2022 LSBC 13
Review File No.: HE20180090
Decision issued: April 27, 2022
Citation issued date: October 25, 2018

LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
REVIEW DIVISION

BETWEEN:

SUMANDIP SINGH (AKA "SUMANDEEP SINGH")

(RESPONDENT)

AND:

THE LAW SOCIETY OF BRITISH COLUMBIA

DECISION OF THE REVIEW BOARD

Review date:	January 31, 2022
Review Board:	Thomas L. Spraggs, Chair Douglas Chiu, Lawyer David Dewhirst, Public representative Gillian M. Dougans, Lawyer Lisa Dumbrell, Bencher
Law Society Counsel:	Mandana Namazi
Counsel for the Respondent:	Joven Narwal
Written reasons of the Board by:	Lisa Dumbrell

SUMMARY

[1] This is a review concerning Sumandip Singh (the "Respondent") pursuant to section 47 of the *Legal Profession Act* ("the Act").

[2] On October 25, 2018, a citation was issued against the Respondent, which was amended June 6, 2019 and further amended July 19, 2019 (the "Citation").

[3] The Citation alleged numerous incidents of misconduct. On January 8, 2020, after reviewing an Agreed Statement of Facts and admissions by the Respondent, a three member hearing panel (the "Hearing Panel") determined that the Respondent had committed professional misconduct pursuant to section 38(4) of the Act. Prior to submissions on sanction being heard, one Hearing Panel member was unable to continue, having been appointed to the provincial court. Further to a decision by the Law Society President, the hearing continued with the two remaining Hearing Panel members.

[4] On March 15, 2021, the two member Hearing Panel imposed discipline on the Respondent consisting of a two year suspension of practice, a supervision order for one year upon return to practice, and costs of $41,098.77.

[5] The Respondent seeks to have the Review Board set aside the disciplinary decision and order a new hearing by a three-member panel, or alternatively, to reduce the period of suspension and to reduce the costs award.

[6] The section 47 hearing proceeded virtually on January 31, 2022.

ISSUES

[7] The Review Board must determine the following issues raised by the Respondent:

1. Did the decision by the President of the Law Society to continue the Hearing Panel with only two members constitute a breach of the principles of procedural fairness that required a new hearing?

2. Was the disciplinary action imposed by the Hearing Panel excessive and disproportionate as a result of the failure of the Hearing Panel to adequately consider the principles of sentencing? In particular, the principles of mitigation, reduction for a global resolution, progressive discipline and rehabilitation of the Respondent?

3. Did the Hearing Panel err in failing to scrutinize the Bill of Costs and acceding to the tariff and award as requested by the Law Society?

BACKGROUND

The Citation

[8] The Citation in this case was unprecedented in the number, duration, and seriousness of the allegations of misconduct. In all, 14 pages of separate allegations were broadly summarized into the following five areas of misconduct, covering approximately 40 instances of professional misconduct over a three year period:

(a) facilitating in a variety of methods the unauthorized practice of law by Gerhardus Albertus Pyper ("Pyper"), a disbarred lawyer, between June 2015 and July 2017;

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

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

(d) misconduct 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.

THE DISCIPLINE HEARING

Part 1: Facts and Determination – Findings and conclusion of the Hearing Panel

[9] The Hearing Panel as appointed consisted of three panel members: one Bencher, one Life Bencher and one public representative. A hearing to determine the facts of the matter was originally scheduled to take place over seven to ten days (the "Facts and Determination Hearing"). On August 27, 2019, the first day of the scheduled hearing, the parties settled an Agreed Statement of Facts ("ASF") which included admissions of professional misconduct by the Respondent. Based on the ASF and written material introduced at the Facts and Determination Hearing, the Hearing Panel found professional misconduct as alleged in the five areas referred to above had been proven.

[10] The findings of professional misconduct by the Hearing Panel are not disputed. The following is a summary of the critical facts which we find underlie the allegations:

(a) The Respondent allowed Pyper, whom he knew to be a disbarred lawyer, to provide legal services during 2015 and 2016 to a number of clients, through the use of his office and his legal assistants and receptionist. Pyper prepared legal documents for clients using the Respondent's law firm letterhead and had access to space within the Respondent's office where he met with clients. Pyper's clients were led to believe that he was a member of the Respondent's law firm and clients were led to believe that Pyper was representing them and was authorized to practice law. The Respondent knew all of this and often signed court documents that had been prepared by Pyper.

(b) The Respondent commissioned affidavits and other court and Land Title documents purportedly sworn in the presence of a client in a civil case, who was in fact not present and whom he had never met. The client thought Pyper was her lawyer and upon learning he was not able to represent her, obtained new counsel.

(c) The Respondent provided similar support to Pyper in a contested family law case for another client ("CA"). In the spring of 2015, Pyper engaged in settlement discussions with opposing counsel, sent letters to opposing counsel on the Respondent's firm letterhead, and was in regular contact with CA, in some instances with the assistance of the Respondent's legal assistant. During the Law Society investigation, the Respondent denied any knowledge that his office was involved in these settlement discussions.

(d) The Respondent attended a court hearing regarding spousal support on behalf of CA. The Respondent admitted that he did not have the client's file when he appeared at the hearing and did not seek or obtain instructions other than on the morning of the hearing when he called her from the courthouse. Thereafter, CA was only able to learn the results of the hearing after contacting her Member of the Legislative Assembly ("MLA") who assisted her in obtaining the information from the court file. The result was that the Respondent provided essentially no useful services to CA, although he was the only lawyer involved in her file who was authorized to represent her in court.

(e) The Respondent further facilitated Pyper doing legal work for a corporate client, ("S Group"), when Pyper was not authorized to practice law. S Group was in a lengthy dispute with WorkSafe BC and was represented by Pyper until he became a former lawyer. The Respondent was retained by S Group following Pyper's loss of status. For over a year, Pyper continued legal work on behalf of S Group and prepared legal documents related to S Group's legal matters, and the Respondent signed them as counsel of record. The Respondent denied knowing that the documents were prepared by Pyper.

(f) The pleadings and correspondence with respect to S Group that were drafted by Pyper included inflammatory personal attacks against WorkSafe BC and its counsel. Allegations of bias, discrimination and other misbehaviour were common themes in the various documents signed by the Respondent. The Respondent signed those documents without investigating whether there was any factual foundation for such allegations.

(g) During the Law Society investigation, the Respondent claimed authorship of the array of pleadings and correspondence related to S Group but was unable to produce any original electronic versions of the documents in question. The only documents stored on his computer system were PDF versions of the documents that had been scanned after the Respondent had signed them.

(h) Despite the Respondent's knowledge of his obligations regarding the unauthorized practice of law, the Respondent did not believe it was necessary to tell Pyper's clients that Pyper was not authorized to practice law. The Respondent stated that he did not believe he had an obligation to alert clients because "Pyper does not work for me."

(i) The Respondent admitted that he engaged in unjustified attacks against other counsel, the judiciary and opposing parties. He repeatedly filed pleadings and sent letters attacking the judiciary and counsel for an opposing party without satisfying himself that there was a good faith basis for those allegations.

(j) The Respondent admitted the allegations in the citation that he failed to discharge his responsibilities with candour, fairness, courtesy, civility, good faith, respect and the requisite honour and integrity and that he communicated in a manner that was abusive, offensive or otherwise inconsistent with the proper tone of a professional communication.

(k) Finally, the Respondent admitted that in the course of the Law Society investigation, he misled the Law Society by making numerous untrue statements.

[11] In summary, the Respondent admitted that his conduct constituted multiple examples of professional misconduct.

[12] After reviewing the ASF and other material presented at the Facts and Determination Hearing stage, the three member Hearing Panel concluded that the five allegations of professional misconduct set out in the Citation, comprising in total of more than 40 events of professional misconduct, were made out: *Law Society of BC v. Singh*, 2020 LSBC 01.

Part 2: Reduction in Panel composition to two members

[13] The Hearing Panel was then adjourned prior to moving on to the disciplinary action phase of the hearing. Prior to submissions on the appropriate sanction being made, Mr. Jeff Campbell, QC, was appointed a judge of the Provincial Court of British Columbia. Thereafter, then Law Society President Craig Ferris ordered that the hearing continue with the remaining two panel members, Ralston Alexander, QC, a Life Bencher, and Paul Ruffell, a public member of the tribunal.

[14] Prior to the continuation of the hearing, counsel for the Respondent provided written materials to President Ferris on May 24, 2020 and June 2, 2020, requesting that the disciplinary action hearing be adjourned, that the panel be reconstituted to include a current practicing Bencher and that the disciplinary action hearing be held in person.

[15] In response to those written materials, President Ferris provided written reasons issued June 5, 2020. President Ferris ruled that the there was no requirement in the Law Society Rules (the "Rules") to add a sitting Bencher to the panel, and referred the other questions to the Hearing Panel. The application for the appointment of an additional panel member was dismissed: *Law Society of BC v. Singh*, 2020 LSBC 25.

Part 3: Disciplinary Action – sanction phase of the hearing

[16] The hearing continued on November 9, 2020 with the remaining Hearing Panel members.

[17] The position of the Law Society was that an 18-month suspension of the Respondent was required.

[18] The position of the Respondent was that he be permitted to continue practice under strict supervision of an approved supervisor. If the supervisor noted any misconduct, then a predetermined period of suspension from practice would be engaged. The Respondent also proposed a fine, community work service and an additional 50 hours of Continuing Professional Development ("CPD") credits and that he would undergo treatment and monitoring of his mental health.

[19] Of note, the Hearing Panel raised the issue of possible disbarment and invited further submissions on that point.

[20] On March 15, 2021 the Hearing Panel provided its determination of disciplinary action (the "Decision on Disciplinary Action"). The Hearing Panel ordered that the Respondent serve a suspension from the practice of law for a two-year period. It further ordered that for the first full year following his return to practice, the Respondent was required to practice under the supervision of a supervising lawyer approved by the Practice Standards Committee and on terms and conditions specified by that committee: *Law Society of BC v. Singh*, 2021 LSBC 12.

[21] Turning to the issue of costs, the Law Society submitted a bill of costs in the amount of $41,098.77 prepared according to the tariff of costs provided in Schedule 4 of the Rules. In brief reasons on this issue, the Hearing Panel imposed costs as requested by the Law Society and deferred installment payments of that amount until one year after the Respondent's return to practice, and that they would be paid in 36 equal monthly payments without interest: *Singh*, 2021 LSBC 12.

RESPONDENT'S NOTICE OF REVIEW

[22] The Respondent seeks a review of the decision of the Hearing Panel on the sanction imposed, including the costs awarded. The Notice of Review is dated April 14, 2021 and is reproduced below:

> TAKE NOTICE that the Respondent, Sumandeep Singh, hereby applies for a review of the decision of a hearing panel of the Law Society of British Columbia rendered on March 15, 2021 indexed as *Singh (Re)*, 2021 LSBC 12 (the "Impugned Decision").
>
> AND TAKE FURTHER NOTICE that the nature of the orders sought are as follows:
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> 1. that fresh evidence be received and considered on this review;
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> 2. that the Impugned Decision be set aside and a new hearing ordered;

3. in the alternative, that the Impugned Decision be modified to remove/reduce the suspension and/or set aside the costs award; and

4. such further and other orders as may be sought and permitted.

AND TAKE FURTHER NOTICE that the issues to be considered on review are whether:

1. the composition of the panel violated principles of natural justice and procedural fairness as it was constituted pursuant to Rule 5-3 as a two-member panel and the Rules fail to provide any guidance or solution for what is to occur in the event that a two-member panel is unable to reach a unanimous decision. Without a mechanism in place to account for this outcome, the panel was unfairly pressured to reach a unanimous decision, artificially ousting the possibility of a split decision, thereby rendering the hearing procedurally unfair;

2. the denial of an order to reconstitute the panel to include a democratically elected Bencher, or to give the Respondent an opportunity to present full submissions on the constitution of the panel, denied natural justice and procedural fairness as the President rendered a decision based solely on a Notice of Application, leading to reasons indexed as *Singh (Re)*, 2020 LSBC 25;

3. the panel erred in law and failed to observe the principles of natural justice and procedural fairness in failing to address the Respondent's concerns regarding the constitution of the panel;

4. on the standard of review, the Impugned Decision should be given no deference as it was rendered by a two-member panel and one that did not include a democratically elected Bencher;

5. the panel erred in law and failed to observe the principles of natural justice and procedural fairness by imposing a disciplinary action that had not been argued before them;

6. the panel erred in law and failed to observe the principles of natural justice and procedural fairness by failing to give adequate reasons for exceeding the range provided by counsel;

7. the panel erred in law by misapplying the concept of globalization and related principles of totality and restraint;

8. the panel erred in law by failing to find and give weight to mitigating factors and by overemphasizing aggravating factors;

9. the panel erred in law by failing to give sufficient weight to the principles of rehabilitation and progressive discipline;

10. the panel erred in law and failed to observe the principles of natural justice and procedural fairness by failing to scrutinize the bill of costs and by failing to consider the cumulative effect of the costs award and suspension;

11. the panel erred in law by imposing a disciplinary action that was excessive and inappropriate;

12. there was a denial of procedural fairness through the conduct of counsel for the Law Society including by presenting an offer to resolve the matter through an Agreed Statement of Facts on the morning of the first hearing date and then failing to adequately acknowledge these circumstances and the mitigating effect of the acceptance of responsibility. Further, when the panel raised the issue of disbarment, whether there was a denial of procedural fairness through the conduct of counsel for the Law Society by inviting the panel to impose a disciplinary action that was more severe than what the Law Society had submitted and by failing to make submissions justifying the Law Society's position on sanction;

13. fresh evidence should be admitted on review; and

14. such further and other issues that counsel for the Respondent may advise and the Review Board may permit.

Position of the Respondent at the review

[23] The Respondent provided detailed oral submissions, supplementing written submissions provided October 18, 2021 and January 10, 2022.

[24] Counsel for the Respondent further refined his submissions before us, and focused on the following issues:

1. Panel Composition: The Respondent submitted that the decision of President Ferris to continue with a two member panel was procedurally unfair. The Respondent also submitted that President Ferris erred in law in his analysis of the Rules, and as such, this Review Board has the ability to set his decision aside and order a new hearing.

2. Errors in principle: Counsel suggests that the Hearing Panel made numerous errors and failed to properly consider principles of mitigation and rehabilitation

in respect of the Respondent's actions in admitting the professional misconduct and providing an ASF without the necessity of witnesses being called to testify.

3. Because of the errors made, the disciplinary action was unduly harsh and the cost award was also imposed without due consideration of the principles referred to above.

[25] The Respondent is seeking a reduction in the sanction imposed to a 12 month suspension and reduced costs.

Position of the Law Society at the review

[26] In response to the refinement of the issues raised by the Respondent, counsel for the Law Society submitted:

1. There is no jurisdiction for this Review Board to overturn the decision of President Ferris with respect to continuing the panel with two members. In addition, the decision to continue was procedurally fair and within the Rules.

2. The Hearing Panel did not make any errors in principle and their decision is entitled to deference. It did not fail to consider the relevant sentencing principles and further, when the complete record of the proceedings is considered, it is clear that they well understood the seriousness of the misconduct and took into consideration mitigating factors and gave them appropriate weight and consideration.

3. The disciplinary action imposed was not unduly harsh as it was within the appropriate range, and the costs are appropriate and were a direct reflection of the seriousness of this Citation and the manner in which the Respondent chose to defend it.

ANALYSIS

Legislative framework

[27] This application is governed by section 47 of the Act, which permits a review board to confirm the decision of a hearing panel or to substitute it with a decision that the panel could have made under the Act. These are the relevant provisions:

Review on the record

> 47(1) Within 30 days after being notified of the decision of a panel under section 22 (3) or 38(5), (6), (6.1) or (7), the applicant or respondent may apply in writing for a review on the record by a review board.
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> **…**
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> (5) After a hearing under this section, the review board may
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> (a) confirm the decision of the panel, or
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> (b) substitute a decision the panel could have made under this Act.

Standard of review

[28] As has been stated in numerous cases, in embarking upon a review under this section, the review board must determine if the decision of a panel was correct, and if it finds that it was not, then the review board must substitute its own judgment for that of a panel: *Law Society of BC v. Hill*, 2012 LSBC 20 at para. 8.

[29] There is no dispute as to this standard. Counsel accept that the internal standard of review in Law Society review board hearings is the standard set out in the *Law Society of BC v. Hordal*, 2004 LSBC 36 and the *Law Society of BC v. Berge*, 2007 LSBC 07 line of cases (the "*Hordal/Berge* standard"). This standard has been endorsed by the British Columbia Court of Appeal in *Vlug v. Law Society of BC*, 2017 BCCA 172 and in the companion case of *Harding v. Law Society of BC* 2017 BCCA 171.

[30] Given that the limited issues before us in this review relate to the sanction imposed, the following paragraphs of *Hordal* are particularly relevant and must guide our decision:

> [16] The Benchers are often required to consider whether the quantum of a fine levied on a member, or duration of a suspension imposed as a result of particular conduct, is the correct fine or is the correct duration for the suspension …
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> [17] While we have determined that these issues are not as easily capable of the application of the correctness test, they are nonetheless questions to which there is a correct answer. If the Benchers on review are satisfied that the proper penalty differs from that imposed by the Hearing Panel, the Benchers must substitute their judgment for that of the Hearing Panel.

> [18] In considering questions regarding the correctness of the magnitude of a fine, or of the duration of suspension, the Benchers must examine the impugned conduct and determine if the proposed penalty falls within a "range" of penalties that have been applied in similar situations in the past. This examination is often referred to as a "reasonableness" test, and in our view that characterization is sometimes wrongly contrasted with the correctness test. It is the view of the Benchers that to be correct, the proposed fine or suspension duration must be "reasonable" or within the range of appropriate penalties for similar delicts. If it falls outside of that range it will not be correct and it will be necessary for the Benchers to substitute their determination of the correct fine amount or the correct suspension duration in those circumstances.
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> [19] Counsel suggested that it would be improper for the Benchers to interfere with the fine quantum and/or suspension duration, as it was suggested that conduct by the Benchers would amount to "tinkering" with the determination of the Hearing Panel. Within certain parameters, we agree that it is inappropriate for the Benchers to "tinker" with determinations made by a Hearing Panel. It would, for example, be inappropriate for the Benchers to determine, in circumstances where a Hearing Panel had levied a fine of $5,000.00, that a fine of $4,000.00 or $6,000.00 would have been more appropriate. That substitution of judgment would clearly amount to tinkering by the Benchers, and would be inappropriate. On the other hand, if the Hearing Panel had determined a fine of $5,000.00 while the Benchers thought that a fine of $15,000.00 was the correct fine, then clearly it would not, on a relative basis, amount to tinkering with the determination of the Hearing Panel for the Benchers to substitute a fine of $15,000.00 for the fine of $5,000.00 imposed by the Hearing Panel …

Issue 1: Did the decision by the President of the Law Society to continue the Hearing Panel with only two members constitute a breach of the principles of procedural fairness such that a new hearing is necessary?

Relevant legislative framework

[31] Prior to January 1, 2022, Law Society Rules 5-2 to 5-3 provided as follows:

5-2 (1) When a hearing is ordered under this part, Part 2, Division 2 *[Admission and Reinstatement]* or Part 4 *[Discipline]*, the President must appoint a panel consisting of 3 persons.

(2) Despite subrules (1) and (3), a panel may consist of one Bencher who is a lawyer if

(a) no facts are in dispute,

(b) the hearing is to consider an admission under Rule 5-6.5 *[Admission and consent to disciplinary action]*,

(c) the hearing proceeds under Rule 5-4.5 *[Summary hearing]*,

(d) the hearing is to consider a preliminary question under Rule 5-4.3 *[Preliminary questions]*, or

(e) it is not otherwise possible, in the opinion of the President, to convene a panel in a reasonable period of time.

(3) A panel must

(a) be chaired by a lawyer, and

(b) include at least

(i) one Bencher or Life Bencher who is a lawyer, and

(ii) one person who is not a lawyer.

(4) Panel members must be permanent residents of British Columbia over the age of majority.

(5) The chair of a panel who ceases to be a lawyer may, with the consent of the President, continue to chair the panel, and the panel may complete a hearing already scheduled or begun.

(5.1) If a member of a panel ceases to be a Bencher and does not become a Life Bencher, the panel may, with the consent of the President, complete a hearing already scheduled or begun.

(6) Two or more panels may proceed with separate matters at the same time.

(7) The President may refer a matter that is before a panel to another panel, fill a vacancy on a panel or terminate an appointment to a panel.

(8) Unless otherwise provided in the Act and these Rules, a panel must decide any matter by a majority, and the decision of the majority is the decision of the panel.

Panel member unable to continue

> 5-3 (1) Despite Rule 5-2 *[Hearing panels]*, if a member of a hearing panel cannot, for any reason, complete a hearing that has begun, the President may order that the panel continue with the remaining members.
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> (2) If the chair of a hearing panel cannot, for any reason, complete a hearing that has begun, the President may appoint another member of the hearing panel who is a lawyer as chair of the hearing panel.

Discussion and analysis

[32] The provisions outlined above clearly provide a residual authority to the President of the Law Society (now the Tribunal Chair) to make the determination as to whether or not to proceed in a myriad of circumstances where necessity has resulted in a change to the panel composition.

[33] In contrast, section 47 of the Act, referred to earlier, sets out the entirety of the limited jurisdiction of a Review Board to either confirm the decision of a panel or substitute a decision the panel could have made under the Act. It must be remembered that the Review Board is a statutorily created body and must exercise the jurisdiction set out in its governing statute. It does not have the ability to give a remedy that is not set out in the Act.

[34] The authority of a hearing panel, also a creature of statute, is set out in section 38 of the Act and does not contain any reference to panel composition. If the review board can only do what the hearing panel could do, and if the hearing panel has no authority to deal with panel composition, then setting aside the Decision on Disciplinary Action and requiring a rehearing by a three member panel is not a remedy a review board has the jurisdiction to provide.

[35] However, the Respondent does not agree that the plain reading of the statute ends the matter. Rather, the Respondent argues that, given the seriousness of the circumstances of the case, the matter required oral submissions, or at the very least, effective notice that President Ferris's decision would be decided based upon written material only, with an opportunity for the Respondent to complement his existing submissions if needed. He argues that the denial of this opportunity is a breach of procedural fairness and more plainly a denial of the opportunity to be heard. The Respondent suggests he was denied procedural fairness by being denied adequate notice of the mode of presentation of submissions, being denied an oral hearing and being deprived of a timeline for submitting any reply.

[36] The Respondent analogizes the importance of oral submissions to the determination of a dangerous offender designation or to *ex parte* applications such as *Mareva* injunctions. With respect, we do not find these comparisons persuasive. The increased jeopardy in those situations has absolutely nothing in common with a procedural decision in the context of disciplinary hearings. The Respondent provided fulsome written submissions to President Ferris on two occasions. Those written submissions focused on the submission that "practicing" lawyers are better suited to assess current practice standards. President Ferris concluded that the Respondent's chief objection to the composition of the panel suggested that a public member ought not to have similar or equal say with Bencher or lawyer members of the panel with respect to a lawyer's conduct, and that the submission had no merit.

[37] While we are of the view that we have no basis upon which to set aside President Ferris's determination in any event, we pause to reflect further upon his conclusion on this issue. Public members of a tribunal are essential to ensuring a public voice in tribunal decisions and their work is imperative to ensuring the protection of the public by providing meaningful scrutiny on lawyers' conduct.

[38] The Respondent further argues that because of the break between the Hearing Panel's decision on Facts and Determination and the commencement of the hearing on Disciplinary Action, the President's reliance on Rule 5-3 was misplaced. The Respondent argues that it was further misplaced since the Respondent was relying on Rule 5-2(7) as the legislative source of the authority for the order sought. With respect, these submissions have no merit.

[39] There is no splitting up of the Hearing Panel into separate hearings. The panel, as selected by the President, is tasked with dealing with all aspects of that citation as specifically required by section 38 of the Act. Further, there is no indication that President Ferris failed to consider his ability to fill a vacancy and reconstitute a full panel if he thought it necessary. Rule 5-2(7) is discretionary and there are myriad of possible situations where it would be appropriate for the President to reconstitute a full panel.

[40] Finally, the Respondent argues that the composition of the panel violated principles of natural justice and procedural fairness as the Rules fail to provide any guidance or solution for what is to occur in the event that a two-member panel is unable to reach a unanimous decision. The Respondent suggests that the unavoidable result would be that the panel would be unfairly pressured to reach a unanimous decision and that the reasoning process of both panel members would be unfairly stifled.

[41] The Respondent cannot point to any evidence on the record that there was any undue pressure or failure to act impartially by either of the remaining panel members. While we agree that a change to the Rules, perhaps echoing sections 13(5) and 13(6) of the *Court of Appeal Act*, RSBC 1996, c 77, could assist, the absence such codification of a common sense result requiring a new hearing in the event the remaining two panel members are not able to agree, does not amount to a violation of natural justice. There is nothing inherently unfair in proceeding with a two person panel.

[42] In summary, the Respondent seeks a remedy that the Review Board has no jurisdiction to order. Under the Rules, the discretionary decision of the President to proceed with the disciplinary action phase of the hearing with a two member panel was entirely permissible and appropriate. This ground of review is dismissed.

Issue 2: Was the disciplinary action imposed by the Hearing Panel excessive and disproportionate as a result of the failure of the Hearing Panel to consider the principles of sentencing?

Position of the Respondent

[43] The Respondent submits that the Hearing Panel made numerous errors in principle and failed to apply the usual considerations and legal principles, and, as a result of these multiple failures, came to an incorrect result. The Respondent further particularized his submissions into three areas where the errors were made which he asserts led to the imposition of the incorrect sanction:

(i) the Hearing Panel misapplied the concept of a global sanction for multiple findings of misconduct and the related principles of totality and restraint;

(ii) the Hearing Panel failed to give weight to mitigating factors and overemphasized aggravating factors; and

(iii) the Hearing Panel gave insufficient weight to the principles of rehabilitation and progressive discipline.

Global sanction

[44] The Respondent submits that the Hearing Panel failed to take a global approach to the sanction imposed. He points out that both counsel for the Respondent and counsel for the Law Society argued that a global approach to discipline was

required because there were multiple allegations of misconduct. The Respondent says that the Hearing Panel declined to do that. This failure is evidenced by the repeated reference by the Hearing Panel to the "accumulation" of the misconduct. He refers with emphasis to paragraphs 64 to 67 of the Hearing Panel's Decision on Disciplinary Action (*Singh*, 2021 LSBC 12):

> [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 sanction 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 sanction 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.
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> [66] It is acknowledged that the Global approach to a determination of the correct sanction 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.
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> [emphasis in the original]

[45] The Respondent further chastises the Hearing Panel's analysis of the global penalty approach later in the decision at paragraphs 72-75.

[46] In addition, the Respondent submits the failure to recognize that some of the allegations of misconduct overlapped and were different constructs of the same misconduct violates the criminal law principle against multiple convictions for the same event, known as the "*Kienapple*" rule.

Mitigation

[47] A further and more serious error in principle, according to the Respondent, was the failure to give sufficient weight to the admissions made by the Respondent and the mitigating factors to be considered in imposing a penalty upon him.

[48] The Respondent asserts that the admissions as to the facts and the allegations of misconduct were significantly mitigating as it alleviated the need to call witnesses. Further, weeks prior to the hearing, he had already signaled that the issues to be determined would be very narrow. Efforts were being made to resolve the outstanding issues before the hearing commenced, and accordingly, the admissions cannot be characterized as being made at the last minute or eleventh hour and of no real assistance. The Respondent suggests that the criticism of his timing of the admissions animates the Hearing Panel's entire treatment of the principle of mitigation. Rather than considering these admissions as mitigating, the Respondent asserts that the Hearing Panel took the admissions as an aggravating factor in its consideration of the timing of the admissions.

Progressive discipline and rehabilitation of the Respondent

[49] Finally, the Respondent asserts that the Hearing Panel failed to consider the principles of progressive discipline and rehabilitation, and because of these errors, the Hearing Panel arrived at the incorrect result. The Respondent submits that the Hearing Panel failed to consider the impact of the disciplinary action on the individual before it, which is an error in principle. He points out that there were no further allegations of misconduct after the investigation concluded, and that there is no allegation of theft of trust funds. Clearly the investigation and its aftermath has been impactful on the Respondent and his family and this was not considered in any way by the Hearing Panel.

[50] The Respondent further submitted that the Hearing Panel failed to provide any analysis of the authorities for the range, and then exceeded it. In his oral submissions, the Respondent asserts that the Hearing Panel just "picked a number" of two years. The Respondent submits that it is unclear from the reasons themselves whether the disciplinary action imposed was within a reasonable range.

Regardless, the disciplinary action should be reduced ultimately to one year of suspension.

[51] Before turning to the position of the Law Society, we pause to note that at the Disciplinary Action phase of the hearing, the Respondent suggested that a fine, community work service and CPD hours was an appropriate sanction. The Respondent is now submitting that a one year suspension is the appropriate penalty.

Position of the Law Society

[52] In reply, the Law Society says that the Hearing Panel did not fail to consider the principles of restraint and did apply a global sanction approach in determining the appropriate disciplinary action. Counsel further cautioned against the whole scale adoption of criminal law principles, many of which are codified in the *Criminal Code*, RSC 1985, c. C-46.

[53] The Law Society submits that this case involved a "cascade of misconduct" whereby the Respondent, over the course of three years, deliberately and repeatedly engaged in serious misconduct and his deception and dishonesty demonstrated a flagrant disregard for his regulator and for the public.

[54] With respect to the timing of admissions and the assertion by the Respondent that there were settlement discussions or prior admissions, counsel for the Law Society confirmed that there was no evidence before the Hearing Panel of any admission or acknowledgement of responsibility by the Respondent prior to the scheduled first day of the hearing. Rather, right up to the first day of the hearing, there was a denial of significant aspects of the evidence that was to be presented, including documents signed or commissioned by the Respondent. While there is no negative inference to be drawn from this, neither does it point to any real acceptance of responsibility prior to the first day of the hearing or any fulsome attempt to streamline or shorten the proceedings.

[55] The Law Society provides that perfection is not required of the Hearing Panel's decision. If this review concludes that the penalty imposed was within an acceptable range, then the decision should not be interfered with. Deference is owed to the Hearing Panel's decision in that circumstance.

ANALYSIS

[56] Before turning to the review of the Hearing Panel's decision in the areas identified by the parties, it cannot be overemphasized that the primary consideration in any

disciplinary proceeding must be the protection of the public. This is mandated by section 3 of the Act and bears repetition here:

> **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, honor and competence of lawyers,
>
> (c) establishing the standards and programs for the education, professional responsibility and competence of lawyers and of Respondents 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.

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

[58] The purpose and goal of disciplinary proceedings were succinctly set out by the Review Board in *Law Society of BC v. Nguyen,* 2016 LSBC 21 at para. 36*:*

> Still, the disciplinary action chosen, whether a single option from s. 38(5) or a combination of more than one of the options listed, must fulfill the two main purposes of the discipline process. The first and overriding purpose is to ensure the public is protected from acts of professional misconduct, and to maintain public confidence in the legal profession generally. The second purpose is to promote the rehabilitation of the respondent lawyer. If there is conflict between these two purposes, the protection of the public and the maintenance of public confidence in the profession must prevail, but in many instances the same disciplinary action will further both purposes.

[59] A review of the many transcripts, the ASF as well as the history of the proceedings, and the fulsome oral and written submissions of counsel and authorities provided,

leads resoundingly to the conclusion that this Citation was without precedent. The Hearing Panel was certainly of that view and we echo its conclusions.

[60] Given the paucity of precedent for the scope of the misconduct of the Respondent, the Hearing Panel gave a very detailed examination of the factors as set out in *Law Society of BC v. Ogilvie*, 1999 LSBC 17 (the "*Ogilvie* factors") to be considered in its Decision on Disciplinary Action (*Singh*, 2021 LSBC 12). While we will not reproduce the entirety of those factors, the following excerpts are critical:

> [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.
>
> …

[61] A continued review of the remaining paragraphs of the Decision on Disciplinary Action reiterate the seriousness of the conduct of the Respondent. Respectfully, the Respondent's submissions are based on an interpretation of the Decision on Disciplinary Action that is incapable of being sustained by the review of the decision as a whole as opposed to overly parsing excerpts from it.

[62] With respect to the able submissions of counsel, the Respondent's argument fails in every respect on the issue of the appropriate sanction to have been imposed and fails to demonstrate any error made by the Hearing Panel.

Global penalty

[63] The Hearing Panel was exceedingly mindful of the principles behind imposing a "global penalty" in light of the myriad of instances of misconduct. That it was mindful of that principle is made plain throughout the decision, starting at paragraph 29:

> [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.

Mitigation

[64] If a lawyer who is under a citation admits to the allegations in the citation, that is a mitigating factor: *Law Society of BC v. Lessing*, 2013 LSBC 29.

[65] The Hearing Panel considered the submissions of the Respondent regarding the mitigating factors, but determined that the aggravating factors were of such elevated concern that the circumstances merited a lengthy suspension. For

example, with respect to the obstreperous behaviour towards the Law Society's investigation, the Hearing Panel held:

> [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.

[66] It is clear that the Hearing Panel was mindful of the mitigating factor of an admission of misconduct. Furthermore, the Hearing Panel advised counsel that it was considering whether disbarment was appropriate in the circumstances. The Hearing Panel made note of the Law Society's submissions that the Law Society was not asking for disbarment due to the admissions made by the Respondent. At the end of the day, the Hearing Panel did not disbar the Respondent. Were it not for the mitigating factor of the late admissions, the Respondent could have been disbarred.

[67] We pause to note that the possibility of disbarment as an alternative sanction to be imposed was seriously debated by this Review Panel.

Rehabilitation and progressive discipline

[68] Contrary to the Respondent's submission, it is clear that the Hearing Panel considered the possibility of rehabilitation of the Respondent, and the principles of progressive discipline. However, in light of the Respondent's professional conduct record and the seriousness of the numerous, repeated and sustained instances of misconduct, some of which were occurring during his last conduct review, the Hearing Panel had a realistic view of the prospect of the Respondent's rehabilitation (*Singh,* 2021 LSBC 12):

> [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.

…

[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.

[69] We can find no basis upon which to find that the sanction imposed by the Hearing Panel was not correct and therefore we decline to interfere with it.

[70] However, this conclusion does not ameliorate our discomfort with the sanction imposed on the Respondent. More particularly, we are deeply concerned about the protection of the public upon the Respondent's return to practice given the minimal remorse and recompense he has demonstrated. This review merited a lengthy contemplation of disbarment as an appropriate remedy.

[71] We encourage the Law Society to take whatever steps necessary to ensure that the supervision of the Respondent, as ordered, is fulsome and robust. It cannot be overstated that the public must be protected by lawyers such as the Respondent who refuse to be guided by their ethical obligations or demonstrable competence to represent their clients.

[72] Further, the prophetic comments of the Conduct Review Subcommittee referred to above are not lost on this Review Panel. We further encourage the Law Society to take more timely and prescient action in restricting lawyers such as the Respondent with the aim of preventing the degree and scope of professional misconduct as demonstrated here.

Issue 3: Did the Hearing Panel err in failing to scrutinize the Bill of Costs and acceding to the tariff and award as requested by the Law Society?

[73] The Respondent submits that the panel erred in law and failed to observe the principles of natural justice and procedural fairness by failing to scrutinize the Bill of Costs and by failing to consider the cumulative effects of the cost award and suspension. The Respondent focused his submissions before the Hearing Panel on the impact of a lengthy suspension on a sole practitioner, and that while the circumstances before the Hearing Panel were unique, they were not as complex as to warrant the Scale B rate.

[74] The position of the Law Society was that this was an extremely time consuming file given the number of allegations and as such it was more complex and necessitated the Scale B rate. Further, the tariff and units suggested is presumptively reasonable and it is up to the Respondent to present evidence to the panel as to why that presumption ought to be overturned.

Rule 5-11 deals with the cost of hearings:

> **Costs of hearings**
>
> 5-11 (1) A panel may order that an Respondent or respondent pay the costs of a hearing referred to in Rule 5-1 *[Application]*, and may set a time for payment.
>
> (2) A review board may order that an applicant or respondent pay the costs of a review under section 47 *[Review on the record]*, and may set a time for payment.
>
> (3) Subject to subrule (4), the panel or review board must have regard to the tariff of costs in Schedule 4 *[Tariff for hearing and review costs]* to these Rules in calculating the costs payable by an applicant, a respondent or the Society.
>
> (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 *[Tariff for hearing and review costs]* 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 *[Tariff for hearing and review costs]*,
>
> > (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, one-half the number of units or amount payable applies.
>
> (7) If no adverse finding is made against the Respondent, the panel or review board has the discretion to direct that the Respondent be awarded costs.
>
> (8) If the citation is dismissed or rescinded after the hearing has begun, the panel or review board has the discretion to direct that the respondent be awarded costs in accordance with subrules (3) to (6).

> (9) Costs deposited under Rule 2-92 *[Security for costs]* must be applied to costs ordered under this rule.
>
> (10) An applicant must not be enrolled, called and admitted or reinstated until the costs ordered under this rule or the Act are paid in full.
>
> (11) As an exception to subrule (10), the Credentials Committee may direct that an applicant be enrolled, called and admitted or reinstated even though costs ordered under this rule have not been paid in full and may make the direction subject to any conditions that the Committee finds appropriate.

[75] The decision of the Hearing Panel in referring to the costs to be awarded is brief and provides as follows:

> [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.

[76] With respect to the disbursements claimed by the Law Society pursuant to Rule 5-11(5) of $8,998.77, there is no basis to interfere with that award.

[77] Similarly, with respect to the Schedule 4 tariff items, we do not find any basis to amend or "tinker" with the number of units claimed by the Law Society.

[78] However, we are of the view that the decision to impose the scale of costs at Scale B of $150 per unit as opposed to Scale A of $100 per unit is subject to review.

[79] The Hearing Panel assessed costs on Scale B which is reserved for matters of greater than ordinary difficulty and is $150 per unit as opposed to $100 per unit. The justification for assessing the full costs on Scale B appears to be based on the magnitude of the Citation.

[80] We can well appreciate that the ASF was entered very late in the day and required additional overtime work to be done, and it was not finalized until the first day of the scheduled hearing. This "eleventh hour" decision to enter an ASF was no doubt frustrating for Law Society staff and counsel. However, it did reduce the length of the hearing and co-operation and admissions of allegations of misconduct should be encouraged and recognized.

[81] Rule 5-11 requires the panel to "have regard" to the costs tariff in assessing costs, however where it is "reasonable and appropriate," the costs order may deviate from the tariff. In *Law Society of BC v. Jensen*, 2015 LSBC 10, the review board noted that sizeable costs can become punitive, and can be a deterrent to lawyers defending a citation, even where they may have a defence:

> [10] One consideration of costs is the actual size of costs. Sometimes, for whatever reason, the costs are just too large. Awards of sizeable costs could become a deterrent to lawyers defending citations where they have a reasonable defence or some answer to the allegation. Further, costs that reach a high level become punitive, particularly when compared with the misconduct alleged in the citation. Finally, hearing panels should not be blind to the simple fact that costs can be a more severe burden on single practitioners. Costs always must remain discretionary, flexible and proportional to the matter in question. The ability to pay is always a key factor. At the end of the case, the panel should look at the size of the proposed costs in view of the entire hearing, considering all factors and decide if, taken as a whole, the costs proposed are appropriate or should be adjusted.

[82] In the present case, there must be some recognition of the admissions made as well as the personal circumstances of the Respondent as a sole practitioner. This needs to be balanced with what we have already described as extremely serious misconduct. Accordingly, the 214 units claimed by the Law Society shall be awarded, but on the Scale A rate of $100 per unit. Thus, the fees will be assessed at $21,400 rather than $32,100. The total cost award is reduced from $41,098.77 to $30,398.77.

RESULT

[83] Accordingly, the Disciplinary Action sanction imposed by the Hearing Panel is confirmed. The only modification is a reduction in the total costs awarded to $30,398.77.

[84] 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.

[85] 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.