate the importance of adhering to the rules governing accounting (*Sahota* (Review), at paras. 14-18). The same point applies with even greater force regarding the prohibition on the misappropriation of client funds.

Public Confidence in the Profession and the Disciplinary Process

[115] We have already commented on the importance of protecting the public and promoting public confidence in both the legal profession and the ability of the Law Society to regulate and supervise its members' conduct. See, for example, paragraphs 47, 67, 77, 80, 88-89, 101-102, 104 above. These considerations are of primary importance where a respondent's misconduct includes the intentional misappropriation of client trust funds.

Range of Sanctions in Similar Cases

[116] In reviewing the range of sanctions in similar cases, we have focused on disciplinary decisions in which the respondent intentionally misappropriated client funds, including but not limited to, instances in which: (a) the amount misappropriated was roughly similar; (b) the lawyer was relatively inexperienced and had no professional conduct record; and/or (c) the lawyer also engaged in other types of professional misconduct.

[117] In *Law Society of BC v. Currie*, [1994] LSDD 123, the respondent deliberately misappropriated $2,800 from a client. He had taken the money as a retainer, but had not

deposited it into his trust account, and had put at least some of it into a personal account. The respondent also misled the client into believing that he had taken steps to incorporate a company on her behalf, as instructed, when he had not done so. His purpose in misleading the client was to avoid disclosing that he had misappropriated her funds. The respondent engaged in further professional misconduct by not responding to the Law Society. He was no longer a member of the Law Society at the time of the hearing, having voluntarily resigned, and was disbarred by the hearing panel.

[118] In *Law Society of BC v. Peters*, 1999 LSBC 38, [2000] LSDD No. 10, the respondent deliberately misappropriated $7,000 from a client by means of seven separate withdrawals. The money was used to pay personal expenses. She committed additional professional misconduct by failing to respond to the Law Society regarding three matters, failing to comply immediately with an order for the production of records under the *Legal Profession Act* and tendering to another lawyer a trust cheque that was not honoured by the bank due to insufficient funds. The respondent was relatively inexperienced and had overcome significant adversity to become a lawyer. She had been suffering from stress and depression and had no professional conduct record when the misconduct occurred (although she was later reprimanded for an unrelated matter). No longer a member of the Law Society due to non-payment of fees, she nonetheless wished to be able to return to the profession at some point in the future. She was on social assistance and had not repaid the misappropriated funds, although the Special Compensation Fund had reimbursed the client. The respondent was disbarred at first instance, and this result was affirmed on review.

[119] In *Law Society of BC v. Hammond*, 2004 LSBC 32, the respondent misappropriated for his personal use about $5,000 from two different clients. He committed additional professional misconduct by failing to honour four undertakings, failing to respond to the Law Society in six respects, engaging in the unauthorized practice of law, failing to report a judgment made against him to the Law Society and failing to remit tax withholdings deducted in respect of employees. The respondent's professional conduct record contained three conduct reviews. In the absence of any evidence pointing to extraordinary extenuating circumstances, he was disbarred.

[120] In *Ali*, the respondent committed professional misconduct by misappropriating approximately $4,250 in client funds, failing to pay practice debts, using funds collected for GST, PST and employee income tax for personal matters, failing to respond to the Law Society, failing to keep adequate trust and general accounting records and not reporting an unsatisfied judgment. She had no prior record of misconduct and appears to have repaid most, or perhaps even all, of the misappropriated funds (*Ali* (F & D), at paras. 15, 18, 23). However, most of the instances of misappropriation had been deliberate (*Ali* (F & D), at paras. 84, 87, 90, 96). The respondent had ceased to be a member of the Law Society for

failure to pay her fees and, while not appearing at the hearing, had sent a letter apologizing for her "many mistakes" and expressing an intention to resign. There was no evidence of exceptional circumstances justifying a remedy short of disbarment for misappropriating the funds. The hearing panel therefore disbarred the respondent.

[121] In *Law Society of BC v. Hainer*, 2007 LSBC 48, the respondent deliberately misappropriated at least $7,520 from eight clients over a nine-month period, using misleading documentation to carry out the scheme. The respondent was a junior lawyer with no prior history of misconduct. The respondent did not appear at the penalty phase of the hearing. There being no evidence of any mitigating factors to explain her actions, she was disbarred.

[122] In *Goulding*, the respondent misappropriated $3,050 from a client. He committed additional professional misconduct by failing to respond to the Law Society regarding three different matters, failing to competently represent the client whose funds were misappropriated and not handling that client's funds in accordance with the Law Society's Rules. None of the misconduct involved misleading the client or the Law Society. The respondent was an experienced lawyer with no prior record of misconduct. He was no longer a member of the Law Society and did not appear at the hearing. There was no evidence of any exceptional circumstances that might have justified a sanction other than disbarment. The hearing panel therefore ordered that the respondent be disbarred.

[123] In *Harder*, the respondent had committed professional misconduct by intentionally misappropriating client funds of between $42,000 and $56,000, failing to provide competent service, failing to remit funds collected for GST and PST, failing to comply with accounting rules, failing to include a reasonable description of services rendered in client accounts, failing to properly supervise an employee, failing to deliver an account prior to withdrawing funds from trust, failing to pay Law Society fees and failing to file a Form 47. He was an experienced lawyer with no prior history of misconduct. The respondent was of previous good character and had been suffering from significant depression at the time in question. These mitigating factors did not, however, constitute extraordinary circumstances justifying departure from the usual sanction meted out where funds are wilfully misappropriated. The hearing panel therefore disbarred the respondent.

[124] In *Gellert*, the respondent committed professional misconduct by deliberately misappropriating about $14,000 in client trust funds, making discourteous and threatening remarks regarding a Law Society auditor and failing to respond to the Law Society. He also breached various Law Society Rules by issuing trust cheques payable to cash and failing to maintain proper trust accounting records. The respondent was an experienced lawyer. He had previously been suspended for 18 months regarding 12 instances of professional misconduct, which included misappropriating $182.40 in client funds, failing

to remit GST and PST remittances, failing to provide competent service, failing to respond to the Law Society and breaching an undertaking. The respondent had ceased to be a member of the Law Society for non-payment of fees and did not appear at the hearing. No mitigating circumstances were brought to the hearing panel's attention. The hearing panel therefore concluded that disbarment was necessary to ensure that the public was adequately protected and to preserve public confidence in the legal system.

[125] There exist some cases in which misappropriation has not led to disbarment. For instance, in *Sahota*, the respondent committed professional misconduct by misappropriating client funds, withdrawing trust funds on behalf of a client when he had insufficient funds on deposit to that client's credit, failing to immediately remedy trust shortages in relation to a number of clients, failing to deposit trust funds in a trust account as soon as practicable, maintaining more than $300 of his own money in his pooled trust account and failing to keep proper accounting records. The misappropriation of trust funds was not intentional but rather arose through gross negligence. Specifically, the respondent's accounting records were so poorly kept that on 51 occasions he withdrew money from trust on behalf of a client who did not have sufficient credit to cover the withdrawal, the result being a trust shortage. No client lost any money as a result of the respondent's conduct and he gained no direct financial benefit from his misconduct. The respondent had no prior discipline history and had only been practising for a few years. The risk of future misconduct could be eliminated by restricting the respondent from practising in the area of real estate. The respondent sought a reprimand, while the Law Society asked for a suspension of six to 12 months plus the imposition of certain practice restrictions. The hearing panel agreed to impose the practice restrictions but suspended the respondent for only one month. On review, the review board found that the hearing panel had erred in various respects and held that the minimum appropriate range of suspension was between three and six months. It imposed a suspension of three months, which included the one-month suspension already served by the respondent.

[126] The misappropriation in *Sahota* is comparable to the Respondent's professional misconduct as described in allegation 3 of the Citation. That is, by writing a trust cheque without having sufficient funds on deposit with respect to the client on whose behalf the money was being withdrawn, both Mr. Sahota and the Respondent improperly used other clients' funds to cover the resulting trust shortfalls (*Sahota* (F & D), at paras. 47, 73-74). Mr. Sahota engaged in this conduct 51 times, while the Respondent did so on 62 occasions. However, the Respondent also committed the professional misconduct set out in allegation 1 of the Citation by intentionally misappropriating just over $6,000 in client funds, a substantial portion of which was used to pay her personal expenses. Mr. Sahota did not engage in this sort of misconduct. His misappropriation of funds was unintentional and did not inure to his personal financial benefit. Further, Mr. Sahota did not fail to honour an undertaking or file a misleading document with the Land Title Office in breach of the *Land*

Title Act. The outcome in *Sahota* does not, therefore, support the proposition that the penalty proposed by the parties in the Respondent's case falls outside the range of fair and reasonable disciplinary outcomes in the circumstances.

[127] Another recent case in which misappropriation did not result in disbarment is *Law Society of BC v. Sas*, 2016 LSBC 03. There, the respondent was closing her sole practice prior to joining a firm of lawyers. Instead of returning trust funds to 22 former clients, she issued accounts for disbursements totalling $1,947.39 when she knew, or ought to have known, that these disbursements had not been incurred. The respondent also withdrew trust funds without immediately delivering bills to a number of former clients. The respondent had since returned the misappropriated monies. The hearing panel emphasized that the misappropriation took place for the purpose of eliminating amounts held in trust and cleaning up accounting records and not for the purpose of enriching the respondent (*Sas*, at paras. 58-60, 67, 69, 84-85, 87). The respondent had an exemplary reputation and record of service to the bar and the community. The Law Society sought a suspension of between three and six months. The hearing panel imposed a four-month suspension. This suspension was upheld on review, the review board noting that "the fact that the mitigating *Ogilvie* factors outweighed the aggravating factors allowed the panel to depart from disbarment as the appropriate penalty for misappropriation of trust funds" (*Law Society of BC v. Sas*, 2017 LSBC 08, at para. 97).

[128] Unlike in *Sas*, the Respondent intentionally misappropriated funds for her personal use. The amount of money taken was also more substantial, and the Respondent engaged in a wholesale breach of numerous accounting rules which, among other things, resulted in 62 trust shortages totalling over $240,000. Finally, she failed to honour an undertaking and filed a misleading document with the Land Title Office in contravention of the *Land Title Act*. Consequently, the result in *Sas* does not lead us to conclude that disbarment falls outside the fair and reasonable range of disciplinary actions in the circumstances of this case.

[129] Many of the remaining cases in which misappropriation has not led to disbarment are discussed in *Harder* (DA), at paras. 37-45, and *Hainer*, at para. 5. These cases are distinguishable from the Respondent's case largely for the reasons noted in *Harder* and *Hainer*. For example, in a number of these cases the misappropriation was not intentional. In others, there appears to have existed exceptional mitigating circumstances. Still, others involved conditional admissions to which deference was owed by the hearing panel deciding the matter (i.e., disbarment may have been the result had the issue of penalty been contested and the hearing panel thus been free to impose whatever disciplinary action it reasonably thought appropriate in the circumstances). Finally, some of these cases are arguably out of step with current views as to when it may be appropriate not to disbar a respondent who has misappropriated a client's funds. Ultimately, in our view the cases

discussed in *Harder*, at paras. 37-45, and *Hainer*, at para. 5, do not justify the conclusion that the penalty proposed by the parties in this case falls outside the range of fair and reasonable disciplinary outcomes in all the circumstances.

Conclusion

[130] Given the factors discussed above, we conclude that the penalty proposed by the parties, namely the Respondent's disbarment, falls within the range of fair and reasonable disciplinary outcomes in the circumstances of this case. In particular, the Respondent's disbarment is a fair and reasonable response to her intentional misappropriation of just over $6,000 in client funds, given the need to ensure that the public is adequately protected and to preserve public confidence in the legal profession. There is no evidence of exceptional mitigating circumstances that would render disbarment an unreasonable penalty. We therefore accept the Respondent's conditional admission and order that the Respondent be disbarred pursuant to s. 38(5)(e) of the *Legal Profession Act*.

COSTS AND NON-DISCLOSURE ORDER

[131] The Law Society seeks costs of $700, which the Respondent has agreed to pay. This amount is consistent with Item 25 of Schedule 4 – Tariff for Discipline Hearing and Review Costs. Under Item 25, the range of costs is $1,000 to $3,500 for a Rule 4-30 hearing. We therefore order that the Respondent pay costs of $700. Given the lack of information regarding the Respondent's financial circumstances, she will have until March 31, 2019 to pay the award of costs.

[132] The Law Society also seeks an order under Rule 5-8(2) that the portions of the exhibits that contain privileged or confidential client information not be disclosed to members of the public. We agree that imposing this restriction is necessary to protect the legitimate privacy interests of the Respondent's clients and thus grant the requested order.

SUMMARY OF ORDERS AND INSTRUCTIONS TO THE EXECUTIVE DIRECTOR

[133] We order that:

a. the Respondent be disbarred;

b. the Respondent pay costs to the Law Society in the amount of $700, to be paid no later than March 31, 2019; and

c. if any person, other than a party, seeks to obtain a copy of any exhibit filed in these proceedings, the names of any clients, as well as all information that might

reasonably identify a client or be protected by solicitor-client privilege, must be redacted from the exhibit before it is disclosed to that person.

[134] Pursuant to Rule 4-30(5)(a), we instruct the Executive Director to record the Respondent's admission on her professional conduct record.