2018 LSBC 40
Decision issued: December 27, 2018
Citation issued: June 21, 2017

Corrected Decision: The decision has been corrected on the first page and at paragraph [34](b) on January 10, 2019.

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

DANIEL BRUCE GELLER

RESPONDENT

DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION

Hearing dates:	July 23, 24 and 25, 2018
Panel:	Jennifer Chow, QC, Chair Eric V. Gottardi, Lawyer Lance Ollenberger, Public representative
Discipline Counsel:	Michael Shirreff and Elizabeth Allan
Appearing on his own behalf:	Daniel B. Geller

INTRODUCTION

[1] The Law Society of British Columbia issued a citation against the Respondent on June 21, 2017 (the "Citation") for failing to comply with Law Society Rule 2-24(4) (the "BC Rule") by practising law in Yukon while suspended in that jurisdiction,

contrary to section 1(4) of the Yukon *Legal Profession Act*, RSY 2002, c. 134 (the "Yukon *Act*").

[2] The Citation alleged that the Respondent's failure to comply with the BC Rule constituted a breach of the *Legal Profession Act* (the "BC *Act*") and amounted to professional misconduct under section 38(4) of the BC *Act*. In particular, the Citation alleges that:

> 1. Between March 16, 2015 and May 6, 2015, you breached Rule 2-15(4) of the Law Society Rules (now Rule 2-24), by practising law in the Yukon territory while suspended in the Yukon Territory, contrary to section 1(4) of the *Legal Profession Act* of the Yukon Territory, when you did one or more of the following:
>
> (a) gave JR legal advice;
>
> (b) agreed to place at JR's disposal the services of a lawyer;
>
> (c) accepted a retainer with respect to JR's criminal law matter in the Yukon Territory; and
>
> (d) represented yourself as a lawyer with the ability to practise law in the Yukon Territory.

BACKGROUND

[3] At the outset of the hearing, the parties filed an Agreed Statement of Facts, which was entered as Exhibit 1 in the proceedings (the "ASF").

[4] The Respondent was called and admitted as a member of the Law Society of British Columbia on May 15, 1974. He has been practising law, primarily as a criminal lawyer, for 44 years. The Respondent has represented clients all over the province and in Alberta, Manitoba, Saskatchewan and Ontario. The Respondent has at all material times been a sole practitioner and a member in good standing in British Columbia.

[5] The Respondent also practised law in Yukon from time to time. On April 25, 2005, the Law Society of Yukon ("LSY") granted a Certificate of Permission (Certificate) to the Respondent to practise law in Yukon for the first time. Certificates can be granted to outside lawyers on a case-by-case basis. Between April 25, 2005 and May 16, 2007, the Respondent practised law in Yukon in relation to several individual matters under a number of these Certificates.

[6] In 2007, the Respondent was investigated by the LSY related to an allegation that he was practising law in Yukon without having first obtained a Certificate. Following an investigation into those allegations, the Chair of the Discipline Committee directed that no further action be taken against the Respondent.

[7] On May 16, 2007, the Respondent was called and admitted as a full member of the LSY. Almost three years later, in February 2010, the Respondent's membership in the LSY was administratively suspended due to non-payment of his membership fees. The Respondent testified that in 2010 he was diagnosed with leukemia and had to undergo chemotherapy. He explained that the non-payment was a detail that essentially fell through the cracks during the tumultuous period of his illness. As a result of the administrative suspension, after February 2010, the Respondent was no longer authorized to practise law in Yukon.

[8] In February 2012, the Respondent again came to the attention of the LSY. The LSY received a report alleging that the Respondent was practising law while on administrative suspension. On September 18, 2012, the LSY issued a preliminary investigation report with respect to the complaint and then, on February 26, 2013, the LSY referred the matter to two members of the Discipline Committee for review and disposition. In January 2014, the Respondent participated in a conduct review pursuant to s. 29(2)(c) of the Yukon *Act*. As a result of that review, the Respondent, without admitting any fault, agreed to an undertaking not to apply for a Certificate or for membership with the LSY for a period of three years commencing from April 2014.

THE IMPUGNED CONDUCT

[9] In or about 2004 or 2005, the Respondent was first retained by JR, a client in British Columbia, to act for him in a criminal proceeding. Over the subsequent years, JR would retain the Respondent from time to time as a criminal defence lawyer in relation to legal matters in British Columbia. Prior to March 2015, JR last retained the Respondent in 2014 to deal with a criminal matter arising out of an incident that occurred near Boston Bar (the "Boston Bar" matter). These charges were being prosecuted out of the Chilliwack courthouse. The Respondent was successful in getting the charges against JR stayed in advance of any trial.

[10] The Panel heard evidence from the Respondent that JR had left the jurisdiction before the Respondent could render him a final bill for his services in relation to the Boston Bar matter. The Respondent testified that he did not have any current contact information for JR and had lost contact with him for a time.

JR's arrest and detention

[11] On March 16, 2015, JR was arrested in Whitehorse and detained at the Whitehorse Correctional Centre ("WCC") in Yukon. Shortly after his arrest, JR contacted the Respondent by phone. After the initial phone call, in the following weeks and months, the Respondent spoke with JR on several occasions.

[12] On March 21, 2015, JR submitted a written request to the WCC to have the Respondent added to his privileged telephone contact list as his lawyer. Several days later, on March 25, 2015, an employee of WCC called the phone number provided by JR to confirm that the Respondent wished to be added to the inmate phone system. The Respondent agreed and asked for both his cell phone and business phone number to be added to the system. Having the number added to the system had two benefits: (1) it allowed JR to phone the Respondent for free; and (2) it ensured that the calls would not be recorded.

Phone calls regarding JR

[13] After learning of JR's arrest, the Respondent made significant efforts to contact defence lawyers in Yukon and in British Columbia so that they could act for JR as his counsel in the Yukon matter. He testified that none of these efforts bore fruit.

[14] In April 2015, the Respondent called several institutions in Yukon in an attempt to seek help for his former client. He contacted the LSY on April 8, 2015 and indicated in a voicemail that he was "having trouble getting representation for my client in BC." On April 9, 2015, the Respondent called the Crown and made inquiries about the charges and whether bail would be opposed. The Respondent made it clear to the Crown that he would not be acting for JR on the Yukon matter.

[15] During this time, JR was assaulted on two separate occasions at the WCC. The more serious of the two assaults took place on April 17, 2015. After the assaults took place, the Respondent phoned the Crown, EM, once again and asked if bail would still be opposed in light of the assaults. He also spoke to JP, the chief Federal prosecutor in Yukon, and asked for some assistance. The Respondent expressed concern about the safety of his client and indicated that he had been unable to get representation, legal aid or otherwise.

[16] In early May 2015, the Respondent phoned the President of the LSY, JT, about a "former client". He expressed concern about the assaults and about the client's inability to obtain legal representation. It is fair to say that the Respondent's phone calls to the various people he was seeking help from became increasingly agitated and involved a palpable level of frustration.

[17] In late April 2015 through early May 2015, the Respondent also made a series of calls to the LSY seeking to have legal aid counsel appointed for JR. His calls and voicemails evinced a growing level of frustration and criticism of the perceived inaction on the part of the Yukon Legal Services Society ("YLSS"). At some point in mid-May 2015, the YLSS approved JR's legal aid application and NM was assigned to represent JR.

JR's payment to the Respondent

[18] Since the time of JR's arrest, the Respondent was in contact with JR's fiancée, TH. The Respondent spoke with TH shortly after JR's arrest in March 2015 and subsequently met with her twice in person. At some point, JR and the Respondent arranged for a payment of $5,000 to be made to the Respondent. JR asked TH to sell her SUV and use the proceeds to make the payment to the Respondent. Shortly after the second assault on JR, the Respondent met with TH. It was at this meeting that she provided the Respondent with a $5,000 bank draft. The Respondent told TH that he would help JR.

[19] On April 22, 2015, the Respondent deposited the $5,000 bank draft into his general account. There is conflicting evidence about the purpose of this payment. To avoid unnecessary duplication, a discussion of that evidence will be reserved for later in this decision.

The Respondent's visit to the WCC

[20] The Respondent flew to Whitehorse in the early evening of April 23, 2015, returning home the following day. On April 23, 2015, the Respondent called the WCC and attempted to schedule a visit. He spoke with SV, a Research Administrative Assistant, who advised that the Respondent would not be able to visit JR until the following day. The Respondent identified himself as JR's lawyer. After the call, SV exchanged emails with his supervisor. It appears from those e-mails that SV believed that the Respondent was counsel to JR.

[21] The Respondent met with JR at the WCC on April 24, 2015. He met with JR in a secure lawyer-client interview room, which was used for lawyer visits due to the fact that the room did not have a recording device. The meeting was scheduled for 45 minutes. SV met the Respondent upon his arrival and advised that he was there to provide JR with access to the surveillance video of his prior assault. SV presented JR with an Access to Information and Personal Privacy ("ATIPP") form. After the Respondent added some words to the language of the form, JR signed the document. Some additional photos of the assault were provided to JR and the

Respondent and then SV left the room. The Respondent and JR reviewed the video and the photos on the laptop.

[22] During the meeting with JR, the Respondent advised JR that he was there as a "friend" and that he was not able to practise law in Yukon, but that he was "working on it." The meeting lasted 45 minutes. The Respondent did not attend the WCC again following his visit on April 24, 2015.

THE COMPLAINT

[23] On May 13, 2015, the LSY sent a letter to the Respondent advising him that they had received information that he may be engaged in the unauthorized practice of law in Yukon in relation to JR's legal matter and requested a response. On May 13 2015, the Respondent sent a reply letter in which he explained his conduct and stated his strong belief that his only intention was to get JR legal representation in Yukon.

[24] On July 14, 2015, the LSY issued a Motion pursuant to Rule 98 of the LSY Rules directing that the matter be treated as a complaint. The Respondent sent a letter dated August 5, 2015 to the LSY explaining his conduct. On August 25, 2015, the LSY wrote to advise the Respondent that it was directing that a preliminary investigation be conducted by JC. JC and the Respondent exchanged some correspondence. JC also had two telephone interviews with JR during the course of his investigation.

[25] By letter dated December 10, 2015, JC contacted the Respondent regarding the preliminary investigation.

[26] On July 11, 2016, the Respondent wrote to the LSY and expressed concerns about the fairness of the LSY investigating his conduct and requested that the investigation be transferred to another law society. The matter was then transferred to the Law Society of BC by way of a letter dated January 12, 2017.

[27] On April 27, 2017, the Respondent was interviewed by Sarah Conroy and Raymond Viswanathan of the Law Society in the course of its own subsequent investigation.

[28] On June 8, 2017, the Discipline Committee of the Law Society authorized a citation and it was issued on June 21, 2017.

POSITION OF THE PARTIES

Position of the Law Society

[29] The Law Society relied on the ASF and its accompanying Book of Documents ("BOD") as the evidentiary foundation for its position that the Respondent was engaged in the unauthorized practice of law in Yukon. This evidence was supplemented by the *viva voce* evidence of several witnesses.

[30] The Law Society called TH, JR's fiancée at the material time, as a witness. TH testified about two meetings that she had with the Respondent and efforts that she made to sell her vehicle in order to provide requested funds to the Respondent. She also testified as to her understanding regarding the nature of the relationship between the Respondent and JR and the purpose of the monies provided to the Respondent.

[31] The Law Society also made an application to have four witnesses testify by telephone. That application was granted. The Law Society called EM, a Crown prosecutor who had conduct of JR's criminal matter in Yukon at the material time and who spoke with the Respondent. The Law Society called JP, the Chief Federal prosecutor in Yukon, who also spoke with the Respondent about JR's matter. The Panel also heard evidence from NM, counsel at the Yukon Legal Services Society, who eventually became JR's legal aid lawyer; and NC who was the Executive Director of the Yukon Legal Services Society at the material time and testified about the processing of JR's application for Legal Aid.

[32] The Law Society took the position that the evidence, viewed collectively and in context, demonstrated that the Respondent engaged in the practice of law in Yukon when he, among other things:

(a) gave JR legal advice over the phone from Vancouver while JR was incarcerated at the WCC on charges under the *Criminal Code* and the *Controlled Drugs and Substances Act* that JR was facing in Yukon;

(b) represented to JR and TH, at least implicitly, that he was a lawyer with the ability to practise law in Yukon;

(c) accepted a "retainer" to advise and assist JR regarding the charges he was facing in Yukon and to assist JR following an assault by another inmate while incarcerated at the WCC;

(d) phoned Crown counsel handling JR's matter on multiple occasions to obtain information about the nature of the charges against JR; to discuss the assaults on JR at the WCC; and to inquire as to Crown's position on bail; and

(e) travelled to Whitehorse and met with JR while he was incarcerated at the WCC to discuss JR's current legal situation in Yukon.

Position of the Respondent

[33] In brief, the Respondent disputes that he was engaged in the practice of law in Yukon when he spoke with JR and other individuals there. The Respondent maintains that he was aware of his practice restriction and stated to JR and others that he could not act for JR as his counsel in the criminal proceeding in Yukon. The Respondent argues that all of his efforts were directed in finding alternate counsel for JR and in ensuring JR's personal safety while incarcerated at WCC. The Respondent maintains that he took no action that required or engaged his specialized knowledge or skill as a lawyer and simply made general inquiries and passed along information – and that such actions do not amount to the practice of law as that concept is defined in the Yukon *Act*.

ISSUES

[34] The issues for determination are:

(a) Whether the Respondent engaged in the unauthorized practice of law in Yukon; and

(b) If (a) is affirmed, whether that conduct amounts to a breach of the Rules or professional misconduct, pursuant to section 38(4) of the BC *Act*.

LEGAL FRAMEWORK

[35] Section 38(4) of the BC *Act* states:

(4) After a hearing, a panel must do one of the following:

(a) dismiss the citation;

(b) determine that the respondent has committed one or more of the following:

(i) professional misconduct;

(ii) conduct unbecoming the profession;

(iii) a breach of this Act or the rules;

(iv) incompetent performance of duties undertaken in the capacity of a lawyer;

(v) if the respondent is an individual who is not a member of the society, conduct that would, if the respondent were a member, constitute professional misconduct, conduct unbecoming the profession or a breach of this Act or the rules.

The standard and burden of proof

[36] As the hearing panel in *Law Society of BC v. Daniels*, 2016 LSBC 17, noted at paragraph 16, the standard of proof on a hearing of a citation is proof on a balance of probabilities, and the burden of proof falls on the Law Society:

> A hearing of a citation by a Law Society hearing panel is a civil and not a criminal proceeding. There is only one civil standard of proof at common law, and that is proof on a balance of probabilities, and factual conclusions in a civil case must be made by deciding whether it is more likely than not that the event occurred (*FH v. McDougall*, 2008 SCC 53 at paras. 40 and 44). In this matter, the Law Society carries the burden of proof to establish on a balance of probabilities the facts that it alleges constitute professional misconduct or a breach of the Act or Rules.

The practice of law

[37] The Citation alleges that the Respondent breached Rule 2-15(4) of the Law Society Rules (now Rule 2-24(4)), by engaging in the unauthorized practice of law in Yukon. Rule 2-24(4) reads as follows:

> (4) A lawyer who practises law in another Canadian jurisdiction must comply with the applicable legislation, regulations, rules and *Code of Professional Conduct* of that jurisdiction.

[38] The "practice of law" is defined in section 1(1) of the Yukon *Act* as follows:

> "practice of law" includes

(a) appearing as counsel or advocate,

(b) preparing, revising or settling

(i) a petition, memorandum or articles under the *Business Corporations Act*, or an application, statement, affidavit, minute, resolution, bylaw or other document relating to the incorporation, registration, organization, reorganization, dissolution or winding up of a corporate body,

(ii) a document for use in a proceeding, judicial or extrajudicial,

(iii) a will, deed of settlement, trust deed, power of attorney or a document relating to a probate or letters of administration or the estate of a deceased person,

(iv) a document relating in any way to a proceeding under a statute of Canada or Yukon, or

(v) an instrument relating to real or personal estate that is intended, permitted or required to be registered, recorded, or filed in a registry or other public office,

(c) doing an act or negotiating in any way for the settlement of, or settling, a claim or demand for damages,

(d) agreeing to place at the disposal of another person the services of a lawyer,

(e) giving legal advice,

(f) making an offer to do anything referred to in paragraphs (a) to (e), and

(g) making a representation that he or she or another person is qualified or entitled to do anything referred to in paragraphs (a) to (e),

…

[39] Section 1(4) prohibits certain individuals from practising law as follows:

(4) A person must not do any act described in paragraphs (a) to (g) of the definition of "practice of law" in subsection 1(1), even though the act is not performed for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed, if

(a) the person is a member or former member of the society who is suspended or has been disbarred, or who, as a result of disciplinary proceedings, has resigned from membership in the society or otherwise ceased to be a member as a result of disciplinary proceedings; or

(b) the person is suspended or prohibited for disciplinary reasons from practising law in another jurisdiction.

[40] It should be noted for the purposes of the discussion below that the definition of "practice of law" in the BC *Act* is nearly identical to the one in the Yukon *Act*. Any differences in the definition are not material with respect to the issues before the Panel. Further, the meaning of "practice of law" is actually broader than both of these definitions, as it *includes* but is not limited to the 11 enumerated examples in the provision.

[41] To summarize the legal framework in plain language, the Respondent must adhere to the rules in Yukon when practising law as a visiting lawyer. According to the Rules of Yukon, to practise law the Respondent had to either be in possession of a Certificate or be a member of the LSY. The Respondent admits that he was neither and, further, he undertook not to apply for either until the expiration of the legal undertaking. As a result, the Respondent was prohibited from practising law in Yukon, regardless of whether he was being paid for his services or not. The key issue for this Panel to determine is whether the Respondent was practising law in Yukon as that activity is defined in its governing legislation. If the Law Society establishes, to the requisite standard of proof, that the Respondent did practice law in Yukon, it will have established that he was in breach of Rule 2-24(4) of the BC Rule.

[42] What is practising law? What does it mean to give legal advice? Is it something different than giving general counsel or guidance? Aside from the list of activities in the definition section of the Yukon *Act*, there is no further definition. In order to give further guidance to lawyers who are suspended, the Law Society has produced an "Information Sheet: For Lawyers who are Suspended." In that document, the Law Society provides examples of what types of activities a lawyer must not do – essentially, the document tells the lawyer that "a suspended lawyer may not perform any services for or provide any advice to clients." The examples provided for in the Information Sheet are, in part, as follows:

A suspended lawyer MUST NOT:

- speak to or meet with clients about their files;

- perform any work on client matters (A suspended lawyer may advise another lawyer of the status of the file (that is, what has been done prior to the suspension), but may not advise or suggest the steps to be taken on the file)

…

- infer [sic] that he or she is qualified or entitled to practise law in any type of communication (A suspended lawyer is permitted to attend to certain aspects of the business of the practice of law, provided that in doing so he or she does not infer himself or herself [sic] as qualified or entitled to practise law.)

[43] The Information Sheet also provides guidance to suspended lawyers by defining what limitations circumscribe the type of activities in which they are permitted to engage. For example, the Information Sheet describes that a suspended lawyer may close a client file or sign cheques from the general account to pay outstanding practice debts. In other words, the lawyer may engage in only the most limited business-related activities to keep the machinery of the practice going. No meaningful interactions with clients, including meetings, are to be conducted. While not dispositive of the issue, the Information Sheet provides very cogent evidence of the broad interpretation that the Law Society takes of the definition of practising law, as that term is understood in the context of a suspended lawyer.

[44] A related and relevant question in the Respondent's case is where does a lawyer practise law if the client is charged, arrested and detained in a different jurisdiction? Again, the Law Society has produced a helpful document dealing with this topic: "Information Sheet: Temporary Practice in BC" ("Temporary Practice Sheet"). This document provides guidance to other Canadian lawyers who wish to practise law in BC on an occasional basis and also to BC lawyers seeking to practise elsewhere in the country. The relevant portion of the Temporary Practice Sheet is as follows:

> **What activities constitute practising law in British Columbia?**
>
> For the purposes of Rule 2-16 [now Rule 2-24], you will be considered to be providing legal services in BC if:
>
> - you perform professional services for others as a barrister or solicitor with respect to or relying on the laws of BC or the laws of Canada applicable to BC; or

- *you give legal advice with respect to the laws of BC or the laws of Canada applicable to BC.*

This means that you could be practising law in BC whether or not you are physically in the province. For example, if you are giving legal advice with respect to the laws of BC on the telephone, by email or through correspondence from a province outside of BC, you are considered to be practising law in BC. You must therefore keep track of all of these activities.

It also means that you are providing legal services in BC if you do so with respect to the laws of Canada applicable to BC. For example, lawyers employed by the Government of Canada who perform professional services as barristers and solicitors or give legal advice with respect to or relying on the laws of Canada applicable to BC are subject to Rule 2-16 [now 2-24].

[emphasis added]

[45] The LSY does not have a similar Information Sheet. However, given the similarity of BC rules to those of Yukon generally and the definition of "practise of law" specifically, this Panel finds that the Yukon Rules should be similarly interpreted. At the very least, given the BC interpretation of the Rule, and the existence of the Temporary Practice Sheet, the Respondent ought to have sought clarification on this point from the LSY. It is clear from the evidence, however, that the Respondent was unfamiliar with this Information Sheet and that the potential for a breach of the Rules had not occurred to him. In fact, when asked about his telephone calls to JR in this regard, he stated: "It never occurred to me for a second that I was practising law. … My efforts were to get somebody else, anybody else to practise law, I mean all of them, over a period of weeks getting somebody, anybody else to practise law."

Test for professional misconduct

[46] Professional misconduct is not defined in the BC *Act*, the Rules or the *Code of Professional Conduct for British Columbia*. The panel assesses a lawyer's conduct in specific circumstances to determine if there is "a marked departure from that conduct the Law Society expects of its members": *Law Society of BC v. Martin*, 2005 LSBC 16 at paragraph 171. In *Martin*, the hearing panel observed at paragraph 154:

> ... 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.

[47] In *Re: Lawyer 12*, 2011 LSBC 11 at paragraph 14, the hearing panel summarized previous applications of the *Martin* test as follows:

> In my view, the pith and substance of these various decisions displays a consistent application of a clear principle. The focus must be on the circumstances of the Respondent's conduct and whether that conduct falls markedly below the standard expected of its members.

[48] Not every breach of the Rules will amount to professional misconduct. In *Law Society of BC v. Lyons*, 2008 LSBC 09 at paragraph 35, the hearing panel discussed the factors for determining when a breach of the Rules is so serious that it amounts to professional misconduct:

> In determining whether a particular set of facts constitutes professional misconduct or, alternatively, a breach of the *Act* or the Rules, panels must give weight to a number of factors, including the gravity of the misconduct, its duration, the number of breaches, the presence or absence of *mala fides*, and the harm caused by the respondent's conduct.

ANALYSIS OF THE EVIDENCE

The Respondent's understanding of his relationship to JR

[49] The evidence establishes that JR had a pre-existing lawyer-client relationship with the Respondent relating to at least one (and perhaps more) criminal matter(s) in British Columbia, dating back to 2004 or 2005. The duration of that prior relationship is unclear, as the Respondent made conflicting statements about how long he had known JR. The Respondent explained these contradictions by reference to the effluxion of time and to memory problems relating to time periods dating prior to his cancer treatment.

[50] This Panel also heard evidence that the Respondent had lost touch with JR after the conclusion of the Boston Bar matter. The Respondent stated that JR owed the Respondent somewhere in the realm of $10,000 in unpaid work, which was incurred during negotiations with and submissions to the Crown prosecutor in the Boston Bar matter. The Respondent testified that he had prepared a draft bill but

had never had a chance to formally render the account due to JR's departure from the jurisdiction. As the Respondent appeared to have some memory problems about the precise details of the draft account, the Panel does not have to decide whether, at the time when JR contacted the Respondent from the WCC, there was a body of unpaid work for which the Respondent was entitled to be paid, nor what the said amount of the payment may be.

[51] The evidence, on balance, establishes that the Respondent told JR, representatives of the Crown and the Law Society that he would not be acting for JR in the Yukon matter. The Respondent was adamant in his testimony that he explicitly told everyone that he was simply trying to find a lawyer to take on his former client's legal matter.

[52] The evidence of Crown prosecutor EM, confirmed that the Respondent was explicit that he would not be representing JR in his criminal matter in Yukon. This Panel finds, having considered all of the evidence, that the Respondent did take positive steps to state that he was not going to act as counsel for JR in the Yukon criminal matter, although his actions may have contradicted his statements.

[53] The evidence establishes that the Respondent subjectively believed at all material times that he was not practising law in Yukon. The Panel accepts that, during the time period covered by the Citation, the Respondent was expending significant effort to locate and procure alternate legal representation for JR militates against an inference that the Respondent harboured an intention, fleeting or otherwise, to act as counsel for JR in relation to his criminal matter.

Did the Respondent engage in the unauthorized practice of law?

[54] The Law Society argued, as set out in the Citation, that the Respondent: (a) gave JR legal advice; (b) agreed to place at JR's disposal the services of a lawyer; (c) accepted a retainer with respect to JR's criminal law matter in Yukon; and (d) represented himself as a lawyer with the ability to practise law in Yukon.

[55] We will first address particular (b) from the Citation. We find that the Law Society has not established on clear and cogent evidence that the Respondent engaged in any conduct that would amount to agreeing to place a lawyer at JR's disposal. Indeed, that particular allegation was not emphasized in oral argument by counsel for the Law Society.

[56] What remains for the Panel to decide is whether it is proven that, over the course of his dealings with JR during the relevant period, the Respondent gave JR legal advice, held himself out as a practising lawyer or accepted a retainer with respect to

the Yukon criminal matter. When the course of dealings between JR and the Respondent are viewed as a whole, it is the considered decision of the Panel that the Respondent was providing legal advice and accepted a retainer related, at least in part, to the Yukon criminal matter. While the Respondent properly told JR that he was not able to practise law in Yukon, there is evidence that JR may have been confused about the extent to which he could expect legal assistance from the Respondent. In addition, it appears that the Respondent believed that any legal advice that was given while in British Columbia, did not amount to practising law in Yukon. In addition, the Respondent admitted in an interview with the LSBC that JR was told that the Respondent was not acting for him regarding his criminal charges at his visit to the WCC. The Respondent also made several confusing and seemingly inconsistent statements about whether or not the money he received was in relation to the Yukon matter. The Panel finds that the Respondent could have, and should have done more to disabuse officials at the WCC about the precise nature of his visit and his role, if he was not attending the WCC as counsel for JR.

Phone calls to Crown, LSY and YLSS

[57] The Panel will first consider whether the Respondent's efforts to collect information about the charges and to find a lawyer for JR constitute the practice of law. The Panel heard evidence that the Respondent made telephone calls to the Crown, to the LSY and to the Yukon Legal Services Society. While the evidence from each of the representatives of each respective organization varied in terms of the level of emotion and collegiality with the Respondent spoke to them, the evidence was consistent that he was calling each of them to assist JR in obtaining alternate counsel and/or to engage their help is ameliorating JR's situation at the WCC. For example, the Panel heard from Crown prosecutor EM, who testified that the Respondent stated that he would not be acting for JR in the Yukon criminal matter and that he sent a summary package to the Respondent as a courtesy that he extends to many prospective lawyers. The other witnesses were less clear in their memories about the precision with which the Respondent had stated he was not acting as counsel for JR but on balance, their evidence was that they confirmed with the Respondent that he did not have practising status in Yukon. The Respondent for his part was clear and unequivocal that he made clear to each of JP, GW and SV that he was not going to be acting as JR's lawyer.

[58] It is the position of the Law Society that when JR called from Yukon, seeking assistance, the Respondent should have simply told JR that he could not assist him and that he should find another lawyer, speak with duty counsel or call one of the other lawyers on the in-custody list, if he was given one. A lawyer may, pursuant to her duty of loyalty to a client, take some cursory steps to contact alternate

counsel or get basic information about the nature of the charges that a client is facing in order to pass that information along to future counsel. As long as the suspended lawyer does not discuss the legal matter with the client or provide any advice to the client, such efforts could be described as a basic courtesy. The Respondent, in making phone calls to the Crown, the YLSS and the LSY was simply trying to get help for a former client. However, when the Respondent took the step of advising the WCC to add his name to the WCC inmate phone list as JR's counsel, the Respondent held himself out as counsel for JR with the WCC. Accordingly, the Panel finds that the evidence establishes that the Respondent was giving legal advice, or holding himself out as a lawyer for JR in relation to the Yukon matter.

Arrest and discussion with JR

[59] The LSBC contends that the Respondent provided JR with legal advice during his first phone call from the WCC and in subsequent phone calls to the Respondent. They point to statements made by JR to JC during the course of his investigation. According to JC's notes, JR told him that during his phone call to the Respondent, the Respondent advised him of "the usual". The notes also indicate that the Respondent told him that he would fly up to see JR immediately, but that he required $5,000.

[60] It is difficult to decide the appropriate weight to give to the "evidence" of JR in this proceeding. First and foremost, JR died in November 2017, therefore he did not give *viva voce* evidence, under oath. The interviews with JR were not recorded nor was there any cross-examination on his statements by JC or anyone else. Third, JR was described by the Respondent as a career criminal whose character could quite properly be characterized as unsavory. In addition to credibility concerns, there are also reliability concerns. Parts of JR's narrative were internally inconsistent; at one point he acknowledged that the Respondent had told him that he was not permitted to practise in Yukon, while at another point JR told JC that if he had known that the Respondent was not entitled to represent him in Yukon, he would have retained someone else. This inconsistency however could be attributed to "mixed messages" from the Respondent, wherein first he states he was not permitted to practice, but then proceeds to take some affirmative action for JR. When asked in cross-examination as to whether he advised JR not to speak to police, for example, the Respondent's evidence was equivocal. During one exchange on this topic, he provided the following evidence:

> Q. You said to JR don't talk to the police about the issues, don't answer any questions –

A. I don't remember saying that but if you're asking me if that's something I typically would say, I would say depending on the circumstances.

Q. Right. Do you recall telling him not to talk to other inmates about his charges?

A. That's possible. I don't know. But I don't recall specifically saying that. It's, it's sound advice but I, I don't know if I actually said that.

Q. Does that sound like something that your practice would be to tell people when they call you after having just been arrested?

A. It does.

Q. I can show you the notes. I mean that's what JR told JC.

A. Well, you know, I don't know what JR told JC. And I understand JR had his own agenda at that point, but I can tell you this that if I told him don't talk to other inmates, I suppose you could call that legal advice but I don't recall saying that, but I, I certainly, you know – boy, that would be cutting it pretty fine.

[61] Despite the fact that the Panel did not have the benefit of JR's testimony, JR's statement to JC that the Respondent gave him the "usual" advice, combined with the Respondent's testimony that it is possible that he gave such advice to JR we find that it is likely that the Respondent gave legal advice to JR during these early conversations.

[62] The evidence is clear that the Respondent spoke with JR and his fiancée, TH, about JR's legal situation generally and about his safety at the WCC. The Respondent admitted talking to JR about his "no contact" order and speaking with officials at the WCC about enforcing the order. The Respondent admitted to talking to JR about his legal representation and his "situation in jail". Importantly, in cross-examination, the Respondent agreed that the discussions that he was having with JR during the impugned time period were "related to issues JR was facing in the Yukon."

[63] The Panel finds that whether the Respondent was giving JR specific advice about his right to silence or more general advice about his situation in jail or the enforceability of the no contact order, he was giving JR legal advice in relation to the issues he was facing in Yukon. We reject the distinction offered by the

Respondent that he was simply giving JR a "factual rendition of the law in Canada". We find that the Respondent adopted an overly narrow and unrealistic interpretation of legal advice when he was dealing with JR as a suspended lawyer in Yukon. Further, given that he was subject to an undertaking effectively prohibiting him from practising law in Yukon, the Respondent should have erred on the side of a broad interpretation of legal advice and refrained, as much as possible, from giving any type of advice.

The $5,000 payment

[64] The Law Society argued that the Respondent sought and received money as a "retainer" or as payment on account for legal services rendered. There is no dispute in the evidence that the Respondent accepted $5,000 from JR's fiancée, TH, raised from the sale of her truck, on April 21, 2015, while JR was incarcerated at the WCC. A statement of account dated April 20, 2015 was tendered as an exhibit at the Respondent's hearing. The document, on its face, purports to be a statement of account for "all legal services rendered … including the numerous and lengthy discussions with yourself and others regarding your current situation and numerous calls with your girlfriend re the same." Again, if this document is accepted as being prepared by the Respondent, it would constitute evidence that the Respondent himself deemed the conversation with JR and his girlfriend to be "legal services" that could properly be billed as such.

[65] The Respondent was asked about the account once he had disclosed it to the Law Society in its investigation. On the topic of the $5,000 payment or discussions about the payment, the Respondent, in his interview with Sarah Conroy on April 27, 2017, said the following, at p. 26 of the transcript:

> … No one had seen him at that point, I said look, I don't know what to do and we discussed the matter. I said A) I want money from the other thing, and B) I'm coming up to the Yukon but I'm gonna be paid, okay?

[66] And at page 28 of the transcript, the Respondent was asked about the retainer again:

Conroy	Did you tell him before going up there that you were not able to practise law in the Yukon?
Geller	Uh-huh.
Conroy	And that you would not be able to run a bail hearing for him or help?

Geller Of course, I'd been trying to get a lawyer so we could do that. I wouldn't have waited two months to, to do a bail hearing.

Conroy Okay. And so did the two of you discuss what the $5,000 was for?

Geller Yes we did.

Conroy Okay.

Geller I said, you know, don't forget, I said you know I, I told you, he disappeared from B.C.

Conroy Uh-hmm.

…

Geller There's, *there's about a thousand dollars to go up there*, I was there for 24 hours, between the plane fare and the hotel it was about, I don't know, something like that, *but he owed me money as well*, okay.

Conroy Okay.

Geller *And, I had been spending a lot of time on this, just trying to get him help, plus the fact that yeah, he did.*

Conroy Okay.

Geller He owed me money but, but, leaving that aside …

Conroy If we can just stay on that for a second because, was, *was part of the $5,000 to pay for you to go up there*?

Geller *Well, I had to pay – yes, of course.*

[emphasis added]

[67] Later in the interview, Ms. Conroy asked the Respondent about the account that he issued to JR on April 20, 2015. In that account, one of the line items referred to "[t]he numerous discussions with yourself and others regarding your current situation and numerous calls with your girlfriend re: the same." The other entries

on the statement of account appear to refer to the JR's prior legal matter in British Columbia.

Conroy	Yeah, so let's deal with the last paragraph of that statement of account.
Geller	What about it?
Conroy	What, what was that in reference to?
Geller	The situation at the jail and the fact that he's calling me to get a lawyer, the numerous [inaudible] of discussions with yourself and others, obviously there were others, regarding your current situation and numerous calls with your girlfriend re: the same.
Conroy	So, these were legal services that you billed [JR] for?
…	
Geller	*I discussed with him his current situation, and you wanna call that legal services?*
Conroy	The reason I ask is because at the top of the statement of account, it says "to all legal services including" …
Geller	*Yeah, well that's, yeah [inaudible] pro forma, yeah, yeah, I know.*
Conroy	And generally that's what lawyers bill for, right, they bill for services, legal services that they've provided [inaudible].
Geller	No, [inaudible] that also includes I don't bill disbursements, it's something I don't do, I, I, in general, my office expenses, okay. *So this has to do with everything regarding the Yukon, everything regarding the Yukon, okay.* And it says numerous and lengthy discussions with yourself regarding your current situations and numerous calls with your girlfriend, that's correct.
Conroy	*So did you bill JR for services that you provided to him in the Yukon?*

Geller *I billed him, I billed him for when I was in British Columbia for questions he asked me, okay and conversations I had with him. The fact that he's in the Yukon or the fact that anywhere, he could be in the US and I talk about his situation doesn't mean I'm practising law in the US ...*

…

Geller … [T]he fact is, I did go to the Yukon, and this covered my bill in the Yukon as well.

[emphasis added]

[68] As of the date of the interview with Ms. Conroy, the Respondent was taking the position that the account *did* relate to the matters in Yukon. It is also clear that the Respondent appeared to be drawing a distinction in his own mind between services provided to JR in British Columbia, related to Yukon, and services provided in Yukon. At the hearing however, the Respondent's evidence was wholly contradictory on this point. At various points in his testimony, the Respondent denied that the bill he issued to JR was for services in Yukon. The Respondent stated at one point in his testimony:

> Now I just want to tell you that at this time I had, had an agreement with respect to, you know, I said $5,000. He was arranging the $5,000 through his girlfriend. *This was not for any legal representation in the Yukon. This was simply between me and him. And I can tell you that when I went up to the Yukon, you could almost call it just a freebee, you could say it was pro bono* because my concern was that I had, had not been able to get anybody to pay any attention to a situation in the jail, either GW, who I had no confidence in, or any of the lawyers …
>
> [emphasis added]

[69] Similarly, he also stated that the trip to Yukon was a cost that he paid for personally:

> Q. So the distinction in your mind turns on whether or not you were practising law?
>
> A. *I spent about a thousand dollars going up to the Yukon*. I forget what it cost to fly up there. And in that sense I did not ask for or receive any compensation, that's what I meant by *pro bono*.

[emphasis added]

[70] Again, discussing this point in cross-examination, the Respondent drew the distinction regarding his discussions with JR taking place at a time when the Respondent was physically located in BC, stating:

> … *This $5,000 was for BC services. And, you know, the fact is I did talk to him. It was just a boilerplate putting it in*. It really -- I don't see how you could say that that was for work in the Yukon, it wasn't.
>
> [emphasis added]

[71] When the Respondent was asked, in cross-examination, about the last line in the statement of account, just as he was by Ms. Conroy, he gave a slightly different answer:

> Q. Okay. And so the last point on this bill says:
>
> Through numerous and lengthy discussions with yourself and others regarding your current situation and numerous calls with your girlfriend re: the same.
>
> A. Yeah.
>
> Q. Right. *So are you saying that had nothing to do with the Yukon?*
>
> A. *You know what, it's kind of boilerplate. It's kind of a boilerplate thing, but the fact is we, we also – as I said, he had, he had – his current situation is ongoing – probably an ongoing matter in Chilliwack*. I didn't even know at that time whether or not they were going to recharge him with something else, but that's just boilerplate language, Mr. Sherriff. I never, never, never charged him for anything resembling legal advice.
>
> [emphasis added]

[72] Here, the Respondent suggested that the line was simply boilerplate, but also seemed to suggest that the line might also relate to an ongoing criminal investigation in Chilliwack.

[73] Finally, when asked by the Panel to clarify his testimony about the account, the Respondent offered the following evidence:

Q. … You mentioned in reference to the account, Mr. Sherriff took you to the last entry regarding discussions with the girlfriend. And you'd said that perhaps the inclusion of that language was boilerplate so I just want to clarify that point. So is it your testimony today that the inclusion of that descriptor in that particular account, was that included in error in that account?

A. In, in retrospect, yes. I mean I – on a lot of bills I will say to, you know, all other blah, blah, blah, blah, it's a boilerplate thing, discussions and – that's all I thought about. I, I, I – yeah, I guess so. *But again, I know the bill doesn't discuss what was discussed in the Yukon, but certainly it was never my intention, nor my belief that I billed him for any service in the Yukon, including, I might add, going there to the jail*.

Q. Okay. I mean that answer leads to some confusion in my own mind and this may be my own thick-headedness. *The account and the $5,000, can you just reiterate for me, was it in any way related to the Yukon or was it only related to the matters in BC*?

A. *It was only related to the matter in BC*, otherwise I would have charged him specifically for everything including the flight, including hotel.

…

Q. All right. And you mentioned in your testimony that the flight was approximately a thousand dollars or something --

A. No, it was, –

Q. – like that?

A. – it was less but it was quite expensive.

Q. Okay. *But you paid that out-of-pocket?*

A. *Yeah.*

Q. And you never issued him another account?

A. I never did …

[emphasis added]

[74] The Respondent's evidence on this point was confusing and contradictory. On balance, we find that the Respondent did bill JR for conversations that he had with JR and others while located in British Columbia, thinking, erroneously, that he could not possibly be found to be practising law in Yukon while giving advice in British Columbia. We accept that the statement of account is a true reflection of the Respondent's state of mind at the time that it was issued. He was billing JR for some portion of the unpaid work on the prior criminal matter and in some portion for the time he had spent dealing with JR's legal matter in Yukon, including his travel to see JR at the WCC. To the extent that the Respondent testified otherwise, we do not find him credible on this point and reject his evidence in that regard.

[75] As a result, this Panel finds that the Respondent did accept a retainer for legal services and/or accepted payment for the provision of legal services to JR in relation to the Yukon legal matter. This finding also bolsters our earlier finding that the Respondent gave JR legal advice over the course of his numerous telephone conversations with JR.

Prison visit

[76] The Respondent agreed that, when officials at the WCC contacted him to have his number registered as a solicitor-client contact for JR, he confirmed that he was the lawyer for JR. He did not at that time tell the contact from the WCC that he was not acting as JR's Yukon lawyer. He testified that, when he attended at the WCC on April 24, 2015, he signed in as a lawyer using his BC lawyer's identification card. The Respondent also testified adamantly that he told the head administrator at the jail, GW, that he was not counsel for JR in Yukon that day.

[77] The Respondent flew up to visit JR after the second time JR was beaten in the jail. He made arrangements to go to the jail. He made arrangements with SV, who had the video of the assault, to see the video, prior to going to the jail. The evidence is undisputed that the Respondent went to the jail and viewed the video with JR. He gave some advice to JR about the ATIPP form that JR signed and discussed the whole situation with JR. The evidence is clear from the emails exchanged between the prison officials that they viewed the Respondent as JR's lawyer. When the Respondent was asked in cross-examination about the distinction that the Respondent seemed to be drawing between representing JR in the criminal matter and helping him with his situation at the jail, the Respondent accepted the following characterization of his conduct:

> Q. You fly up to the Yukon, you meet with him in jail, you're saying that you were just there to talk about his rights as a prisoner effectively?
>
> A. That's exactly what happened.

[78] It is the observation of the Panel that the Respondent erroneously did not view the assistance that he was providing to JR as legal assistance. This is evinced in the Respondent's repeated statements in his closing argument that any "member of the John Howard Society or a member of the Salvation Army or a journalist or a concerned citizen" could have made the same inquiries of the officials at the WCC about JR's well-being. When asked by the Panel whether those same private actors would be able to have access to a private solicitor-client interview room, the Respondent incredibly stated that he believed that they would.

[79] In *Law Society of BC v. Barton*, 2007 LSBC 24, the panel was referred to and seemed to adopt as persuasive the "Definition of the Practice of Law" approved by the Washington State Supreme Court on September 1, 2001. The "Definition of the Practice of Law" is quoted at paragraph 41:

> **General Definition:** The practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) which require the knowledge and skill of a person trained in the law. This includes but is not limited to:
>
> (1) *Giving advice or counsel to others as to their legal rights or the rights or responsibilities of others for fees or other consideration.*
>
> (2) Selection, drafting, or completion of legal documents or agreements which affect the legal rights of an entity or person(s).
>
> (3) Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.
>
> (4) Negotiation of legal rights or responsibilities on behalf of another entity or person(s).

[80] We find that the Respondent's interpretation of legal advice is overly narrow. He was meeting with a client, negotiating for greater safety protocols to be put in place and counselling JR in relation to his rights as a prisoner. The Respondent frankly

acknowledged as much. He simply was of the opinion that such actions did not amount to the practice of law – in his mind, he was simply helping JR in a very difficult and dangerous situation. While the Panel accepts that the Respondent's motives were largely altruistic and his belief in his own *bona fides* was honestly held, simply put, his belief was mistaken and his actions constituted an unauthorized practice of law.

[81] Further, his belief that, as a lawyer in BC, he was entitled to have privileged calls with JR generally led him to take advantage of the benefits of phone and visitation access reserved for legal counsel. It was not until late in the day, after confirming his place on the phone list and his meeting with JR at the WCC, that he expressly clarified with the jail officials and with JR himself that he was not JR's lawyer in Yukon. Given that he was suspended and subject to an undertaking, we find that the Respondent was obligated to be more proactive in disabusing the prison officials of any notion that he was authorized to do legal work in Yukon.

Is the Respondent guilty of professional misconduct?

[82] While we have concluded that the Respondent engaged in the unauthorized practice of law in his dealings with, and on behalf of, JR, we find that his conduct falls short of that required to support a finding of "professional misconduct."

[83] We are mindful of the fact that the Respondent told JR at the WCC, and separately, the assigned Crown prosecutor that he was not authorized to act for JR as counsel on his criminal matter. The Panel was also impressed with the fact that the Respondent subjectively believed that he was abiding by his undertaking and that he took significant steps to try to find a lawyer for JR. The evidence is clear that the Respondent became emotionally involved in his client's legal tribulations and passionately advocated that JR was at risk and required the assistance of someone in the criminal justice system. The Panel accepts, on balance, that it was this ethic that primarily animated the Respondent's actions.

[84] The evidence is equally clear, however, that the Respondent was under the fundamental misconception that, as long as he did not represent JR in court and give any legal advice when the Respondent was physically located in British Columbia, it did not constitute the practice of law in Yukon. The evidence also establishes, and the Respondent accepted, that he also wished to be paid for his unpaid work in helping resolve JR's legal matter in the Boston Bar incident as well as for his time advising JR in relation to the problems arising from his arrest and detention at the WCC. As suggested by counsel for the Law Society, if the

Respondent had not insisted on being paid for previously-completed, but unbilled, legal work, one might query whether the Citation would ever have issued.

[85] When JR called the Respondent for help from the WCC, the Respondent knew he was not authorized to practise in Yukon as he had given the LSY an undertaking. The Respondent took a risk when he took the steps that he did to assist JR with his situation. Upon review, that risk was not justified. Suspended lawyers must exercise caution and restraint above all. They must seek clarification and permission in all ventures. While the Respondent did reach out to the LSY, he did not expressly seek advice on his own conduct. Had he done so, he may have avoided breaching the Rules.

[86] It is noteworthy that this is not a case where the Panel accepts that the Respondent has breached an undertaking. Mr. Geller never applied for membership in the LSY, nor did he apply for a certificate in Yukon. When considering whether a lawyer has breached the precise terms of a legal undertaking it is important to look at the express wording and consider those in context. When pressed on this point, counsel for the Law Society accepted that the actions prohibited by the express language of the undertaking had not occurred. Further, the Respondent's clearly expressed intention was to abide by the strictures set out in the undertaking.

[87] If we consider and apply the factors set out in *Lyons*, we do not believe that this case, given that much of the Respondent's actions could be described as taking place in a "grey area", rises to professional misconduct.

Gravity of the misconduct

[88] The Respondent has been found to have practised law in Yukon while prohibited. He gave legal advice and accepted payment for legal services. He did this in violation of the spirit of the undertaking he signed. The context is important on any consideration of the gravity of the conduct. The Respondent was attempting to assist a former client find a lawyer and ameliorate very dangerous circumstances at the WCC. It is clear from the evidentiary record that, at the time of the impugned actions, the Respondent did not believe that he was practising law, nor was he in breach of the express language of the undertaking. Indeed, the Panel accepts that the steps taken by the Respondent did not lend themselves to a clear bright-line definition of practising law. The answers were discernible but were not obvious.

Number of breaches

[89] The steps taken by the Respondent can best be viewed as one transaction. He took steps to find JR a lawyer and to ameliorate his situation at the jail in the two months after his arrest. When viewed in context of other cases involving misconduct over an extended period of months or years, this factor can be described as being at the low end of the spectrum in this case.

Presence or absence of *mala fides*

[90] The evidence suggests that there was an absence of *mala fides* in this case. The Respondent took positive steps to acknowledge his restrictions with JR and the representatives that he spoke to in Yukon. Despite an obviously acrimonious relationship with the LSY, he reached out to that organization for assistance. This is not a case where the Respondent clearly appreciated that his conduct was wrong and proceeded despite that knowledge. Nor is this a case where the Respondent attempted to hide his involvement with JR or proceed secretly in any way.

Harm caused by the conduct

[91] This is not a case where the Respondent's actions caused lasting harm to the client. If the Law Society is correct in its submission that JR was confused about the Respondent's role in his legal matter, that confusion was not expressly communicated to the Respondent. At most, the intervention of the Respondent may have delayed JR's bail hearing for a period of a month or so. Nor was this a situation where money was paid to the Respondent and no work was done to assist the client. The Respondent made calls to find JR a lawyer, made calls to ameliorate his safety situation in the jail and flew up to meet with him and the jail officials after a second attack. While JR may have believed he paid sufficiently to receive more assistance from the Respondent and expected progress on the issue of his judicial interim release, the Respondent did spend some time working to assist JR.

[92] In summary, none of the factors set out in *Lyons*, viewed either individually or collectively, support a finding that the Respondent, in attempting to help JR, demonstrated a "gross culpable neglect in his duties as a lawyer." The Respondent simply fell into a greater and greater amount of involvement with the client and became emotionally invested in getting some kind of results for JR and his situation, in addition to being paid for past work done.

[93] The unauthorized practice of law in this case might have been avoided if the Respondent had been aware of the Law Society's Information Sheet or if he had

made specific inquiries about whether or not he was practising law in Yukon while giving advice from British Columbia. While the Information Sheet itself is perhaps not as well known in the profession as the Law Society Rules or the *Code of Professional Conduct*, it is the hope of this Panel that this decision will make it clear to the profession going forward that providing legal advice to a person located in another domestic jurisdiction will, in all likelihood, constitute the practice of law in that jurisdiction.

[94] Having considered all of the evidence, we find that the Respondent's conduct does not amount to a marked departure constituting professional misconduct. The pith and substance of the Respondent's various decisions were altruistic: he tried to find his client a lawyer and to assist him in an unsafe situation. Ultimately, the Respondent went too far in personally trying to ameliorate JR's situation. His actions, however, are not "grounded in a fundamental degree of fault," as that term was defined in *Martin*. The Respondent's actions were animated, to a large extent, by what he viewed as his conflicting duties as a lawyer, rather than a "gross culpable neglect of his duties as a lawyer." In the final analysis, the Respondent was wrong. He practised law in Yukon while suspended, and he accepted payment for this work. This was a breach of Law Society Rule 2-24(4). However, on the particular facts of this case, those actions do not amount to professional misconduct.

[95] The Panel would like to note that, in the future, now that these issues have been clarified, a similar breach of BC Rule 2-24(4) may amount to professional misconduct.

DETERMINATION

[96] This Panel finds that the Respondent did not commit professional misconduct; however, he did engage in the unauthorized practice of law and, as such, has committed a breach of the BC Rule 2-24(4).