2020 LSBC 02
Decision issued: January 16, 2020
Citation issued: September 26, 2018

CORRECTED DECISION: PARAGRAPH [13] OF THE DECISION WAS AMENDED ON JANUARY 29, 2020

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

JAMES ANTHONY COMPARELLI

RESPONDENT

DECISION OF THE HEARING PANEL

Written materials:	August 7, 2019
Panel:	Michelle D. Stanford, QC, Chair Laura Nashman, Public representative Nina Purewal, Lawyer
Discipline Counsel:	Mandana Namazi
Counsel for the Respondent:	Jaia Rai

BACKGROUND

[1] On September 26, 2018, the Discipline Committee of the Law Society of British Columbia directed that a citation (the "Citation") be issued against James Anthony Comparelli.

[2] The Citation sets out the following allegations:

1. Between September 20, 2016 and April 19, 2017, while acting as executor and representing the Estate of LR (the "Estate"), you misappropriated or improperly withdrew from trust the sum of $40,464.43 when you were not entitled to those funds, contrary to your fiduciary duties, or Rule 3-64 of the Law Society Rules, or both;

2. Between September 20, 2016 and September 29, 2016, while acting as executor and representing the Estate, you improperly withdrew from trust the sum of $137,030.04 prior to receiving signed releases from the beneficiaries waiving the passing of your accounts, contrary to your fiduciary duties, or Rule 3-64 of the Law Society Rules, or both;

3. On or about September 20, 2016, while acting as executor and representing the Estate, you prepared and delivered a release and estate accounting to the residual beneficiaries when you knew or ought to have known that the estate accounting contained false representations of the Estate's financial activities; and

4. In or about February 2007, you acted in a conflict of interest by preparing the Last Will and Testament of LR dated February 14, 2017 in which you were given a testamentary gift of $40,000, contrary to Chapter 7, Rule 1 of the *Professional Conduct Handbook*, then in force.

[3] The conduct alleged in all four allegations was stated to constitute professional misconduct. In allegations 1, 2, and 3, the conduct was stated to constitute conduct unbecoming a lawyer and in allegation 1 and 2, the conduct was stated to constitute a breach of the *Legal Profession Act* (the "*Act*") or the Law Society Rules (the "Rules").

PRELIMINARY MATTERS

[4] The Respondent acknowledged that service of the Citation complied with Rule 4-15 of the Rules.

[5] The Respondent conditionally admitted that these discipline violations amount to professional misconduct, being a marked departure from the standards expected of lawyers in British Columbia, pursuant to section 38(4)(b)(i) of the *Act*.

[6] The Respondent also consented to a specified disciplinary action under Rule 4-30(1) of the Rules and to costs in the amount of $1,000.

[7] Rule 4-30 allows for a respondent to admit the misconduct and consent to a specified penalty, conditional upon approval by the Discipline Committee and a hearing panel. At its meeting on June 5, 2019, the Discipline Committee considered and accepted the proposed conditional admissions and specified disciplinary action of disbarment. The matter is now before this Panel for consideration.

[8] The proposed resolution of disbarment is jointly submitted by the Respondent through counsel and counsel for the Law Society.

[9] In addition to a Joint Book of Exhibits (the "BoE") and a Joint Book of Authorities (the "BoA"), the parties submitted an Agreed Statement of Facts (the "ASF") for consideration by the hearing panel in their joint application for a hearing in writing.

APPLICATION FOR HEARING IN WRITING

[10] The Practice Direction of April 6, 2018 allows for a hearing to be conducted by written record rather than an oral hearing. The parties applied jointly for a hearing conducted on written materials.

[11] Factors to consider include whether the submitted written materials are comprehensive and provide evidentiary support for the Citation, whether there is agreement on the substantive facts and whether public interest requires an oral hearing.

[12] In this case, the parties provided the ASF and agreed on the proposed disciplinary action. Counsel filed comprehensive materials, including written submissions and all exhibits relevant to the Citation.

[13] The Panel considered the joint application and decided that this was an appropriate case to proceed on written materials only and without an oral hearing. In reaching that conclusion, the Panel considered whether it had questions about the facts of the matter that were not clearly answered in the ASF and whether any credibility issues were presented by the ASF. The Panel determined that the written record was complete and that no additional useful information would be provided by an oral hearing. On that basis, the Panel agreed to proceed to conduct the hearing on the written record, without an oral hearing, pursuant to the April 6, 2018 Practice Direction.

[14] Accordingly, the Panel ordered that the hearing proceed on the basis of the written materials provided. In addition to the ASF, the BoE and BoA, the Panel considered submissions from the Law Society. No submissions were advanced by the Respondent. The ASF, BoE and BoA will be marked as exhibits to this Hearing.

FACTS

[15] We note for the record that the ASF is comprehensive, consisting of 14 pages and referencing 14 tabs of material. The tabulated material comprises an additional 206

pages of information in support of the allegations in the Citation. The following is a summary of the facts for each allegation in the Citation as verified by the ASF:

Respondent's background

[16] The Respondent was called and admitted as a member of the Law Society on May 17, 1991.

[17] Initially, the Respondent practised as a sole practitioner. In approximately 2000, he hired an associate and started the law firm Comparelli & Company (the "Firm"). He practised with the Firm until November 27, 2017 when he terminated his membership in the Law Society and became a former lawyer.

[18] While practising law, and at all material times, the Respondent's practice consisted primarily of real estate conveyancing, wills and estates, and some corporate law. At all material times, the Respondent's wills and estates practice included representing executors in his capacity as a lawyer and acting as executor in certain cases.

[19] When the Respondent received funds in his capacity as executor, he deposited those funds into the Firm's trust account (the "Trust Account"), and withdrawals were made from the Trust Account.

[20] The Respondent was the sole signatory on the Trust Account and authorized the withdrawals made from the Trust Account until another lawyer became a second signatory pursuant to the undertaking referenced below.

Summary of evidence

The will

[21] LR and her late husband were long-term clients of the Respondent's father. When the Respondent's father retired, LR and her husband retained the Respondent as their family solicitor.

[22] LR died on June 14, 2014, leaving a will dated February 14, 2007 (the "Will"). The Will was filed in the British Columbia Supreme Court on December 18, 2014. The grant of probate was approved by the Supreme Court on the same date and the Respondent was granted administration of the Estate.

[23] The Will was prepared by the Respondent in approximately late 2006 or early 2007. It was witnessed by and executed before another lawyer and a legal assistant on February 14, 2007.

[24] The Will appointed the Respondent, LR's solicitor at the time, as executor and trustee.

[25] The Will provided for numerous specific bequeaths, including a $40,000 gift to the Respondent.

[26] The Will provided for the remainder of the Estate to be divided amongst seven residuary beneficiaries, with the share of any one of them who predeceased LR passing equally to that beneficiary's next of kin.

[27] The Will included a term stating that LR directed that her trustee would be remunerated for his services as executor and trustee notwithstanding any gift bequeathed to him under the Will.

[28] The Respondent did not refer LR to another law firm for independent legal advice prior to the execution of the Will.

Administration of the Estate and payment of executor fees

[29] Two of the residuary beneficiaries predeceased LR but had living next of kin. As a result, there were ten residuary beneficiaries under the Will (the "Residuary Beneficiaries").

[30] Estate funds received by the Respondent in his capacity as executor and trustee were deposited into his Trust Account.

[31] The Respondent administered the Estate and paid funds from trust for all specific bequests, including payment of the $40,000 testamentary gift to himself on February 20, 2015.

[32] The Respondent prepared an interim estate accounting and a form of Release to Executor for execution by the Residuary Beneficiaries (the "First Release").

[33] Pursuant to the interim estate accounting, the Respondent was entitled to executor fees in the amount of $332,773.91.

[34] Prior to receiving signed First Releases from all the Residual Beneficiaries, the Respondent paid $137,030.04 from the Trust Account for his executor fees, as follows:

(a) on September 20, 2016, he paid $23,205 by cheque payable to a third party to whom his wife owed money;

(b) on September 20, 2016, he paid $100,000 towards his personal line of credit; and

(c) on September 29, 2016, he paid $13,825.04 towards his credit card.

[35] The Respondent made additional withdrawals from the Trust Account totalling $236,208.30 in payment of his executor fees after receiving the signed First Releases from the Residuary Beneficiaries.

[36] The Respondent withdrew from the Trust Account $40,464.43 in excess of executor fees approved by the Residuary Beneficiaries (the "Fee Overpayment").

[37] At the time of the withdrawals made from the Trust Account, the Respondent knew that the following amounts taken were over and above the amount of his executor fees approved by the Residuary Beneficiaries, and he withdrew the funds in order to attempt to reconcile the accounting:

(a) $3,000 (initially misidentified as $2,000), representing the amount owing to a beneficiary that the Respondent tried but could not locate. The Respondent's intention was to pay these funds to the beneficiary once he was located; and

(b) $26,300.24, representing the amount of funds held in trust that the Respondent tried but was unable to reconcile.

[38] The balance of the Fee Overpayment represented funds that had not cleared the Respondent's Trust Account because the cheque issued was not cashed and became stale-dated on December 1, 2016.

Law Society compliance audit and winding down of practice

[39] On July 20, 2017, the Law Society notified the Respondent that a compliance audit was scheduled for August 28, 2017. Upon receiving this notice, the Respondent came to terms with what he had done.

[40] After receiving notice of the compliance audit, and prior to self-reporting his conduct to the Law Society, the Respondent repaid the $40,464.43 Fee Overpayment into his Trust Account.

[41] The Respondent self-reported his conduct to the Law Society by letter dated August 25, 2017 to Tara McPhail, then Manager of Intake and Early Resolution.

[42] That letter was written before the Respondent had reviewed all relevant client files and accounting records.

[43] On August 29, 2017, the Chair of the Discipline Committee made an order pursuant to Rule 4-55, including a direction that an investigation be made of the books, records and accounts of the Respondent.

[44] After his self-report, the Respondent returned to his Trust Account the executor fees and GST paid into his general account and retained an estate lawyer to assist him complete the administration of the Estate.

[45] On September 11, 2017, the Respondent signed an undertaking agreeing to a mandatory second signatory on his Trust Account.

[46] By letter dated September 20, 2017, the Respondent provided clarification and additional details regarding the Estate trust.

[47] On October 27, 2017, the Respondent signed a further undertaking to restrict his practice, including acting as an executor.

[48] The Respondent took steps to wind down his practice, and on or about November 14, 2017, he submitted a termination of membership form to the Law Society and requested the Executive Director's permission to resign his membership, as required by Rule 4-6(2) of the Rules. The Acting Executive Director granted permission to resign effective November 27, 2017.

Personal circumstances

[49] On July 27, 2018, the Respondent was interviewed by a Law Society staff investigator in relation to his conduct.

[50] In a letter dated August 9, 2018 from his counsel, the Respondent disclosed long-standing personal health issues in addition to practice management issues that were:

> … not meant to justify his conduct; rather, he is hopeful that it will give you better insight into the struggles he was experiencing at the time of his conduct.
>
> …

> At the time of the trust withdrawals in the [LR] Estate, Mr. Comparelli was overwhelmed by the volume of work and management of his practice. He was experiencing difficulties in his role as executor on this file. His inability to properly deal with this file in a timely way caused embarrassment and created an anxiety within him that led to the regrettable lack of judgement for which he is now in the process of making amends.

[51] The Panel noted that no objective medical evidence confirming the Respondent's personal health issues was provided by the Respondent.

[52] The Respondent further explained that, at the time he was administering the Estate, the real estate market was booming and his real estate practice was extremely busy. He regularly dealt with multiple closings, either in a single day or on consecutive days. Given the time-sensitive nature of the closings and deadlines that had to be met, the Respondent gave priority to his real estate files over the work required to administer the Estate, including reconciliation of the estate accounting. This, in turn, exacerbated the stress and anxiety he felt with his inability to reconcile the accounting.

BURDEN OF PROOF

[53] We have instructed ourselves that the burden of proving the allegations in the Citation on the balance of probabilities rests with the Law Society. The admissions provided by the Respondent in the ASF have allowed us to find that the Law Society has discharged this burden without an in-depth analysis of the individual allegations.

PROFESSIONAL MISCONDUCT

[54] "Professional misconduct" is not a defined term in the *Act*, the Rules or the *Code of Professional Conduct for British Columbia* (the *"Code").* The test for whether conduct constitutes professional misconduct was established in *Law Society of BC v. Martin*, 2005 LSBC 16, as:

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

[55] In *Martin*, the panel observed that a finding of professional misconduct did not require behaviour that was disgraceful or dishonourable. It concluded 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.

[56] The *Martin* test has been accepted by many subsequent panels and was affirmed in 2011 by a Review Panel in *Re: Lawyer 12*, 2011 LSBC 35, at paragraph 8.

[57] More specifically, numerous hearing panels have determined that the improper withdrawal of trust funds amounts to professional misconduct. In *Law Society of BC v. Reith*, 2018 LSBC 23, at paragraph 28, the hearing panel stated:

> In *Law Society of BC v. Lail*, 2012 LSBC 32, the hearing panel found that the respondent's breach of trust accounting rules, including the withdrawal of trust funds without first delivering accounts, amounted to professional misconduct. The panel observed at paragraph 10: "Trust accounting obligations go to the heart of confidence in the integrity of the legal profession, and there is clear public interest in ensuring that they are performed meticulously and not, as here, nonchalantly."

MISAPPROPRIATION

[58] "Misappropriation" is not a defined term under the *Act*, the Rules or the *Code*. It is a concept developed by precedent through hearing panel decisions.

[59] In *Law Society of BC v. Sahota*, 2016 LSBC 29, at paragraphs 60 and 63, a hearing panel provided a helpful overview of what constitutes misappropriation:

> We begin with an attempt to understand the nature of misappropriation. In the decision of a hearing panel on facts and verdict in the matter of *Law Society of BC v. Ali*, 2007 LSBC 18, at para. 79, the following appears in the context of describing the meaning of misappropriation:
>
> > Misappropriation is defined in *Black's Law Dictionary*, 6th Edition as follows:
> >
> > > The unauthorized, improper, or unlawful use of funds or other property for purposes other than that for which

> intended. Misappropriation of a client's funds is any unauthorized use of clients [sic] funds entrusted to an attorney, including not only stealing but also unauthorized temporary use for a lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom ...
>
> …
>
> Thus, all that is required is for the lawyer to take the money entrusted to him or her knowing that it is the client's money and that the taking is not authorized.

ANALYSIS

Allegation 1

[60] The Respondent admits, and the ASF establishes, that between September 20 and December 15, 2016, while acting as executor of the Estate, he knowingly withdrew from trust, on three occasions, Estate funds totalling $40,464.43. The withdrawals were made when he was not entitled to the funds.

[61] The Respondent admits, and the ASF establishes, that this conduct constitutes misappropriation of Estate funds and was contrary to his fiduciary duties and Rule 3-64 of the Rules.

Allegation 2

[62] The Respondent admits, and the ASF establishes, that between September 20 and September 29, 2016, while acting as executor of the Estate, he withdrew from trust funds totalling $137,030.40 in payment of his executor fees. The withdrawals were made prior to receiving signed releases from all Residuary Beneficiaries waiving the passing of his accounts.

[63] The Respondent admits, and the ASF establishes, that this conduct was contrary to his fiduciary duties and Rule 3-64 of the Rules.

Allegation 3

[64] The Respondent admits, and the ASF establishes, that on or about September 20, 2016, while acting as executor of the Estate, he prepared and delivered a release and estate accounting to the Residuary Beneficiaries when he knew the estate

accounting contained false representations pertaining to the $3,000 payment to PM and $26,300.24 that he could not reconcile.

[65] The Respondent admits, and the ASF establishes, that this conduct was contrary to his fiduciary duties.

Allegation 4

[66] The Respondent admits, and the ASF establishes, that in or about late 2006 or early February 2007, he acted in a conflict of interest by preparing the Will in which he was given a testamentary gift of $40,000.

[67] The Respondent admits that his conduct was not consistent with Chapter 7, Rule 1 of the *Professional Conduct Handbook*, in force at the time.

[68] Each of the allegations involves a serious breach of trust by the Respondent, either as counsel or executor. The Respondent made a clear, deliberate and calculated withdrawal of funds over a number of months for a significant amount of money, withdrawn to satisfy his personal debt.

[69] This conduct alone amounts to professional misconduct. The fact that the misconduct involved trust funds the Respondent knew he was not authorized to withdraw and contemporaneously deprived the Residuary Beneficiaries funds they were entitled to, is particularly aggravating.

[70] The further aggravating features of the amount of funds withdrawn from trust and the intentional misappropriation and misrepresentation strike at the core of the solicitor-client relationship and at the integrity of the Respondent as a lawyer and member of the Law Society.

[71] The Hearing Panel has no difficulty in accepting the Respondent's admission that the conduct outlined in each of the four allegations demonstrates a deliberate and prolonged course of misappropriation and that, as a result, he has committed professional misconduct.

THE APPROPRIATE DISCIPLINARY ACTION

[72] Having concluded that the Respondent has committed professional misconduct, the Hearing Panel must determine whether the proposed joint disciplinary action of disbarment is fair and reasonable.

[73] *Law Society of BC v. Ogilvie*, 1999 LSBC 17, sets out factors that have been confirmed by many subsequent panels, which this Panel must consider when evaluating a proposed disposition to the Citation.

[74] A disciplinary action is acceptable if it is within the range of a fair and reasonable disciplinary action in all the circumstances. The leading decisions on the factors to be considered in determining an appropriate disciplinary action are: *Ogilvie, Law Society of BC v. Lessing*, 2012 LSBC 29, and *Law Society of BC v. Faminoff*, 2017 LSBC 04.

[75] The Review Board in *Faminoff* confirmed that the proper approach to determining the appropriate disciplinary sanction is to apply the factors identified in *Ogilvie* that are relevant to the particular circumstances of the misconduct and the Respondent.

[76] The Review Board held at paragraph 83 that decisions on sanction are 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.

[77] The Law Society and the Respondent agree that the *Ogilvie* factors and considerations most relevant to a determination of the appropriate sanction are:

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

(b) character and professional conduct record of the Respondent;

(c) the acknowledgement of the conduct and remedial action and the presence or absence of other mitigating circumstances;

(d) public confidence in the profession, including public confidence in the disciplinary process; and

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

Application of the *Ogilvie* factors

Nature and gravity of the proven misconduct

[78] The nature and gravity of the misconduct in this case is at the most serious end of the spectrum. As noted in *Law Society of BC v. Lebedovich*, 2018 LSBC 17, at paragraph 24:

> … misappropriation of a client's funds, particularly over a period of time, is the most serious misconduct a lawyer can commit.

[79] Prior Law Society Tribunal decisions clearly establish that absent rare and extraordinary mitigating factors, disbarment is the appropriate disciplinary action for the intentional misappropriation of client trust funds.

[80] In *McGuire v. Law Society of BC*, 2007 BCCA 422, a hearing panel had concluded that disbarment was the appropriate remedy in relation to deliberate misappropriation of trust funds, except in highly unusual circumstances. Mr. McGuire improperly withdrew client funds from trust multiple times to satisfy personal debt. Notwithstanding the presence of a number of personal and financial stressors, the decision of the panel was upheld by the Court of Appeal.

[81] The Court observed at paragraphs 14 and 15 that "general deterrence can be an important means of protecting the public." It expressly rejected the argument that the hearing panel had placed too much emphasis on protection of the public.

[82] In the present case, the Respondent not only misappropriated funds, but also improperly withdrew further funds while acting as executor of the Estate, prepared and delivered a release and estate accounting to the Residuary Beneficiaries that he knew contained false representations and acted in a conflict of interest in preparing the Will while also being given a testamentary gift.

[83] In a letter dated August 9, 2018 from his counsel, the Respondent set out personal health issues to provide some context to his conduct at the time of the admitted violations. However, he submitted no medical or expert evidence that would support a finding that these personal health issues amounted to rare and extraordinary mitigating factors to justify anything less than disbarment.

[84] In the protection of the public, the culmination of the Respondent's misconduct is most serious and cannot be sanctioned. In all the circumstances, the nature and gravity of the misconduct ought to be viewed as highly aggravating without objective evidence of extraordinary mitigating circumstances. Disbarment is the only appropriate disciplinary action in relation to all of the misconduct.

Character and professional conduct record of the respondent

[85] On August 29, 2017, the Chair of the Discipline Committee made an order pursuant to Rule 4-55 of the Rules authorizing an investigation of the books, records and accounts of the Respondent. It was after this order that the Respondent voluntarily

entered into the two undertakings that form his professional conduct record, as follows:

(a) September 2017: the Respondent agreed to a mandatory second signatory on his trust account and signed an undertaking to that effect on September 11, 2017; and

(b) October 2017: the Respondent agreed to restrict his practice, including acting as executor, in accordance with an undertaking he signed on October 27, 2017.

[86] Given that the Respondent's professional conduct record is related to this case, this factor is neutral.

Acknowledgment of the conduct and remedial action

[87] While the Respondent was transparent and immediately cooperative with the Law Society investigation once the process began, it is notable that the Respondent self-reported his misconduct to the Law Society only after he was notified that a compliance audit would be conducted of his law practice. The Respondent received notice on July 20, 2017 that a compliance audit would be conducted on August 28, 2017. The Respondent self-reported in a letter to the Law Society dated August 25, 2017.

[88] Accordingly, the acknowledgment of his misconduct is only somewhat mitigating. However, the Respondent has apologized to the Residuary Beneficiaries for his misconduct and has taken steps to remedy the impact of his misconduct.

[89] The Respondent also took steps to wind down his practice within approximately three months of the Law Society investigation and audit in August 2017.

[90] The fact remains, however, that the acknowledgment, remedial steps and prompt winding up of the Respondent's practice all followed notice of an impending compliance audit. In light of these circumstances considered as a whole, the Panel finds that these factors are neutral, and are neither mitigating nor aggravating.

Public confidence in the profession including public confidence in the disciplinary process

[91] The hearing panel in *Law Society of BC v. Tak*, 2014 LSBC 57, observed at paragraph 35, that:

> Misappropriation of client trust funds is perhaps the most egregious misconduct a lawyer can commit. ... In the absence of multiple, significant mitigating factors, public confidence in the profession and its ability to regulate itself would be severely compromised if anything short of disbarment is ordered for misappropriation of client funds.

[92] And the *Ogilvie* panel stated at paragraph 19:

> The public must have confidence in the ability of the Law Society to regulate and supervise the conduct of its members. It is only by the maintenance of such confidence in the integrity of the profession that the self-regulatory role of the Law Society can be justified and maintained.

[93] The Respondent's misconduct is extremely serious, demonstrating a fundamental lack of honesty and integrity and a deliberate neglect of his professional duties. Public confidence in the integrity of the legal profession will be eroded if the sanction imposed does not reflect the seriousness with which the Law Society and the legal profession view the totality of the misconduct. As stated by the hearing panel in *Lebedovich* at paragraph 26:

> The legal profession is self-regulated by the Law Society. The public must be satisfied that the Law Society has the public interest in mind as it regulates. The sanction imposed must reflect the seriousness with which the Law Society, and through it the legal profession, views the intentional misappropriation of trust funds.

[94] In *Law Society of BC v. Harder,* 2006 LSBC 48, the hearing panel quoted from MacKenzie, *Lawyers and Ethics: Professional Responsibility and Discipline*, loose-leaf (Toronto: Carswell, 1993), at 26-1:

> The seriousness of the misconduct is the prime determinant of the penalty imposed. In the most serious cases, the lawyer's right to practise will be terminated regardless of extenuating circumstances and the probability of recurrence. If a lawyer misappropriates a substantial sum of clients' money, that lawyer's right to practise will almost certainly be terminated, for the profession must protect the public against the possibility of recurrence of the misconduct, even if that possibility is remote. Any other result would undermine public trust in the profession.

[95] The Panel agrees that protection of the public is paramount. Unquestionably, in these circumstances, the need to maintain public confidence in the integrity of the legal profession supports a finding that an order of disbarment is required.

Range of sanctions imposed in similar cases

[96] Counsel for the Law Society submitted, and the Panel reviewed, a number of cases of intentional misappropriation. In all cases, hearing panels accepted the conditional admissions and proposed sanction of disbarment from the respondents.

[97] In *Law Society of BC v. Chaudhry*, 2018 LSBC 31, the respondent committed professional misconduct over seven different allegations, each of which was related to numerous withdrawals of funds from her trust account or failure to maintain proper accounting records in relation to her trust and/or general accounts over a prolonged period of time.

[98] In *Law Society of BC v. Mansfield*, 2018 LSBC 30, the respondent committed professional misconduct by intentionally misappropriating over $400,000 of his clients' trust funds. The hearing panel found that, notwithstanding his "unfortunate personal circumstances" of a gambling disorder, this was not a sufficient mitigating factor justifying his conduct.

[99] *Law Society of BC v. De Stefanis*, 2018 LSBC 16 and 2019 LSBC 14, ("*De Stefanis 2018*") most closely relates to the present case. While acting as executrix and representing the estate of the deceased, the respondent misappropriated funds she was not entitled to, made false representations to the Law Society and prepared and delivered false accounting of an estate administration. Notwithstanding her "deep regret" and the presence of significant physical illnesses and mental health issues, the hearing panel found that they failed to meet the threshold of extraordinary mitigating circumstances and accordingly, the respondent was disbarred.

[100] The above decisions support the proposition that, where there has been clear, intentional misappropriation of clients' trust funds, disbarment is the appropriate disciplinary action. In the present case, trust funds were misappropriated for the Respondent's own personal use. The amount taken was substantial and it was taken over a prolonged period of time. There was no evidence to support the presence of extraordinary mitigating circumstances. The Panel agrees that the proposed disciplinary action of disbarment is appropriate.

Discipline against a former lawyer

[101] Section 38(4)(b)(v) of the *Act* expressly provides that a hearing panel has the jurisdiction to make a finding of professional misconduct against a former lawyer based on conduct that would, if the respondent were currently a lawyer, have constituted professional misconduct.

[102] If a hearing panel makes an adverse determination against a former lawyer under section 38(4) of the *Act*, it is then required, by virtue of section 38(5) of the *Act*, to also impose a sanction. Disbarment is one of the available disciplinary actions under section 38(5).

[103] "Disbar" is defined in the *Act* as follows: "disbar means to declare that a lawyer *or former lawyer* is unsuitable to practise law and to terminate the lawyer's membership in the society." [emphasis added]

[104] An order of disbarment, to the extent that it is a declaration that the respondent is not suitable to practise law, is accordingly applicable to former lawyers, and is appropriate, having regard to the general principles and considerations to sanctioning which include:

> (a) protection of the public interest, including preserving the public confidence in the legal profession by protecting the reputation of the profession in general and preserving public confidence in the disciplinary process;
>
> (b) denunciation; and
>
> (c) consistency and precedential value of sanctions.

[105] In addition, in *De Stefanis 2018*, at paragraph 44, the hearing panel confirmed that a respondent's status as a former lawyer did not preclude a panel from deciding that disbarment was an appropriate sanction.

[106] In *Tak*, at paragraph 25, the hearing panel stated that the disciplinary action provisions of the *Act* and Rules apply to former lawyers. The panel in that case assessed the former lawyer's misconduct on a global basis and determined that disbarment was the appropriate sanction.

[107] As well, in a subsequent decision, *Law Society of BC v. De Stefanis*, 2019 LSBC 14, at paragraphs 20 and 21, the former lawyer was disbarred a second time. The hearing panel explained that a second disbarment can be ordered in relation to a former lawyer who has been disbarred:

> While it may seem unnecessary to order disbarment in this case, given that the Respondent has previously been ordered disbarred, section 38 of the *Legal Profession Act* provides that a hearing panel has jurisdiction to make a finding of professional misconduct against a former member. Upon an adverse determination, the hearing panel must impose a sanction.

As the hearing panel stated in *Law Society of BC v. Power*, 2009 LSBC 23 at paras 45 and 46:

> Although it may appear odd that a Panel may suspend or disbar a non-member, the *Act* requires that it be done if that is the appropriate penalty.
>
> When imposing a penalty appropriate to the circumstances, a panel sends an important message to lawyers as well as to the public that such conduct is deserving of that kind of penalty.

While not necessary to protect the public from the Respondent in this matter, given that she can no longer practise law, disbarment is necessary to protect the public confidence in the legal profession and to protect the public's confidence in the ability of the profession to regulate itself. Misappropriation of funds and falsifying accounts to clients cannot be condoned and is deserving of an order of disbarment whether the individual is a practising lawyer, a former member or a disbarred former member.

[108] Given the severity of the misconduct, and the need for the protection of the public, an order of disbarment is required, despite the Respondent's status as a "former lawyer."

COSTS

[109] The authority to order costs is derived from section 46 of the *Act* and Rule 5-11 of the Rules. Rule 5-11 provides:

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

[110] Costs are calculated under Schedule 4 – Tariff for Hearing and Review Costs and specifically item 25, which applies to hearings under Rule 4-30. The range for a Rule 4-30 hearing tariff is $1,000 to $3,500, exclusive of disbursements.

[111] The Law Society and the Respondent have consented to the Respondent paying costs in the amount of $1,000. The Panel accedes to this agreement and orders those costs payable on or before April 1, 2020.

NON-DISCLOSURE ORDER

[112] The Law Society requested an order under Rule 5-8(2) of the Rules that portions of exhibits that contain confidential client information or privileged information not be disclosed to members of the public. We agree that the order is appropriate in these circumstances.

SUMMARY OF ORDERS

[113] The Hearing Panel accepts the Respondent's conditional admission of professional misconduct on all four allegations under Rule 4-30 and orders that:

(a) the Respondent is disbarred, pursuant to section 38(5)(e) of the *Legal Profession Act*;

(b) if any person, other than a party, seeks to obtain a copy of any exhibit filed in these proceedings, client names, identifying information and any information protected by solicitor-client privilege be redacted from the exhibit before it is disclosed to that person;

(c) the Respondent pay the Law Society $1,000 in costs on or before April 1, 2020;

(d) the Executive Director record the Respondent's admission on his professional conduct record; and

(e) by consent, there shall be no disclosure of the facts set out in paragraph 60 of the Agreed Statement of Facts, pursuant to Rule 5-8(2) of the Rules.