2019 LSBC 19
Decision issued: May 30, 2019
Citation issued: February 7, 2018

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

WILLIAM HENRY LIM

RESPONDENT

DECISION OF THE HEARING PANEL

Written materials:	April 2, 2019
Panel:	Sarah Westwood, Chair David Layton, QC, Lawyer Guangbin Yan, Public representative
Discipline Counsel:	Kathleen Bradley
Counsel for the Respondent:	Gerald Cuttler, QC

INTRODUCTION AND PRELIMINARY MATTERS

[1] On February 7, 2018, the Discipline Committee of the Law Society of British Columbia (the "Law Society") issued a citation against the Respondent pursuant to the *Legal Profession Act* and the Rules of the Law Society (the "Citation"). Although the Citation consisted of two allegations, the Law Society proceeded only on the first, which alleges that, on or about February 15, 2011, in his capacity as principal and director for C Corporation (the "Corporation"), the Respondent caused the Corporation to enter into a loan agreement as lender, which loan agreement he ought to have known provided for interest at a criminal rate, as defined in section 347 of the *Criminal Code of Canada*, contrary to Chapter 2, Rule 1 of the *Professional Conduct Handbook*, then in force.

[2] The Law Society further alleges that this conduct constituted conduct unbecoming a lawyer, pursuant to s. 38(4) of the *Legal Profession Act* (the "Act").

[3] The Respondent admits that he was properly served with the Citation.

[4] On February 7, 2019, the Respondent wrote to the Discipline Committee indicating his conditional admission of conduct unbecoming and proposing that the matter be resolved by way of a proceeding under Rule 4-30. At its meeting on February 28, 2019, the Discipline Committee considered and accepted the proposal, and instructed discipline counsel to recommend the acceptance of the proposal to this Hearing Panel.

[5] The Citation was originally set for four days of hearing from May 7 through 11, 2019. On March 29, 2019, the Law Society applied to have the hearing proceed on written materials without a hearing. The procedure for such process is set out in the Practice Direction dated April 6, 2018 (the "Practice Direction").

[6] The Respondent consented to the Law Society's application to conduct the hearing by way of written materials only and without an oral hearing.

[7] In considering the application to have the hearing in writing, this Hearing Panel considered the parties' submissions and the parties' Joint Book of Exhibits, which included an Agreed Statement of Facts ("ASF"). Having reviewed this material, on April 12, 2019, this Panel ordered that the matter should proceed as a hearing in writing.

[8] This Hearing Panel then considered the materials presented in relation to the conditional admission under Rule 4-30 of the Law Society Rules, including the ASF, and the Respondent's consent to disciplinary action as set out in the Rule 4-30 proposal.

[9] This Hearing Panel confirmed the Rule 4-30 proposal, accepted the Respondent's admission of conduct unbecoming, and confirmed the proposed disciplinary action.

[10] The following sets out our reasons for those decisions.

APPLICATION TO CONDUCT THE HEARING ON WRITTEN MATERIALS

[11] In this case, the parties consented to having the hearing proceed on written materials alone. All the materials required for the hearing in writing were prepared and accompanied the Law Society's request to adjourn the dates for an oral hearing and proceed with a hearing in writing. Thus, the Panel found that both the right of

the Respondent to have a fair hearing, and the desirability of speedy and expeditious hearings in relation to allegations of conduct unbecoming a lawyer, were met, and moved to consider the application to conduct the hearing on the written record.

Background and basis for application for a hearing in writing

[12] In its submissions, the Law Society set out the background and basis for the application, namely:

(a) The Respondent is a practising lawyer;

(b) The Respondent conditionally admitted that he, in his capacity as principal and director for the Corporation, caused the Corporation to enter into a loan agreement as lender. The Respondent ought to have known that the loan agreement provided for interest at a criminal rate, as defined in s. 347 of the *Criminal Code of Canada*, contrary to Chapter 2, Rule 1, of the *Professional Conduct Handbook*, then in force;

(c) The Respondent conditionally admitted that this conduct constituted conduct unbecoming a lawyer, and consented to a disciplinary action of a fine of $8,000, and costs in the amount of $1,000;

(d) The Law Society and the Respondent prepared and provided materials for consideration by the Hearing Panel, which were provided to us in advance of the hearing dates. These materials consisted of:

(i) submissions of the Law Society;

(ii) submissions of the Respondent;

(iii) letter dated February 7, 2019, from the Respondent's counsel;

(iv) email dated March 28, 2019, from the Respondent's counsel;

(v) Joint Book of Exhibits;

(vi) Joint Book of Authorities; and

(vii) draft consent order.

Applicable law

[13] Under the Practice Direction, with the consent of the Respondent the Law Society may apply to the President for a hearing in writing (the "Application"). The Application must be accompanied by all documents to be considered at the hearing in writing.

[14] The President (or Designate) will appoint a hearing panel to consider the Application and conduct the hearing, and the hearing panel will exercise a discretion to grant or refuse the Application.

[15] Once having reviewed the written materials, if the hearing panel finds it can proceed with a determination under s. 38(4) of the *Legal Profession Act* and, if appropriate, take disciplinary action under s. 38(5) of the *Legal Profession Act*, without the need for an oral hearing, the panel will then mark the exhibits submitted, if admissible, for the purposes of Rule 5-9 of the Law Society Rules. The hearing panel will then consider and decide the matter on the materials provided.

[16] In this case, the materials provided, including the required consents, were circulated in advance of the hearing. All requisite procedural aspects of the Practice Direction were met, and on review, this Hearing Panel found that the materials provided were sufficient to decide the matters before it. Moreover, since the Respondent admitted to conduct unbecoming a lawyer and consented to a fine, this Hearing Panel found that it was in a position to do justice between the parties without an oral hearing.

[17] This Hearing Panel therefore found that the materials provided did not give rise to any factual or legal issue on which we required oral submissions or testimony, nor did they contain any material deficiency such that we were unable to make a determination. Accordingly, we found that, in the circumstances as a whole, it was appropriate to proceed with a hearing in writing and so ordered on April 12, 2019.

Proceedings under Rule 4-30

[18] Rule 4-30 requires that a hearing panel consider the conditional admission and the proposal and, if the panel finds them acceptable, impose the proposed disciplinary action.

[19] In considering a proposal under Rule 4-30, Rule 4-31 provides that a hearing panel may only accept or reject the proposal and related disciplinary action. It is not open to the hearing panel to come to a different conclusion regarding the proposed

disciplinary action, to reconsider the citation, or otherwise to vary the proposal approved and recommended by the Discipline Committee.

[20] In this case:

(a) the Respondent admits the underlying facts of the Citation, and admits allegation 1 contained within the Citation. The Respondent further admits that this conduct constituted conduct unbecoming a lawyer, pursuant to s. 38(4) of the *Legal Profession Act*;

(b) the Respondent consents to the specified disciplinary action of a fine of $8,000, and costs of $1,000, payable within a month of the date on which the decision of this Panel is issued; and

(c) The Respondent acknowledges that publication of the circumstances summarizing the admission will be made pursuant to Rule 4-48 of the Law Society Rules, and that such publication will identify the Respondent.

[21] This Hearing Panel finds that the conduct described in the ASF at issue in these proceedings constitutes conduct unbecoming a lawyer. The Hearing Panel accepts the proposed specified disciplinary action and orders a fine in the amount of $8,000, and costs in the amount of $1,000, the total payable one month after these reasons are issued. The Law Society also sought, and the Respondent consented to, an order pursuant to Rule 5-8 in the nature of a "non-disclosure order" that, if any person other than a party seeks to obtain a copy the information protected by client confidentiality and solicitor-client privilege in any exhibit filed in these proceedings, the material is redacted. This Hearing Panel makes these orders, and what follows are our reasons for them.

AGREED STATEMENT OF FACTS

[22] The following is a summary of the portions of the ASF that this Hearing Panel finds most relevant to the decision at hand.

Member background

[23] The Respondent was called to the bar and admitted as a member of the Law Society of British Columbia on July 13, 1977.

[24] The Respondent practises as a solicitor, primarily in the areas of residential real estate and corporate law.

[25] The Respondent worked at a small firm in Vancouver from approximately July 1977 to May 1982, at which time he opened his own small firm, also in Vancouver. The Respondent's firm now has offices in both Vancouver and Richmond, British Columbia, and he practises law at both locations.

[26] At all material times, the Respondent was the principal and director of the Corporation.

Background facts

[27] In February 2011, another lawyer at the Respondent's firm represented a potential lender who had been approached by a group of borrowers (the "Borrowers") for a loan of $2.5 million.

[28] As the first lawyer was going out of town, he briefed the Respondent about the potential loan in case the potential lender required representation.

[29] On February 11, 2011, two of the Borrowers attended at the Respondent's firm and met with the Respondent, communicating that they wished to make the following proposal to the potential lender to secure a loan:

(a) loan amount: $2,500,000;

(b) the loan amount plus a bonus of $600,000 (total of $3,100,000), to be repaid within three months;

(c) if payment was not made within three months, the loan amount would accrue interest at four per cent per month to the date of payment in full; and

(d) to secure the loan, the Borrowers would pledge a total of four properties.

[30] The Borrowers in attendance at the Respondent's office did not specify whether the four per cent interest was to be simple or compound interest.

[31] The Respondent called the potential lender to discuss the Borrowers' proposal while the individual Borrowers were in his office. The potential lender advised that he wanted professional appraisals of the properties to be put up as security.

[32] The individual Borrowers advised that professional appraisals would take too long, as they needed the deal to happen quickly and did not want to wait. The potential lender refused to make the loan.

[33] The Borrowers then asked the Respondent if he could arrange to loan the Borrowers $2.5 million, explaining that they needed the money quickly, that it was a bridge loan, and that they had done deals like this successfully many times in the past.

[34] The Respondent advised the Borrowers that he, through the Corporation, may be interested in making the loan, but made it clear that any discussions would not be in his capacity as a lawyer but rather as a director of the Corporation.

[35] The Borrowers then made the same proposal to the Respondent as they had to the potential lender, except that they offered an additional four properties (for a total of eight properties), to secure the loan. The Respondent advised the Borrowers that he would research the properties and get back to them.

[36] On February 23, 2011, the Respondent informed the Borrowers that the Corporation would proceed with the loan as proposed.

The loan documents

[37] The Respondent informed the individual Borrowers that his firm, and another individual lawyer in his firm (the "Associate"), would prepare the loan documents for the Corporation.

[38] The loan documents included a Loan Agreement, a Promissory Note, and a Form B Mortgage (collectively, the "Loan Documents").

[39] The Respondent gave written instructions to the Associate, but the instructions did not specify whether the four per cent interest was compound or simple, or whether it applied to the face value of the loan (the loan amount plus the $600,000 bonus), or solely to the $2.5 million that was to be advanced.

[40] In his written instructions, the Respondent did not specify the nature of the $600,000, which was in fact a "bonus" proposed by the Borrowers. During the later Law Society investigation, the Respondent explained that he simply did not consider whether this "bonus" amounted to "interest", nor its effect on whether the interest rate charged amounted to a criminal rate of interest.

[41] The Associate drafted the Loan Documents. The Loan Agreement, dated for reference on February 15, 2011, included the provision that the interest was to be payable at the "interest rate equal to four percent (4%) per month, calculated monthly and compounded monthly."

[42] The Associate also drafted a Promissory Note for $2,500,000, dated February 16, 2011, which defined its Principal Sum as $2,500,000, with "interest on the Principal Sum at the rate equal to four percent (4%) per month calculated monthly and compounded monthly, on or before May 16, 2011."

[43] The Promissory Note went on to state:

> The Principal Sum shall bear interest at a rate equal to four percent (4%) per month calculated monthly and compounded monthly, not in advance both before and after maturity and before and after default, payable each month until payment of the entire Principal Sum plus interest has been received by the Lender.

[44] The Associate delegated the preparation of the Mortgage and ancillary documents to a conveyancer. The Mortgage defined the "Principal Amount" as $3,100,000" and the "Interest Rate" as "4% per month".

[45] Four percent simple interest per month on $2.5 million produces an annual effective rate of 48 percent. Four percent compound interest per month on $2.5 million, however, produces an annual effective rate of 60.1 percent.

[46] Section 347 of the *Criminal Code* sets the threshold for a "criminal rate" of interest at 60 percent per annum.

[47] On February 15, 2011, all of the Borrowers attended at the Respondent's firm, the Associate witnessed the Borrowers' signatures on the Loan Documents, and the loan proceeds were subsequently distributed as authorized by the Borrowers.

The Borrowers default on the loan

[48] On April 27, 2011, the Respondent had the Associate draft a reminder letter to send to the Borrowers (the "April Letter"). The April Letter stated, in part, that "if the loan is not repaid by [May 16, 2011], that interest at a rate of four percent per annum shall apply to the outstanding balance." The Respondent has clarified that the reference to "4 percent per annum" was in error, and that it should have read "4 percent per month."

[49] The Borrowers did not repay the loan by May 16, 2011.

The Respondent initiates foreclosure proceedings

[50] Before May 12, 2011, the Respondent consulted and retained other counsel ("Foreclosure Counsel") to initiate foreclosure proceedings.

[51] When consulting Foreclosure Counsel, the Respondent expressed surprise regarding the compounding provisions in the Loan Documents.

[52] After their initial consultation, in a letter dated May 12, 2011, the Respondent wrote to Foreclosure Counsel setting out "additional details of the loan" and indicating that the interest rate was "4 percent per month," resulting in monthly interest of $100,000 and daily interest of $3,287.67. On May 25, 2011, Foreclosure Counsel wrote to the Borrowers reiterating these numbers, and confirming the per diem amount of $3,287.67. This amount was reflected in the Notice of Intention to Enforce Security that Foreclosure Counsel attached to the letter.

[53] Foreclosure Counsel then began foreclosure proceedings and prepared all relevant documents, affidavits and orders based on a simple interest calculation of four per cent per month, or $3,287.67 per day.

[54] The Borrowers still did not repay any of the amount owing, so the Respondent, on behalf of the Corporation, took the matter to trial.

The trial

[55] At trial, the Corporation claimed four per cent simple interest on a principal amount of $2.5 million.

[56] The two properties owned by the Borrower who did not defend the action were sold by court order.

[57] At trial, the remaining Borrowers claimed that the Loan Agreement provided for a criminal rate of interest and that the Court should therefore either decline to enforce it, or decline to allow the Respondent to recover any interest.

[58] Foreclosure Counsel did not represent the Respondent at trial, nor was he called to testify at the proceedings. The Respondent and the Associate both testified.

[59] The trial judge delivered his Reasons for Judgment on May 12, 2015 (the "Reasons"), ordering that the Borrowers had to repay the Respondent the amount that had been advanced to them, but without interest.

[60] The trial judge found that the Respondent "was not being truthful in his evidence that he only intended to require repayment of the sum of $2,500,000 with simple interest of 4% per month from the Borrowers."

[61] The trial judge further found that the Respondent had in fact intended the interest to be compounded, and therefore charged at a criminal rate, based on the trial judge's assessment that the Associate "testified that she must have discussed the interest provisions with Bill Lim because the Loan documents contain provisions not set out in his written instructions. I cannot accept that [the Associate], a careful solicitor, would have drafted interest and repayment provisions so widely divergent from those asserted by Bill Lim."

Law Society investigation

[62] Following a review of the Reasons, the Law Society investigated the Respondent's conduct, seeking an explanation from him regarding the criminal rate of interest charged in the Loan Documents, as well as the input of Foreclosure Counsel, the Associate and others.

[63] While acknowledging that, as drafted, the interest rate set out in the Loan Documents constituted a criminal rate of interest, the Respondent maintained both at trial and to the Law Society investigators that this was never his intent.

[64] The Respondent noted that, when he filed the foreclosure documents, he claimed interest at four per cent per month, or 48 per cent per year, not the four per cent compounded monthly set out in the Loan Documents.

[65] The Respondent stated that he had not noticed the error in the interest rate provisions before the documents were signed and asserted through counsel that his "problematic conduct resulted from a lack of attention during a rushed transaction." The Law Society did not dispute this explanation.

[66] The Respondent said he first became aware of the compound interest provisions when he consulted Foreclosure Counsel after the Borrowers defaulted on the loan.

[67] In the Law Society's correspondence with the Associate, she explained that it was her understanding that the interest rate to be charged was not compounded interest, that it simply did not occur to her that four per cent monthly interest would exceed 60 per cent annual interest if compounded, and that she did not realize until later that the Loan Agreement said compound interest. The Associate wrote that she "was not aware of the 4% per month exceeding 60% per annum until the issue arose during the litigation proceedings."

[68] The Law Society further reviewed the transcripts of the trial where, contrary to the judge's finding that the Associate "must have discussed" the interest provisions with the Respondent, the Associate in fact testified that she had no recollection or notes that she had discussed those provisions with him, and only assumed that she had done so.

[69] The Law Society also contacted Foreclosure Counsel, who had not testified at trial. In the course of correspondence with Foreclosure Counsel, it became apparent that the Respondent's letter to Foreclosure Counsel of May 12, 2011 (the "May Letter"), instructing Foreclosure Counsel to claim simple interest only, was not tendered in evidence at trial.

[70] During the course of its investigation, the Law Society obtained evidence from Foreclosure Counsel and reviewed his entire file, which contained privileged communications between Foreclosure Counsel and the Respondent, including the May Letter. The Law Society investigator also interviewed Foreclosure Counsel by telephone in October, 2017. During that interview, Foreclosure Counsel advised that, while he had no specific recollections of his dealings with the Respondent, he recalled that, when he first spoke with the Respondent, the Respondent was not resistant to claiming simple interest.

ISSUE

[71] The issue in this case is whether the Respondent acted in a manner that constitutes conduct unbecoming a lawyer and, if so, whether the proposed disciplinary action is within the acceptable range for this conduct.

Conduct unbecoming

[72] In 2011, Chapter 2, Rule 1 of the *Professional Conduct Handbook* defined dishonourable conduct as follows:

> 1. A lawyer must not, in private life, extra-professional activities or professional practice, engage in dishonourable or questionable conduct that casts doubt on the lawyer's professional integrity or competence, or reflects adversely on the integrity of the legal profession or the administration of justice.

[73] In 2011, s.1(1) of the Act defined "conduct unbecoming a lawyer" as conduct that was considered in the judgement of the benchers or a panel:

> (a) to be contrary to the best interest of the public or of the legal profession, or

(b) to harm the standing of the legal profession.

[74] In *Law Society of BC v. Larraker*, 2011 LSBC 29, the Benchers adopted the "useful working distinction" set out in the 2001 decision of *Law Society of BC v. Watt*, 2001 LSBC 16, stating (at para. 29):

> In this case the Benchers are dealing with conduct unbecoming a Member of the Law Society of British Columbia. We adopt, as a useful working distinction, that professional misconduct refers to conduct occurring in the course of a lawyer's practice while conduct unbecoming refers to conduct in the lawyer's private life.

[75] The Respondent admitted a disciplinary violation in his February 7, 2019 letter to the Chair of the Discipline Committee setting out his conditional admission to a disciplinary violation and consented to a specified disciplinary action, stating that, in particular, he admitted:

> On or about February 15, 2011, in my capacity as principal and director for [the Corporation], I caused [the Corporation] to enter into a loan agreement as lender, which loan agreement I ought to have known provided for interest at a criminal rate, as defined in section 347 of the *Criminal Code of Canada*, contrary to Chapter 2, Rule 1 of the *Professional Conduct Handbook*, then in force.

[76] This Hearing Panel accepts that there is no evidence the Respondent intended to charge the Borrowers a criminal rate of interest. It is clear, however, that while acting in his private role as the principal and director for the Corporation, the Respondent caused the Corporation to charge the Borrowers a criminal rate of interest. The Respondent has admitted that his actions in this matter do constitute conduct unbecoming a lawyer. While not convicted of a criminal act, the Respondent caused the Corporation to enter into an illegal agreement, in relation to which the Corporation's claim for any interest was disallowed. His negligence in regard to his responsibility for the contents and effects of the Loan Documents could properly be said to harm the standing of the legal profession in the eyes of the public.

[77] As the misconduct occurred in the context of the Respondent's private life, and given the Respondent's admission of the impugned conduct, this Panel accepts the admission of the Respondent that his conduct in respect of the Citation constitutes conduct unbecoming a lawyer.

Appropriateness of penalty

[78] Under the Rule 4-30 proposal, the Respondent has consented to a penalty of a fine of $8,000, and the Discipline Committee has recommended that this Hearing Panel accept this as the penalty to be imposed.

[79] In considering the Discipline Committee's recommendation regarding the penalty to be imposed, the question faced by this Hearing Panel is not whether we would impose the same sanction as is proposed by the parties, but rather whether the proposal is fair and reasonable in all the circumstances.

[80] 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 paragraphs 6 through 8:

> This proceeding operates (in part) under Rule 4-22 [now Rule 4-30] 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.
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> 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?"
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> 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.

[81] In *Law Society of BC v. Lessing*, 2013 LSBC 29, a Law Society review panel reaffirmed the factors relevant to the issue of sanction considered in *Law Society of BC v. Ogilvie*, 1999 LSBC 17, and noted they reflect the objects and duties of the Society set out in section 3 of the *Legal Profession Act*. The review panel in *Lessing* placed particular emphasis on public protection, including public confidence in the profession generally.

[82] The review panel in *Lessing* observed that not all the *Ogilvie* factors would come into play in all cases and the weight to be given these 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 member were two factors that, in most cases, would play an important role. The review panel stressed, however, that where there was a conflict between these two factors, the protection of the public, including protection of the public confidence in lawyers generally, would prevail.

[83] In the recent decision *Law Society of BC v. Faminoff*, 2017 LSBC 04, the 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, noting at para. 84 that 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." The review board also held that a weighing of aggravating and mitigating circumstances will assist in determining the range of appropriate sanctions.

[84] Taking into consideration the comments in *Faminoff* and applying the principles set out in *Ogilvie* and *Lessing*, the Law Society and the Respondent agree that the factors and considerations most relevant to the issue of penalty in the circumstances of this case are as follows:

(a) The nature and gravity of the conduct;

(b) The previous character of the Respondent, including his Professional Conduct Record ("PCR");

(c) The presence or absence of other mitigating or aggravating factors (other than the Respondent's PCR); and

(d) The range of sanctions imposed in prior similar relevant cases.

This Hearing Panel accepts these as the relevant considerations in this matter.

Nature and gravity of the misconduct

[85] In *Law Society of BC v. Gellert,* 2014 LSBC 05 at para.39, the panel stated that:

> … the nature and gravity of the misconduct will usually be of special importance … 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* …

[86] Here, the Respondent caused the Corporation to enter into a loan agreement that provided for interest at a criminal rate. The $600,000 "bonus" and the compound interest provisions each exceeded the 60 percent threshold set out in the *Criminal Code*. Even though the Borrowers proposed the terms of the Loan Agreement, and the Associate drafted the Loan Documents, the Respondent signed the documents and is ultimately responsible for the Corporation's actions; he ought to have known that the Loan Agreement provided for interest at a criminal rate.

[87] Importantly, however, there are no elements of dishonesty associated with the Respondent's conduct. Rather, the conduct occurred in the context of a rushed transaction and the Respondent's concomitant lack of attention to detail. The Respondent learned of the criminal nature of the Loan Agreement only when consulting Foreclosure Counsel and limited the demand at trial for repayment to the $2.5 million actually advanced and simple interest at four percent.

The Respondent's PCR and previous character

[88] The Respondent's PCR consists of two Conduct Reviews, one of which is unrelated, and one of which is both dated and found no improper action on Respondent's part. As a result, the Hearing Panel assigns little weight to this factor.

Presence or absence of other mitigating or aggravating factors

[89] The Respondent has expressed remorse, accepted full responsibility, and apologized for his misconduct. The Hearing Panel accepts that the misconduct was inadvertent and due to a lack of attention to detail, rather than to any *mala fides.*

[90] The Respondent cooperated with the Law Society in the investigative process, and admitted the facts set out in the ASF.

[91] The evidence also shows that the Respondent has a history of service to his community spanning more than 40 years, during which time he has volunteered with ethnic and religious community organizations, business associations, and the People's Law School.

[92] The Hearing Panel finds these are mitigating factors weighing in the Respondent's favour.

Range of sanctions in prior similar cases

[93] In considering this factor, this Panel has to be mindful of its obligations under Rule 4-30, and that it may only accept or reject the proposed sanction. It is not open to the Panel to vary the penalty to which the parties have agreed. The Panel must therefore consider whether the proposed penalty is within the range of sanctions in prior similar relevant cases, and accordingly whether it should be accepted or rejected on that basis.

[94] Counsel were unable to point us to any disciplinary cases from British Columbia dealing with the issue of corporate responsibility and criminal rates of interest.

[95] With regards to corporate action and "conduct unbecoming", in *Law Society of BC v. Hall*, 2001 LSBC 34, Mr. Hall incorporated a software company and received funds personally as a director without the authorization of a special resolution. Some of these funds were received after Mr. Hall's call to the bar. Mr. Hall also falsely told a chartered accountant that income taxes had been filed for the company.

[96] Mr. Hall admitted, and a hearing panel found, that his conduct constituted conduct unbecoming a lawyer. The hearing panel reprimanded Mr. Hall for the receipt of funds, finding that he had been negligent, but not dishonest, in receiving funds as a director without the authorization of a special resolution, and fined him $6,500 for the false statement to the accountant.

[97] The panel in *Hall* noted that, in cases of conduct unbecoming, authorities concerning professional misconduct are of limited assistance. In upholding the imposition of a fine, the panel relied on the fact that, in the case of behaviour arising out of a lawyer's dealing as director and officer of a corporation, the correct analysis concerns matters concluded with a finding of "conduct unbecoming", rather than professional misconduct.

[98] In the matter before this Hearing Panel, counsel notes that other "conduct unbecoming" cases generally relate to criminal conduct involving convictions for impaired driving or assault, and such disciplinary actions generally result in a suspension.

[99] In *Law Society of BC v. Berge*, 2005 LSBC 53, a lawyer drove a car after consuming alcohol and caused an accident. The lawyer subsequently engaged in dishonest conduct by attempting to use mouthwash to mask the smell of alcohol and removing an open can of beer from the car.

[100] The hearing panel in *Berge* emphasized the dishonesty of the conduct, stating at para. 19 that "we found that the combination of the Respondent's actions, was tantamount to dishonest conduct and conduct unbecoming a lawyer." Mr. Berge received a one-month suspension.

[101] In *Law Society of BC v. Suntok*, 2005 LSBC 29, a Crown prosecutor assaulted and threatened his former girlfriend after breaking into her father's home, where she was staying. He also breached his bail conditions. Before and after the assault, he sought counselling and treatment for depression, and after the assault he started attending Alcoholics Anonymous.

[102] At his discipline hearing, Mr. Suntok admitted that his conduct in assaulting his former girlfriend was dishonourable conduct reflecting adversely on the integrity of the legal profession, contrary to Chapter 2, Rule 1 of the *Professional Conduct Handbook*, which was then in effect.

[103] In considering the penalty to be imposed, the hearing panel in *Suntok* started from the proposition that the penalty to be imposed was for conduct unbecoming a lawyer, which "is classically defined as conduct that occurs outside the core practice of law," (at para. 14) but also noted that the Act does not distinguish between the penalties to be imposed for professional misconduct as contrasted with "conduct unbecoming". The hearing panel suspended Mr. Suntok for 90 days, imposed conditions on his practice, and ordered that he pay costs of the hearing within two years of returning to practice.

[104] Disciplinary action related to lawyers committing regulatory offences, in contrast, generally results in lesser penalties than those related to criminal acts. In *Law Society of BC v. MacAdam*, 1999 LSBC 24, Mr. MacAdam misled conservation officers and taxidermists into believing that his friend had shot a grizzly bear when, in fact, Mr. MacAdam shot the bear. Mr. MacAdam was convicted under the *Wildlife Act* of killing an under-age bear and unlawfully using the species license and hunting authorization of another person.

[105] Mr. MacAdam was cited, and faced disciplinary action, for misleading conservation officers and taxidermists regarding who shot the bear.

[106] In considering whether Mr. MacAdam's behaviour amounted to "conduct unbecoming", the hearing panel wrote (at paras. 7 and 10):

> In the end we come down to the question: are the particular acts of the respondent serious enough to come within the definition of conduct unbecoming a lawyer and are they thereby contrary to the best interests of the public or the legal profession, and do they harm the standing of the legal profession? …
>
> The offence is two-fold, not just knowingly committing an offence but also lying about it thereafter. Under the circumstances of this case, I find conduct unbecoming, that in so doing Mr. MacAdam lowered the esteem of the legal profession in the eyes of the public and that this would have the effect of lowering the public's esteem in the judicial process and consequently is contrary to the best interests of both the public and the legal profession.

[107] The panel noted that Mr. MacAdam was no longer practising, and therefore deemed a suspension inappropriate, but also found a reprimand would not be serious enough to meet the offence. The Law Society sought a fine in the range of $5,000 to $6,000, and the panel imposed a fine of $5,000, plus costs.

[108] Finally, Law Society counsel directed this Hearing Panel to the case of *Law Society of BC v. Stevens*, 2001 LSBC 12, where Ms. Stevens jointly owned a dairy farm with her husband. The husband ran the farm, and Ms. Stevens primarily pursued her career as Crown Counsel, performing only minor tasks in relation to the dairy operation.

[109] When the cattle were found to be severely neglected, Ms. Stevens was convicted at trial of permitting animals to be in distress, with the Provincial Court finding that, as co-owner, Ms. Stevens was a person responsible for the cattle and should have

taken steps to determine and care for the animals' well-being. The Court ordered a fine of $1,725 and a ban on owning livestock for two years.

[110] The Law Society cited Ms. Stevens for her behaviour in causing or permitting farm animals for which she was responsible to be in distress, and Ms. Stevens admitted that her conduct constituted conduct unbecoming a lawyer. The Law Society and Ms. Stevens jointly proposed a reprimand as an appropriate penalty.

[111] In confirming the joint submission for a reprimand, the panel in *Stevens* wrote, at paras. 11 and 14:

> Although there was no evidence that Ms. Stevens wilfully neglected the cattle, after considering extensive evidence of the circumstances, [the Provincial Court Judge] held that Ms. Stevens committed an offence … The Panel agrees there was evidence of negligence or wilful blindness on the part of Ms. Stevens … Ms. Stevens has admitted that her actions in this matter do constitute conduct unbecoming a lawyer. … Her negligence in regard to her legal responsibility for the cattle could properly be said to harm the standing of the legal profession in the eyes of right-thinking members of the public. …
>
> The decision on penalty of this Panel must reflect the necessity to uphold the reputation of the members of the Law Society by penalizing conduct of a member which falls below that level of personal conduct expected of members of the Law Society.

[112] The panel in Stevens concluded that a reprimand would be sufficient penalty and ordered that Ms. Stevens pay costs.

[113] In considering the issue of whether to impose a fine or a suspension generally, counsel cited *Law Society of BC v. Martin*, 2007 LSBC 20, a review decision where Mr. Martin argued that a penalty imposed on him (a six-month suspension) could only be justified if the misconduct to be sanctioned involved dishonesty, was intentional, or evidenced moral turpitude.

[114] In overturning the suspension and substituting a fine of $20,000 and costs of $35,000, the review panel stated (at paras. 41 and 42):

> While the Applicant's case is unique, the salient features considered in the authorities provided on behalf of the Law Society and the Applicant, as well as the cases mentioned by the Hearing Panel and noted above, when considering a suspension include the following:

(a) elements of dishonesty;

(b) repetitive acts of deceit or negligence;

(c) significant personal or professional conduct issues;

None of those factors apply to the Applicant in this case.

[115] Counsel submit, and this Hearing Panel finds, that the Respondent's conduct did not include elements of dishonesty, occurred only once, and is at the lower end of the spectrum of personal conduct issues. Accordingly, a suspension is not required, and a fine is the appropriate sanction.

[116] The Law Society submits that a fine of $8,000 suitably reflects the seriousness of the Respondent's conduct, while taking into account the mitigating factors noted above, as well as the need for deterrence. The Respondent consents to such penalty.

[117] For the reasons set out above, we find that the proposed fine of $8,000 is within the range of fair and reasonable disciplinary action in all of the circumstances and should be imposed in this case.

CONCLUSION

[118] Given prior cases relating to "conduct unbecoming", a fine is the appropriate outcome, and the proposed sanction of an $8,000 fine is appropriate in light of the considerations in *Martin*, the Respondent's PCR, the seriousness of the misconduct, and all of the circumstances of this case.

ORDER TO PROTECT CONFIDENTIAL AND PRIVILEGED INFORMATION

[119] The Law Society made an application pursuant to Rule 5-8(2) for a "non-disclosure order" such that information protected by client confidentiality and solicitor-client privilege in any exhibit filed in these proceedings, if any person other than a party seeks to obtain a copy, is redacted.

[120] Openness and transparency are an important part of these disciplinary proceedings. Rule 5-8(1) provides that every hearing is open to the public. Rule 5-9 permits any person to obtain a copy of an exhibit entered during a public portion of a hearing.

[121] However, the Rules also recognize that there may be legitimate reasons to restrict public access to a hearing or to exhibits filed at a public hearing. For example, a

person's ability to obtain a copy of an exhibit is expressly subject to solicitor-client privilege. Rule 5-8(2) permits a panel to make an order that specific information not be disclosed in order to "protect the interests of any person."

[122] In this case, the evidence of the events giving rise to the Citation and the evidence filed in this hearing includes some information that is protected by client confidentiality and, arguably, solicitor-client privilege, namely, the evidence relating to the potential lender for whom the Respondent's firm was initially acting (see paragraphs 27-32 above).

[123] In our view, the need to protect the potential lender's client confidentiality and solicitor-client privilege outweighs the interests of a member of the public in obtaining this information.

[124] Accordingly, pursuant to the discretion afforded by Rule 5-8(2), we order that:

> If any person, other than a party, seeks to obtain a copy of any exhibit filed in these proceedings, the name and identifying information of the potential lender for whom the Respondent's firm was initially acting, and any information regarding the potential lender that is protected by solicitor-client privilege, must be redacted from the exhibit before it is disclosed to that person.

COSTS

[125] The authority to order costs is derived from section 46 of the *Legal Profession Act* and Rule 5-11 of the Law Society Rules 2015. The rule provides:

> (3) Subject to subrule (4), the panel or review board must have regard to the tariff of costs in Schedule 4 to these Rules in calculating the costs payable by an applicant, a respondent or the Society.

[126] The costs are calculated under section 25 of the tariff, which applies to hearings under Rule 4-30. The range for a Rule 4-30 hearing presented in the tariff is $1,000 to $3,500, exclusive of disbursements.

[127] The Law Society and the Respondent have consented to the Respondent paying costs in the amount of $1,000, payable within one month of this Hearing Panel's decision. We so order.

ORDER

[128] For all of the foregoing reasons, this Hearing 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*, fining the Respondent $8,000, to be paid within one month of the issuance of this decision;

(b) An Order under Rule 5-11 of the Law Society Rules for costs in the amount of $1,000, to be paid within one month of the issuance of this decision; and

(c) An Order under Rule 5-8(2) of the Law Society Rules that, if any person, other than a party, seeks to obtain a copy of any exhibit filed in these proceedings, the name and identifying information of the potential lender for whom the Respondent's firm was initially acting, and any information regarding the potential lender that is protected by solicitor-client privilege, must be redacted from the exhibit before it is disclosed to that person.