2018 LSBC 37
Decision issued: December 5, 2018
Citation issued: September 12, 2017

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

GERALD ANTHONY GORDON

RESPONDENT

DECISION OF THE HEARING PANEL

Written materials:	November 5, 2018
Panel:	John D. Waddell, QC, Chair Laura Nashman, Public representative Michael Welsh, QC, Bencher
Discipline Counsel:	Kathleen M. Bradley
Appearing on his own behalf:	Gerald A. Gordon

INTRODUCTION

[1] This matter comes before this Hearing Panel on a hearing in writing and without an oral hearing, as a conditional admission of a discipline violation and consent to specified disciplinary action, pursuant to Rule 4-30 of the Law Society Rules (the "Rules").

PRELIMINARY MATTERS

[2] The citation was authorized by the Discipline Committee on August 24, 2017 and issued on September 12, 2017 (the "Citation").

[3] Gerald A. Gordon ("the Respondent") admits that on September 13, 2017, he was served with the Citation in accordance with Rule 4-19 of the Rules.

[4] The Citation sets out four allegations, which relate to the Respondent's failure to remit Provincial Sales Tax ("PST"), Goods and Services Tax ("GST"), and Harmonized Sales Tax ("HST"), between 2009 and 2015.

RESPONDENT'S BACKGROUND

[5] The Respondent was called and admitted as a member of the Law Society of British Columbia on May 11, 1982.

[6] He is currently 62 years of age.

[7] Since 1982, the Respondent has worked at a small firm in Osoyoos, British Columbia.

[8] The Respondent practises primarily in the areas of real estate and corporate commercial law.

RULE 4-30 PROPOSAL

[9] The Respondent admits all of the underlying facts in this case and admits each of the four allegations as set out in the Citation. The specified disciplinary action is a fine of $12,000.

[10] Publication of the circumstances summarizing this admission will be made pursuant to Rule 4-48 of the Rules, and that publication will identify the Respondent.

[11] At its meeting on October 18, 2018, the Discipline Committee considered and accepted this proposal. Pursuant to Rule 4-30(4) of the Rules, discipline counsel was instructed to recommend the acceptance of the proposal to the hearing panel.

DISCIPLINE VIOLATION

[12] This Panel is asked to accept the admission of the Respondent that his conduct in respect of each of the four allegations set out in the Citation constitutes professional misconduct. These allegations arise from the Respondent's failure to remit taxes to the government between 2009 and 2015 as follows:

(a) GST and interest due for taxes collected from April 1, 2009 to June 30, 2010;

(b) HST and interest due for taxes collected from July 1, 2010 to March 31, 2013;

(c) GST and interest due for taxes collected from April 1, 2013 to December 31, 2015; and

(d) PST collected from April 1, 2013 to December 31, 2014.

SUMMARY OF EVIDENCE

[13] From 1982 to 2009, the Respondent worked as a partner at a small firm in Osoyoos.

[14] On March 31, 2009, the firm reorganized its structure and began operating as Gordon & Young, a partnership of two law corporations, Gerald Gordon Law Corporation and Peter Young Law Corporation (the "Firm").

[15] In early 2009, the Firm acquired a second office in Oliver, British Columbia.

[16] The Oliver office was managed by a lawyer working for the Firm.

[17] The Respondent was the partner in charge of the financial management of the Firm, including all accounts payable and the remittance of taxes.

[18] The Firm had two bookkeepers at its Osoyoos location until September 2010.

Allegation 1: April 1, 2009 to June 30, 2010

[19] In 2009, and up to June 30, 2010, Provincial Sales Tax ("PST") and Goods and Services Tax ("GST") were in effect in British Columbia.

[20] Between April 1, 2009 and June 30, 2010, the Firm collected PST and GST from its clients.

[21] From April 1, 2009 to June 31, 2010, although PST was remitted to the Ministry of Finance of British Columbia (the "Province"), GST was not remitted to the Canada Revenue Agency ("CRA").

[22] When the Firm was restructured, it was required to obtain a new GST registration number from the CRA. The new number was issued on April 3, 2009. However, at some point in 2009 or 2010, the CRA closed the new number in error.

[23] Upon learning that the new GST registration number had been closed, the Respondent called and left messages with the CRA, but did not take any further steps at the time to re-register the Firm with the CRA.

[24] In the meantime, the Firm's bookkeepers prepared GST remittance forms and cheques on a quarterly basis and provided them to the Respondent. However, the Respondent kept them and did not send them in to the CRA. He did not tell his bookkeepers that he had done so. As a result, GST was not remitted to the CRA from April 1, 2009 to June 30, 2010.

[25] The Respondent then took partnership draws in excess of his entitlement.

Allegation 2: July 1, 2010 to March 31, 2013

[26] PST and GST were amalgamated into a Harmonized Sales Tax ("HST") as of July 1, 2010. HST was in effect in British Columbia from July 1, 2010 to March 31, 2013.

[27] From July 1, 2010 to March 31, 2013, the Firm collected HST from its clients.

[28] As before, between July 1, 2010 and March 31, 2013, the Firm's bookkeepers prepared HST tax remittance forms and cheques for the Respondent to sign and send to the CRA, but the Respondent kept them and did not send them in.

[29] On January 20, 2011, a lawyer managing the Oliver office sent an email dated January 20, 2011 to the Respondent's partner, Mr. Young, advising that the Firm had not paid its taxes since January 2010 and that cheques were being written but not sent in.

[30] In response, Mr. Young confronted the Respondent on several occasions in 2011 and 2012. The Respondent assured him that he would take care of the problem and speak with the accountant. The Respondent did not tell Mr. Young that he had been keeping the tax remittance forms and cheques and not sending them in.

[31] Throughout 2012, 2013, and 2014, the bookkeeper provided the Respondent and Mr. Young with memorandums on a quarterly basis, listing the tax remittance cheques that remained outstanding and stale-dated.

[32] Between July 1, 2010 and March 31, 2013, the Respondent took partnership draws in excess of his entitlement.

[33] Between July 1, 2010 and March 31, 2013, the Respondent did not remit HST collected by the Firm to the CRA.

Allegations 3 and 4: April 1, 2013 to December 31, 2015

[34] HST was replaced with PST and GST as of April 1, 2013.

[35] Between April 1, 2013 and December 31, 2015, the Firm collected PST and GST from its clients.

[36] In 2013 and 2014, the Respondent continued to keep tax remittance forms and cheques that had been prepared by the bookkeeper.

[37] In 2013 and 2014, the Respondent took partnership draws in excess of his entitlement.

Payment of GST/HST and PST

[38] On October 30, 2014, the Firm submitted an application to the CRA's Voluntary Disclosure Program. On December 8, 2014, the CRA accepted the Firm's disclosure for the 2009 to 2013 reporting periods. As the Firm's returns from July 1, 2013 to July 1, 2014 were not more than a year overdue, they were filed separately, outside of the Voluntary Disclosure Program.

[39] The Respondent was advised in a letter dated November 21, 2014 that the Firm was registered for PST with a retroactive date of April 1, 2013.

[40] On March 10, 2015, the Firm received a Notice of Assessment from the Province for $98,982.09 in relation to unpaid PST. Arrangements were made to make monthly payments, and the debt was paid in full by December 8, 2015.

[41] On January 4, 2016, the CRA issued a Requirement to Pay for $141,159.48. This amount was paid in full by February 17, 2016.

Law Society Compliance Audit and Investigation

[42] In early 2014, the Law Society conducted a compliance audit of the Oliver location. The audit revealed that the Respondent and the Firm had failed to remit HST, GST, and PST collected from clients to the government. The period audited was July 1, 2012 to December 31, 2013.

[43] In June 2014, the audit team leader outlined the exceptions noted in the compliance audit and asked for explanations from the Respondent.

[44] In a letter dated September 2, 2014, the Respondent confirmed that the Firm had not paid GST/HST or PST in full and on time. He explained that when the Firm

structure changed from a sole proprietorship to a partnership of law corporations, the Canada Revenue Agency ("CRA") issued a new GST number to the new partnership and closed the old number. However, the CRA also closed the new number in error. The Respondent explained that a previous application to reopen the new number under the CRA's voluntary disclosure provisions was not processed, and that when PST came back into effect, the Firm could not register for PST without a GST number.

[45] The Respondent acknowledged that the Firm had been charging and collecting GST and PST on legal accounts. He noted that the funds were deposited into the general account, and some funds were used to pay the Firm's operating expenses.

[46] The Respondent estimated that the total GST and PST liability was approximately $320,000, that the Firm had approximately $125,000 of those funds available, and that he was in the process of applying for loan financing to cover the balance. He also indicated that he had advised the Firm's accountants to prepare and file voluntary disclosure returns for GST and PST.

[47] The compliance audit resulted in a referral to the Professional Conduct Department. As a result, an investigation by the Professional Conduct Department was commenced.

[48] During the course of the Law Society's investigation, the investigator asked the Respondent to explain when he found out the GST number had been closed, and what he did to correct the error. In response, the Respondent advised that he learned the Firm's GST number had been closed in February 2011 when he contacted the CRA to make inquiries to arrange a voluntary disclosure of the outstanding remittances that had accumulated. He wrote:

> I recall calling GST [*sic*] to arrange a voluntary disclosure and filing of outstanding returns under the new GST number, and I was advised by the general inquiry person that the new GST number had been closed, and I would have to deal with a different party to "re-activate" the new GST number.
>
> I recall leaving telephone messages with a GST compliance person in February 2011 to "re-activate" the new GST number, and make voluntary disclosure of outstanding GST returns. The party was always out of the office, and the process was never initiated.
>
> I was aware prior to April 2013 that in order to register for PST, an active HST number was required.

> I believe I tried to apply to register for PST, but the application could not be processed without an active HST number.

[49] The Respondent also confirmed that, after September 2010, he signed tax remittance cheques when he knew that the returns were not being filed. In explanation as to why the remittances and cheques were being prepared if they were not being filed, he explained that he "anticipated 'catching up' with GST."

[50] The Respondent also explained the following:

> I made attempts to obtain funds from my personal resources to deposit to the general account to pay the outstanding GST and PST liability. I listed my Apex Mountain ski cabin for sale, but was unable to sell it due to a depressed real estate market. I attempted to obtain mortgage financing from my bank, but was declined due to the depressed real estate market, and the bank not wanting to mortgage vacation properties at the time. I dealt with a mortgage broker to obtain private mortgage financing, but was unable to obtain sufficient funds.

[51] The Respondent also advised that he responded to the memorandums from the bookkeeper by meeting with Mr. Young to discuss them.

[52] When asked to explain what he did with the PST returns and cheques that were prepared between April 1, 2013 and December 31, 2015, the Respondent advised that he put them into a PST file in the office to deal with when the Firm's PST number had been activated and that, after the voluntary disclosure, the PST returns and cheques were filed.

[53] Although the Respondent did not know until February 2011 that the GST number was cancelled, the Respondent confirmed that he was aware the GST returns were not being filed before that. He explained that both bookkeepers prepared the returns and gave the prepared returns and cheques to the Respondent for review and signature. He put them in a GST file in the office to be dealt with, originally thinking that he would catch up with the GST and then later that he would deal with them when the GST number had been re-activated.

[54] In response to questions regarding the use of the taxes that had been collected and deposited into the firm's general account, the Respondent answered "yes" to the question of whether the firm was experiencing financial difficulty at the time and "yes" to the question of whether he himself was. He explained:

> Funds were used for operating expenses and partner draws. I used my partner draws for personal expenses. ...
>
> The decline in the real estate market reduced the firm income from conveyancing files. ... [T]he Oliver office never performed to our expectations. The combination of those factors caused financial difficulty at times.
>
> I was able to deal with financial matters by liquidating assets (I sold my Apex ski cabin and withdrew RRSP funds).

[55] In a letter to the Law Society dated May 25, 2016, the Respondent took responsibility for what transpired and admitted taking partnership draws in excess of his entitlement. He wrote:

> I take responsibility for this situation. *I took draws from the firm general account in excess of my entitlement*, in the hope that a rebounding real estate economy, and a vibrant Oliver office would increase firm billings, and I would be able to sell/mortgage my Apex cabin and deposit funds to the firm general account. Those hopes were, in retrospect, unrealistic. I ultimately obtained funds to satisfy the outstanding GST and PST obligations by borrowing and by withdrawing RRSP funds. In retrospect, I should have done that far sooner. My actions have caused considerable stress and frustration to Mr. Young, for which I apologize. My actions should not be attributed to him and should not affect his good reputation.
>
> [emphasis added]

ADMISSION OF DISCIPLINE VIOLATIONS

[56] The Respondent's admissions of professional misconduct are set out in his letter to the Chair of the Discipline Committee dated September 21, 2018, and at paragraphs 74 to 81 of the Agreed Statement of Facts.

[57] "Professional misconduct" is not a defined term in the *Legal Profession Act*, the Rules, the *Code of Professional Conduct for British Columbia*, or the *Professional Conduct Handbook*.

[58] The test for whether conduct constitutes professional misconduct was established in *Law Society of BC v. Martin*, 2005 LSBC 16 at para. 171 as:

> [W]hether the facts as made out disclose a marked departure from that conduct the Law Society expects of its members; if so, it is professional misconduct.

[59] In *Martin*, the panel observed, at paras. 151-154, that a finding of professional misconduct does not require behaviour that is disgraceful or dishonourable. It concluded:

> The real question to be determined is essentially whether the Respondent's behaviour displays culpability which is grounded in a fundamental degree of fault, that is whether it displays gross culpable neglect of his duties as a lawyer.

[60] The *Martin* test was affirmed by a Review Panel in *Re: Lawyer 12*, 2011 LSBC 35.

[61] In the circumstances of this case, given the facts set out in the Agreed Statement of Facts, and the Respondent's admissions of professional misconduct, we accept that a finding of professional misconduct in relation to each allegation in the Citation is appropriate.

APPROPRIATENESS OF DISCIPLINARY ACTION

[62] Under the Rule 4-30 proposal, the Respondent has consented to an order that he be fined $12,000.

[63] The Discipline Committee has instructed discipline counsel to recommend to this Hearing Panel that the proposed disciplinary action be accepted.

[64] Deference should be given to the recommendation of the Discipline Committee to accept the proposal if the proposed disciplinary action is within the range of a "fair and reasonable disciplinary action in all of the circumstances." As stated in *Law Society of BC v. Rai*, 2011 LSBC 02 at paras.6-8 :

> This proceeding operates (in part) under Rule 4-22 of the Law Society Rules. That provision allows for the Discipline Committee of the Law Society and the Respondent to agree that professional misconduct took place and agree to a specific disciplinary action, including costs. This provision is to facilitate settlements, by providing a degree of certainty. However, the conditional admission provisions have a safeguard. The proposed admission and disciplinary action do not take effect until they are "accepted" by a hearing panel.

> This provision exists to protect the public. The Panel must be satisfied that the proposed admission on the substantive matter is appropriate. In most cases, this will not be a problem. The Panel must also be satisfied that the proposed disciplinary action is "acceptable". What does that mean? This Panel believes that a disciplinary action is acceptable if it is within the range of a fair and reasonable disciplinary action in all the circumstances. The Panel thus has a limited role. The question the Panel has to ask itself is, not whether it would have imposed exactly the same disciplinary action, but rather, "Is the proposed disciplinary action within the range of a fair and reasonable disciplinary action?"
>
> This approach allows the Discipline Committee of the Law Society and the Respondent to craft creative and fair settlements. At the same time, it protects the public by ensuring that the proposed disciplinary action is within the range of fair and reasonable disciplinary actions. In other words, a degree of deference should be given to the parties to craft a disciplinary action. However, if the disciplinary action is outside of the range of what is fair and reasonable in all the circumstances, then the Panel should reject the proposed disciplinary action in the public interest.

General Principles

[65] The leading cases in British Columbia on the factors to be considered in determining disciplinary action are: *Law Society of BC v. Ogilvie*, 1999 LSBC 17, *Law Society of BC v. Lessing*, 2013 LSBC 29, and *Law Society of BC v. Faminoff*, 2017 LSBC 04.

[66] In *Lessing*, a Review Board held that, as a starting point, disciplinary action must have regard to, and be consistent with, the Law Society's statutory mandate to protect the public interest in the administration of justice, in accordance with section 3 of the *Legal Profession Act*.

[67] Section 3 of the *Legal Profession Act* provides as follows:

> It is the object and duty of the society to uphold and protect the public interest in the administration of justice by
>
> (a) preserving and protecting the rights and freedoms of all persons,
>
> (b) ensuring the independence, integrity, honour and competence of lawyers,

(c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,

(d) regulating the practice of law, and

(e) supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.

[68] The Review Board in *Lessing* also indicated that the objects and duties set out in section 3 of the *Act* are reflected in the following factors from *Ogilvie* (at para. 10):

(a) the nature and gravity of the conduct proven;

(b) the age and experience of the respondent;

(c) the previous character of the respondent, including details of prior discipline;

(d) the impact upon the victim;

(e) the advantage gained, or to be gained, by the respondent;

(f) the number of times the offending conduct occurred;

(g) whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;

(h) the possibility of remediating or rehabilitating the respondent;

(i) the impact upon the respondent of criminal or other sanctions or penalties;

(j) the impact of the proposed penalty on the respondent;

(k) the need for specific and general deterrence;

(l) the need to ensure the public's confidence in the integrity of the profession; and

(m) the range of penalties imposed in similar cases.

[69] In *Faminoff*, a Review Board confirmed that the proper approach in determining an appropriate sanction is to apply the *Ogilvie* factors that are relevant to the particular circumstances of the misconduct and to the respondent (para. 83). A decision on sanction is an "individualized process that requires the hearing panel to weigh the relevant factors in the context of the particular circumstances of the lawyer and the conduct that has led to disciplinary proceedings" (para. 84).

[70] The Review Board in *Faminoff* also held that a consideration of aggravating and mitigating circumstances will assist in determining the range of appropriate sanctions (para. 87).

[71] The Review Panel in *Lessing* observed that not all of the *Ogilvie* factors would come into play in all cases, and the weight to be given to the *Ogilvie* factors would vary from case to case, but noted that the protection of the public (including public confidence in the disciplinary process and public confidence in lawyers generally) and the rehabilitation of the lawyer were two factors that, in most cases, would play an important role (para. 56).

[72] The Review Panel in *Lessing* stressed however that, where there was a conflict between the protection of the public and the rehabilitation of the lawyer, the protection of the public would prevail (para. 60).

[73] In this case, the *Ogilvie* factors that are most relevant to a determination of the appropriate sanction are:

(a) the nature and gravity of the conduct proven;

(b) the previous character of the respondent, including details of prior discipline;

(c) the presence or absence of other mitigating or aggravating factors; and

(d) the range of sanctions imposed in similar cases.

Nature and gravity of misconduct

[74] The nature and gravity of the misconduct is a prime determinant of the disciplinary action to be imposed. This view is consistent with prior Law Society decisions, as summarized by the panel in *Law Society of BC v. Gellert*, 2014 LSBC 05 at para. 39:

> We have taken the *Ogilvie* factors into account in the Respondent's case. But not all of the factors deserve the same weight in all cases. For

> instance, the nature and gravity of the misconduct will usually be of special importance (MacKenzie, *Lawyers and Ethics: Professional Regulation and Discipline*, loose-leaf (Toronto: Carswell, 1993), p. 26-1; *Law Society of BC v. Williamson*, 2005 BCSC 19, para. 36; *Law Society of BC v. Harder*, 2006 BCSC 48, para. 9; *Law Society of BC v. Goulding*, 2007 BCSC 39, para. 4; *Law Society of BC v. Skogstad*, 2009 BCSC 16, para. 6; *Law Society of BC v. McRoberts*, 2011 BCSC 4, para. 29), not only because this factor in a sense encompasses several of the others, but also because it represents a principal benchmark against which to gauge how best to achieve the key objective of protecting the public and preserving confidence in the legal profession. Indeed, this key objective is the prism through which all of the *Ogilvie* factors must be applied, a message that shines through clearly in the discussion in *Ogilvie* itself at paras. 9 and 10, and has since been affirmed in other decisions such as *Lessing*, (*supra*), at paras. 57 to 61.

[75] Here, the failure to remit taxes in a timely manner occurred over a period of approximately six-and-one-half years, and the arrears amounted to over $328,000 of GST/HST, and over $98,000 of PST.

[76] In addition to the significant length of time and amount of taxes involved, there is a number of aggravating factors that elevate the nature and gravity of the Respondent's misconduct to the highest end of the spectrum for "failure to remit" cases.

[77] The Respondent was primarily responsible for the failure to remit the Firm's taxes, as he was in charge of the financial management of the Firm.

[78] There was an element of dishonesty because, for a number of years, the Respondent took the forms and cheques that had been prepared and put them away instead of submitting them. When his bookkeeper provided the Respondent and his partner with memoranda setting out lists of stale-dated cheques, the Respondent did not advise the others that he had kept the cheques, and when he was confronted by his partner, the Respondent advised that he would take care of the problem and speak with the accountant when he knew that the cheques were not being cashed because he was filing them away in the office. The Respondent did not take any meaningful steps to rectify the situation until after the Law Society became involved.

[79] In addition, the Respondent took advantage of the situation by taking partnership draws that exceeded his entitlement. The Respondent did not remedy the situation when Mr. Young brought the matter to his attention, and continued to take

excessive partnership draws thereafter. As a result, even after the Voluntary Disclosure application was made, the Firm was not able to pay its arrears in a timely manner.

[80] The Respondent's misconduct had serious ramifications for his partner, Mr. Young. On August 24, 2017, the Discipline Committee authorized a citation against Mr. Young for his part in the Firm's failure to pay taxes. A hearing on the written record has been considered by another hearing panel and the decision was issued on November 28, 2018 (2018 LSBC 34).

Previous character and professional conduct history

[81] The Respondent has been practising law for over 36 years.

[82] The Respondent has a professional conduct record that includes a conduct review in (2006) to discuss his conduct in acting for more than one party in real estate transactions that were not simple conveyances, and Practice Standards Committee recommendations (2007) related to file management and the Respondent's real estate practice. The Practice Standards file was closed in 2010.

[83] Although the Respondent's professional conduct record is unrelated and somewhat dated, it is an aggravating factor that the misconduct at issue started at a time when the Respondent was actively implementing recommendations made by the Practice Standards Committee.

Other aggravating or mitigating factors

[84] As noted above, the aggravating factors in this case are:

(a) the large amount of arrears owed (over $400,000),

(b) the length of time involved (over six-and-one-half years),

(c) the element of dishonesty (that the Respondent secretly withheld tax remittance forms and cheques),

(d) the personal financial gain that the Respondent obtained (he took advantage of the situation by taking larger partnership draws than he was entitled to),

(e) the effect of his conduct on his partner (stress, embarrassment, and exposure to discipline), and

(f) the failure of the Respondent to correct his misconduct until the Law Society became involved.

[85] Neutral factors include that, with the considerable assistance of Mr. Young, the tax debt has been paid, and that there was no apparent harm to clients or the public.

[86] Mitigating factors have not been identified.

Range of sanctions imposed in similar cases

[87] The majority of "failure to remit PST/GST" cases have resulted in a low fine. However, given the added elements of dishonesty and personal gain in this case, and considering inflation, the Law Society submits, and the Respondent agrees, that a much higher fine is warranted.

[88] In *Law Society of BC v. Purvin-Good*, 2004 LSBC 05, a lawyer was disciplined for failing to remit approximately $13,000 of collected PST and GST. The lawyer admitted his misconduct. The hearing panel ordered that the respondent be reprimanded, and that he pay a fine of $1,000.

[89] In *Law Society of BC v. Chipperfield*, 2003 LSBC 24, a lawyer collected, but failed to register for and remit social services tax for over eight years. The lawyer admitted professional misconduct and did not have a professional conduct record. The hearing panel ordered that the lawyer be reprimanded and that he pay a $1,500 fine. The panel also ordered conditions that he immediately register under the *Social Services Tax Act*, that he provide the Law Society with quarterly reports regarding the payment of his taxes, that he undergo a practice audit, and that he consult a bankruptcy trustee.

[90] In *Law Society of BC v. Donaldson*, 2003 LSBC 27, a lawyer was disciplined for failing to remit approximately $26,000 in GST and PST collected over a period of two years. The lawyer did not have a professional conduct record, and there was evidence that he had suffered a serious illness. The hearing panel ordered a reprimand and a fine of $1,500 and ordered the lawyer to provide quarterly reports to the Law Society about the status of his health.

[91] In *Law Society of BC v. Worobec*, 2003 LSBC 22, a lawyer failed to remit GST for 21 months and used the GST funds collected to satisfy ongoing financial obligations of his partnership during a time of financial difficulty. He also failed to advise the Law Society of unsatisfied monetary judgments. A hearing panel accepted his conditional admission and ordered a reprimand and a fine of $1,500. He had a prior unrelated conduct review.

[92] In *Law Society of BC v. Hendery*, 2005 LSBC 25, a lawyer failed to register for PST, failed to charge and remit GST at various times in an 11-year period, and failed in one year to maintain his books properly. Assessments indicated that he owed over $27,000 in GST and PST arrears. The hearing panel ordered a $2,000 fine as a global sanction.

[93] In *Law Society of BC v. Wittmann*, 2008 LSBC 24, a lawyer was disciplined for failing to remit approximately $35,000 in GST and PST that he had collected from clients over the course of two years. He also falsely submitted "nil" PST returns to the government, which he certified to be true and correct when they were not. The lawyer admitted to his conduct in an agreed statement of facts. He was ordered to pay a fine of $3,000.

[94] In *Law Society of BC v. Bonfield*, 2008 LSBC 23, a lawyer failed to register for PST and failed to remit over $13,000 of GST and PST collected over a period of five years. He also misled the Law Society by making a false statement in a trust report that all taxes had been remitted when that was not true. The lawyer did not have a professional conduct record at the time. A hearing panel accepted his conditional admission and ordered a fine of $5,000. He was also ordered to provide the Law Society with quarterly statutory declarations of his total fees billed and PST remittances.

[95] In *Law Society of BC v. Lowes*, 2007 LSBC 54, a lawyer self-reported that, for 12 years he had not registered for or remitted approximately $167,000 in PST that he had collected from clients and misled his clients by collecting PST and failing to remit it. At the disciplinary action hearing, the lawyer presented medical evidence to support his position that he was an alcoholic and that, rather than deal with the debt, he continued to collect taxes from clients. The hearing panel accepted this as the reason the lawyer had not remitted PST. The lawyer also explained that his wife had passed away, that he was caring for an adult daughter that suffered from depression, and that he planned to sell his house to pay his tax debt. The panel noted that the lawyer had self-reported his failure to remit his taxes, had admitted that his actions constituted professional misconduct, and had taken steps to pay the outstanding taxes. The panel ordered a fine of $5,000.

[96] Suspensions have been ordered, but only where other serious misconduct was also proven, or where a lawyer was previously cited for the same misconduct.

[97] In *Law Society of BC v. Welder*, 2005 LSBC 49, a hearing panel ordered a suspension of one year for failing to remit approximately $183,000 in unpaid GST, PST, and employee source deductions. This was the second time the respondent was cited for the same misconduct. Following his first citation, he was fined

$2,500, ordered to consult with a trustee in bankruptcy, and ordered to provide quarterly declarations to the LSBC of the total fees billed by him and the amount of taxes remitted to the government. He then reported that from 2002-2004, he did not remit any GST, and only some PST. The respondent explained that he had diverted the funds from his law practice to fund a software project that failed and to make spousal support payments. On review, 2007 LSBC 29, the sanction was reduced to a three-month suspension with a condition that the respondent submit monthly reports of tax remittances to the Law Society. This case is distinguishable because it was the lawyer's second citation for the same conduct, and because the lawyer had a significant professional conduct record.

[98] In *Law Society of BC v. Cruickshank,* 2012 LSBC 27, a hearing panel ordered a one-month suspension as a global sanction. This was a consent resolution of two citations. The allegations included that the respondent failed to remit PST, GST, and employee source deductions at various times over a period of six years, failed to comply with numerous accounting rules (approximately 27), breached two undertakings in separate civil litigation matters, and failed to enter into five written contingency agreements. The respondent had a prior discipline record including an unrelated citation and three conduct reviews.

[99] In *Law Society of BC v. Hammond,* 2004 LSBC 33, a hearing panel ordered a four-month suspension because the "wide cross section of transgressions require[d] a suspension." There were 13 allegations in total, including allegations of breaches of undertakings/breaches of trust, breaches of duties to the Law Society, and various allegations related to maintaining proper office and accounting procedures, including the remittance of taxes. The panel characterized the situation as a "crumbling practice spinning out of control." The respondent had a significant professional conduct record that included three previous conduct reviews for breaches of undertakings/failure to report a judgment to the Law Society, and Practice Standards recommendations regarding practice management.

[100] This Panel accepts the submission that, in this Respondent's case, a low fine is inadequate because of the large amount of money involved (almost $400,000), the protracted length of time involved (over six-and-one-half years), the exposure of his partner to financial liability and discipline processes, and the deception involved in putting away tax remittance cheques in order to take excessive partner draws.

[101] This Panel further accepts that the serious aggravating factors in this case take it out of the low-fine range. As such, in the totality of circumstances, and in order to

send a message to the public and the profession that the Law Society will not tolerate such conduct, the proposed $12,000 fine should be imposed.

[102] The proposed disciplinary action is within the range of fair and reasonable disciplinary action in all of the circumstances.

CONCLUSON ON DISCIPLINARY ACTION

[103] For all of the foregoing reasons, this Panel accepts the Respondent's proposal pursuant to Rule 4-30, and orders a fine of $12,000 payable on or before January 15, 2019.

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

COSTS

[105] The Respondent has agreed to pay the Law Society's costs in the amount of $750 payable on or before January 15, 2019.

NON-DISCLOSURE ORDER

[106] The Law Society seeks an order under Rule 5-8(2) of the Rules that portions of the exhibits that contain confidential client information or privileged information not be disclosed to members of the public.

[107] The Law Society has the right to override a lawyer's duty to keep client confidentiality and to maintain solicitor-client privilege by compelling lawyers to produce confidential and privileged information to the Law Society during its investigation and hearing processes. Sections 87 and 88 of the *Legal Profession Act* compel disclosure to the Law Society and protect confidential and privileged information from disclosure.

[108] Rule 5-9(2) allows any person to obtain a copy of an exhibit that was tendered in a Law Society hearing that was open to the public, subject to solicitor-client privilege.

[109] Rule 5-9 is also subject to any orders made under Rule 5-8(2). In order to prevent the disclosure of confidential or privileged information to the public, this Panel orders, under Rule 5-8(2), that portions of the exhibits that contain confidential

client information or privileged information be excluded from disclosure to the public.

SUMMARY OF ORDERS MADE

[110] This Panel accepts the Respondent's conditional admission, instructs the Executive Director to record the Respondent's admission on the Respondent's professional conduct record, and makes the following orders:

(a) an order under section 38(5)(b) of the *Legal Profession Act,* that the Respondent pay a fine in the amount of $12,000, to be paid on or before January 15, 2019;

(b) an order under Rule 5-11 that the Respondent pay the Law Society $750 in costs, to be paid on or before January 15, 2019; and

(c) an order under Rule 5-8(2)(a) that, if any person, other than a party, seeks to obtain a copy of any exhibit filed in these proceedings, client names, identifying information and any confidential information or information protected by solicitor-client privilege be redacted from the exhibit before it is disclosed to that person.