2020 LSBC 57
Decision issued: November 26, 2020
Citation issued: January 29, 2019

**THE LAW SOCIETY OF BRITISH COLUMBIA**

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

**and a hearing concerning**

**BROCK ANTHONY EDWARDS**

**RESPONDENT**

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**DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION**

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| Hearing date: | September 29, 2020 |
| Panel: | Craig A.B. Ferris, QC, Chair<br>Laura Nashman, Public representative<br>John D. Waddell, QC, Lawyer |
| Discipline Counsel: | Barbara Lohmann |
| Counsel for the Respondent: | Joel A. Morris |

## INTRODUCTION

[1] In *Law Society of BC v. Edwards*, 2020 LSBC 21 ("Facts and Determination Decision"), this Hearing Panel found that Brock Anthony Edwards ("Respondent") committed professional misconduct in respect of the five allegations in the Citation issued on January 29, 2019 ("Misconduct").

[2] In particular, this Hearing Panel found that:

> In the course of representing himself in matrimonial proceedings before the Supreme Court of British Columbia, the Respondent acted in a manner that the court found frustrated or misused the court process, by doing the following:
>
> (a) paying costs to the Family Maintenance Enforcement Program rather than to the opposing party or her counsel:

(i) contrary to the terms of a January 31, 2017 costs order;

(ii) to frustrate the opposing party; and

(iii) to increase the cost of litigation for the opposing party;

(b) drafting and forwarding a memo to the opposing party, in which he stated his intention to bring another application that he believed would result in the opposing party having to pay her lawyer more in fees than the sum of the January 31, 2017 costs order;

(c) filing two requisitions that were purportedly by consent, in circumstances where he knew or ought to have known that no such consent had been provided;

(d) threatening and instituting legal proceedings for an improper purpose; and

(e) using the court process as a means of harassing and intimidating the opposing party.

[3] The hearing concerning disciplinary action took place by virtual medium on September 29, 2020.

**THE POSITIONS OF THE PARTIES**

[4] The Law Society submits that the appropriate disciplinary action in respect of the Misconduct is a suspension of five months, commencing on the first day of the month after release of this Hearing Panel's decision, or such other date as this Hearing Panel may order.

[5] The Law Society also seeks costs in the amount of $14,058.71, payable within 30 days from the date of pronouncement of this Hearing Panel's decision, or such other date as this Hearing Panel may order.

[6] The Law Society submits that the proposed sanction reflects an appropriate balancing of the principles and factors relevant to the assessment of disciplinary action in the circumstances of this case and of the Respondent. In particular, the proposed sanction is argued to be necessary for denunciation, deterrence and sending the correct message to the profession and the public.

[7] In response, the Respondent argues that his conduct should be assessed globally. He acknowledges the findings of this Panel regarding his conduct in frustrating and

misusing the court process extends beyond improperly filing a requisition without consent or breach of a court order; it also involves conduct comparable to cases where counsel misled the court or otherwise engaged in misconduct before the court. Nevertheless, the Respondent submits that his acknowledgement of four of the allegations in the Citation, the absence of any professional conduct record, and evidence regarding the Respondent's character support a lesser sanction than a period of suspension. He further argues that a fine and order for payment of a portion of the Law Society's costs will impose a significant hardship to him. Therefore, a reprimand and fine will achieve the objective of maintaining public confidence in the legal profession and in the disciplinary process.

## DISCIPLINARY ACTION

### Object and purpose of the sanctioning process

[8] It is well-established that the primary purpose of disciplinary proceedings is the fulfillment of the Law Society's mandate, set out in section 3 of the *Legal Profession Act* ("*Act*"), to uphold and protect the public interest in the administration of justice.

[9] Section 3 of the *Act* states:

> **Object and duty of society**
>
> 3 It is the object and duty of the society to uphold and protect the public interest in the administration of justice by
>
> (a) preserving and protecting the rights and freedoms of all persons,
>
> (b) ensuring the independence, integrity, honour and competence of lawyers,
>
> (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,
>
> (d) regulating the practice of law, and
>
> (e) supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.

[10] The sanction imposed at the disciplinary action phase of the hearing should be determined by reference to these purposes.

[11] In *Law Society of BC v. Hill*, 2011 LSBC 16 at para. 3, a hearing panel emphasized the following with respect to the purpose of a sanction imposed by a Law Society Tribunal:

> It is neither our function nor our purpose to punish anyone. The primary object of proceedings such as these is to discharge the Law Society's statutory obligation, set out in section 3 of the *Legal Profession Act*, to uphold and protect the public interest in the administration of justice. *Our task it to decide upon a sanction or sanctions that, in our opinion, is best calculated to protect the public, maintain high professional standards and preserve the public confidence in the legal profession.*
>
> [emphasis added]

**Principles and factors relevant to sanction**

[12] The review panel in *Law Society of BC v. Lessing*, 2013 LSBC 29 confirmed that the object and duties set out in section 3 of the *Act* are reflected in the following non-exhaustive factors as set out in *Law Society of BC v. Ogilvie*, 1999 LSBC 17 ("*Ogilvie* Factors"):

> *Given that the primary focus of the* Legal Profession Act *is the protection of the public interest, it follows that the sentencing process must ensure that the public is protected from acts of professional misconduct*. Section 38 of the Act sets forth the range of penalties, from reprimand to disbarment, from which a panel must choose following a finding of misconduct. ***In determining an appropriate penalty, the panel must consider what steps might be necessary to ensure that the public is protected, while also taking into account the risk of allowing the respondent to continue in practice***.
>
> The criminal sentencing process provides some helpful guidelines, such as: *the need for specific deterrence of the respondent, the need for general deterrence, the need for rehabilitation and the need for punishment or denunciation. In the context of a self-regulatory body one must also consider the need to maintain the public's confidence in the ability of the disciplinary process to regulate the conduct of its members.* While no list of appropriate factors to be taken into account can be considered

exhaustive or appropriate in all cases, the following might be said to be worthy of general consideration in disciplinary dispositions:

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

(b) the age and experience of the respondent;

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

(d) the impact upon the victim;

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

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

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

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

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

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

(k) the need for specific and general deterrence;

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

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

[emphasis not in boldface added]

[13] The *Lessing* review panel observed that not all of the *Ogilvie* Factors will come into play in all cases, and the weight to be given these factors will vary from case to case. However, the protection of the public (including public confidence in the disciplinary process and public confidence in lawyers generally) and the rehabilitation of the lawyer, are two factors that, in most cases, will play an important role. The review panel stressed that, where there is a conflict between these two factors, the protection of the public, including protection of the public confidence in lawyers generally, will prevail.

[14] A rigid application of each *Ogilvie* Factor is not necessarily required in every case. In recent years, hearing panels have focused their analysis and placed more weight on the factors that are truly relevant to the case at hand. For example, in *Law Society of BC v. Dent*, 2016 LSBC 05, a hearing panel considered the relevant *Ogilvie* Factors as part of four primary factors and concluded that it was only necessary to consider the factors considered relevant or determinative of the final outcome of the disciplinary action:

(a) nature, gravity and consequences of conduct;

(b) character and professional conduct record;

(c) acknowledgement of the misconduct and remedial action; and

(d) public confidence in the legal profession, including public confidence in the disciplinary process.

[15] The review panel in *Law Society of BC v. Martin*, 2007 LSBC 20 stated that the salient features, when considering a suspension, include the following:

(a) elements of dishonesty;

(b) repetitive acts of deceit or negligence; and

(c) significant personal or professional conduct issues.

**Global sanction**

[16] *Lessing* is also instructive in terms of how to approach crafting a sanction when multiple citations are proven. The principles are equally applicable where multiple allegations are contained in one citation. The review panel held that the questions of whether a suspension or fine should be imposed, and the length of the suspension, should be determined on a global basis. Disciplinary action for multiple instances of professional misconduct should address the overall nature of the misconduct and what is necessary to protect the public interest.

[17] The rationale for a global sanction was explained by the hearing panel in *Law Society of BC v. Gellert*, 2014 LSBC 05, as follows:

> A global approach tends to carry with it the benefit of simplicity and will, in most cases, be particularly well-suited to arriving at a result that furthers the objective of protecting the public. After all, the extent to which the public needs protection, and the manner by which such

> protection is best provided, must ultimately relate to the entire scope of the misconduct in issue and not to each particular wrongdoing viewed piecemeal.

**Nature, gravity and consequences of conduct**

[18] In our view, the seriousness of the misconduct is the prime determinant of the sanction imposed.

[19] In *Gellert*, the panel found that the nature and gravity of the misconduct will almost always be an important factor as it stands for a "benchmark" to assess how to best protect the public and preserve its confidence in the profession. This objective of public protection is the "prism" through which all of the *Ogilvie* Factors should be applied.

[20] This Hearing Panel is of the view that the nature and gravity of the Respondent's proven Misconduct is very serious.

[21] In the Facts and Determination Decision, this Panel found:

> As noted above, it is difficult to separate the factual background pertaining to the allegations into distinct acts or omissions. The events giving rise to the Citation occurred within a discrete period of time and formed a strategic program of harassment. The Respondent was warned on separate occasions by two Justices of the Supreme Court of British Columbia that his behaviour was improper and likely to impugn his reputation.

[22] We also stated:

> When all of the evidence is drawn together, the only conclusion in this matter is that the Respondent utilized his legal expertise to bring improper pressure to bear on his opponents in legal proceedings. He would have been unable to pursue such a course had he not been a lawyer with significant court experience.

[23] The Respondent is an officer of the court. Over the course of the litigation that was considered at the facts and determination phase of the hearing, the Respondent was rebuked by two Justices of the Supreme Court of British Columbia in a very firm and clear manner, after additional warnings and attempts to have him behave appropriately. This conduct is very serious.

[24] As submitted by the Law Society at the facts and determination phase of the hearing, the Respondent also failed in his duties to himself. As a member of an

ancient and respectable profession, the Respondent should have acted in a manner that maintained his own honour, as well as the honour of the legal profession. He failed in all aspects to adhere to the virtues of probity, integrity, honesty and dignity. While emotions can run high in family law litigation, as a lawyer, the Respondent had a duty to keep those emotions in check and to act with decorum and courtesy.

[25] Justice Ross, in her July 17, 2014 decision, noted that "Ms. Edwards has respected the orders of the court; on the other hand, Mr. Edwards has consistently disregarded court orders."

[26] Justice Ross concluded her decision as follows:

> The final issue is whether there should be an award of special costs in Ms. Edwards' favour. *Mr. Edwards' conduct throughout the litigation has been unacceptable.* His failure to produce documents alone could warrant an order for special costs; see *Bains v. Bains*, 2006 BCSC 1187. In addition, Mr. Edwards ignored an order of the court requiring him to pay child support. His lack of cooperation in relation to dealings with the real property resulted in unnecessary interim applications. His conduct most certainly had the effect of driving up the costs to Ms. Edwards and added much unnecessary additional stress to the litigation. However, an award of special costs is a discretionary order. I am concerned that an award of special costs would upset the balance with respect to financial issues. In addition, I have concluded that an award of special costs would be unduly harsh in all of the circumstances. I decline to make an award for special costs.
>
> [emphasis added]

[27] Unfortunately, the Respondent did not appear to learn from his experience. All of the proven Misconduct took place after the judgment of Justice Ross.

[28] The parties appeared before Justice Schultes on January 31, 2017. In his June 23, 2017 decision, Justice Schultes said the following about the January 31, 2017 hearing:

> Because of *what I described as the "shenanigans"* underlying the previous judgment of Ross J., and Mr. Edwards's filing of a requisition that had falsely represented a re-setting of the hearing by consent, I dispensed with the requirement that he approve the form of the order.

> …
>
> At the conclusion of the hearing, I said the following to Mr. Edwards as a guide to his future conduct in this case:
>
> > I know how emotions run high in family matters, but you don't want to lose your professional reputation, and people have been disbarred for less.
>
> [emphasis added]

[29] As noted by Justice Schultes in that decision:

> [The Respondent] narrowly escaped being ordered to pay special costs in the trial before Ross J., but sadly seems to have learned nothing from that experience. I consider an award of special costs against him necessary *to reflect the court's severe condemnation of this behaviour.* To ensure that he complies with the order, I add the further term that he may not seek leave pursuant to the s. 221 order to make an application or continue a proceeding until the special costs have been paid.
>
> [emphasis added].

[30] It is the view of this Panel that the severe rebukes by two Justices of the Supreme Court of British Columbia, after previous warnings, amount to serious professional conduct issues, which is a *Martin* factor when considering a suspension.

[31] It is also significant that the misconduct occurred over a number of years in the context of the Respondent's own matrimonial litigation. The Respondent and Ms. Edwards were divorced in August 2014. However, the litigation between them during which the Respondent misconducted himself continued into 2017, leading to the decision of Justice Schultes in June 2017.

[32] The Respondent's proven Misconduct involves his frustration or misuse of the court process. He did so in five distinct ways:

(i) He paid the $500 costs order of Justice Schultes to the Family Maintenance and Enforcement Program rather than to opposing counsel. He did so contrary to a court order, in order to frustrate Ms. Edwards and to increase her costs;

(ii) He forwarded a memo to opposing counsel in which he set out his intention to bring another application that he believed would result in Ms. Edwards having to incur more litigation costs;

(iii) He filed two requisitions purportedly by consent;

(iv) He filed a court action against JH, Ms. Edwards' partner; and

(v) He used the court process as a means of harassing and intimidating his former spouse.

**$500 costs order**

[33] When the Respondent paid the $500 costs order of Justice Schultes to the Family Maintenance and Enforcement Program rather than to opposing counsel, he did so contrary to a court order with the intention to frustrate Ms. Edwards and to increase her costs.

[34] Justice Schultes found in his June 23, 2017 decision:

> … I am satisfied that his initial payment *was meant to skirt the clear terms of my order* and to secure for himself the credit towards child support arrears, instead of complying directly with the order's obvious meaning.
>
> [emphasis added]

[35] This Hearing Panel found that it could not ignore the finding of Justice Schultes that the $500 payment was misdirected to skirt the terms of the costs award: "the Respondent's actions were not the conduct of a party who was ignorant of the meaning and purpose of an award of court costs."

[36] Skirting the terms of a court order is demonstrative of an element of dishonesty, which is another *Martin* factor when considering a suspension.

[37] Justice Ross found that the Respondent had consistently ignored court orders in the context of this family law litigation. Justice Schultes quoted Justice Ross in his June 23, 2017 decision as follows:

> Of course, none of these excuses amount to acceptable reasons to disregard the order of the court. I find it remarkable to think that Mr. Edwards, a practising lawyer, would have believed that they were.

**Memo to opposing counsel**

[38] The Respondent's second act that frustrated or misused the court process was a memo that he forwarded to opposing counsel in which he set out his intention to

bring another application that he believed would result in Ms. Edwards having to incur more litigation expense.

[39] This Hearing Panel noted in our decision that the memo was "clear evidence of the Respondent's intent to pursue a course of action that would drive up his former spouse's legal fees beyond the amount of costs that he had been ordered to pay his spouse."

**Filing of requisitions by "consent"**

[40] The third act(s) that frustrated or misused the court process was the filing of two requisitions purportedly by consent. About this, Justice Schultes stated in his June 23, 2017 decision:

> I also conclude that [the Respondent] has no regard for the proper use of court procedures, since he has now filed two requisitions which were falsely stated to be by consent, in circumstances where he knew that no such consent had been provided.

[41] Not only was the Respondent dishonest when he filed the two requisitions by consent, he did so against the advice of a senior lawyer.

[42] This is another example of an element of dishonesty on the part of the Respondent to be factored in when considering the matter of the appropriate disciplinary action.

[43] The courts must be able to rely on representations made by counsel. In *Law Society of BC v. Galambos*, 2007 LSBC 31, the respondent represented to a Master in Supreme Court Chambers that a notice of motion had been served on the defendant in an action, when it had not been served. The hearing panel stated at para. 6:

> … Nonetheless, in the case under consideration, the governing factor, in our view, is that this is a serious matter. The court must be able to accept statements of counsel without having to make inquiry. And indeed, when counsel, having discovered that he or she has made a misrepresentation (and there is no alternative) must inform the court of the incorrect statement that had been made. That seems for us to be an aggravating factor here.

**Filing of court action against JH**

[44] The fourth form of frustrating or misusing the court process was the action filed by the Respondent against JH. This Panel found that:

> The Respondent commenced a separate proceeding against a third party, which was found to be "dubious" and highly prejudicial. The timing of the suit was suspicious, as it related to an alleged incident in 2013 and was filed at a time when the Respondent was seeking a change to his parenting rights.

[45] The Respondent's assistant, PC, whom he stated was bright and an excellent assistant, tried to convince him not to commence the proceedings against JH, yet the Respondent did so in spite of this advice.

*[46]* In his investigation interview with the Law Society on May 2, 2018, the Respondent stated the following in respect of PC:

> [PC] doesn't work there anymore, and she was new at the time of this and she was just recently graduated I think from SF – well, I know she went to SFU, but I think in terms of graduated or just due to graduate, but since then she has graduated. She has excellent grades. She could attend law school if she wants to. Her brother did and he decided not to practise, and she doesn't – I don't think she wants to practise, but she was a very excellent assistant.

**Misuse of court process**

[47] The final form of frustrating or misusing the court process was the Respondent's use of the court process as a means of harassing and intimidating his former spouse.

[48] This Hearing Panel found that "[t]he events giving rise to the Citation occurred within a discrete period of time and formed a strategic program of harassment."

[49] Frustrating or misusing the court process in five distinct ways highlights that the nature and gravity of the Respondent's misconduct is very serious and deserving of an equally serious sanction.

**Consequences of the Respondent's misconduct**

[50] The Respondent's misconduct had consequences on multiple parties: Ms. Edwards, the Respondent's children, Ms. Edwards' counsel, Ms. Edwards' partner (JH), the court process and the legal profession.

[51] Justice Ross, as noted in para. 26 of these reasons, stated that the Respondent's "conduct most certainly had the effect of driving up the costs to Ms. Edwards and added much unnecessary stress to the litigation."

[52] In *Lessing*, the direct victims were the respondent's former spouse and her counsel, who were put through unnecessary time and expense.

[53] The Respondent's former spouse and her counsel, as noted by Justice Ross, were also put through unnecessary time, expense and stress. However, the effect of the Respondent's conduct went beyond that, in that he harassed and intimidated his ex-spouse, cast unsubstantiated aspersions on her counsel and instituted dubious and highly prejudicial legal proceedings against JH.

[54] In his Reasons for Judgment dated June 23, 2017, Justice Schultes stated the following in respect to the effect on the Respondent's conduct on Ms. Edwards:

> She deposes [tenth Affidavit of Ms. Edwards] that her fear of further groundless legal actions by Mr. Edwards has led her to become excessively cautious about involving the children in activities that could result in physical injuries to them, for fear that he will seize on those injuries to support further spurious allegations of abuse. She quotes one of their children as telling her in that context that he did not want her to "get sued" by his father.
>
> Similarly, she explains that she and her partner took separate houses during their spring break vacation so that any disputes between [JH's] children and hers could not be utilized by Mr. Edwards for a similar purpose.

[55] In Ms. Edwards' counsel's submissions to Justice Schultes on April 24, 2017, she stated that:

> It is Ms. Edwards' submission that the actions taken by Mr. Edwards in this case, and specifically concerning the applications that have been recently before the court, have been a misuse of the court process in an attempt to frustrate the court process and to harass Mrs. Edwards.

> …
>
> The respondent's behaviour in litigation has resulted in additional expenses to the claimant as well as significant stress, as she has had to retain counsel to deal with these matters.

[56] Justice Schultes found in his June 23, 2017 decision:

> [The Respondent's] subsequent request for an undertaking to confirm what was obvious from my order – that the payment was in respect of court costs – was likewise completely unnecessary. And, his "memo to file" email ominously suggests a further aggravating feature: that he was hoping to cause Ms. Edwards to expend a greater amount in counsel fees that that costs award.
>
> On the evidence provided by Ms. Edwards, I am satisfied that Mr. Edwards is using the court process as a means of harassing and intimidating her.
>
> Finally, I conclude that he has responded to my previous costs orders in a manner calculated to frustrate Ms. Edwards and her counsel and to increase her litigation costs.

[57] The Respondent also involved Ms. Edwards' partner, JH, when he filed a notice of civil claim against him. In his June 23, 2017 decision, Justice Schultes noted:

> I draw the inescapable inference, based on the timing of his demands for mediation and the explicit threat underlying them that his lawsuit against [JH], which arose from a very dated allegation that one would have expected him to have acted on promptly if he sincerely regarded it as a legitimate basis for litigation, was threatened solely to force her to mediate a reduction in his arrears, and then filed in order to increase that pressure. This indicates to me that he sees the institution of dubious but highly prejudicial legal proceedings against third parties as a legitimate tactic to further his position in the family law proceedings.

[58] Further, the Respondent also cast aspersions against Ms. Edwards' counsel. Justice Schultes noted that the Respondent:

(a) accused Ms. Edwards' counsel of using her legal skills to deliberately thwart his ability to obtain increased access to his children;

(b) accused Ms. Edwards' counsel of being "contemptuous" of the court process;

(c) accused counsel of playing "keep away" with the court dates; and

(d) suggested that this misbehaviour on procedural issues by Ms. Edwards' counsel should result in an award of special costs in his favour. He concluded his submissions on the first hearing date by alleging that because of a deliberate strategy by counsel to use up all of the court time so that his variation application could not be heard, "my children are now in the hands of a child abuser."

[59] Justice Schultes found no merit in the Respondent's submissions and found that there was no "substance to the allegations that her counsel behaved improperly with respect to the setting of the present application."

[60] Justice Schultes also stated:

> With respect to the request for special costs, *I am satisfied that Mr. Edwards's conduct of this application is particularly deserving of rebuke*. He has cast serious aspersions on the professional integrity of Ms. Edwards's counsel, with no evidence to support those most serious claims. He of all people, in his own professional capacity, should understand the serious harm that can result from baseless allegations of misconduct directed at opposing counsel in family litigation.
>
> [emphasis added]

[61] This Panel found that the Respondent's conduct was "part of a strategy to frustrate the Respondent's estranged spouse, misuse a court order and increase the cost of litigation for the opposing party."

[62] The impact of the Respondent's conduct on the above-referenced parties is an aggravating factor.

**Character and professional conduct record**

[63] The Respondent was called and admitted as a member of the Law Society of British Columbia on September 1, 2004. At the time of the Misconduct, the Respondent was an experienced lawyer and had been practising for at least 12 years.

[64] The Respondent's experience is an aggravating factor requiring a more severe disciplinary action. This is not a case of a first-year-call lawyer who lacks experience. In the Facts and Determination Decision, this Hearing Panel noted:

> In assessing the Respondent's decision-making and his behaviour, this Panel is required to consider the import of the Respondent's training and professional experience a [sic] lawyer and a litigator. We note that his impugned conduct occurred while he was engaged in his capacity as a lawyer and in the context of legal proceedings.

[65] As noted in para. 24 of these reasons, this Hearing Panel found that the Respondent would not have been able to pursue the course of action that he did "had he not been a lawyer with significant court experience."

[66] The Respondent does not have a professional conduct record ("PCR"), as defined in the Law Society Rules. A PCR is therefore a neutral factor in this case.

[67] The Respondent currently practises as a sole practitioner in Burnaby, British Columbia. However, the fact that the Respondent is a sole practitioner is not an appropriate consideration in determining the type of sanction that should be imposed.

[68] In *Law Society of BC v. McCandless*, 2003 LSBC 44 at para. 11, the single Bencher hearing panel imposed a one-month suspension and commented:

> It was suggested by counsel for the Law Society that what I will describe as a lighter suspension is appropriate in a case involving a sole practitioner. Other Benchers may be influenced by such a consideration. I hope they are not. In my view, we cannot have members thinking that they will be treated differently just because they happen to choose a particular practice arrangement. The overriding consideration must be protection of the public.

[69] This principle has been followed in *Law Society of Upper Canada v. Findlay*, [2001] LSDD No. 62, *Law Society of Upper Canada v. Lachappelle*, [1999] LSDD No. 62, *Law Society of BC v. Hordal*, 2004 LSBC 23, *Law Society of BC v. Bauder*, 2013 LSBC 07, and *Law Society of BC v. Siebenga*, 2015 LSBC 44.

[70] Any prejudice to clients resulting from a suspension of a lawyer should not affect the decision to suspend or the length of the suspension imposed. Rather, the protection of clients is properly addressed by either adjusting the timing of the

suspension or taking other measures, such as the imposition of a locum or custodianship arrangements (see *Findlay*).

**Character evidence**

[71] The Respondent has produced character references in support of his otherwise good character from Michael P. McCrodan and Jim Russell.

[72] In discussing character evidence as a mitigating factor at a sanction hearing, MacKenzie: *Lawyers and Ethics: Professional Responsibility and Discipline*, loose-leaf (Toronto: Carswell, 1993) states:

> Some types of evidence in mitigation of penalty are more reliable indicators of the likelihood of recurrence than are others. *Character evidence is common and can be persuasive, but it is much less valuable if the witnesses are not fully informed of the facts. Even then, it is difficult to gauge the extent to which the evidence is affected by factors such as friendship. Virtually all lawyers are responsible for some good deeds, and virtually all are held in high esteem by some other lawyers and clients.* The discipline hearing panel must ensure that the process is not transformed from a deliberative process into a referendum among members of the profession.
>
> [emphasis added]

[73] After agreeing with the comments from MacKenzie: *Lawyers and Ethics*, the review panel in *Law Society of BC v. Johnson*, 2016 LSBC 20, held that too much weight on character letters (when there was a question of whether the authors knew all the circumstances of the lawyer's professional conduct record) would put the friends and colleagues of the lawyer in the place of the panel and detract from the panel's duty to protect the public interest. The review panel stated:

> However, we must agree with Gavin MacKenzie's comments set out above. There is a question whether all authors of the character letters knew all the circumstances of the Respondent's PCR. For example, conduct reviews are not published. Many of the letters refer to the Respondent's reputation in the community and say that they have never heard of the Respondent committing such behaviour before. Significantly, none of the letters refers to the incident of 1997 when the Respondent was involved in a similar incident and disciplined in 2001.

> No one wants to see harm come to their friends and colleagues, *to put too much weight on character letters would, in effect, put the friends and colleagues of the Respondent in the place of the members of the hearing panel and would detract from the Law Society's duty to protect the public interest.* In this case the character letters were one factor among many that the hearing panel had to consider and weigh. We see no error in either the manner or the weight given by the hearing panel to the character letters.
>
> [emphasis added]

[74] Similarly, in *Bolton v. The Law Society*, [1994] 2 All ER 486, an England and Wales Court of Appeal decision, the court held that, while character letters were relevant and should be considered, the essential issue was the need to maintain among members of the public a well-founded confidence that lawyers were persons of unquestionable integrity, probity and trustworthiness:

> All these matters are relevant and should be considered. But none of them touches on the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor, whom they instruct will be a person of unquestionable integrity, probity and trustworthiness.
>
> [emphasis added]

[75] It appears from the reference letters that Mr. McCrodan and Mr. Russell have both read the Facts and Determination Decision and that Mr. McCrodan has also read the Supreme Court decision, although he did not specify which Supreme Court decision that he read. Both referees speak of their knowledge of the Respondent in the context of mediations, but there is no reference to their personal knowledge of the Respondent's practice before the courts, which was the basis of the findings in the Facts and Determination Decision.

[76] The reference letters are not enough to overcome the serious Misconduct finding of this Hearing Panel. Over the course of his own family litigation, which spanned from before the judgment of Justice Ross on July 17, 2014 to the judgment of Justice Schultes on July 23, 2017, the Respondent was rebuked by these two Justices in a very firm and clear manner, after additional warnings and attempts to have him behave appropriately.

[77] The rebukes from Justice Ross and Justice Schultes go to the heart of the Respondent's integrity, probity and trustworthiness.

**Acknowledgement of misconduct and remedial action**

[78] It was not until the commencement of the Respondent's case on March 10, 2020 and after his application to withdraw specified admissions was denied that the Respondent admitted the allegations in paragraphs 1(b), (c), (d) and (e) of the Citation. He made no admission in respect of allegation 1(a).

[79] The review panel in *Lessing* explained:

> … If a lawyer who is under citation admits the citation, this is a mitigating factor. However, the sooner the admission is made in the process, the more important the admission becomes. The Respondent has only made this specific admission at the last minute. Its effect as a mitigating factor is therefore very limited.

[80] In this case, the Respondent admitted to four of the five allegations, but as in *Lessing*, it was at the last minute.

[81] In respect of rehabilitation of a respondent, the *Lessing* review panel noted that the respondent's late admission on the first citation was one of two factors that caused them to be uncertain of the potential for his rehabilitation.

[82] Therefore, the mitigating effect of any admissions on the part of the Respondent in this case is minimal.

[83] In addition, this case had a protracted beginning. The Respondent's initial counsel withdrew. After his second counsel was retained, attempts were made to schedule a pre-hearing conference. A Notice of Hearing and the Notice to Admit were served on the Respondent's counsel.

[84] The Respondent did not reply to the Notice to Admit, nor did he request an extension of time in which to do so.

[85] At a third pre-hearing conference on November 8, 2019, the Respondent's counsel requested an adjournment of the hearing. He stated that he did not expect any issues with the Notice to Admit but needed a few days to speak with his client. The adjournment request was not opposed and a new hearing was set for January 24, 2020.

[86] On January 9, 2020, the Respondent's counsel wrote to the Law Society and enclosed his notice of withdrawal as the Respondent's counsel.

[87] At a fourth pre-hearing conference on January 17, 2020, counsel attended with the Respondent, and he was permitted to withdraw as counsel. The Respondent also, for the first time, advised that he was not making any admissions.

[88] Two days later, the Respondent's third counsel advised that he had been retained by the Respondent for the purpose of adjourning the January 24, 2020 hearing to allow time for new counsel to review the matter, take instructions and prepare for the hearing.

[89] At the January 24, 2020 hearing, the Respondent's counsel made an adjournment application and indicated that he intended to withdraw some of the admissions. He did not specify which admissions. This Hearing Panel dismissed the adjournment application. The Law Society commenced its case that day, and the hearing resumed on March 10, 2020.

[90] There is no evidence of any remedial action on the part of the Respondent. Even when he paid the $500 costs award to Ms. Edwards' counsel after skirting the order of Justice Schultes by first paying $500 to the Family Maintenance Enforcement Program, he attempted to put opposing counsel on an undertaking that she refused to accept. He later revoked that purported undertaking. Justice Schultes stated in his June 23, 2017 reasons:

> His subsequent request for an undertaking to confirm what was obvious from my order – that the payment was in respect of court costs – was likewise completely unnecessary.

[91] Two Justices of the Supreme Court of British Columbia admonished the Respondent. In addition, he was advised by senior counsel and his own assistant (whom, as stated at paras. 47 and 48 of these reasons, the Respondent described as both smart and excellent) not to undertake the actions, but the Respondent proceeded anyway. This evidences that the Respondent's acts were deliberate.

[92] There is no evidence before this Hearing Panel of any remedial action on the part of the Respondent. This is therefore neither aggravating nor mitigating.

**Public confidence in the legal profession**

[93] This Hearing Panel found:

> "Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer's irresponsible conduct." Accordingly, a lawyer's conduct should always reflect favourably on the

> legal profession, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety.

[94] The Respondent's conduct in the five ways that he frustrated or misused the court process contributed to the erosion of the public's confidence in the legal profession. A message must be sent to the Respondent and the profession in the form of a strong disciplinary action in order to inspire public confidence that the legal profession will not tolerate this type of conduct by lawyers.

[95] As noted by the *Lessing* review panel, where there is conflict between protection of public interest and allowing a lawyer to practise, the protection of the public will prevail.

**Range of sanctions imposed in similar cases**

[96] Like this case, *Lessing* was a case in which the respondent represented himself in matrimonial proceedings. That respondent failed to report eight judgments against him, which was found to be professional misconduct. He also breached three court orders, which was found to be conduct unbecoming. The hearing panel imposed a total fine of $14,000 against the respondent.

[97] The Law Society sought a review of the sanctions imposed by the hearing panel and sought a suspension of three to five months. The review panel ordered a one-month suspension and costs and imposed a restriction that the respondent could not represent himself before any court or tribunal without the consent of the Law Society.

[98] In its decision, the review panel wrote:

> … Lawyers who breach court orders and find themselves in contempt of court should face severe sanctions from the Law Society …
>
> … [T]he hearing panel said: …
>
> > [30] Failing to comply with court orders and being found in contempt of court by a judge of the Supreme Court of British Columbia is very serious conduct that undermines the Rule of Law, and failure to impose a significant sanction would be inappropriate.
>
> …

> As to the breaches of the court orders and contempt finding, it is the particular duty of the Law Society to uphold and protect the public interest in the administration of justice by ensuring the independence, integrity, honour and competence of lawyers; *Legal Profession Act*, s. 3(b). A lawyer's failure to abide by court orders and being found in contempt cuts very close to the bone and requires a strong response.

[99] The respondent put forth his mental health issues as a mitigating factor, which was supported by expert evidence. The review panel noted:

> … If the mental health issue were not a factor, this Review Panel would impose more severe disciplinary action. In other words, a longer suspension would have been imposed.

[100] The Respondent in this case has not advanced any evidence of mental health issues that may have contributed to the Misconduct.

[101] The *Lessing* review panel also stated the following about previous decisions in this area:

> Generally, this Review Panel finds that previous decisions in this area have provided a disciplinary action that is too light for breaching a court order and particularly so if there is a contempt proceeding included. This does not inspire public confidence in the legal profession. Many lawyers have spent considerable time trying to convince clients to obey court orders. It sends a very bad signal to the public to have lawyers disobey court orders and the same lawyers finding themselves in contempt of court. It looks like the legal profession is speaking in two different directions. Therefore, this Review Panel finds that lawyers who breach court orders and lawyers who find themselves in contempt should face severe sanctions.

[102] The *Lessing* review panel noted that impact on victims is not only on specific individuals but also on indirect victims. In this case, the direct victims are the Respondent's former spouse, her counsel, his children and JH. As noted, the effect of the Respondent's conduct on his direct victims went far beyond that of the respondent in *Lessing*.

[103] Further, the legal profession is also a victim when one of its members harms the standing of this ancient profession in the eyes of the public. In *Lessing*, the review panel stated :

> … A lawyer's failure to abide by court orders and being found in contempt cuts very close to the bone and requires a strong response.

[104] In this case, the Respondent ignored court orders to pay child support, produce documents and failed to cooperate in relation to dealings with the real property. That conduct was described by Justice Ross to be unacceptable.

[105] If that were the extent of the Respondent's behaviour, then his conduct could possibly be described as similar to that in *Lessing* (with the exception of the mental health issues and the PCR). However, the Respondent's proven Misconduct occurred after Justice Ross' decision and was more serious. Justice Schultes described the Respondent's conduct before Justice Ross as "shenanigans" and he severely condemned his conduct after that. The Respondent narrowly avoided being ordered to pay special costs before Justice Ross, but was ordered to pay special costs by Justice Schultes.

[106] The Respondent's behaviour went beyond the behaviour demonstrated in *Lessing*.

[107] The Respondent's "skirting" of a court order, his filing of requisitions by "consent", when they were not, his use of his legal experience to manipulate the court process, and the absence of a mental health issue in this case calls for a more severe penalty than in *Lessing*, in the form of a lengthier suspension.

[108] A comment from the review panel's decision in *Lessing* is apt:

> This Review Panel respectfully disagrees with the hearing panel's position on self-representation. It is not a mitigating factor. Lawyers who choose to self-represent and get themselves into difficulties have only themselves to blame. They must live with the consequences of their decision.

**Conclusion on appropriate disciplinary action**

[109] This Panel finds that a global sanction of a suspension is the appropriate disciplinary action in all the circumstances. The Respondent's unprofessional behaviour was protracted and continued in the face of numerous criticisms and warnings from the court. His judgment was patently contorted by his emotional response to his matrimonial situation, and he was indifferent to the impact on his family, his colleagues, the court system and other parties who were simply doing their job.

[110] In arriving at a comparative assessment of the length of suspension to be imposed in this matter, this Hearing Panel imposes a suspension of two months.

[111] We are advised by counsel that the Law Society's practice is to request that the suspension start on the first date of the month immediately following the month in which a decision is issued, unless it is so late in the month that the lawyer's clients cannot be properly protected. In this way, the start date is neutral on its face. Subject to any submissions to the contrary by the Respondent, this Panel accepts that the Law Society's practice should be followed in this matter.

**COSTS**

[112] The Law Society requests an order of costs in the amount of $14,058.71.

[113] Panels derive their authority to order costs from section 46 of the *Act* and Rule 5-11 of the Rules.

[114] Rule 5-11 provides in part:

> (3) Subject to subrule (4), the panel or review board must have regard to the tariff of costs in Schedule 4 to these Rules in calculating the costs payable by an applicant, a respondent or the Society.
>
> (4) A panel or review board may order that the Society, an applicant or a respondent recover no costs or costs in an amount other than that permitted by the tariff in Schedule 4 if, in the judgment of the panel or review board, it is reasonable and appropriate to so order.
>
> (5) The cost of disbursements that are reasonably incurred may be added to costs payable under this Rule.
>
> (6) In the tariff in Schedule 4,
>
> > (a) one day of hearing includes a day in which the hearing or proceeding takes 2 and one-half hours or more, and
> >
> > (b) for a day that includes less than 2 and one-half hours of hearing, half the number of units or amount payable applies.

[115] Under Rule 5-11, the hearing panel must have regard to the tariff when calculating costs. The costs under the tariff are to be awarded unless, under Rule 5-11(4), the panel determines it is reasonable and appropriate to award no costs or costs in an amount other than that permitted by the tariff.

[116] There is no reason to deviate from the application of the tariff in the circumstances of this case. The Respondent has not provided any demonstrative evidence with

respect to his current financial circumstances, including any information about his assets, net worth or ability to pay costs. The total effect of the order of costs and a suspension is not inordinate or out of proportion to the Misconduct.

[117] The costs sought by the Law Society detailed in the draft bill of costs are appropriate in light of the tariff.

**NON-DISCLOSURE ORDER**

[118] The Law Society seeks an order under Rule 5-8(2) of the Rules that those portions of the transcript and exhibits from this proceeding that contain confidential or privileged information not be disclosed to members of the public. Given the recent amendments to the Rule 5-8 and 5-9, especially Subrule 5-9(3), it is our view that this issue is now moot. Accordingly, we decline to make the order sought because it is no longer necessary and will not be necessary for other hearing decisions going forward.

[119] In any event, this type of order was likely never necessary. Section 88 of *Act* has always provided that privileged and confidential information obtained by the Law Society is not to be disclosed. Section 88 reads:

> **Non-disclosure of privileged and confidential information**
>
> (1) [Repealed 2012-16-46.]
>
> (1.1) A person who is required under this Act or the rules to provide information, files or records that are confidential or subject to a solicitor client privilege must do so, despite the confidentiality or privilege.
>
> (1.2) Information, files or records that are provided in accordance with subsection (1.3) are admissible in a proceeding under Part 2, 3, 4 or 5 of this Act, despite the confidentiality or privilege.
>
> (1.3) A lawyer who or a law firm that, in accordance with this Act and the rules, provides the society with any information, files or records that are confidential or subject to a solicitor client privilege is deemed conclusively not to have breached any duty or obligation that would otherwise have been owed to the society or the client not to disclose the information, files or records.
>
> (2) Despite section 14 of the *Freedom of Information and Protection of Privacy Act*, a person who, in the course of exercising powers or carrying

*out duties under this Act, acquires information, files or records that are confidential or are subject to solicitor client privilege has the same obligation respecting the disclosure of that information as the person from whom the information, files or records were obtained.*

(3) *A person who, during the course of an investigation, audit, inquiry or hearing under this Act, acquires information or records that are confidential or subject to solicitor client privilege must not disclose that information or those records to any person except for a purpose contemplated by this Act or the rules.*

(4) A person who, during the course of an appeal under section 48 or an application under the *Judicial Review Procedure Act* respecting a matter under this Act, acquires information or records that are confidential or are subject to solicitor client privilege must not

(a) use the information other than for the purpose for which it was obtained, or

(b) disclose the information to any person.

(5) The Court of Appeal, on an appeal under section 48, and the Supreme Court, on an application under the *Judicial Review Procedure Act* respecting a matter under this Act, may exclude members of the public from the hearing of the appeal or application if the court considers the exclusion is necessary to prevent the disclosure of information, files or records that are confidential or subject to solicitor client privilege.

(6) In giving reasons for judgment on an appeal or application referred to in subsection (5), the Court of Appeal or the Supreme Court must take all reasonable precautions to avoid including in those reasons any information before the court on the appeal or application that is confidential or subject to solicitor client privilege.

(7) Despite section 14 of the *Freedom of Information and Protection of Privacy Act*, the benchers may make rules for the purpose of ensuring the non-disclosure of any confidential information or information that, but for this Act, would be subject to solicitor client privilege, and the rules may be made applicable to any person who, in the course of any proceeding under this Act, would acquire the confidential or privileged information.

(8) Section 47 (4) of the *Freedom of Information and Protection of Privacy Act* does not apply to information that, but for this Act and the production of the information to the commissioner under that Act, would be subject to solicitor client privilege.

[emphasis added]

[120] Section 88 is a mandatory, overarching and express requirement imposed upon the Law Society. It mandates that the Law Society has the same obligation of confidentiality and solicitor-client privilege with respect to transcripts or exhibits as the person from whom the information, files or records were obtained.

[121] Given these statutory provisions, we question whether the order sought by the Law Society was ever required in these proceedings. However, we are not required to rule on this point given that the issue is now moot.

**CONCLUSION**

[122] This Hearing Panel makes the following orders:

(a) pursuant to section 38(5)(d) of the *Act*, the Respondent is suspended from the practice of law for two months, effective January 1, 2021 or such other date as the parties may agree upon; and

(b) pursuant to Rule 5-11 of the Rules, the Respondent must pay costs of $14,058.71, payable on or before June 1, 2021.