2020 LSBC 49
Decision issued: October 20, 2020
Citation issued: July 13, 2017

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a section 47 review concerning

AMARJIT SINGH DHINDSA

RESPONDENT (REVIEW APPLICANT)

DECISION OF THE REVIEW BOARD

Review date:	June 18, 2020
Benchers:	Dean Lawton, QC, Chair Nan Bennett, Public representative Bruce LeRose, QC, Lawyer Steven McKoen, QC, Bencher Shannon Salter, Lawyer
Discipline Counsel:	Alison Kirby
Counsel for the Respondent:	Gerald Cuttler, QC

INTRODUCTION

[1] On July 13, 2017 a citation for this matter was issued that set out the Law Society's four allegations as follows:

> 1. Commencing approximately July 2014 you acted in a conflict of interest by acting for [A Inc.] and one or more of 93 end purchasers in connection with the purchase and sale of lots in a development property originally owned by [F Ltd.], contrary to rule 3.4-1 and section 2 of Appendix C of the *Code of Professional Conduct for British Columbia.*
>
> 2. In the course of representing your client, [A Inc.], in connection with the purchase of a development property from [F Ltd.] and subsequent

sale of one or more of lots 5, 6, 34, 53, 55, 57, 59, 66, 77 and 79 to the end purchasers whom you also represented, you failed to honour a trust condition imposed by lawyer [JH], in each of his ten letters dated January 29, 2015, by failing to provide [JH] with a copy of the compliance deposit agreements signed by the end purchasers prior to the registration of the transfer documents, contrary to rule 7.2-11 of the *Code of Professional Conduct for British Columbia.*

3. In the course of representing your client, [A Inc.], in connection with the purchase of a development property from [F Ltd.] and subsequent sale of one or more of lots 17, 27, 58, 78 and 93 to the end purchasers represented by notary [HV], you failed to honour a trust condition imposed by lawyer [JH], in each of his five letters dated March 31, 2015 or April 13, 2015, by doing one or more of the following, contrary to rule 7.2-11 of the *Code of Professional Conduct for British Columbia*:

    (a) failing to provide [JH] with a copy of the compliance deposit agreements signed by the end purchasers prior to authorizing the registration of transfer documents by [HV];

    (b) failing to provide [JH] with a copy of undertaking letters between your office and [HV] prior to the completion date under the purchase agreement between [A Inc.] and the end purchasers.

4. In the course of representing your client, [A Inc.], in connection with the purchase of a development property from [F Ltd.] and subsequent sale of one or more of lots 37, 54, 64 and 69 to the end purchasers whom you also represented, you failed to honour a trust condition imposed by lawyer [JH], in each of his four letters dated May 22, 2015, by registering transfer documents when you did not hold in your trust account sufficient funds to complete the transaction and without concurrently registering the applicable mortgages, contrary to rule 7.2-11 of the *Code of Professional Conduct for British Columbia*.

The conduct alleged in each allegation is stated to constitute professional misconduct pursuant to s. 38(4) of the *Legal Profession Act* (the "*Act*").

[2] On February 13, 2019, a hearing panel found that the Respondent committed professional misconduct (*Law Society of BC v. Dhindsa*, 2019 LSBC 05). In the

decision of the hearing panel on Disciplinary Action (2019 LSBC 36), the panel summarized their decision at para. 1 as follows:

> … the Respondent had committed professional misconduct by acting in a conflict of interest, breaching undertakings and failing to honour a trust condition relating to the Respondent's representation of a developer with respect to its purchase and sale of a development property.

[3] This is a Review initiated by the Respondent of the decision of the hearing panel finding professional misconduct.

FACTUAL BACKGROUND

[4] The factual background to the citation is set out in the decision on Facts and Determination of the hearing panel and in a Notice to Admit dated July 27, 2018 as qualified by the Respondent's Response to Notice to Admit dated August 20, 2018.

[5] At all relevant times, the Respondent practised real estate law in Abbotsford, British Columbia.

[6] The events that gave rise to this matter occurred mainly in 2014 and 2015.

[7] Under a Novation Agreement dated May 5, 2014, A Inc. agreed to purchase a property in Abbotsford from F Ltd. As part of the transaction, the property was subdivided into 103 separate legal lots (the "Lots") prior to being transferred. F Ltd. was represented by JH. The Respondent played no role in the preparation and execution of the Novation Agreement.

[8] Sections 2(d), (f) and (g) of the Novation Agreement provide that F Ltd. agreed to transfer title to the Lots to A Inc. on the closing date (which was a date tied to certain regulatory approvals being obtained from the City of Abbotsford) and A Inc. agreed to buy the Lots. However, A Inc. had the option, if A Inc. had entered into a binding contract for the purchase and sale of a Lot to a third party (an "End Purchaser") prior to the closing date (as determined in accordance with the terms of the Novation Agreement), to instead have title transferred directly to that End Purchaser.

[9] Section 2(f) of the Novation Agreement stated that F Ltd. was agreeing to deliver title transfers directly to any End Purchasers solely to facilitate the sale of the Lots by A Inc. to End Purchasers, and A Inc. acknowledged in that section that this arrangement did not relieve it of any liability to complete the purchase of, and pay the purchase price for, the Lots on the relevant closing date.

[10] The End Purchasers did not have contractual agreements directly with FF.

[11] The End Purchasers entered into agreements with A Inc. to purchase the Lots. The Respondent played no role in the preparation and execution of agreements between A Inc. and the End Purchasers.

[12] Around July 2014, the Respondent was retained by A Inc. to act for both A Inc. and 93 of the End Purchasers with respect to the conveyance of the Lots from F Ltd. to A Inc. or the End Purchasers, as applicable, when the closings of the conveyances were to occur as provided in the Novation Agreement.

[13] The End Purchasers were introduced to the Respondent by A Inc. The Respondent considered whether he could act for both the End Purchasers and A Inc. and concluded that the transfers of the 93 Lots to the End Purchasers were, within the meaning of "Appendix C – Real Property Transactions" to the *Code of Professional Conduct for British Columbia* (the "Code"), "simple conveyances" and that he was permitted to act.

[14] To comply with Appendix C, the Respondent entered into conflict letters with each of the End Purchasers and A Inc., in which the End Purchasers and A Inc. consented to the Respondent acting for both the End Purchaser and A Inc. with respect to the transfer of a particular Lot to an End Purchaser. Sample conflict letters were provided to the hearing panel that showed the End Purchasers and A Inc. agreed to the concurrent representation of each and that they acknowledged that the Respondent could not act in the event of a dispute between A Inc. and an End Purchaser.

[15] The closings for the purchase and sale of the Lots were originally anticipated to occur on the same date in or around November 2014. Due to delays respecting the filing of the building scheme for the Lots, the closings were also delayed.

[16] The closings occurred in batches and were completed on May 27, 2015.

Facts related to allegation #2

[17] One set of closings was due to complete on January 30, 2015. Through letters dated January 29, 2015, the Respondent was on undertakings to not register the transfers of title until copies of signed Compliance Deposit Acknowledgements were delivered to JH, counsel for the seller. After the Respondent left his office to attend to a family emergency, his staff prepared the materials to register the transfers of title prior to delivering the Compliance Deposit Acknowledgements.

The Respondent affixed his Juricert password to those registrations without confirming that the corresponding undertakings had been discharged.

Facts related to allegation #3(a)

[18] With respect to closings for Lots 17 and 58, JH provided a form of undertaking that required Compliance Deposit Acknowledgements to be delivered by the Respondent to JH prior to authorizing registration of Form A Transfers for those Lots by the transferee's lawyer or notary.

[19] On April 1, 2015, the Respondent sent the documentation for the transfer of these lots to the notary for the End Purchasers and informed the notary that the notary was not authorized to use the documentation until Compliance Deposit Acknowledgements were delivered.

[20] The Form A Transfer for Lot 17 was registered on April 14, 2015, but the Compliance Deposit Acknowledgement was not delivered to JH until April 15, 2015.

[21] The Form A Transfer for Lot 58 was registered on April 14, 2015 at 15:35:36 hours, but the Compliance Deposit Acknowledgement was not delivered to JH until 17:28 hours.

Facts related to allegation #4

[22] On May 22, 2015, JH sent covering letters to the Respondent enclosing transfer documents for another batch of transfers. The letters contained undertakings and stated that use of the enclosed transfer documents constitutes acceptance of the undertakings. The undertakings required that the transfers not be registered until the Respondent held funds that, when combined with mortgage proceeds for mortgages "to be filed concurrently therewith" were sufficient to pay the purchase price.

[23] An email from A Inc. to F Ltd. was forwarded to the Respondent on Friday, May 22, 2015. It stated that because the lender that had been arranged to provide mortgage financing was unwilling or unable to accommodate the parties' desired timing, A Inc. sought F Ltd.'s permission to have until Wednesday, May 27, 2015 to deliver cash for the transfers to JH, F Ltd.'s counsel. The Respondent forwarded that email to JH, indicating that his office would register the transfers on May 22 and that he thought an undertaking was unnecessary. He asked if paying out on May 27 was acceptable. JH responded that "[t]he undertakings are amended to state that if we don't have funds by Wednesday you will withdraw the transfer(s)."

[24] The Respondent registered the transfers on May 22, but did not concurrently file mortgages against four of the Lots. On Monday, May 25, 2019, the Respondent's assistant informed JH's office that they still had not received mortgage instructions with respect to those transfers and, as a result, mortgages had not been registered. JH subsequently demanded that the Respondent withdraw the transfers because mortgages were not filed concurrently with the transfers, which JH believed was in contravention of the undertakings. The Respondent took the position that his actions complied with the undertakings as modified by their correspondence, and he did not withdraw the transfers. Further, he informed JH that he was in possession of executed mortgages from a different lender that could be used if the original lender did not give instructions to proceed. JH repeated his demand that the transfers be withdrawn twice more that day. JH also expressed concern that the Respondent's interpretation of the correspondence could lead to a situation where, since the title transfers had been registered, if a judgment against the new owner or a subsequent transfer by the new owner was registered before a mortgage was registered, the mortgagee would not fund. However, this did not occur, and the mortgages were filed and the funds were released for the subject Lots by Wednesday, May 27, 2015.

[25] While ultimately those mortgages were about loans from a third party lender, the Respondent had instructions from A Inc. that A Inc. would provide mortgages should the original lender not be prepared to complete the transactions in time to allow funding by the Wednesday deadline. The Respondent prepared the corresponding documentation for the A Inc. mortgages but they were not filed because a third party lender provided the funding needed to close these transfers. Neither the original lender nor A Inc. lent funds to close these Lots.

[26] JH reported the Respondent to the Law Society for breach of undertakings on May 26, 2015.

DECISIONS OF THE HEARING PANEL

[27] A hearing panel heard submissions on the facts of this matter on September 13 and October 18, 2018. In the hearing panel's decision on facts, the panel reviewed the evidence of the Respondent's conduct and found as follows:

(a) Under allegation #1, the Law Society has met the onus of demonstrating that the Respondent acted in a conflict of interest, contrary to rule 3.4-1 and paragraph 2 of Appendix C of the Code, constituting professional misconduct;

(b) Under allegation #2, the Law Society has met the onus of demonstrating that the Respondent failed to honour the trust conditions and, in doing so, his conduct constitutes professional misconduct;

(c) Under allegation #3(a), the Law Society has met the onus of demonstrating that the Respondent failed to honour the trust conditions and, in doing so, his conduct constitutes professional misconduct. The Law Society has failed to meet the onus with respect to allegation #3(b); and

(d) Under allegation #4, the Law Society has met the onus of demonstrating that the Respondent failed to honour the trust conditions and, in doing so, his conduct constitutes professional misconduct. (Para. 113)

[28] The hearing panel heard submissions on Disciplinary Action on May 30 and June 27, 2019, and released its decision on September 24, 2019.

[29] After setting out the sanctions available to the hearing panel under s. 38(5) of the *Act*, the panel relied on *Law Society of BC v. Gellert*, 2005 LSBC 15, in determining that, because this matter involved multiple findings of misconduct, they must determine on a global basis the type of sanction to impose, accounting for the nature of all the misconduct.

[30] The panel then considered the 13 factors for assessing the appropriate penalty, set out in *Law Society of BC v. Ogilvie*, 1999 LSBC 17, as cited with approval in *Law Society of BC v. Lessing*, 2013 LSBC 29 at para. 55. The panel observed that the list was not exhaustive but worth general consideration. It also noted that in *Law Society of BC v. Dent*, 2016 LSBC 05 at para. 16, the panel stated that it is not necessary to go over each *Ogilvie* factor, but is sufficient for the panel to concentrate on those factors it considered most relevant. The panel then listed the *Ogilvie* factors that both the Law Society and the Respondent suggested were relevant and reviewed each of those factors.

[31] The panel noted in its decision that it considered the nature and gravity of the conduct to be very serious as it involved acting in a conflict of interest and breach of undertakings. It noted that the Respondent encouraged the panel to view the breaches as mere errors in judgment, inadvertence, oversight and miscommunication, but the panel did not agree.

[32] After applying each of what it considered to be the relevant *Ogilvie* factors to the facts of this matter, the panel concluded that two *Ogilvie* factors stood out: the undermining of the public's faith in the legal profession by the Respondent's

actions; and the need to be seen to deter similar professional misconduct. The panel also noted the multiple instances of professional misconduct throughout the Respondent's retainer, including multiple breaches of undertakings and his prior professional conduct record that showed past instances of similar misconduct.

[33] The panel reviewed the range of penalties in similar cases and, after considering the *Ogilvie* factors it had noted, determined that a seven-week suspension was appropriate.

ISSUES

[34] The Review Board considered the following issues:

(a) whether the hearing panel erred by failing to consider certain prior disciplinary decisions, and specifically, passages related to the standard of proof and the test for professional misconduct.

(b) whether the hearing panel erred by finding that:

(i) Under allegation #1, the Respondent acted in a conflict of interest;

(ii) Under allegation #2, the Respondent failed to honour trust conditions;

(iii) Under allegation #3(a), the Respondent failed to honour trust conditions; and

(iv) Under allegation #4, the Respondent failed to honour trust conditions,

and, in doing so, his conduct constituted professional misconduct.

(c) whether the hearing panel's imposition of a seven-week suspension was appropriate in the circumstances.

STANDARD OF REVIEW

[35] This proceeding is governed by section 47 of the *Act*, which states that after a hearing, this Review Board may either confirm the decision of the hearing panel or substitute a decision the panel could have made under the *Act*.

[36] When making that determination, we must apply a standard of review, which is the amount of deference given by one body in reviewing the decision of another body. The long practice of review boards is to use the standard of review articulated in *Law Society of BC v. Hordal*, 2004 LSBC 36, and *Law Society of BC v. Berge*, 2007 LSBC 07 ("*Hordal/Berge*"). That standard of review was endorsed by the BC Court of Appeal in two cases in 2017 that provided additional direction on applying the *Hordal/Berge* standard as a review board in a section 47 proceeding: *Vlug v. Law Society of British Columbia*, 2017 BCCA 172, and *Harding v. Law Society of British Columbia*, 2017 BCCA 171.

[37] In *Harding*, the Court of Appeal concluded at paras. 6 to 8 that it was reasonable for s. 47 review boards to use the *Hordal/Berge* standard of review:

> … These decisions establish that the standard is correctness, except where the hearing panel has heard *viva voce* testimony and had the opportunity to assess witnesses' credibility, in which case the review board should show deference to the hearing panel's findings of fact.
>
> In *Hordal*, the review board described the standard of review as follows:
>
> > [9] In *Hops*, while considering the appropriate scope of review for "findings of proper standards of professional and ethical conduct", the Benchers adopted the language of the Honourable Mr. Justice Branca when he wrote in *Re: Prescott* (1971), 10 DLR (3d) 446, at 452:
> >
> > > "The Benchers are the guardians of the proper standards of professional and ethical conduct. The definition in my judgment shows that it is quite immaterial whether the conduct complained of is of a professional character, or otherwise, as long as the Benchers conclude that the conduct in question is "contrary to the best interests of the public or of the legal profession". The Benchers are elected by their fellow professionals because of their impeccable standing in the profession and are men [and women] who enjoy the full confidence and trust of the members of the legal professional of this Province."
> >
> > [10] It follows from that observation that the Benchers must determine whether the decision of the Hearing Panel was "correct", and if it finds that it was not, then the Benchers must substitute

> their own judgment for that of the Hearing Panel as is provided in Section 47 (5) of the *Legal Profession Act*.
>
> [11] There is a clear caveat articulated in the authorities to the general application of the correctness test in cases where the Hearing Panel has had the benefit of the *viva voce* testimony of witnesses and have had the opportunity to assess the credibility of those witnesses by observing their demeanor in the proceedings. In those cases the Benchers ought to accord some deference to the Hearing Panel on matters of fact where determinations have been made by a Hearing Panel on factual matters in dispute.

In *Berge*, the review board described the standard of review in this way:

> [19] The standard of review to be applied by the Benchers on this Review is one of correctness. See *Law Society of BC v. Dobbin*, 1999 LSBC 27, [2000] LSDD No. 12.
>
> [20] This standard permits the Benchers to substitute their own view for the view of the Hearing Panel as to:
>
> > i) whether the Applicant's conduct constitutes conduct unbecoming a lawyer; and/or
> >
> > ii) whether the penalty imposed was appropriate.
>
> [21] The standard of review described above is subject to one qualification, namely, that where issues of credibility are concerned, the Benchers should only interfere if the Hearing Panel made a clear and palpable error. See *Law Society of BC v. Hops*, [1999] LSBC 29 and *Law Society of BC v. Dobbin* (*supra*).

[38] In *Vlug*, the Court of Appeal stated at para. 2 that:

> … the standard of review articulated in the *Hordal/Berge* line of cases is the internal standard developed by review boards for s. 47 reviews and is reasonable. The *Hordal/Berge* review board decisions establish that *the internal standard is correctness, except where the hearing panel has heard* viva voce *evidence and had the opportunity to assess witnesses' credibility, in which case the review board should show deference to the hearing panel's findings of fact*.
>
> [emphasis added]

[39] Though not binding on us, we find the approach in the *Hordal/Berge* line of cases persuasive and have adopted it. In reviewing the hearing panel's decision, our task is to determine whether it was correct. Where the hearing panel had the benefit of hearing *viva voce* testimony, we were prepared to show deference to the hearing panel, except in the face of a clear and palpable error, though no such error was apparent in this case.

ANALYSIS

[40] We will consider whether the hearing panel was correct in finding, in each of the four allegations enumerated above, that, first, the Respondent breached his duties and, second, that those breaches represented a marked departure from the conduct expected of lawyers.

Burden of proof

[41] The Respondent argued that the hearing panel erred by failing to properly apply the standard of proof and the test for professional misconduct.

[42] The Respondent noted that, when citing the test for professional misconduct in *Law Society of BC v. Martin*, 2005 LSBC 16, in their decision, the hearing panel did not cite para. 154, which states: "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 [one's] duties as a lawyer." The Respondent also noted that other cases on the test for professional misconduct were not cited, including *Law Society of BC v. McLean*, 2016 LSBC 10 at para. 87, where a review board noted that the Law Society does not require a standard of perfection of lawyers.

[43] With respect to the test for professional misconduct, the Respondent noted that the hearing panel did not cite cases that discuss the principle that the proper approach is to view the lawyer's behaviour holistically in the context of the circumstances the lawyer was in, such as *McLean* at para. 79.

[44] Failure to cite a particular section or passage of a relevant case is not, by itself, a reason to overturn a decision. The Respondent pointed out that lawyers are not held to a standard of perfection and nor are hearing panels. In *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, the Supreme Court of Canada stated at paras. 91 and 94:

> A reviewing court must bear in mind that the written reasons given by an administrative body must not be assessed against a standard of perfection. That the reasons given for a decision do "not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred" is not on its own a basis to set the decision aside …
>
> The reviewing court must also read the decision maker's reasons in light of the history and context of the proceedings in which they were rendered. … This may explain an aspect of the decision maker's reasoning process that is not apparent from the reasons themselves, or may reveal that an apparent shortcoming in the reasons is not, in fact, a failure of justification, intelligibility or transparency.

[45] The Respondent argued that the *Vavilov* decision was not applicable here, as it involved a judicial review and not an internal review like the s. 47 review undertaken by this Review Board. While we recognize we are not engaged in a judicial review, the Supreme Court of Canada's statement that a standard of perfection is inappropriate when conducting a review also applies to an internal review board's hearing process.

[46] Following that guidance, we find the hearing panel's decision not to cite all cases relevant to the standard of proof and the test for professional misconduct does not render their decision incorrect.

[47] The Respondent argued that, when properly applied, the authorities indicate that, if the conduct arose because of events beyond the Respondent's control, or by innocent mistake, the conduct does not reach the standard of "gross culpable neglect" as set out in in *Martin* at para. 154. That approach was endorsed in *Re: Lawyer 10*, 2010 LSBC 02 but has been subsequently rejected.

[48] In *Re: Lawyer 12*, 2011 LSBC 11, the single bencher panel concluded that the reasoning in *Re: Lawyer 10* was circular, and noted it was viewed with some skepticism by the hearing panels in *Law Society of BC v. McCandless*, 2010 LSBC 03 at para. 74 and in *Law Society of BC v. McRoberts*, 2010 LSBC 17 at para. 29. The panel concluded at para. 14:

> 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.

[49] In *McCandless*, the hearing panel considered the reasoning in *Re: Lawyer 10* and stated at paras. 73 and 74:

> The Respondent relied on the decision of the Benchers on Review in *Law Society of BC v. Lawyer 10*, 2010 LSBC 02. That decision, at paragraphs [32] and [33] held:
>
> > [32] A respondent must be culpable in order to have committed professional misconduct. The conduct must not only be a marked departure from the norm, but must also be blameworthy.
> >
> > [33] In order to determine whether the Applicant's (Respondent's) conduct is both a marked departure from the norm and blameworthy, one needs to consider precisely what it is that he did wrong.
>
> That circular logic makes each ruling dependent on its own facts.

[50] In *McRoberts*, the hearing panel stated at para. 29:

> This Panel adopts the *McCandless* view that the test set out in *Lawyer 10* may result in a circular and highly subjective analysis, making each ruling dependent upon its own facts.

[51] We agree with the reasoning in *McCandless* and *McRoberts* that the test used in *Lawyer 10* is circular and unhelpful, and we have not applied it in this case.

[52] Further, we do not agree with the formulation of the test offered by the Respondent. If we are to determine professional misconduct by determining first whether events were beyond the lawyer's control or occurred due to innocent mistake, we are merely substituting a narrower, subjective test for the accepted *Martin* test. Evidence of innocent mistake or of the lawyer having no ability to control the outcome of a situation may be relevant to the analysis. However, those facts are to be considered in the context of all other evidence before a hearing panel when determining whether the lawyer's conduct meets the *Martin* test for professional misconduct, not as separate, subjective tests that must be met prior to reaching a finding of professional misconduct.

Allegation #1

[53] The hearing panel found that the Respondent engaged in professional misconduct by acting in a conflict of interest. The Law Society's conflict of interest rules have certain exceptions to them, one of which is that, when acting on a "simple

conveyance," a lawyer can act for two parties with opposing interests if certain steps are followed. The hearing panel reviewed the exception and found that the 93 conveyances should be viewed in context and holistically, rather than as a series of individual events. We note that the panel's holistic approach is consistent with the approach the Respondent argued ought to have guided the hearing panel.

[54] When viewed holistically, the hearing panel found that the 93 conveyances did not meet the test for being "simple conveyances" because of the commercial element of the relationship between A Inc. and F Ltd. through the Novation Agreement and the obligations A Inc. had to F Ltd. under that agreement. As well, they found that the nature of the various elements of the transactions took the 93 conveyances out of the definition of "simple conveyances," including the need for holdbacks for developer servicing requirements and the aggregate size of the 93 transactions, being over $23 million.

[55] Once they found that the conveyances did not meet the definition of "simple conveyances," the hearing panel found that, by acting for both A Inc. and the End Purchasers, the Respondent acted in a conflict of interest contrary to rule 3.4-1, which prohibits acting in a conflict of interest, and para. 2 of Appendix C of the Code, which states, "a lawyer must not act for more than one party with different interests in a real property transaction" unless, among other things, the transaction is a "simple conveyance."

[56] The hearing panel then examined whether the Respondent's conduct was merely a breach of the applicable rules, or if it met the test for professional misconduct. The panel cited the *Martin* test and then considered whether the Respondent's conduct was a marked departure from the behaviour the Law Society expects of lawyers. The panel cited *Law Society of BC v. Coglon*, 2006 LSBC 14 at para. 6, for the proposition that "the duty of loyalty [is] one of the core values of the legal profession, perhaps the core value." They also discussed how, as a real estate practitioner, the Respondent ought to have recognized the complexity of the transactions he was engaged for and their commercial nature. Considering these factors, the panel found that the Respondent's conduct met the test for professional misconduct with respect to allegation #1.

[57] The Respondent argued before this Review Board that the hearing panel made several errors in their analysis.

[58] First, the Respondent argued that the panel erred by stating at para. 21 that "the issue to be determined" was whether the transactions constituted a "simple conveyance." The Respondent argued that this is incorrect because the issue to be determined is whether the Respondent engaged in professional misconduct.

[59] While the Respondent is correct that simply answering the question of whether the 93 conveyances were "simple conveyances" was not the entirety of the task before the hearing panel, the Respondent overlooked that the hearing panel did go on to consider whether the Respondent's behaviour met the *Martin* test and constituted professional misconduct. We find that, by making the statement in para. 21, the panel was simply stating that the issue was, at that point in their analysis, to consider the definition of "simple conveyance." We do not find that the statement indicates the panel improperly applied the test for professional misconduct across the entire decision.

[60] Second, the Respondent argued that the panel overlooked rule 1.1-1, which describes a conflict of interest as "a substantial risk that the lawyer's loyalty to … a client would be materially and adversely affected by … the lawyer's duties to another client." The Respondent argued that A Inc. and the End Purchasers shared a common interest in ensuring that titles transferred from F LTD. to the End Purchasers, and that title transfer was all the Respondent advised upon, because he did not act with respect to the agreements between A Inc. and the End Purchasers. The Respondent argued therefore no "substantial" risk of conflict existed in this matter, so he did not breach the Law Society's conflict rules.

[61] We do not agree that it is appropriate for the Respondent to rely on the word "substantial" in rule 1.1-1. While that rule of general application exists, a specific regime for conflicts in real estate transactions is established in Appendix C to the Code. In that Appendix, the relevant part of s. 2 states:

> 2. A lawyer must not act for more than one party with different interests in a real property transaction unless:
>
> (a) because of the remoteness of the location of the lawyer's practice, it is impracticable for the parties to be separately represented,
>
> (b) the transaction is a simple conveyance, …

That section does not include the word "substantial", and Appendix C is clearly intended to provide a complete set of rules for conflicts in real estate conveyances. If the 93 conveyances were not simple conveyances, there was no other exception available to the Respondent that would have permitted him to act.

[62] The Supreme Court of Canada recognized that law societies may adopt conflict rules that are more restrictive than the more general rules applied by the courts. In *Canadian National Railway Co. v. McKercher LLP*, 2013 SCC 39 at para. 16, McLachlin CJC wrote: "Law societies are not prevented from adopting stricter

rules than those applied by the courts in their supervisory role." The Law Society has done so in adopting Appendix C. It is inappropriate to attempt to import outside concepts into the complete regime the Law Society has established in Appendix C for conflicts in conveyancing.

[63] The Respondent also argued that his only obligation was to make a good faith effort to "consider" whether or not a transaction is a "simple conveyance." In s. 4 of Appendix C, the rule states that the lawyer should "consider" various factors when determining whether a transaction is a "simple conveyance," and the commentary to that section provides additional guidance. However, the presence of the word "consider" in s. 4 does not change the rule in s. 2, which asks whether a transaction *is* a "simple conveyance." It does not say the lawyer should merely consider whether it is a "simple conveyance." Section 4 provides guidance when making that determination but does not transform the objective rule in s. 2 into a subjective question of what a lawyer considered.

[64] We find that the hearing panel was correct in their application of the rules in Appendix C and, once the panel determined that the 93 transactions were not "simple conveyances," they were correct in determining that the Respondent had breached s. 2 of Appendix C.

[65] The hearing panel then considered whether the rule breach by the Respondent constituted professional misconduct. We find the hearing panel was correct in finding that the duty of loyalty is fundamental to the role of a lawyer. In *Coglon* the panel stated at para. 20:

> A lawyer who places himself or herself in a position of conflict can never be sure in advance whether actions taken in this context will result in damage. The conflict avoidance provisions set forth in the *Professional Conduct Handbook* are not simply remedial: they are preventative for the simple reason that the only safe way to deal with conflicts is to avoid them altogether. A lawyer must not be allowed to gauge the seriousness of a conflict with reference solely to the harm it may cause. Such would turn the avoidance of conflict into a game of probability in which lawyers play the odds, weighing potential benefits and liabilities in each conflict as it arises.

[66] We agree with the statement in *Coglon* quoted by the hearing panel, that the duty of loyalty is perhaps the core value of the legal profession.

[67] In the context of such a fundamental rule, the evidence here of gross culpable neglect supports the hearing panel's decision. The hearing panel noted evidence

that there were 93 transactions conducted over a period of roughly six-month valued in aggregate over $23 million. The Respondent was retained months before the transactions closed, so there was more than sufficient time for the Respondent to consider his position and the application of the conflict rules. There was also evidence noted by the hearing panel that, while A Inc. intended to have title transferred to the End Purchasers, if the End Purchasers did not close, that potential event could have financial consequences for A Inc. That should have demonstrated to the Respondent that it was not correct to consider A Inc. and the End Purchasers to have co-extensive interests in the transactions.

[68] We find the hearing panel was correct in determining, with respect to allegation #1, that the Respondent's conduct was professional misconduct.

Allegation #2

[69] The hearing panel found that the Respondent breached his ethical duties when he authorized the registration of ten title transfers without first confirming that his undertakings had been discharged.

[70] The Respondent was on undertakings not to register the transfers of title until copies of signed Compliance Deposit Acknowledgements were delivered to JH, counsel to the seller. After the Respondent left his office to attend to a family emergency, his staff prepared transfer documents, and he applied his Juricert password to register the transfers of title prior to delivering the Compliance Deposit Acknowledgements as he had undertaken to do.

[71] The Respondent argued that the hearing panel failed to consider several facts, namely that he had the signed Compliance Deposit Acknowledgements in his possession, that he was called away to attend to a family emergency and that his conveyancer simply forgot to deliver the Compliance Deposit Acknowledgements. Further, he argued that the oversight was resolved promptly and without causing prejudice or harm.

[72] The Respondent further argued that his conduct did not meet the test for professional misconduct because he acted honestly throughout in attempting to fulfill the undertaking and correct his assistant's oversight promptly.

[73] The hearing panel correctly observed that undertakings are of fundamental importance to legal practice. Lawyers are required to comply strictly with all undertakings they give. Rule 7.2-11 is unequivocal: "A lawyer must … fulfill every undertaking given; and honour every trust condition once accepted."

[74] The hearing panel noted the Respondent's evidence was that, while he did instruct his conveyancer to deliver the Compliance Deposit Acknowledgements prior to registering the transfers of title, he failed to ensure that she had done so before he authorized the registration of transfer. The hearing panel also found it was insufficient for a lawyer to rely on an assistant to comply with instructions. In our opinion, that finding was correct. The undertaking the Respondent gave was not to instruct his assistant to deliver the Compliance Deposit Acknowledgements. His undertaking was to deliver the Compliance Deposit Acknowledgements. He not only failed to ensure the delivery occurred, he then went on to authorize the registration of the title transfers by affixing his Juricert password, on an assumption that the undertakings had been discharged. The Law Society expects lawyers to personally ensure undertakings are fulfilled. The Respondent failed to ensure his undertakings were fulfilled and that constituted, within the meaning of the *Martin* test, gross culpable neglect. The hearing panel was correct in finding that professional misconduct was established on allegation #2.

Allegation #3(a)

[75] In allegation #3(a), the hearing panel found that, as in allegation #2, the Respondent breached undertakings by failing to provide JH with Compliance Deposit Acknowledgements prior to authorizing registration of two title transfers.

[76] The Respondent argued that the hearing panel erred by disregarding that, in this instance, a notary was responsible for registering the title transfers. The Respondent's evidence was that he had instructed the notary not to register the title transfers until the Compliance Deposit Acknowledgements were delivered.

[77] The wording of the undertaking was as follows:

> You will provide our office with a copy of the signed Compliance Deposit Agreement[1] prior to authorizing registration of the Form A Transfer by the Transferee's lawyer/notary public.

[78] The Respondent argued that, because he instructed the notary not to register the transfers without first delivering Compliance Deposit Acknowledgements, he discharged his undertaking.

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[1] The hearing panel found and the Respondent and the Law Society agreed that the reference to "Compliance Deposit Agreements" in the undertaking should have been a reference to "Compliance Deposit Acknowledgements", but nothing turned on the use of the incorrect nomenclature.

[79] The Law Society argued that the Respondent did not take steps to ensure the undertaking would be fulfilled. The multiple undertakings were put in place on March 31, 2015 and the Respondent gave instructions to the notary on April 1, 2015. The closings, however, did not occur until April 14 and 15, 2015. There was no evidence before this Review Board or the hearing panel that the Respondent followed up with the notary to ensure the Compliance Deposit Acknowledgements would be delivered on time. There was evidence, however, that JH's office asked about the status of the Compliance Deposit Acknowledgements and that all closing funds and documents were delivered to the notary and/or JH's office through the Respondent's office. Further, all of this occurred after the Respondent had received notice of the failure to discharge his undertakings for delivery of similar Compliance Deposit Acknowledgements as set out in allegation #2.

[80] We conclude that the hearing panel was correct in finding professional misconduct in these circumstances. We do not accept the Respondent's argument that, by authorizing the notary on April 1, 2015 to only register the title transfers after delivering Compliance Deposit Acknowledgements, he had discharged his undertaking.

[81] While it is important to read undertakings carefully and not infer additional obligations the lawyer did not agree to, here it is an unnaturally restrictive interpretation of "authorize" to interpret the authorization to be completed on April 1, 2015 when initial instructions were delivered to the notary, and to not consider all of the Respondent's actions through the closing dates on April 14 and 15, 2015. Over that two week period, the Respondent appears to have taken no further action to ensure that, when the documentation was delivered to the notary to allow closing, the Compliance Deposit Acknowledgements would be delivered prior to closing occurring. That conduct amounted to the Respondent putting the notary in a position to complete the registration of the title transfers without delivering the Compliance Deposit Acknowledgements and we find such conduct met the meaning of "authorize" as used in the undertakings.

[82] The Respondent's conduct showed an unacceptable disregard for the importance of ensuring compliance with undertakings and demonstrated gross culpable neglect within the meaning of the *Martin* test. We find that the hearing panel was correct in determining that behaviour constituted professional misconduct.

Allegation #4

[83] The Respondent argued that, with respect to allegation #4, the hearing panel made four additional errors, namely that the hearing panel:

(a) failed to conclude that the amended undertakings were ambiguous and capable of being reasonably interpreted in the manner the Respondent did;

(b) failed by considering JH's evidence of his state of mind when interpreting the amended undertakings;

(c) failed to consider the Respondent's conduct as a whole; and

(d) failed to conclude that the Respondent's conduct as a whole when viewed in context was not culpable and did not constitute professional misconduct.

[84] The standard form undertaking at issue contained language requiring mortgages "to be filed concurrently" with transfers of title. That standard form was amended by an email that stated "[t]he undertakings are amended to state that if we don't have funds by Wednesday you will withdraw the transfer(s)."

[85] The Respondent argued that he interpreted that email amendment to mean that all undertakings were replaced with the contents of the email. The hearing panel disagreed and found the Respondent's interpretation was unreasonable. Instead, the hearing panel found the amendment was only meant to alter the timing provisions related to the transfer of funds.

[86] We find that the hearing panel was correct in its interpretation of the amendment to the undertaking. We recognize that an amendment of an undertaking of this kind by an informal email is not ideal. The Respondent should have insisted at the time on more precise wording before accepting this amendment and JH should not have proceeded on this basis. Given the consequences to lawyers of failing to comply with undertakings and the risk to clients of unfulfilled undertakings, it is generally an unacceptable risk to proceed on the basis of informal amendments to undertakings. Nevertheless, that is what occurred here, and the Respondent proceeded at his own risk with resultant obligations by accepting undertakings in this form.

[87] The Respondent's first argument is that it is reasonable to consider that the amended undertaking was meant to remove all requirements with respect to mortgage registration. We find that interpretation to be unreasonable. The Respondent, as an experienced real estate practitioner, should have been aware that, by transferring title prior to registering the mortgages, he exposed F Ltd. to unacceptable risk. If the End Purchaser had filed a title transfer to yet another third party in the intervening period and the transfer from F Ltd. to the End Purchaser and from the End Purchaser to the subsequent buyer were processed before the

Respondent could withdraw the initial transfer, F Ltd. could have ended up with its title being registered in another person's name without having been paid for the transfer. The risk of that occurring is the reason for requiring undertakings not to file transfers unless mortgages are filed concurrently. Given the nature of the risk undertakings are meant to address, we find that it is unreasonable to conclude that the email amendment was meant to amend anything other than the time to remit payment, and therefore left the obligation not to register a title transfer without a concurrent registration of a mortgage unamended. The Respondent therefore breached the amended undertaking by filing the title transfers without a concurrent filing of mortgages.

[88] The Respondent argued that the hearing panel erred by considering JH's state of mind with respect to the content of the undertaking. He says the hearing panel further erred by concluding that the Respondent's actions were motivated by the potential loss of A Inc.'s deposit to F Ltd. if the title transfers were not filed on the date they were filed. We find that the hearing panel's conclusion was supported by the evidence and the correct interpretation of the amended undertaking as discussed above. Even if the evidence of JH's beliefs respecting the meaning of the undertaking and potential motivation of the Respondent to protect A Inc.'s deposit was disregarded for the reasons the Respondent argued, the conclusion of the hearing panel remains correct.

[89] The Respondent engaged in certain steps to mitigate the risk that his registration of the title transfers created, namely arranging a backup mortgage from A Inc. and conferring with land title office staff to determine if there would be a reasonable chance of withdrawing the title transfers if mortgage proceeds were not available to send to JH's office by the Wednesday deadline. For that reason, the Respondent argued, his behaviour as a whole should not be considered gross culpable neglect. However, given our finding that the undertaking was not to file the transfers without a concurrent filing of mortgages, these steps are irrelevant. It is not up to a lawyer who is on undertakings to replace the required undertaking with alternate steps the lawyer believes may provide protections to the transacting parties. The obligation is to comply with the undertaking. The Respondent deliberately took steps that contravened the undertaking based on an interpretation of the undertaking that this Review Board finds was unsupported by the evidence before the hearing panel or this Review Board. We conclude that the hearing panel was correct in finding that this behaviour demonstrates gross culpable neglect within the meaning of the *Martin* test and constituted professional misconduct.

DECISION OF THE HEARING PANEL ON DISCIPLINE ACTION

[90] The Respondent argued that the hearing panel erred both in determining that discipline is warranted and in the magnitude of the discipline imposed. The *Hordal/Berge* decisions provide guidance on the standard of review for the magnitude of a disciplinary penalty. In *Vlug*, the Court of Appeal endorsed the articulation of the standard of review found in *Hordal* at para. 18:

> In considering questions regarding the correctness of the magnitude of a fine, or the duration of a suspension, the Benchers must examine the impugned conduct and determine if the proposed penalty falls within a "range" of penalties that have been applied in similar situations in the past. This examination is often referred to as a "reasonableness" test, and in our view that characterization is sometimes wrongly contrasted with the correctness test. It is the view of the Benchers that to be correct, the proposed fine or suspension duration must be "reasonable" or within the range of appropriate penalties for similar delicts. In other words, the "correctness" test is informed by the "reasonableness" test. If it falls outside of that range, it will not be correct and it will be necessary for the Benchers to substitute their determination of the correct fine amount or the correct suspension in those circumstances.

[91] We also note that in para. 19 of *Hordal*, the review panel cautioned against tinkering with decisions:

> Counsel suggested that it would be improper for the Benchers to interfere with the fine quantum and/or suspension duration, as it was suggested that conduct by the Benchers would amount to "tinkering" with the determination of the Hearing Panel. Within certain parameters, we agree that it is inappropriate for the Benchers to "tinker" with determinations made by a Hearing Panel. It would, for example, be inappropriate for the Benchers to determine, in circumstances where a Hearing Panel had levied a fine of $5,000.00, that a fine of $4,000.00 or $6,000.00 would have been more appropriate. That substitution of judgment would clearly amount to tinkering by the Benchers, and would be inappropriate. On the other hand, if the Hearing Panel had determined a fine of $5,000.00 while the Benchers thought that a fine of $15,000.00 was the correct fine, then clearly it would not, on a relative basis, amount to tinkering with the determination of the Hearing Panel for the Benchers to substitute a fine of $15,000.00 for the fine of $5,000.00 imposed by the Hearing Panel.

> Similar considerations with respect to orders of magnitude as to penalty duration will arise, and we will address those later in these reasons.

[92] The Respondent argued that, if his conduct constituted professional misconduct – which the hearing panel was correct in finding – then the hearing panel erred in its assessment of the nature, gravity and consequences of the Respondent's conduct. The Respondent argued that a seven-week suspension was disproportionate to the Respondent's conduct in the circumstances.

[93] First, the Respondent argued that, taken as a whole, his conduct should be considered mere errors of judgment, inadvertence, oversight and miscommunication and not professional misconduct, and therefore the disciplinary decision should be overturned. Since we have found that the four allegations were correctly determined to have constituted professional misconduct, we do not accept this argument.

[94] Second, the Respondent argued that the hearing panel erred in not giving the proper weight to the evidence that no one suffered a financial loss as a result of his conduct, that all breaches were rectified, that the Respondent acknowledged his errors and that none of A Inc. nor the End Purchasers complained about his acting in a conflict of interest. The hearing panel considered each of these issues in their review of the *Ogilvie* factors and found that lack of financial loss and complaints had to be viewed in the context of the type of breaches alleged. The hearing panel correctly observed that avoiding conflicts of interest and fulfilling undertakings are core values for the legal profession and have correctly been described as bastions that must be upheld in order to preserve the public's confidence in the profession: see *Law Society of BC v. Welder*, 2014 LSBC 20 at para. 30, and *Coglon* at para. 6. We find that, when the Respondent's conduct is viewed in the context of the type of professional misconduct in which he engaged, the hearing panel correctly concluded that the nature, gravity and consequences of the Respondent's conduct are an aggravating factor in this matter.

[95] The Respondent acknowledged that he has a professional conduct record and it is an aggravating factor that supports disciplinary action above the middle range for similar misconduct. He submitted that it does not support the imposition of a suspension on the facts of this case, though he did not provide reasons in support of this position. The hearing panel reviewed the professional conduct record and found that one of the two historical conduct reviews, the referral to practice standards and the prior citation each involved breaches of undertakings or requirements to better supervise compliance with undertakings. Further, the hearing panel observed that the Respondent had not implemented the

improvements to his practice urged in those prior reviews and recommendations, and the current proceeding indicated that he continued to breach undertakings in his practice. We find that the hearing panel was correct in considering that the Respondent's professional conduct record was an aggravating factor.

[96] Third, the Respondent argued that the hearing panel did not correctly weigh the severity of the impact of a seven-week suspension on the Respondent against the nature and gravity of the proven conduct in light of the evidence of the impact the suspension would have on the Respondent's family and the lawyer who works with the Respondent and in light of the character references and evidence that was submitted from the Respondent's physician. The hearing panel considered each of these matters.

[97] The hearing panel observed that the evidence of financial hardship was selective and not extensive and did not support a conclusion that the Respondent could not financially afford to have another lawyer manage his practice during a suspension. The hearing panel also observed that the argument suggesting the lawyer who practises with the Respondent would be disproportionally adversely impacted was not supported by any direct evidence. The Respondent said this is due to the Law Society not cross-examining the lawyer on the letter in evidence from her. We have reviewed the letter and find that it contains little evidence of financial hardship, other than a statement that some unquantified amount of work was no longer being sent to the Respondent's firm and it was anticipated that situation may intensify if a suspension was imposed. It was open to the Respondent to lead more evidence in this regard, but he did not do so. We find the hearing panel was correct in concluding that this evidence was not extensive, and we further conclude that the hearing panel was correct to place little weight on this evidence.

[98] The hearing panel also reviewed the Respondent's character references and evidence submitted by the Respondent's physician. With respect to the character references, the hearing panel observed it was not clear what information regarding the Respondent's conduct in this matter had been disclosed to the persons acting as character references and as such, considered them a neutral factor. We find that conclusion was correct. If it is not apparent that referees are given the full facts of the allegations against a lawyer, they are generally given little weight by a hearing panel.

[99] With respect to the letter from the physician, the Respondent argued that the hearing panel erred by not considering certain medical conditions the Respondent has and his efforts and commitment to seeking treatment for them. The hearing panel found that, because the letter was not provided as expert testimony, it was of

little assistance to the panel. The Respondent did not explain why this determination was wrong. We find that the hearing panel was correct in not placing weight on this evidence in the absence of it being admitted as expert testimony and considered in that light. It would be inappropriate for a hearing panel to make findings about medical conditions in the absence of this evidence.

[100] In support of the overall position that a suspension is not appropriate in this case and should be substituted with a fine, the Respondent referred to six cases without explaining how they support his position that the discipline imposed was incorrect: *Law Society of BC v. Markovitz*, 2012 LSBC 11 and 2012 LSBC 25*; Law Society of BC v. Nguyen*, 2016 LSBC 21*; Law Society of BC v. Promislow*, 2008 LSBC 08 and 2009 LSBC 04; *Law Society of BC v. Richardson*, 2008 LSBC 05 and 2009 LSBC 07; *Law Society of B C v. Shojania*, 2004 LSBC 25; and *Law Society of BC v. Dhindsa*, 2014 LSBC 18.

[101] The *Markovitz* decision relates to a lawyer breaching undertakings to the Law Society in the context of a substance dependency, and we find it to be of little assistance in this matter.

[102] In *Nguyen*, the respondent was suspended for 60 days after being found to have fabricated disbursements and falsely represented them to the Law Society as genuine. We do not find this case to be of assistance.

[103] The *Promislow* decision involved a breach of undertaking for which a $10,000 fine was imposed. That case is similar to the one before us in that the respondent had a substantial professional conduct record, but it related to a single breach where the undertaking was to execute, deliver and file a document, and the respondent executed and delivered an unfiled document. We find that the case before us, involving three separate incidents of breach of undertaking all in the context of acting in a conflict of interest, is distinguishable in that the conduct was more severe than the conduct in *Promislow*. Also, in *Promislow*, the panel considered the imposition of a suspension but, in light of evidence that the respondent was winding down his practice prior to retirement, among other factors, they decided against it. Similar circumstances do not exist here.

[104] In *Richardson*, a lawyer was found to have breached an undertaking, and a $2,500 fine was imposed along with an order of costs. In that matter, the respondent was a senior counsel who had practised for over 35 years, and this was the first discipline hearing involving him. We find that that case demonstrates the type of breach of undertaking case in which a fine is appropriate. We contrast the breach of a single undertaking by a senior lawyer with no discipline history in that case with the Respondent's extensive professional conduct record, including three discipline

proceedings related to breach of undertakings, and the multiple breaches of undertakings in this matter and find that the Respondent's professional misconduct in the current matter warrants a more severe sanction.

[105] The *Shojania* decision also involved a breach of undertaking. There the respondent admitted to his error and consented to the disciplinary action that was imposed. He had undertaken not to release funds in a mortgage transaction but in a subsequent conversation with his legal assistant, was told that a release had been authorized. The legal assistant was incorrect, and the release was in breach of the undertaking. There is no mention of a professional conduct record involving prior breaches of undertakings, and the matter is distinguishable from this case in that the breach did not occur in the context of acting in a conflict of interest and was a single discrete breach, rather than a series of breaches. We find that *Shojania* does not demonstrate that a lesser sanction should be imposed in the case before us.

[106] Finally, the Respondent cited the prior decision that forms part of his disciplinary record. In that case, a fine of $5,000 was ordered in the context of an undertaking that was breached because the Respondent failed to provide proper oversight of a file. He accepted an undertaking but took no steps to ensure the undertaking was complied with and the undertaking was therefore breached. The sanction in that circumstance is distinguishable from the matter before us because, at that time, the Respondent did not have as extensive a professional conduct record, it involved a single breach of undertaking and there was no indication that it occurred in the context of a conflict of interest. We find that this earlier case involving the Respondent does not demonstrate that a lesser sanction should be imposed in the case before us.

[107] In the original decision on Disciplinary Action, the hearing panel reviewed the following cases: *Coglon*, *Law Society of BC v. Ooi*, 2010 LSBC 06; *Law Society of BC v. Scholz*, 2009 LSBC 33; *Welder; Law Society of BC v. Culos*, 2013 LSBC 19; *Law Society of BC v. Goddard*, 2006 LSBC 12 and 2008 LSBC 14; *Law Society of BC v. Ghag*, 1999 LSBC 32, [1999] LSDD No. 49; and *Law Society of BC v. Hill*, 2011 LSBC 16. The range in these cases was a suspension of one to six months. The hearing panel also considered the cases that the Respondent cited in this Review and we considered above.

[108] At seven weeks, the suspension imposed by the hearing panel is on the low end of suspensions imposed in other cases where a suspension was considered the appropriate type of sanction. However, it is within the range of similar sanctions imposed and thus meets the reasonableness element of the test in *Hordal*. In the absence of submissions from the Law Society or the Respondent that another

length of suspension would be appropriate, we see no reason to interfere with that determination.

[109] Upon review, we find that the hearing panel's selection of a suspension of seven weeks was correct, and pursuant to s. 47(5)(a) of the *Act*, we confirm the decision of the hearing panel. The suspension will commence December 1, 2020 unless the parties agree on another date. The order for payment of costs of the hearing within 24 months of the hearing decision (September 24, 2019) will stand.

DECISION

[110] We conclude as follows:

(a) the hearing panel was correct in finding that:

(i) under allegation #1, the Law Society has met the onus of demonstrating that the Respondent acted in a conflict of interest, contrary to rule 3.4-1 and paragraph 2 of Appendix C of the Code, constituting professional misconduct;

(ii) under allegation #2, the Law Society has met the onus of demonstrating that the Respondent failed to honour the trust conditions and, in doing so, his conduct constitutes professional misconduct;

(iii) under allegation #3(a), the Law Society has met the onus of demonstrating that the Respondent failed to honour the trust conditions and, in doing so, his conduct constitutes professional misconduct; and

(iv) under allegation #4, the Law Society has met the onus of demonstrating that the Respondent failed to honour the trust conditions and, in doing so, his conduct constitutes professional misconduct, and

(b) the hearing panel was correct in imposing a seven-week suspension in the circumstances.

COSTS

[111] The Law Society and the Respondent each applied for an order of costs in this Review. As no submissions on costs were heard during the Review Hearing, if the

parties are not able to agree as to costs, they may make written submissions within 30 days of the date of the issuance of this decision.