2021 LSBC 12
Decision issued: March 15, 2021
Citation issued: October 25, 2018

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

SUMANDIP SINGH

RESPONDENT

DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION

Hearing dates:	August 27, 2019 September 4 and 5, 2019
Further submissions:	November 9, 2020
Panel:	Ralston S. Alexander, QC, Chair Paul Ruffell, Public representative
Discipline Counsel:	Mandana Namazi, Ilana Teicher
Counsel for the Respondent:	Joven Bahar Narwal

BACKGROUND

[1] Jeff Campbell, QC (as he then was) chaired the panel during the facts and determination stage of this hearing. He was appointed a judge of the Provincial Court of British Columbia effective March 23, 2020 and did not participate further in this matter. The President ordered, pursuant to Law Society Rule 5-3, that the Panel complete the hearing with the two remaining members.

[2] The Respondent sought an order to reconstitute the Panel to include a Bencher of the Law Society as an additional member. The President dismissed that application

and confirmed his earlier decision that the remaining members of the Panel conclude this matter [*Law Society of BC v. Singh*, 2020 LSBC 25].

[3] In our decision on Facts and Determination issued January 8, 2020 [2020 LSBC 01], we found that the Respondent had committed professional misconduct in an array of matters described in the five allegations of the Citation, comprising in total more than 40 events of professional misconduct.

[4] The specific incidents of misconduct are described in detail in our decision on Facts and Determination, but in general terms the misconduct can be described under the five broad headings of the Citation as follows:

(a) facilitating in a variety of methods the unauthorized practice of law by Gerhard Albertus Pyper, a recently disbarred lawyer;

(b) misconduct in communications and submissions with respect to members of the public, other lawyers and the courts/tribunals;

(c) misconduct by improperly commissioning documents for use in court proceedings and Land Title Office matters;

(d) misconduct demonstrated by the provision of legal services to clients that failed to meet the quality of service required by members of the legal profession; and

(e) misconduct in his dealings with the Law Society during the course of the investigation.

POSITION OF THE LAW SOCIETY

[5] The Law Society made a comprehensive submission emphasizing the impact of the misconduct in the context of the *Ogilvie* factors [*Law Society of BC v. Ogilvie*, 1999 LSBC 17] and seeking a suspension of the Respondent for a period of 18-months.

[6] The Law Society noted that the Panel should seek a "global" sanction for the array of delicts, rather than seeking to attribute separate penalties for the separate offences. We have adopted that approach in our determination of an appropriate disciplinary action and will elaborate on the concept later in these reasons.

[7] The Law Society also noted that the misconduct is broad in nature and wide ranging, that there are many individual instances of misconduct, and that the

misconduct occurred over a relatively long period of time. We intend to identify many of the individual incidents of misconduct as we detail our analysis because the circumstances of this Citation are nearly without precedent in the reported history of Law Society discipline decisions.

[8] The Law Society sought to draw parallels to penalties administered for similar misconduct in prior discipline decisions. This effort could not be entirely helpful to the Panel because, as just noted, the circumstances of this Citation are virtually without parallel in the reported jurisprudence of the Law Society. That is not to say that we did not get help from past disciplinary action decisions. What we learned from past decisions is that the misbehaviour demonstrated on just one of the allegations of the citation, when viewed in the context of past discipline decisions, will justify the disciplinary action suggested and argued for by the Law Society. It has been important for the Panel, in our deliberations on this disciplinary action phase of the hearing, to remember and remind ourselves that the multiplicity of misconduct must be factored into the global sanction settled upon.

[9] An example of this syndrome is the range of cases referenced by the Law Society in respect of the facilitation of unauthorized practice. The circumstances surrounding this allegation of the Citation are stark. Over a period of several years, with no apparent justification or motive, the Respondent allowed a notorious disbarred lawyer to have free access to the offices, staff and equipment of the Respondent with full knowledge that the disbarred lawyer was practising law, rendering accounts to unsuspecting clients, and generally carrying on the misbehaviour that led to the disbarment of the lawyer in the first place.

[10] For behaviour no more egregious than that before us for disciplinary action, lawyers were variously suspended for periods of from four to twenty months. See *Law Society of Upper Canada v. Puskas*, (2013 ONLSHP 127) 20-month suspension; *Law Society of Upper Canada v. Khan*, (2017 ONLSTH 83), 12-month suspension; *Law Society of Upper Canada v. Seif*, (2018 ONLSTH 8) six-month suspension.

[11] In respect of the failure to practise with civility, we are pointed to cases where the Law Society notes that none of the cases are as aggravated as the behaviour of the Respondent in this case. The Respondent was involved in a lengthy litigation involving Worksafe BC and several clients over a somewhat protracted period of time. In the course of his communications with government ministries involved with Worksafe BC, the Respondent made comments suggesting that Worksafe BC was guilty of discrimination to an "astounding" extent, that the internal review

process at Worksafe BC is "to say the least," corrupt, and that officers are tampering with evidence just to dismiss review applications.

[12] The Respondent mounted personal attacks against counsel working for Worksafe BC, writing in pleadings and communications things like "Counsel (by name) for Worksafe BC then obviously decides to hide the truth from the Court," and "Counsel (by name) then carried on misleading the Court."

[13] In a letter to counsel for Worksafe BC, the Respondent wrote ". . . we trust you had the opportunity to reflect on your disgraceful conduct" and "your conduct and the level of corruption in the ranks of Worksafe BC has reached levels of unacceptable proportions." We have repeated here just a very small number of the multiple examples of entirely inappropriate communications delivered and adopted by the Respondent. A more fulsome array of the offending communications is replicated in the Citation where those comments are more extensively reported. The degree to which the Respondent is guilty of uncivil communications is both astounding and inexcusable. The circumstances of this allegation by itself will justify a very serious penalty. These instances are not isolated and occurred over a very long span of time.

[14] The seriousness of this misbehaviour is exacerbated by the fact that the counsel that were targeted by the very serious groundless allegations tried to encourage the Respondent to a more appropriate and measured approach to his interactions. The Respondent was cautioned by senior counsel that he was misbehaving and that he should moderate the level of the rhetoric and invective directed to Government institutions and their counsel. The Respondent paid no attention to the advice and his personal attacks continued without noticeable abatement.

[15] We were not provided with any case authority directly on point, but the sheer volume of the offensive communications demonstrated in the Citation encourages the Panel to review this allegation in the most serious terms. We note the serious impact that these communications will have on the recipients, and we are also troubled that the Respondent offered no reasonable explanation for the protracted and entirely inappropriate delivery of the offensive communications.

[16] The Panel was directed to several instances where discipline outcomes have followed the abuse of the obligation to properly commission affidavits for use in court proceedings. The facts of this case are another example of a series of very serious misbehaviours. While representing a client in a family matter, the Respondent filed affidavits that had been signed by his client and provided to the Respondent. The affidavits were not signed in the presence of the Respondent, and

no oath was administered in respect of the signature on the affidavit of the client. The unsworn affidavit was then filed in the court proceeding and relied upon.

[17] In a real estate transaction involving the same client, a Form A Transfer of Land was signed by the client and "commissioned" by the Respondent. That is to say that the Respondent signed the Transfer as an "Officer" under the provisions of the *Land Title Act*, which requires the Officer to be present in person at the time that the document is signed. By witnessing the document, the Officer (in this case, the Respondent) is verifying that he was present when the document was signed and that the identity of the party signing the Transfer has been verified. Neither of these requirements was satisfied in this instance, and the Transfer was filed in the Land Title System and processed as if it had been properly executed.

[18] No cases were provided that approached or matched the level of misbehaviour demonstrated in the situation of this client and these filings.

[19] The cases to which we were directed in respect of the failure of the Respondent to provide the requisite level of service are not entirely helpful because, in the circumstances of this Citation, the Respondent was essentially acting as surrogate counsel for the disbarred lawyer actually directing the file activity. The fact that the Respondent participated in this charade made things that much worse for the client whose case was tragically mishandled in the result.

[20] The Respondent appeared in a court proceeding because he was the only legally trained individual who had the Law Society standing that permitted him to be in court. The background work, such as it was, was being attended to by the disbarred lawyer. The Respondent appeared in court for the client with essentially no knowledge of the circumstances of the case, with virtually no instructions and with no ability to assist the client in the outcome. Predictably, bad things happened.

[21] The misbehaviour in this allegation of the Citation includes the element of dishonesty in appearing on the matter as if he were the actual counsel of record while knowing nothing about the circumstances of the file. This behaviour and its very serious consequences to the client are the inevitable result of the enabling behaviour identified in allegation 1 of the Citation regarding the facilitation of the unauthorized practice of law.

[22] The cases cited in support of the disciplinary action sought for failing to provide an appropriate level of service range from several months' suspension to disbarment. The circumstances of this misconduct are clearly at the more serious end of the range of penalties, and the Law Society notes that an 18-month suspension can be justified on the circumstances of this misconduct standing alone.

[23] Cases cited in support of an appropriate disciplinary action for the routine and unrelenting misleading of the Law Society, while helpful, do not fully respond to the circumstances of this allegation of the Citation. In many ways, the Panel views these circumstances as the most egregious in a very long list of egregious behaviour. The blatant lying to the Law Society, over a very long period of time while the investigation was ongoing, is without precedent in reported decisions. This behaviour demands condemnation in the most serious of language because it goes to the heart of the ability of the Law Society to provide effective regulation of the lawyers for which it is responsible.

[24] The Law Society notes again that, on this allegation alone, the proven misbehaviour warrants a suspension of at least 18 months and, were it not for some identified mitigating factors, a more aggressive penalty would have been identified as appropriate.

POSITION OF THE RESPONDENT

[25] The Respondent provided a novel suggestion for the Panel's consideration. He suggested that he be permitted to continue practice under the strict supervision of an approved supervisor and that, if that supervisor noted any misconduct on the part of the Respondent while under supervision, then a predetermined period of suspension from practice would be engaged. In addition to the period of supervised practice, the Respondent would pay a sizable fine, do community service and undertake 50 hours of CPD credits. In addition, the Respondent was to provide an undertaking to undergo treatment and continuing monitoring of his mental health.

[26] The Respondent argued that this outcome would meet the primary objective of the discipline process, which is to protect the public interest in the administration of justice while at the same time meeting the second objective of the process, which is to provide an opportunity for the Respondent to be rehabilitated. He also argued that this outcome would provide the necessary component of specific and general deterrence. The Respondent also argues that we must take the mental health of the Respondent into consideration.

[27] We note here that, in the lead up to the Disciplinary Action phase of this hearing, there were various suggestions and applications advanced with a view to having a medical professional provide evidence on the state of the Respondent's mental health. The Panel demonstrated some flexibility in terms of the formal requirements for permitting expert evidence to be submitted on this issue and provided some extensions of previously imposed deadlines. At the end of the day, no medical evidence was provided, and while we make no inference from that lack

of evidence or the fact that we might have had some assistance in that regard from expert witnesses, we do not factor the Respondent's mental health into this decision as we have no evidence one way or the other on that issue.

[28] The Respondent argued that the maintenance of confidence by the public in the legal profession and the need for rehabilitation can be equally compelling factors informing a discipline outcome when the two factors are not in conflict. It is our view that, in the multiple instances of misconduct described in this case, the rehabilitation of the Respondent will be of secondary importance until the outcome appropriately demonstrates that the public interest has been recognized and protected.

[29] The Respondent argues for a disciplinary action that recognizes a principle he calls "Totality". We believe that the "totality" principle is captured in our previously mentioned approach to disciplinary action described as a "global penalty" for all events of misconduct. We have adopted this approach. In doing so we are mindful of the admonition embodied in the Totality principle that the cumulative sentence (from the criminal law context; in our situation read "suspension") does not exceed the overall culpability of the offender.

[30] The Respondent suggests that the criminal law sentencing principle of "Restraint" should be in the mind of this Panel when determining the appropriate suspension. Generally, the principle mandates a lesser penalty for first offenders and suggests that the need for general deterrence can be moderated in some circumstances. The Respondent brings this criminal law concept to the Panel by analogizing to the Law Society principle of progressive discipline. That principle argues for a more serious outcome for second or third-time offenders than would be the case for the first-time offender.

[31] The Respondent acknowledged that it was the role of the Panel to determine and set an appropriate disciplinary action for the identified misconduct. It is the role of the Panel to consider the application of the *Ogilvie* factors and determine the appropriate discipline outcome. The Respondent provided references to previous discipline decisions as a guideline for the Panel. Generally, we found the references cited for each of the areas of misconduct under consideration here to be at the lower end of the penalty outcomes for those offences. The Respondent did acknowledge that there were few cases of similar facts in the Law Society experience.

[32] The Respondent referred the Panel to the criminal law principle in *Kienapple*, which provides that an offender is not to be charged with multiple offences from the same facts. We do not see any application of this principle to the facts of this

case as each of the events of misconduct spring from discrete facts that are described in our decision on Facts and Determination. There is no instance in this case where any one of the multiple allegations in the citation rely on the same or nearly identical facts. We also express a general caution that criminal law principles should be imported to Law Society discipline matters with considerable care.

DISCUSSION

[33] Recent Law Society decisions encourage a more efficient application of the oft cited *Ogilvie* factors. In their historical presentation, the *Ogilvie* factors were the following.

(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 on 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 confidence in the integrity of the profession; and

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

[34] We will not adopt the truncated treatment of the *Ogilvie* factors in our analysis because to do so could suggest that this misconduct is not of the extraordinarily serious nature that we have determined it to be. We will speak to most but not all of the factors.

The nature and gravity of the conduct proven

[35] As we have noted, this case involves a most extraordinary confluence of misconduct. There are five separate instances of proven misconduct and most of the separate instances have several layers of misconduct within them.

[36] The facilitation of the unauthorized practice of a disbarred lawyer over a long period of time (in excess of two years) is very serious misconduct. These events impacted clients in an extremely negative way and involved instances of lack of judgment, integrity and fundamental honesty. The courts of our Province were compromised as a result.

[37] The lengthy and openly aggressive instances of incivility to other members of the bar and to the institutions of government is very serious. We noted above the impact these entirely inappropriate communications would have on the recipients. The entirely baseless nature of the allegations would only serve to exacerbate the already significant attack felt by those lawyers and civil servants. These events engage instances of dishonesty, lack of respect for the profession and a foundational lack of integrity.

[38] We noted above our view of the very serious nature of the abuse of the courts and the Land Title system by the non-commissioning of affidavit materials intended for the courts and participants to rely upon. Similarly, the Respondent's unscrupulous commissioning of Land Title documents undermines the very integrity of the Land Title system.

[39] The failure of a lawyer to provide professional services to a level expected of members of the profession has wide ranging consequences. It obviously has a direct impact on the affected client, but that is just the beginning of the spread of consequences. In this case, the court system was impacted as was the reputation of the legal profession as a whole. The client impacted by this misbehaviour was required at the end of the day to get her answers from her elected MLA. It is difficult to imagine a more visible public exposure of the professional misconduct.

[40] On the fifth allegation of the Citation, the interaction of the Respondent with the Law Society is examined. The Respondent engaged in a lengthy and deliberate scheme of misinformation by perpetrating a renewable series of lies in the face of

ever intense confrontation from his professional regulator. This systematic obfuscation endured over a very long period of time, 26 months in all. A clearer case of abject disrespect for the authority of the Law Society to regulate its members is difficult to imagine. We must condemn this attitude in the clearest possible terms.

[41] It is clear from this very brief summary of lengthy and compounded incidents of misconduct that this is one of the most grave of the Ogilvie factors to be considered.

The age and experience of the respondent, his previous character and details of prior discipline

[42] The Respondent has been a member of the British Columbia Bar since 2009. He is not new to the practice of law and was not when the offending behaviour began in 2015. There are no previous citations, but the conduct record of the Respondent includes two prior conduct reviews. One was in respect of a breach of undertaking in a real estate matter, and the second was in respect of a series of lawsuits found to be abusive of the court processes. In addition to the conduct reviews, the Professional Conduct Record of the Respondent describes a series of interactions with the Practice Standards Committee where various practice deficiencies are noted. We note the Professional Conduct Record may be a sufficient harbinger of the events of this citation to qualify as the missing first offence noted by counsel when urging the application of the Restraint principle upon the Panel. This Professional Conduct Record is an aggravating factor in the *Ogilvie* analysis.

The character of the respondent

[43] The character of the Respondent is front and centre in establishing an appropriate response to the array of admitted misconduct. There are multiple instances throughout the narrative of this Citation where the character of the Respondent is demonstrated, and it consistently tilts in a negative direction.

[44] The entire history of enabling the unauthorized practice of law by a disbarred lawyer is demonstrative of deficient character and a lack of foundational integrity. Day after day this disbarred lawyer showed up in the office of the Respondent to continue to do what he has been legitimately forbidden to do. The Respondent, for reasons that remain mysterious, welcomed this former lawyer to his offices, allowed use of his staff and permitted and facilitated client contact by doing so. This enabling conduct endured for many months.

[45] He denied any knowledge of this man's troubled status until the very end when the elaborate fabric of lies around all allegations on the citation was unravelling before him. Only then did he acknowledge the array of deceit and obfuscation that has been evident to investigators and Law Society staff for months. Dishonesty is characterized in most of the misconduct described in the citation. This demonstrated deficiency in fundamental honesty is a seriously negative *Ogilvie* characteristic.

The impact upon the victim

[46] There were numerous victims of the Respondent's misconduct, including several clients, opposing counsel and representatives of WorkSafe BC. Several of his clients were required to pay multiple adverse costs awards in addition to being found to be vexatious litigants with the adverse consequences that follow that determination.

[47] We have noted the significant adverse outcome for the family law client where the Respondent appeared with no preparation, no instructions and no real idea what he was doing in the courtroom on that day. This client suffered serious consequences from this failed court attendance, and her mistreatment was made worse by having to embark on a lengthy struggle to learn what actually happened in the courtroom that day. She was ultimately required to engage her MLA to assist with that determination. This *Ogilvie* factor weighs heavily against the Respondent.

The number of times the offending conduct occurred

[48] As noted, it is apparent that the misconduct in respect of several of the allegations in the Citation occurred over a very long period of time. In particular, the facilitation of the unauthorized practice endured for more than two years. The uncivil behaviour in the documented exchanges was evidenced over a 16-month time frame. The inappropriate commissioning occurred in at least five documented events over a six-month span of time. The mistreatment of client CA was a saga of 19 months' duration, while the misleading behaviour directed to the Law Society endured for more than 26 months.

[49] This latter misconduct was made worse by the fact that, throughout the entire exchange with the Law Society, the Respondent was confronted with specific and direct cautions that the Law Society was aware that he was lying in his responses and that he should stop and come clean before it all became unmanageable. The Respondent was resolute in his denials of the truth, and the inevitable collapse followed. These protracted time lines are a significant negative factor on the

Ogilvie continuum. In each case the Respondent abused the targets of his misbehaviour over a very lengthy period of time, while all the while knowing that he was acting improperly and continuing to do so despite that knowledge.

Whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong

[50] It is the view of this Panel that the Respondent did not acknowledge the misconduct until the full weight of his accumulation of misbehaviour became clear to him on the first day of a scheduled ten day hearing. In other words, he only acknowledged the misbehaviour when it became clear to him that there was no other option. In a last ditch effort to have an ameliorating impact on the final outcome, the Respondent acknowledged the array of inappropriate behaviour and sought leniency in the result.

[51] The Review Board in the matter of *Law Society of BC v. Lessing*, 2013 LSBC 29, had an appropriate take on the timing of an acknowledgement of misconduct at para. 110:

> … If a lawyer who is under a 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.

[52] It is our view that the Respondent gets no mitigation credit from the last minute admission of responsibility. The Law Society was required to marshal its case in full and was present on the first scheduled day of the hearing ready to proceed. All preparation work for a ten day hearing had been done. Witnesses had been subpoenaed and some were standing by to give evidence on the first day of the hearing. The Law Society argues that over the lengthy preparation phase of the case following the issue of the Citation, the Respondent lied repeatedly to the Law Society in respect of various matters that made up the substance of the case of the Law Society as detailed in the Citation. The acknowledgement of responsibility in this case at the twelfth hour, is at best a neutral factor.

[53] Similarly, there is no evidence before the Panel that the Respondent did anything to redress the wrongs he perpetrated. The victims of the Respondent’s misconduct remain unaware of any remorse or regret suffered by the Respondent.

The possibility of remediating or rehabilitating the respondent

[54] Counsel for the Respondent stressed this factor in disciplinary action and the need for the Panel to accord it equal weight with the protection of the public interest in the administration of justice. We noted earlier our inability to accede to that request. In the second conduct review of the Respondent that was reported on July 31, 2018, less than three months before the citation in this matter was issued, the Conduct Review Subcommittee noted the following, after providing a summary of its findings and recommended outcome:

> The Subcommittee was also concerned that he acknowledged his failings in order to avoid further steps in this matter. We are concerned that he has not really appreciated his wrongdoing and will encounter further and other problems in the future.

[55] The prospect of "further and other problems" turned out to be prophetic. Though the events giving rise to this Citation had long preceded the conduct review, it is clear that the advice provided to the Respondent in that proceeding did not have a helpful impact on his reaction to his next encounter with the Law Society. We have some doubts about the likelihood of rehabilitation of this Respondent, in part impacted by the prescient comments in the report of the Conduct Review Subcommittee.

[56] It is the case that, since the issue of this Citation, the Respondent has continued to practise with no reported incidents to the Law Society. The Law Society argued in the Disciplinary Action component of this hearing that we can take that fact as a mitigating factor in assessing necessary disciplinary action. Like the Conduct Review Subcommittee, we are concerned that the attitude of the Respondent only changed from unconditional denial to acknowledgement of wrongdoing when faced with an overwhelming certainty of an unpleasant outcome. This is not the attitude of someone looking to make a wholesale reformation of their life and practice.

[57] In any event it is the view of the Panel that the need to preserve the public confidence in our discipline process in these essentially unprecedented circumstances trumps the Respondent's wish for a supervised transition back to practice while becoming rehabilitated in that process.

The impact of the proposed penalty on the respondent

[58] The impact of this decision will have a far reaching and significantly negative impact on the Respondent. The impact will likely be more significant because he is a sole practitioner. There is authority in the Law Society jurisprudence that

suggests that, while the impact of a suspension on a sole practitioner can be more significant than it is on others, that is not a factor to be taken into account in the disciplinary action phase of a hearing. [*Law Society of BC v. McCandless*, 2003 LSBC 44; *Law Society of BC v. Buchan*, 2020 LSBC 07] The argument essentially provides that a lawyer should receive an appropriate disciplinary action for misconduct, regardless of the configuration of the lawyer's office. The corollary argument is that a lawyer cannot argue for a more lenient outcome on the basis that because the lawyer is a sole practitioner, the consequences of any suspension will be more impactful.

The need for general and specific deterrence

[59] This is an important *Ogilvie* factor for consideration. Given the wide scope of the admitted misconduct it is important that the disciplinary action imposed reflect the Panel's view of the extremely serious nature of the identified misconduct. We have attempted throughout these reasons to describe the serious and enduring nature of the admitted misconduct. It next falls to us to provide a disciplinary action outcome that accords with that view of the seriousness of the misconduct.

[60] This characteristic is important for the Respondent's wellbeing going forward. It must be made clear to him that the broad scope of the misconduct is significantly beyond acceptable. There can be no room for misunderstanding should he find himself in the future in a situation where personal integrity is confronted. It is equally important that a message of general deterrence be published to the profession. There should be no room for a lawyer to consider a dark side course of action with a belief that the likely penalty will be manageable should events transpire negatively. Lawyers should look at this array of significant professional misconduct and note that the disciplinary action provided is appropriate and persuasive in its impact on encouraging good decisions going forward. We believe that the penalty proposed will have that impact.

The need to ensure the public confidence in the integrity of the profession

[61] This *Ogilvie* factor ranks at or near the top of important considerations and, in the circumstances of this Citation, more than is normally the case. As frequently noted in these reasons, there is a lengthy history of truly reprehensible professional misconduct. The misconduct is not nuanced or subtle. Accordingly, it will be well understood by the casual public reader and will also potentially be more widely circulated because of the nature and extent of the misconduct. With those characteristics in mind, it is the task of this disciplinary action outcome to clearly communicate the view of the Law Society that abuses of the public trust of this

nature by members of the legal profession will not be countenanced. We will identify the misconduct in the clearest possible terms and provide a penalty that cannot be misunderstood. It will only be in that way that the confidence of the public in the ability of the legal profession to self-regulate can be preserved. There is no alternative available in the extraordinary circumstances of this Citation.

The range of penalties in similar circumstances

[62] This *Ogilvie* factor has been discussed earlier in these reasons. We have considered an array of penalty outcomes in all instances for behaviour less significant than that demonstrated here. Counsel for the Respondent urges compliance with principles of "Totality" and "Restraint" while the Law Society suggests a "Global Penalty" to reflect the severity of the accumulated misdeeds.

[63] We note parenthetically that the principles of Totality and the Global Penalty approach are related concepts, perhaps separated only by the source of the first by its genesis in the criminal law while the second springs from civil administrative tribunal jurisprudence.

[64] The suggested approach from the Law Society provides a difficult conundrum for panels. We have in this citation wrestled with a number of incidents of admitted misconduct. There are more than the five numbers on the Citation because many of the allegations include numerous sub-descriptions of additional misconduct. The Law Society has indicated that in at least three of the allegations (and sub-allegations) similar behaviour has produced a penalty of at least 18 months suspension.

[65] The application of the Totality principle, sometimes also known as the Global penalty approach, would lead us to adopt a penalty that is exactly equal to the most severe of only one of the five events of analogized misconduct. This seems to the Panel to be counter-intuitive.

[66] It is acknowledged that the Global approach to a determination of the correct penalty in circumstances of multiple acts of misconduct, requires an assessment of the seriousness of the totality of the offences and specifically *not* the adding together of the appropriate penalty for each to produce a sum total. We agree that that approach could lead to mischief. For example, consider an appropriate penalty for a three-allegation citation where each allegation, considered separately, suggests an appropriate penalty of an 18 month suspension. The Global assessment approach, would not permit the addition of the three 18 month suspensions together to impose a penalty of a 54 month suspension.

[67] However, it is difficult to imagine how a global 18-month suspension for those three separate events of misconduct, with each separately providing a justification for an 18-month suspension, is an appropriate outcome. Yet that is proposed here by the Law Society urging the application of the Global Penalty approach to this disciplinary action outcome. We will adopt a different view of the Global Penalty approach, to be explained.

[68] We first however confirm that we have found that the unique approach to penalty suggested by the Respondent did not find favour with the Panel. The suggested practice under a supervisor with suspension happening on the first instance of misbehaviour will not provide a penalty of sufficient moment in the very difficult circumstances of this multi-allegation Citation. We believe that any respondent in similar circumstances would race to accept that penalty. A fine of any magnitude, community service and endless hours of CPD will never approach the consequence of a suspension, of whatever duration. Accordingly, for those serious events of misconduct where disbarment is not indicated, significant suspension must be preserved as an appropriate penalty, and nothing short of that will be enough.

[69] During the course of the Disciplinary Action phase of this hearing, we asked counsel to consider whether a disbarment of this Respondent could be an appropriate disciplinary action outcome. We asked that question as we were struck by the overarching seriousness of the incidents of admitted misconduct and by our concerns about the demonstrated character deficiencies of the Respondent. Counsel for the Respondent attacked the request, citing conflict with natural justice principles. It was our concern for those principles that required us to raise the issue with the parties. The Law Society was seeking an 18-month suspension and if the Panel were to go beyond that we felt it necessary to alert counsel to the possibility.

[70] Counsel for the Respondent essentially argued that the Panel did not have the jurisdiction to impose a disbarment, that the Panel was somehow bound by the penalty requested by the Law Society. Were that the law correctly stated, there would be little use for panels or formal hearings. Panels are not bound by counsel requests or recommendations, even in limited circumstances on a joint submission.

[71] We did provide Counsel with additional time to make submissions on the disbarment issue and those submissions were received and considered. At the end of the day, the Panel has determined that disbarment is not required in these circumstances. We feel that the Respondent should be aware that it was a close call on this decision. We continue to have apprehensions about the character and integrity of the Respondent, and upon his return to practice, it will be for him to demonstrate the full extent of his rehabilitation.

DECISION

[72] We have determined that the application of a global penalty for the array of professional misconduct demonstrated in these circumstances requires a suspension of greater duration than the lowest common denominator in the authorities cited in support of the suggested penalty. As indicated above, the counter-intuitive nature of the argument must be addressed.

[73] In its submission the Law Society noted on several occasions that the circumstances of one of the identified events of misconduct would justify the 18-month suspension sought. In other submissions the Law Society noted that the circumstances of the misconduct would justify an even more aggressive suspension or even a disbarment were it not for the mitigating factors demonstrated. We see very little in the nature of mitigating factors in the facts of this case. The last minute acceptance of responsibility for the array of professional misconduct arrived in our view too late to be a factor in mitigation of an appropriate suspension.

[74] If one removes that event of surrender in the face of an overwhelming and persuasive factual basis for a finding of multiple counts of professional misconduct, there is nothing in the history of the Respondent's response to this lengthy and difficult engagement with his regulators that suggests amelioration of an otherwise appropriate outcome. Simply put, there are no mitigating circumstances of any moment in this case.

[75] We accordingly order that the Respondent serve a suspension from the practice of law for a two-year period, commencing on April 1, 2021 or such other reasonable start date as may be agreed by the parties. In selecting this duration of suspension we believe that we have applied the principle of a global penalty and have not provided an accumulation of individual penalties for each identified event of misconduct. Had we done that it should be clear that the suspension would have a duration in excess of five years or more.

[76] We further order that, for the first full year following his return to practice, the Respondent must practise under the supervision of a supervising lawyer approved by the Practice Standards Committee and on terms and conditions specified by that Committee. We specifically confirm that this requirement does not mean that it will be necessary for the Respondent to practise in a firm or with other lawyers, only that his work must be appropriately supervised for that one-year period.

COSTS

[77] The Law Society has submitted a bill of costs in the amount of $41,098.77 and asks that the Panel order the Respondent to pay that bill of costs at a time determined appropriate by the Panel. Counsel states that the bill of costs is prepared according to the tariff of costs provided in Schedule 4 of the Rules of the Law Society.

[78] Costs are a significant factor in this decision-making process. It is suggested by the Law Society in its submission that we must apply the Schedule 4 Tariff, absent special or extenuating circumstances. No such circumstances appeared in our analysis. To an extent, the costs incurred follow the magnitude of the Citation. There are many incidents of misconduct, and considerable effort was necessary to properly bring the Citation to its conclusion.

[79] We order that the Respondent pay the costs provided in the Bill of Costs as submitted in the amount of $41,098.77. We provide that monthly payments on account of the ordered costs do not become payable until the first anniversary of the Respondent's return to practice. From that date the Respondent will pay the costs in 36 equal monthly payments without interest.

[80] We have provided this response to the payment obligation for the costs to recognize that the Respondent's practice will need time to recover from the period of suspension.

[81] If the Respondent has not resumed the practice of law as permitted by these reasons by April 1, 2025, then the costs will be due and payable on that date.