2021 LSBC 50
Hearing File No.: HE20190078
Decision Issued: December 10, 2021
Citation Issued: January 7, 2020

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL

HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

ROSARIO CATENO DI BELLA

RESPONDENT

DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION

Hearing date:	September 20, 2021
Panel:	Steven McKoen, QC, Chair Catherine W. Chow, Lawyer Laura Nashman, Public representative
Discipline Counsel:	Barbara Lohmann
Counsel for the Respondent:	Richard Margetts, QC
Written reasons of the Panel by:	Steven McKoen, QC

PART I: BACKGROUND

[1] In our decision on Facts and Determination, 2021 LSBC 27 ("*F&D Decision*"), we found that the Respondent had committed four instances of professional misconduct as follows:

1. Failing to deliver the quality of service expected of a competent lawyer when he failed to:

    (a) attend to matters within a reasonable period of time, or inform his client about the potential for undue delay so that she could make an informed decision about her options;

    (b) keep his client reasonably informed, including failing to provide her with a copy of the entered court order dated July 19, 2017;

    (c) meet the deadlines set out in the court order dated July 19, 2017 on his client's behalf; and

    (d) answer reasonable requests by his client for information and respond to her telephone calls and other communications;

2. Misrepresenting to his client that he had ordered a wills search when he knew or ought to have known that the representation was false or misleading;

3. Failing to answer with reasonable promptness one or more of 31 communications that required a response from opposing counsel; and

4. Failing to do all that could reasonably be done to facilitate the orderly transfer of his client's matter to a successor lawyer.

[2] The Law Society seeks disciplinary action in respect of the misconduct of a suspension in the range of four to six months and an order prohibiting the Respondent from practising in the area of wills and estates until relieved of this restriction on his practice by the Discipline Committee.

[3] The Law Society also seeks costs of $11,785.92 payable within six months from the date of the pronouncement of the hearing panel's decision, or such other reasonable date that the hearing panel may order.

[4] The Law Society submits that the proposed sanction reflects an appropriate balancing of the principles and factors relevant to the assessment of disciplinary action, taking into consideration the circumstances of this case and the Respondent. In particular, the proposed sanction is necessary in order to ensure denunciation and deterrence, as well as to send the correct message to the profession and the public that this type of serious misconduct will result in serious consequences.

[5] The Respondent did not provide any written submissions, and, according to his counsel, provided very limited instructions on sanction.

PART II: SUMMARY OF THE LAW - PRINCIPLES OF APPROPRIATE DISCIPLINARY ACTION

Object and purpose of the sanctioning process

[6] 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, as cited with approval in numerous cases, including *Law Society of BC v. Hordal*, 2004 LSBC 36 at para. 51.

[7] The hearing panel in *Law Society of BC v. Hill*, 2011 LSBC 16 echoed the comments of the hearing panel in *Hordal* that:

> [3] … Our task is to decide upon a sanction or sanctions that, in our opinion, is best calculated to protect the public, maintain high professional standards and preserve public confidence in the legal profession.

[8] We agree that the sanction imposed at the disciplinary action phase of this matter should be determined by reference to these purposes.

Principles and factors relevant to sanction

[9] Counsel for the Law Society referred the Hearing Panel to the oft-cited case of *Law Society of BC v. Lessing*, 2013 LSBC 29 and the list of factors set out in *Law Society of BC v. Ogilvie*, 1999 LSBC 17 known as the "*Ogilvie Factors*":

(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.

[10] *Lessing* affirmed the *Ogilvie Factors* as a non-exhaustive guide or roadmap, while noting that not all may apply and that their respective weight 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 factors that, in most cases, play an important role. The review panel in *Lessing* stressed that where there is a conflict between these two factors, the protection of the public, including protection of the public's confidence in lawyers generally, will prevail.

[11] The more recent hearing decision, *Law Society of BC v. Dent*, 2016 LSBC 05, distilled the *Ogilvie Factors* down to what will be referred to as the "consolidated *Ogilvie* factors":

(a) the nature, gravity and consequences of the conduct;

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

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

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

[12] Counsel for the Law Society also referred the Hearing Panel to the case of *Law Society of BC v. Martin*, 2007 LSBC 20 where 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

the ("*Martin Factors*").

[13] This Hearing Panel accepts the consolidated *Ogilvie* factors and the *Martin Factors* as principles relevant to sanction.

Global sanction

[14] The case of *Lessing* is also instructive where multiple allegations or citations are proven, providing that the following principles for a "global sanction" shall apply:

(a) the question of whether a suspension or fine should be imposed is best determined on a global basis of all the citations;

(b) the question of the length of the suspension should be determined on a global basis; and

(c) if it is decided to impose a fine, it should be done on an individual basis.

[15] Counsel for the Law Society also directed the Hearing Panel to a number of recent authorities where a global approach to sanction has been applied: *Law Society of BC v. Buchan*, 2020 LSBC 07; *Law Society of BC v. Edwards*, 2020 LSBC 57; and *Law Society of BC v. Singh*, 2021 LSBC 12.

[16] The Hearing Panel accepts the Law Society's submission that the global approach to sanction applies in this case.

ANALYSIS

The nature, gravity and consequences of the conduct

[17] We now turn to applying each of the four consolidated *Ogilvie* factors to this case. The Law Society submits that the nature and gravity of the Respondent's misconduct is very serious and requires an equally serious sanction.

[18] Under the first of the consolidated *Ogilvie* factors (nature, gravity and consequences), the Law Society submits that each of the following four allegations found by this Hearing Panel as misconduct, support an equally serious sanction:

(a) quality of service;

(b) misleading the client about the wills search;

(c) lack of responsiveness to opposing counsel; and

(d) failing to facilitate the orderly transfer of the file to new counsel.

[19] Each of these shall be considered for this Hearing Panel to assess the seriousness of the misconduct and the establishment of meeting the first of the four consolidated *Ogilvie* factors.

Quality of service

[20] The Hearing Panel found that the Respondent failed his client in delivering quality of service and, in particular, failed to:

(a) attend to matters in a reasonable time frame;

(b) keep his client reasonably informed and provide her with a copy of the court order; and

(c) meet deadlines contained in the court order and answer reasonable requests for information from this client.

[21] Given that the Respondent is an experienced lawyer in the practice of wills and estates, which he himself purported to his client and in his letter to the Law Society dated January 8, 2019, the Respondent's extraordinary delay in the handling of his client's file over three years (March 2015 to April 2018) is an aggravating factor as to the nature and gravity of the conduct.

[22] Indeed, in the *F&D Decision*, this Hearing Panel found that the Respondent utterly failed to accomplish what his client retained him to do, which was to file for probate in respect of her father's estate. We agree with the Law Society's submission that the Respondent's complete lack of reasons for failing to file for probate by the court-ordered deadline and, at all, is an aggravating factor for the nature and gravity of the misconduct.

[23] The Law Society further submits that the misconduct is of a very serious nature because of the incontestable harm caused by the Respondent to the Respondent's client and beyond, the client's spouse, the deceased's son, opposing counsel, the elderly spouse of the deceased and her family.

[24] The Law Society refers to two cases, *Law Society of BC v. Menkes*, 2016 LSBC 24 and *Law Society of BC v. Perrick*, 2015 LSBC 42, where the respondents delayed taking steps to advance their client's claim, failed to respond to communications from their clients and failed to take steps to move their client's claims along. In *Menkes*, the respondent was also an experienced lawyer who had the ability to conduct the matter in a timely and confident way but failed to do so. In *Perrick*, the length of time over which the misconduct occurred (two years) was considered to be an aggravating factor.

[25] The Hearing Panel finds the case of *Law Society of BC v. McTavish*, 2018 LSBC 02 to be applicable. *McTavish* is a case where the respondent was retained to settle the estate of the client's late mother. The respondent failed to take appropriate steps to probate the client's late mother's will or administer the estate, failed to keep the client reasonably informed about the matter, failed to respond to communications from the client and failed to provide the client with complete and accurate relevant information about the status of the probate and administration of the estate.

[26] The hearing panel in *McTavish* found that the nature, gravity and consequences of the misconduct was serious and, quoting another case (*Law Society of BC v. Epstein*, 2011 LSBC 12), could not be considered "trivial departures". Further, the respondent's misconduct had consequences to the client.

[27] Accordingly, we find that the Respondent's misconduct in respect of his failure to provide the quality of service to his client, which is expected of an experienced lawyer such as the Respondent, is very serious and should therefore attract a sanction that will send a clear message to instill public confidence in the integrity of the profession that such misconduct is not acceptable.

Misleading his client about the wills search

[28] This Hearing Panel found that the Respondent undoubtedly did not order a wills search and thereby misled his client when he stated that he did (see *F&D Decision* at para. 71). It is a very serious matter for a lawyer to lie to a client about having taken steps on a file.

[29] The Law Society referred this Hearing Panel to three relevant cases (*Martin* (as quoted before citing the *Martin Factors*), *Law Society of BC v. Wynne*, [1995] LSDD No. 269 and *Law Society of BC v. Andison*, [1995] LSDD No. 160), where the hearing panels found the nature, gravity and consequences of the respondents' conduct, akin to the Respondent's misconduct in misleading his client about the wills search, as serious warranting a suspension.

[30] In *Martin*, dishonesty alone was found to be a very serious misconduct issue and a relevant factor in considering suspension. Couple the seriousness of dishonest misconduct with delay, the hearing panel in *Wynne* found that "… members of the public have the right to expect honesty of members of the legal profession, as this is the foundation of the solicitor-client relationship."

[31] In *Andison*, the hearing panel also reviewed a number of analogous cases where a lawyer had lied about having taken steps which had not, in fact, been taken. The hearing panel found such deception to be a serious matter that generally calls for a suspension rather than a mere fine.

[32] Taken together, we find that the Respondent's misconduct in misleading his client about the wills search is misconduct of a nature, gravity and consequence that is serious and warrants a sanction of suspension.

Lack of responsiveness to opposing counsel

[33] The Law Society submits that the Respondent's lack of responsiveness to opposing counsel supports a finding of seriousness under this first factor of the consolidated *Ogilvie* factors, warranting an equally serious sanction.

[34] This Hearing Panel found the following at para. 74 of the *F&D Decision*:

> The Respondent did not respond to Mr. Chudiak on at least 31 occasions, which forced Mr. Chudiak to file the Notice of Claim and a citation, in order to compel, albeit unsuccessfully, the Respondent to respond on behalf of AR to file an application for probate. The Respondent's failure to respond also detracted from Mr. Chudiak's ability to provide quality service to his client by thwarting the timely resolution of the estate matter and hereby undermined public confidence in the ability of the legal professional to operate in an expeditious and cost-effective manner. We find the Respondent's failure to respond with reasonable promptness to communications that required a response from opposing counsel to be professional misconduct.

[35] We find the circumstances in this case to be similar to *Law Society of BC v. Pyper*, 2019 LSBC 01, a case tendered by the Law Society as authority that a lack of responsiveness to opposing counsel supports a finding of the seriousness of the misconduct. In *Pyper*, the respondent ignored, over the course of many months, both multiple written and telephone enquiries, which the hearing panel considered relevant with respect to the nature, gravity and consequence of the conduct.

[36] We also find that the Respondent's repetitive, prolonged and unexplained delay or utter lack of responsiveness to opposing counsel as repetitive acts of negligence, which are a relevant, aggravating factor when considering a suspension.

Failure to facilitate the orderly transfer of the file to new counsel

[37] In the *F&D Decision*, this Hearing Panel found that the Respondent did not respond to successor counsel and did nothing to help transfer the file. In response to successor counsel's repeated request, the Respondent provided only a copy of the renunciation, not the original that was required. This conduct was determined by this Hearing Panel to be professional misconduct.

[38] *Law Society of BC v. McLean*, 2015 LSBC 01 dealt with the transfer of a client's file, which the hearing panel found to be a significant matter that ought to be dealt with in a timely fashion. The hearing panel went on to state:

> [51] Clients provide lawyers with important and valuable documents. These must be treated with utmost respect and importance. When a client file is transferred, it is important that this is done in a timely fashion to ensure that no documents are lost or misplaced in the process.
>
> …
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> [57] As indicated above, given the serious nature of the subject matter: client files, undertakings and trust conditions, this matter should have been treated seriously and diligently, which the Respondent did not do.

[39] We agree with the Law Society's submission that the nature, gravity and consequences of the Respondent's failure to facilitate the orderly transfer of the file to new counsel constitutes serious misconduct. The Respondent's behaviour in delaying the transfer and not providing the original as required are not trivial departures from the norm expected of a member of this profession. Providing quality and appropriate legal services to a client is at the core of a lawyer's duty, and we find that duty includes facilitating the orderly transfer of a file at the termination of a solicitor-client engagement.

Character and professional conduct record

[40] We now turn to the second of the consolidated *Ogilvie* factors and will consider the Respondent's character and his professional conduct record.

[41] The Law Society submits that the Respondent's 35 years of experience as a lawyer is an aggravating factor requiring more severe disciplinary action, citing the case of *Perrick* as authority.

[42] Counsel for the Respondent advised this Panel that during his lengthy career, the Respondent had been the President of the Victoria Bar Association, had leading roles at the Canadian Bar Association, was on the Board of the BC Law Institute in 2008 and had taught at the University of Victoria Law School. Counsel for the Respondent submitted that the Respondent was "well-regarded" in the legal profession and community, until his wife died of cancer in 2011. After which, counsel for the Respondent observed the Respondent's engagement with the community decline.

[43] In the *F&D Decision*, this Hearing Panel noted that the Respondent had submitted several character letters, which the Law Society submits should not be taken into consideration for the purposes of imposing a sanction because the referees were not aware of the *F&D Decision*. We find that the letters can be considered as to the Respondent's character, but that the weight in which they are considered will have regard to the fact they were written by the referees before the *F&D Decision*.

[44] While the Respondent's character was not debated at length, this Hearing Panel reviewed the Respondent's extensive professional conduct record ("PCR"), which consists of:

(a) a conduct review;

(b) a practice standards referral;

(c) a limitation placed on his practice;

(d) a previous citation resulting in a decision indexed as 2019 LSBC 32 ("*Decisio*n"); and

(e) three administrative suspensions, two of which continue to be in effect.

[45] The Law Society submits that this is a case of repeated similar misconduct and therefore stands apart from many precedents because the Respondent had been warned about similar conduct previously.

[46] The Respondent had a conduct review in 2008 regarding his accepting of cash in excess of $7,500, and a practice standards referral in 2014 regarding his inadequate task management and reminder system for his files due to his delay in his files. The Respondent provided compliance reports as ordered by the Practice Standards

Committee, but failed to implement the recommendations and undertakings to improve his practice management. As a result, the Practice Standards Committee closed its file citing that it could no longer monitor his implementation of the recommendations and instead determined that the Respondent was either "unwilling" or "unable" to make the necessary changes to his practice.

[47] On July 30, 2018 and May 24, 2019, the Discipline Committee issued citations against the Respondent on allegations concerning a breach of his November 22, 2016 undertaking to the Law Society (by opening 33 files, contrary to his undertaking), misleading the Law Society about his active client files or about his adherence to the November 22, 2016 undertaking (by not listing these new files in his audit reports) and failing to provide quality of service to his client in pursuing a committeeship for a client's ailing mother between June 2017 and April 2018.

[48] The Respondent was suspended for two months as a result of the proven misconduct in the *Decision*. It is noted that the misconduct in the *Decision* took place during the same period of time as the proven misconduct in this case.

[49] In the *Perrick* case, misconduct taking place at the same time as the conduct that gave rise to the earlier citation was considered to be an aggravating factor. Similarly, in *Dent* at para. 35, the hearing panel quoted with approval the case of *Law Society of BC v. Taschuk*, 2000 LSBC 22 where separate citations in an administrative context should be considered together rather than separated as "first offences" in each case.

[50] We note that the Respondent had been suspended previously in these instances:

(a) September 8, 2020 – failure to file trust report – lifted September 24, 2020;

(b) February 19, 2021 – failure on compliance audit – ongoing suspension; and

(c) April 20, 2021 – failure to respond to Law Society investigator – ongoing suspension.

[51] On April 30, 2021, the Supreme Court of British Columbia appointed the Law Society as custodian of the Respondent's law practice.

[52] We accept the Law Society's submission that the principle of progressive discipline applies here and supports a lengthier suspension than that which would be imposed absent a significant PCR. The Respondent's significant and relevant PCR is an aggravating factor.

Acknowledgement of misconduct and remedial action

[53] We now turn to the third of the consolidated *Ogilvie* factors, and will consider the Respondent's acknowledgement of misconduct and remedial action.

[54] During the investigation into this matter, the Respondent candidly admitted that he was aware of his professional obligations under the *Code of Professional Conduct for British Columbia*, yet he failed to provide any meaningful insight or explanation for his misconduct.

[55] Other than a note by the Practice Standards Committee on December 4, 2014 in respect of the Respondent's depression, there is no evidence before us of any medical or other issue that may act in mitigation of his conduct.

[56] While the Respondent admitted to the underlying misconduct by not opposing the Notice to Admit, the Respondent's inaction led to a protracted prosecution of this case. From the Respondent's initial counsel having to withdraw, to the Respondent retaining counsel on the eve of rescheduled hearings requiring further rescheduling, the Respondent's underlying behaviour of delay and lack of responsiveness was evident in the handling of his own disciplinary hearing.

[57] We find that there is no evidence of any remedial conduct by the Respondent.

[58] We further find that the Respondent did not express remorse for the delay and distress he caused his client, the aggravation that he caused opposing counsel and the delay and anxiety that he caused the elderly opposing party and her family. While he apologized to his client for not providing her with a copy of the court order, any remorse was limited to the one action, not an acknowledgement of how his misconduct impacted his own client, opposing counsel and affected parties.

Public confidence in the legal profession and disciplinary process

[59] For the fourth and final of the consolidated *Ogilvie* factors, we turn our analysis to the public's confidence in the legal profession. The Law Society submits that 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 serious misconduct by one of its members.

[60] We accept the cases submitted by the Law Society in support of this proposition of the need to instill public confidence. In *Law Society of BC v. Edwards*, 2020 LSBC 21, the hearing panel stated:

> [53] '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.

[61] We agree with the finding in *Lessing* where the review panel noted at para. 60 that where there is a conflict between the protection of the public interest and allowing a lawyer to practise, the protection of the public will prevail.

[62] We note that the Law Society is not seeking a finding of "ungovernability". However, we find that the Respondent's conduct is approaching such a finding, where there is evidence of a consistent unwillingness to comply with the Law Society as a regulator or a disregard and disrespect for the regulatory processes that govern that lawyer's conduct (see *Law Society of BC v. Fogarty*, 2021 LSBC 25 at para. 27).

Range of sanctions imposed in similar cases

[63] This Hearing Panel has accepted the numerous authorities submitted by the Law Society that a global approach to sanction is appropriate. In particular, we will apply the principles for a global sanction noted in *Lessing* as set out earlier at para. 14 of this decision. In short, where multiple allegations or citations are proven, a suspension and its length should be imposed by best determining it on a global basis of all the citations and if a fine is imposed, it should be done on an individual basis.

[64] The Law Society submits that a suspension is appropriate in these circumstances, where a fine falls short. In the case of *McTavish*, the hearing panel accepted a joint proposal of a $6,000 fine for the respondent's failure to provide quality of service to a client. The Law Society submits that the Respondent's misconduct in this case far exceeds the single failure to provide quality of service and that the additional findings of misconduct warrant a suspension.

[65] The Law Society further submits that a suspension is warranted because the Respondent's own PCR provides guidance on the appropriate range of sanctions. In the *Decision*, the Respondent admitted serious misconduct, including a breach of an undertaking to the Law Society, misleading the Law Society and not providing quality of service to his client in obtaining a committeeship for his client's ailing mother. The hearing panel accepted the joint submission for disciplinary action of a two-month suspension.

[66] We find that the *Decision* and the finding of misconduct in the *F&D Decision* as applied to the concept of progressive discipline requires a higher sanction to be imposed in this case.

[67] To determine the appropriate length of suspension, the Law Society submitted the following cases:

(a) *Law Society of Saskatchewan v. Bachynski*, 2018 SKLSS 5 – six-month suspension; and

(b) *Law Society of Saskatchewan v. Tilling*, 2013 SKLSS 12 – nine-month suspension,

which we accept to be the upper end of the range of appropriate suspensions in this case. In each of those cases, there were multiple instances of dishonesty over extended periods of time and they involved many more clients. In the Respondent's case, there was one instance of lying to his client.

[68] The Law Society submits that an order prohibiting the Respondent from practising in the area of wills and estates until relieved of this condition by the Discipline Committee is both necessary and appropriate.

[69] A practice condition is consistent with sanctions imposed where misconduct is found, as in the case of *Law Society of BC v. Sahota*, 2019 LSBC 08. In *Sahota*, the hearing panel imposed a practice condition against the respondent, along with a one-month suspension, in order to efficaciously impact the respondent's misconduct in his real estate practice and to maintain public confidence in the profession and disciplinary process.

[70] We disagree that a practice condition is appropriate in these circumstances. Counsel for the Respondent submitted that on the eve of this disciplinary Hearing, the Respondent tendered his resignation from the Law Society, with an undertaking not to re-apply in the next five years. The Respondent is currently 65 years old.

[71] The Respondent's practice consisted mainly of wills and estates matters and it is not certain that the subject matter of his practice contributed to the misconduct, as it did in the *Sahota* case.

[72] We find that there is no significant benefit to imposing a practice condition against the Respondent and, moreover, to impose an open-ended practice condition where the Respondent is relieved only by the Discipline Committee is tantamount to a *de facto* disbarment. Accordingly, we do not impose a practice condition as part of the sanction.

[73] In applying the principles of a global sanction and progressive discipline, we find that the appropriate sanction is a suspension of four months, commencing on the first day of the month following issuance of this decision.

PART III: COSTS

[74] The Hearing Panel derives its authority to order costs from section 46 of the *Act* and Rule 5-11 of the Rules. Costs under the tariff are to be awarded under Rule 5-11 unless the panel determines that it is reasonable and appropriate to award no costs or costs in an amount other than that permitted by the tariff.

[75] The Law Society requests an order for costs in the amount of $11,785.92, as set out in a draft bill of costs calculated in accordance with the tariff. As there is no evidence of the Respondent's financial situation, the Law Society submits that there is no reason to deviate from the application of the tariff in the circumstances of this case.

[76] Counsel for the Respondent submits that the Law Society's submission on costs is over-reaching because the Respondent did not oppose the Notice to Admit, and the affidavit documents prepared are of a mechanical or "cut and paste" nature and do not warrant the full 107 units claimed by the Law Society. Moreover, the Respondent's lack of opposition obviated the need for cross-examinations, rebuttal experts, motion hearings and such like – albeit the Panel does find that lack of any medical evidence to be lamentable.

[77] We considered the submissions from counsel for the Respondent on a line-by-line reductions of costs, for an aggregate reduction of 15 to 20 units, and a reduction of the disbursements for the disciplinary Hearing of $225.

[78] We award schedule 4 tariff items in the amount of $9,200 (a reduction of 15 units) and disbursements in the amount of $797.17 (a reduction of $225 plus GST), for a total award of costs in the amount of $9,997.17.

PART IV: CONCLUSION

[79] The Hearing Panel orders that:

1. Pursuant to section 38(5) of the *Act*, the Respondent is suspended from the practice of law for a period of four months, commencing on the first day of the month following issuance of this decision; and

2. Pursuant to Rule 5-11 of the Rules, the Respondent pay costs of $9,991.17, payable on or before six months from the date of this decision.