2022 LSBC 17
Hearing File No.: HE20190021
Decision Issued: June 8, 2022
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THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL

HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

GEORGE FREDERICK TURNER GREGORY

RESPONDENT

DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION

Hearing date:	February 3, 2022
Written submissions:	February 11, 2022
Panel:	Jennifer Chow, QC, Chair Ruth Wittenberg, Public representative
Discipline Counsel:	William B. Smart, QC Susan J. Humphrey
Counsel for the Respondent:	Henry C. Wood, QC
Written reasons of the Panel by:	Jennifer Chow, QC

OVERVIEW

[1] On August 25, 2021, the Panel found that the Respondent had committed professional misconduct in relation to client A who was seeking to foreclose on a disputed private loan. We found that the Respondent: (a) failed to record and make reasonable inquiries about the subject matter and objectives of both his retainer and client A and associate B; and (b) failed to make reasonable efforts to obtain or record client A's identification information.

[2] For over 40 years, the Respondent has maintained an unblemished professional record. The Respondent is a well-known and well-respected seasoned practitioner within the legal community. The Respondent did not act dishonestly. Client A's foreclosure petition has stalled and no actual foreclosure has occurred.

[3] However, several aggravating factors existed that should have led the Respondent to make reasonable inquiries and efforts regarding client A and his information. Those factors included: a national media outlet article that named client A and associate B as drug traffickers who were laundering drug monies in the Greater Vancouver area real estate market; contemporaneous questions from a Law Society investigator who suggested that the Respondent should closely examine client A and associate B's banking documents; the lack of any independent translator to allow the Respondent to communicate effectively with client A or review client A's documents; and reliance on lawyers who were not all completely aware of the facts of the Respondent's file or the concerns of the Law Society investigator.

[4] Taking into account all of the circumstances, the Panel has determined that a two-month suspension is necessary to maintain public confidence in both the legal profession and the disciplinary process. Public interest also requires that a clear message be conveyed to other lawyers that they act diligently in making reasonable inquiries and efforts to avoid being duped into assisting clients to commit criminal offences such as fraud and money laundering.

BACKGROUND

[5] In our Decision on Facts and Determination (2021 LSBC 34) ("F&D Decision"), the then-panel determined that the Respondent had committed professional misconduct while acting for client A (and taking instructions from associate B) in a foreclosure proceeding involving an alleged private loan and related mortgage. In particular, the then-panel found that the Respondent failed to make reasonable

inquiries about his client and the subject matter of his retainer as required by the *Code of Professional Conduct for British Columbia* (the "*BC Code*"). The Respondent also failed to make reasonable efforts to obtain or record client information.

[6] On January 21, 2022, Ruth Wittenberg and I were advised that the Tribunal Chair had made an order under Rule 5-3 that the hearing continue without (then) Nina Purewal, QC who is now a judge of the Provincial Court of British Columbia. Accordingly, all references in this decision to the Panel are references only to Ms. Wittenberg and myself.

[7] At this hearing on Disciplinary Action, the Panel had the benefit of oral and written submissions by counsel for the Law Society and the Respondent. No witnesses gave testimony. The Respondent provided a medical report from his family physician, Dr. Ian Arbuckle, and 29 letters of character reference. The Law Society did not object to the admission of the Respondent's documents as evidence.

[8] At the conclusion of this hearing, the Respondent was permitted to address the Panel orally. As the Respondent was not sworn in when he made his address, we have placed little to no weight on any factual submissions he made that were not already supported by evidence.

THE PARTIES' POSITIONS

[9] The Law Society submits that an appropriate global disciplinary sanction in the circumstances of this case is a suspension of between two to three months.

[10] Despite the Respondent's otherwise exemplary record and contributions to the legal profession, the Law Society submits that public interest requires a suspension to maintain public confidence in the legal profession and the disciplinary process. To avoid being duped into assisting clients in committing criminal offences, lawyers must be diligent in making reasonable inquiries and efforts.

[11] The Respondent submits that rather than a suspension, a substantial fine is the appropriate global disciplinary sanction. The Respondent submits that a fine of between $20,000 and $50,000 (the maximum allowable) would be appropriate. The Respondent relies on his otherwise unblemished career of 40 years, his exemplary character and reputation, the exacerbation of his chronic major depressive disorder and his extensive seeking of legal advice. He characterizes his misconduct as negligence, rather than intentional malfeasance.

DISCUSSION

Background

[12] In our F&D Decision, we provided extensive discussion of the facts and we will not repeat those facts here. However, where necessary, we have set out the facts to explain our determination on penalty.

[13] In essence, the main concerns arising from the Respondent's misconduct are his breaches of a lawyer's duty "to uphold the standards and reputation of the legal profession" (*BC Code*, rule 2.2-2) and to not engage in "any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud" (*BC Code*, rule 3.2-7).

[14] To be clear, this case is not about whether client A, an alleged drug trafficker and money launderer, is entitled to counsel or whether the Respondent should withdraw from client A's case as counsel. Rather, the main issue in this matter is whether the Respondent made reasonable inquiries of client A and of the subject matter of his retainer so that he could know if he was being duped into facilitating client A's alleged criminal activities, namely, fraud and money laundering.

[15] As set out in our F&D Decision, we emphasize the following key facts:

(a) The Respondent could not communicate directly with his Chinese client. He did not hire an independent translator to assist in communications or in translating documents. Instead, the Respondent relied on his client's Chinese friend, without independently verifying her ability to translate or meet the professional standard of translation (paras. 135 to 138, 140 and 144).

(b) A media outlet investigative article was published after the Respondent was retained (para. 32). The article named client A and associate B as alleged drug traffickers who were laundering monies in the Greater Vancouver area real estate market. The article also listed the house that was subject to client A's foreclosure proceeding as one of the houses that was subject to money laundering transactions (para. 45).

(c) Client A's bank records did not support the client's claim for the alleged loan and mortgage that formed the basis for the foreclosure proceeding (paras. 41 and 51).

(d) The Respondent accepted that client A and associate B were money launderers and drug dealers (paras. 42, 46, 185, 187 and 204) but rejected the assertion that his client's foreclosure matter concerned money laundering since no cash was involved (para. 133).

(e) The contemporaneous Law Society investigation that alerted the Respondent to the media outlet article also alerted the Respondent to a deficiency in client A's financial records in that client A's records did not match the client's facts as set out in the client's foreclosure petition (paras. 44, 51, 59 and 82).

(f) The Respondent expressed contempt to the Law Society for its investigation (paras. 47 to 48).

(g) The Respondent submits that he relied on other legal advisors and was simply channeling the advice of others (para. 50). However, the Respondent did not seek any legal advice on whether he held a correct understanding of the definition of money laundering and proceeds of crime (para. 126).

(h) The Respondent took litigation steps regarding client A's foreclosure matter, including setting down hearing dates (para. 51), meeting with the client, preparing affidavits and attending to their filing in court (para. 63), communicating with the client about the litigation and communicating with opposing counsel regarding court dates and filings. The Respondent also turned his mind to the need to have his client's affidavit translated and relied on client A's friend to sign a certificate of endorsement so that the court was provided with assurance on its face that the affidavit was properly interpreted (para. 67). The Respondent also sought client A's instructions on responding to the opposing party's request to move the matter to the trial list (para. 83).

(i) The Respondent admitted that he did not fully understand his client's transactions or his client's documents (paras. 68 and 133) and that he did not appear to understand the various conflicting views about the structure of the loan agreement (para. 76).

(j) The Respondent made a late request for client identification information to comply with the Law Society's request (paras. 70, 72 and 75).

(k) The Respondent blindly accepted his client's assertions of a valid loan and mortgage despite the opposing party's complete denial of client A's

version of facts (paras. 77, 188, 191 and 192) and his allegations that client A's mortgage was obtained by fraud (paras. 131 to 132).

(l) The Respondent continues to be counsel of record for client A (paras. 86 and 116).

The *Ogilvie* factors

[16] In *Law Society of BC v. Lessing*, 2013 LSBC 29, at para. 10, the review panel discussed the various *Ogilvie* factors to be considered at the penalty stage. They explained that not all 13 factors come into play in all cases. They explained that "[i]n addition, the weight given to the factors may vary from case to case. Some factors may play a more important role in one case, and the same factor may play little or no role in another case." Those 13 factors are:

(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's confidence in the integrity of the profession; and*

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

[emphasis in original]

[17] In *Law Society of BC v. Dent*, 2016 LSBC 05, at paras. 18 to 23, the panel consolidated the *Ogilvie* factors into four primary groups, namely:

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

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

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

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

[18] The Law Society's position also seeks to emphasize two additional *Ogilvie* factors. Accordingly, in this case, we agree and have considered six *Ogilvie* factors as follows:

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

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

(c) acknowledgement of the misconduct and remedial action;

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

(e) the need for specific and general deterrence; and

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

[19] The Respondent relies on *Lessing*, at paras. 57 to 58 and 63 to 66, for the proposition that the Panel should focus on two dominant *Ogilvie* factors in this case, namely:

(a) the protection of public interest, including maintaining public confidence in both the disciplinary process and the profession generally; and

(b) rehabilitation of the lawyer, including consideration of mental health issues.

[20] In our reasons, we address the protection of public interest in the discussion about public confidence in the legal profession and the disciplinary process. We discuss

the rehabilitation of the lawyer, including consideration of mental health issues in the discussion of the character of the Respondent.

The nature, gravity and consequences of conduct

A global disciplinary sanction

[21] The Law Society seeks a global disciplinary sanction because there are multiple findings of professional misconduct arising from a single citation or because the findings are significantly intertwined (see *Law Society of BC v. Gellert*, 2014 LSBC 05, at para. 37; *Law Society of BC v. Harding*, 2015 LSBC 25, at paras. 48 to 49; *Law Society of BC v. Lowe*, 2019 LSBC 37, at paras. 8 to 9).

[22] We agree that a global disciplinary sanction is appropriate given the nature of the events and the intertwining facts.

Lawyers must avoid being duped

[23] In the circumstances of this case, the Respondent's failures to make reasonable inquiries and efforts to obtain or record client information are serious matters. The circumstances of this case demonstrate the existence of aggravating factors that highlight the gravity of the Respondent's misconduct, including the media article, the contemporaneous Law Society investigation and the lack of independent translation that would have allowed the Respondent to communicate effectively with his client to better inform himself about his client's claims.

[24] Money laundering and fraud are serious criminal matters. In particular, money laundering is a high profile public concern, as evidenced by the recent report by the Commission of Inquiry into Money Laundering in British Columbia.

[25] Public interest requires that lawyers avoid legitimizing money laundering transactions through their law practices. The maintenance of public confidence in the legal profession requires lawyers to be vigilant to avoid being duped into assisting clients in committing criminal offences, including allowing their trust accounts to be used by their clients to launder money. The requirement for lawyers to make reasonable inquiries, including ascertaining the source of their clients' funds, and to obtain client information helps protect against being duped.

Intentional v. negligent misconduct

[26] The Law Society's position is that the Respondent's conduct was intentional and not negligent. As such, it differs from the misconduct in *Law Society of BC v. Martin*, 2007 LSBC 20 in which the respondent failed to carefully scrutinize the accounts provided by his client's children who were employed to assist as part of the respondent's defence team. The Law Society submits that the circumstances in this case are different from *Martin* in that the Respondent knew or ought to have known that there were suspicious circumstances requiring the making of reasonable inquiries. When the Respondent scrutinized the opposing party's Response to Petition and Affidavit #1 filed on January 23, 2019, he dismissed D's sworn evidence as a "tissue of lies" (F&D Decision, at para. 41(c)). In other words, the Respondent represented client A in a deliberate manner that, to his detriment, reflected blind loyalty to his client.

[27] We agree that the Respondent's commitment to his belief in his client's case and his expressed contempt over the Law Society's contemporaneous investigation is most evident in his letter dated June 18, 2018 to the Law Society. The Respondent wrote:

> Giving this matter thought after my interview, and speaking with one senior member of the member-complaint bar, *I ask myself why I should not act for a hypothetical party merely because it is alleged that he was laundering money*.
>
> Whatever [A] may have done on other occasions, this transaction bears all the hallmarks of legitimacy.
>
> I don't know how I could properly fire a client because I have learned unflattering things about him respecting other transactions.
>
> Accordingly, as matters now stand, I have told [A] that I will complete his retainer.
>
> [emphasis added]

[28] The June 18, 2018 letter demonstrates that the Respondent had thought things through and made deliberate statements to demonstrate to the Law Society that he was committed to completing client A's foreclosure proceeding. Additionally, despite suggesting that the Respondent was channeling Mr. Cuttler's legal advice, it is clear from the wording of this letter that the Respondent was communicating clearly with the Law Society that he would not be deterred by its investigation.

[29] The Law Society submits that aggravating circumstances demonstrate intentional rather than negligent acts. The Law Society submits that the following circumstances demonstrate aggravating circumstances or deliberate steps taken by the Respondent. The Law Society's submissions are excerpted as follows:

(a) The Article specifically named and featured the respondent's clients, and provided clear, compelling evidence that his clients were money launderers who had engaged in numerous fraudulent real estate transactions worth millions of dollars. The Article should have caused any responsible member of the profession to have a high degree of suspicion that they may be assisting their clients in the commission of a serious criminal offence and motivated them to make prompt, thorough, and careful inquiries about their clients, their clients' employment, their clients' source of wealth, and the source of the alleged loan before agreeing to continue acting.

(b) The respondent did none of that. He knew almost nothing about his clients and made little or no effort to do so. He made no inquiries about their source of wealth, their employment, or their business beyond what the Article stated. He could not communicate directly with his clients or read the bank statements they provided him, yet never used a qualified, independent interpreter to assist him to do so.

(c) The need to make reasonable inquiries about his clients and the source of the funds allegedly loaned to D in December 2015 was made even more compelling by the information contained in the Article that in May 2016, the respondent's clients, A and B, were arrested by police in possession of hundreds of thousands of dollars of cash, covered with traces of fentanyl, that was forfeited as the proceeds of crime.

(d) One of the few inquiries the respondent did make was to determine whether the property his clients were seeking to foreclose on was one of the properties referred to in the Article. The result of that inquiry should have reinforced for him the need to exercise the appropriate level of due diligence about his clients and his retainer before continuing with the foreclosure Petition.

(e) The Article also specifically referred to the role lawyers play in facilitating dishonest real estate transactions and laundering the proceeds of crime. This should have highlighted for the respondent his responsibility not to undermine public confidence in the legal profession by assisting criminal conduct on the part of his clients.

(f) The Law Society repeatedly communicated to the respondent in real time his professional obligations to make reasonable inquiries and why he needed to do so. The respondent's response to the Law Society's efforts was one of defiance and contempt.

(g) The respondent's failure to gain any reasonable grasp of his file or knowledge of his clients is bewildering. His initial reliance on the First Bank Record makes no sense given that the year of the transactions was clear on its face. This suggests that he paid little, if any, attention to the contents of the document.

(h) The respondent's blind acceptance of his clients' claims, his failure to know his clients or the file, and his failure to make reasonable inquiries continued over many months.

(i) The respondent's lack of due diligence commenced months before he received a copy of the Article – at the latest, it commenced when he obtained D's affidavit in February 2018, which stated that D had been defrauded by the respondent's clients and had not received the alleged $800,000 loan. This evidence was simply dismissed by the respondent as a lie without any factual basis to do so and apparently without making any inquiries of his clients about the allegation.

(j) The respondent persisted in his assumption that his clients were telling the truth when he prepared and filed false affidavits from them in November 2018 for the purpose of advancing their claim against D.

(k) The financial value of the foreclosure proceeding was significant – close to a million dollars – yet the respondent never sought advice from a criminal lawyer or did his own legal research to determine whether cash is a necessary element of money laundering, despite the Law Society's encouragement that he do so.

(l) The respondent's evidence, as well as his attitude and demeanour as a witness, suggests he still does not appreciate his failure to make reasonable inquiries.

[30] In contrast, the Respondent submits that the fundamental nature of his misconduct is negligence and not "intentional malfeasance". The Respondent's position is that his shortcomings were fundamentally sins of omission, not commission, that occurred at a time of precarious and intrusive mental health.

[31] The Respondent submits that he understood the obligations required by the applicable rules. Additionally, he submits that as an officer of the court "[m]y understanding then, and now, is I can't do anything to help my clients do something dishonest … " (Transcript, September 4, 2020, page 165, line 13 to page 166, line 5).

[32] The Respondent suggests that since the foreclosure did not actually occur, no real harm was done. He suggests that the lack of harm is a mitigating factor. We do not agree that no real harm was done. The foreclosure proceeding imposed a burden on the opposing party who swore affidavits stating that client A's claim was fraudulent. The opposing party has endured the stress and spectre of foreclosure and has had to retain and pay a lawyer to defend against client A's claim. Additionally, the court system does not need to be overburdened by lawyers filing claims without having reviewed whether any actual evidence exists to support them.

[33] We understand the Respondent's position on negligence to also mean that the Respondent's depression adversely impacted his focus thus his delay and lack of attention to detail should amount to negligence. We do not agree. As we discuss further at paragraph 66, the Respondent testified that his depression did not affect his judgment and that he was responsible for his decisions.

[34] The circumstances do not support the Respondent's suggestion that he was negligent in not making reasonable inquiries or efforts. Rather, the Respondent was deliberate in taking litigation steps and otherwise committed to prosecuting his client's case despite the lack of a review to ensure that he had evidence to support the alleged loan.

[35] We do not accept the Respondent's view that he was merely negligent, as opposed to being deliberate in his actions and inactions. The Respondent deliberately chose to place blind faith in his client's foreclosure matter, as reflected in his testimony when he said that he "wasn't trying to understand the transactions at all, and it would almost be fair to say I was trying *not* to understand the transactions" (F&D Decision, at para. 46).

[36] Another aggravating factor was the Respondent's express contempt for the Law Society investigation, which resulted in the Respondent focusing on resisting the Law Society's unwanted intrusion, instead of verifying whether the Law Society's concerns were legitimate. To date, the Respondent continues to act as counsel of record for client A. At the hearing, the Respondent presented no evidence regarding the source of client A's funds nor any evidence of an actual transfer of funds from client A to support the alleged loan.

[37] We find the Respondent turned a blind eye to client A's lack of financial information, despite the Law Society's warning that the only financial information he had did not support client A's alleged loan and mortgage. The Respondent deliberately chose not to understand his client's transactions. In the Panel's view, the Respondent's inaction (i.e. his lack of making reasonable inquiries and efforts) was deliberate and not negligent. We agree with the Law Society that the Respondent's actions or inactions in these circumstances amount to intentional conduct that cried out for him to make reasonable inquiries and reasonable efforts to record his client's information.

The character and professional conduct record of the respondent

The Respondent's background

[38] The Respondent was called to the Bar of British Columbia in 1982. The Respondent has no prior professional conduct history. We agree with the Respondent's characterization that this matter "is a single lapse in unusual circumstances over a lengthy and laudable career. Any risk of repetition is highly unlikely."

[39] The Respondent is married with two adult children. He maintains a broad commercial litigation practice. The Respondent has emphasized a widespread reputation for skill, integrity, fairness, civility an ethical conduct throughout his legal practice; a career-long mentoring of other lawyers; three years as an elected member of the Canadian Bar Association; significant assistance to members of the Bar, including guidance concerning the Law Society's investigative and disciplinary processes; a longstanding contribution to legal education and publication, including the co-editing (along with his wife) of practice manuals on municipal government and personal injury jurisprudence related to motor vehicle accidents; the provision of extensive pro bono assistance to the public; and a general contribution of time to community-based organizations.

The Respondent's character reference letters

[40] The Respondent provided 29 letters of character reference from lawyers and non-lawyers. Based on the contents of the letters, the authors were all made aware of the Respondent's citation and were all advised that they had read a redacted version of the F&D Decision.

[41] The letters describe a lawyer who generally holds a great reputation among his peers and the authors generally view the Respondent's current misconduct as being

out of character. In order to demonstrate our understanding of the Respondent's general reputation, we provide excerpts from the letters of character reference below:

(a) Letter dated January 28, 2022 from Dr. David K. Anderson, a retired family physician. He and the Respondent participated in quartet and chorus activity and were together several times a week in 2018 and 2019. He witnessed some distraction but notably did not observe typical features "such as extreme loss of interest, irritability, weepiness or slowing down of his physical movement."

(b) Letter dated January 14, 2022 from Michael Bertoldi, a lawyer. He described the Respondent's invaluable wealth of legal knowledge and assistance when he was a junior lawyer and co-counsel as well as a "brilliant, ethical, courageous and thorough member of the bar" and a "lawyer's lawyer".

(c) Letter dated January 17, 2022 from Jennifer Campbell, an Executive Director of Small Talk Centre for Language Development. She described the Respondent's "remarkable level of volunteer commitment and consistency for our program" and "a rare breed of volunteer whose generosity of spirit and time is unwavering."

(d) Letter dated January 28, 2022 from H.C. Ritchie Clark, QC, a lawyer of Bridgehouse Law LLP. He has "always held a very high opinion of [the Respondent's] ethics." He has "never heard any stories, gossip, or opinions, which would question the propriety of [the Respondent's] conduct or his ethics" and "[p]rofessional misconduct is the last thing I would associate with George."

(e) Letter dated January 27, 2022 from Gerald A. Cuttler, QC, a lawyer of Cuttler & Company. He described the Respondent as consistently demonstrating a sincere desire to always "do the right thing" with honesty, sincerity and dedication to upholding the rule of law. He advised that he came to learn that the Respondent may have been suffering from depression and his mental health may have had some bearing on his conduct and lack of timeliness.

(f) Letter dated January 21, 2022 from Alan P. Czepil, a Penticton lawyer. He described the Respondent as "someone who I have relied on over the years to act as a sounding board and to provide advice. George has always been generous with his time … I have relied on George for

advice because he impresses me as a competent, experienced practitioner who takes his professional obligations seriously. I respect his opinion."

(g) Letter dated January 24, 2022 from Matthew Cooperwilliams, a lawyer of Cooperwilliams Law. He advised that he has always valued his relationship with the Respondent and considered himself lucky to have it. He wrote "I believe he is a real asset to the profession, and I believe that both clients and colleagues have benefitted very substantially from his wise counsel."

(h) Letter dated January 18, 2022 from Dean P. Davison, a lawyer of Davison Law Group. He wrote "I can say through my experience with Mr. Gregory that he takes the responsibility of being a lawyer in British Columbia very seriously and has nothing but respect for the Law Society and its employees."

(i) Letter dated January 21, 2022 from Bruno De Vita, QC, a lawyer of Alexander Holburn Beaudin + Lang LLP. He wrote "George devoted much of his personal time in authoring, along with Eleanor, The Annotated B.C. Insurance (Vehicle) Act and The Annotated B.C. Local Government Act, references used by lawyers throughout the province. His intimate knowledge of the law in these areas was a great resource which George was invariably willing to share."

(j) Letter dated January 12, 2022 from Philip J. Dougan, a lawyer of Citadel Law Corporation. He wrote "In my experience, [the Respondent] has always been a hard-fighting advocate but also one with a strong sense of his professional duties. One of his greatest strengths is his ability to see to the heart of a legal matter. I would describe him as shrewd, highly capable, and an astute judge of character …"

(k) Letter dated January 25, 2022 from James A. Dowler QC, a lawyer of Alexander Holburn Beaudin + Lang LLP. He described the Respondent as "passionate about his role as a barrister and his duty to protect his client. While at the firm, he would often take difficult cases involving unpopular clients and he would rigorously defend them."

(l) Letter dated January 31, 2022 from Kelly R. Doyle, a lawyer of Doyle & Company. He described the Respondent as being "on a very short list of counsel to whom I refer members of the public with difficult and complex foreclosure or property matters when I am not able to assist. I

do not send him routine matters. I send him cases where there are often serious conflicts on the evidence and difficult issues of law."

(m) Letter dated January 14, 2022 from Steven Field, a lawyer of MacLeod & Company. He wrote "I hold Mr. Gregory in high regard as a careful and effective advocate for his clients. Throughout my dealings with Mr. Gregory, I have seen him act with the utmost integrity, exercise sound judgment, and take principled positions on behalf of his clients, even when facing significant risks of not being paid for his time and efforts. He is loyal to his clients."

(n) Letter dated January 24, 2022 from Kojo Frempong, a lawyer of Kojo Frempong Law Office. He described the Respondent as "professional, helpful and conscientious." He wrote "George is devoted in advancing his client's interest nonetheless he is conscientious in how he practises law … George is very helpful and a great mentor."

(o) Letter dated January 17, 2022 from Geoffrey Gomery. He wrote "In my experience with Mr. Gregory to June 2018, I knew him to be an honest and honourable lawyer. I referred clients to him from time to time because I considered him as a tenacious advocate who was dedicated to his clients' interests. He was attentive to the Rules of Conduct and professional norms. I cannot recall an occasion when I thought him guilty of sharp practice."

(p) Letter dated January 23, 2022 from Eleanor A. Gregory, the Respondent's spouse. She wrote "For as long as I have known George, he has demonstrated a keen awareness of the many inequalities and challenges that people face in their lives and genuine sympathy for less fortunate or disadvantaged people … It has always been important to him to do what he can to achieve justice for people, whether that be social or legal … George has always been mindful of the physical and emotional challenges many of our clients have faced and he treats all his clients with courtesy and respect … I assure you that he has taken this matter very seriously throughout and that he has obsessed over what he could do to reconcile what he (and others) perceived to be a conflict of expectations and values. His own battle with depression was impacted adversely and it is no exaggeration to say that he was essentially paralyzed in dealing with this matter."

(q) Letter dated January 11, 2022 from Robin Harper, a Vancouver lawyer. He wrote that he has referred numerous clients to the Respondent. He

wrote "At no time was there any indication in any of our professional interactions of unethical behaviour or anything remotely relating to professional misconduct. I also recall recommending George to colleagues and that feedback about referrals to him was always positive."

(r) Letter dated February 1, 2022 from James A. Henshall, a lawyer of Henshall Law. He wrote "On the whole, George is a credit to our profession and as I said at the outset, I hope that the disciplinary committee will take into consideration his many strong qualities and exercise compassion in deciding upon any future disciplinary action."

(s) Letter dated January 14, 2022 from William G. MacLeod, QC, a lawyer of Macleod & Company. He wrote "Over many years I have come to know Mr. Gregory to be a lawyer of integrity, sound practical judgment and to be a capable advocate for his clients … in many years of practice, I have not known of any questionable professional conduct on his part. I continue to trust in his integrity and judgment."

(t) Letter dated January 31, 2022 from Leslie J. Mackoff, a lawyer of Mackoff Mohamed. He wrote "Over the past 10 years I have had an opportunity to discuss a wide range of matters with George. I have also had the opportunity to refer some work to him and received positive feedback both in respect of the result and George's approach to the client ... Over the ten years that we have interacted regularly I can say with confidence that he has aspired to serve his clients well and to a high ethical standard … Like most members of the bar, I know that George takes pride in holding himself to a high ethical standard and is jealous in guarding a reputation earned over several decades in the profession."

(u) Letter dated January 31, 2022 from John S.C. Mao, a lawyer of Mao & Company. He wrote "I have known Mr. Gregory, first professionally and then personally, for about twenty years. We first met when Mr. Gregory acted for the opposing side of a business dispute. The dispute concluded unremarkably, but Mr. Gregory's sense of principle and fairness left a deep impression on me. I started referring clients to Mr. Gregory and worked tougher with him on cases ever since … I trust his judgment and he has never given me any reason to question his professionalism or integrity as a lawyer. I believe my respect and high regard for Mr. Gregory as senior counsel is shared generally by those members of the legal community who know him."

(v) Letter dated January 27, 2022 from Andrew I. Nathanson, QC, a lawyer of Fasken Martineau DuMoulin LLP. He wrote "In my experience. George is vigorous counsel with a strong commitment to his clients' causes … When channeled to best effect, this commitment promotes access to justice by prosecuting claims or defences to expeditious and cost-effective resolution … I always found George to be sincere and honourable. In all of our dealings, I never had concerns that he would act unethically."

(w) Letter dated January 18, 2022 from Ali Sodagar, a lawyer of Sodagar & Company Law Corporation. He wrote "My advice to junior lawyers that practice with me is 'if you want to pursue litigation, follow George'. To me George makes up what it is truly to be a lawyer. He is honest, hard-working, diligent, puts his clients first and upholds the law … I owe a great deal of my success to George, as is the case with many other lawyers in the profession. He deserves credit for that generous contribution of time and knowledge which has also been of much benefit to the public we serve."

(x) Letter dated January 18, 2022 from Maryam Sodagar, a lawyer of Sodagar Nielsen Law Group. She wrote "As one of the few male champions I have met along my career path, George has always provided me with support and guidance … His advice was also on point. Time and time again, it was with his sage advice that I was able to navigate very difficult ethical issues that arose with opposing counsel, the court and clients. In short, George has been invaluable to my professional advancement and I credit him for some of my most significant wins in court."

(y) Letter dated January 11, 2022 from Delwen Stander, a lawyer of Stander & Company. He wrote "George is one of a select number of lawyers from Vancouver that I have kept in contact with in the years since I left Vancouver. There is a reason for this – I valued our time together as young associates of Davis & Company, and I continue to value his friendship to this day … If asked to describe his character, I would say that George is intelligent, conscientious, honest, and forthright. He is a reliable 'straight-shooter'."

(z) Letter dated January 28, 2022 from Michael Steinbach, a lawyer of Mackoff Mohamed. He wrote "Throughout our interactions, George has been caring, conscientious and extremely giving of his time, not just to

me, but also to clients who might not have otherwise had representation before our courts. I have watched the care George takes in considering issues of law, evidence and professional obligations and tried my best to emulate his considered approach."

(aa) Letter dated from Scott A. Turner, a lawyer of Turner & Co. He wrote "I have always found George to be a very effective advocate for his clients, and fair and courteous in his dealings with opposing counsel. I hold George in the highest regard as a commercial litigation barrister and I believe that this is a view shared by my colleagues at the bar."

(bb) Letter dated January 20, 2022 from Frank Yates, a clinic coordinator of Access Pro Bono. He wrote "On a personal basis I wish to state that few pro bono lawyers have helped our organization as much as Mr. Gregory. His pro bono record speaks for itself. It shows dedication to community, and a deep commitment to helping vulnerable individuals … Mr. Gregory has always been there for us as an organization and we are truly thankful for everything he has done. But more importantly he was there for the countless vulnerable individuals he has assisted over the years."

(cc) Letter dated January 26, 2022 from Lucy X. Zhao, a lawyer of Poise Law Corporation. She wrote "I personally have asked George several times for practice or ethical advice, such as whether I should take someone as a client and so on. George always answered my phone calls and/or questions. If he was busy or in the middle of something, he would text me and call me back as soon as he finished his work … George is someone I trust. He has been like a friend, colleague, and mentor to me."

Law on good character evidence

[42] The Law Society's position is that the Panel should give limited weight to the Respondent's character reference letters and decline to treat them as a mitigating factor. The Law Society emphasizes the nature of the Respondent's misconduct, the amount of the alleged loan at issue, the period of time over which the misconduct occurred, the repeated warnings from the Law Society and the defiant and contemptuous nature of the Respondent's conduct.

[43] Further, the Law Society's position is that while character reference letters may assist in assessing the risk of future misconduct by a respondent, they do not diminish the importance of the other important objectives of discipline such as

general deterrence, repudiation and the maintenance of public confidence in the disciplinary process.

[44] The Respondent's position is that his character and reputation are mitigating factors. The character reference letters demonstrate a remarkable amount of support from an array of people who represent diverse sources of insight over many years. Further, the Respondent submits that the character reference letters attest to an extensive history of exceptional service and generosity to colleagues and members of the public.

[45] The Panel may consider good character evidence in determining an appropriate sanction, but such evidence has limited weight in disciplinary matters. We agree with the perspective that "[v]irtually all lawyers are responsible for some good deeds, and virtually all are held in high esteem by some other lawyers and clients. The discipline hearing panel must ensure that the process is not transformed from a deliberative process into a referendum among members of the profession" (Gavin Mackenzie, *Lawyers and Ethics: Professional Responsibility and Discipline*, loose-leaf (consulted on June 2, 2022), Thomson, Reuters, at para. 26:18, p. 26-59).

[46] As explained by the review panel in *Law Society of BC v. Johnson*, 2016 LSBC 20, at paras. 45 to 46, " … to put too much weight on character letters would, in effect, put the friends and colleagues of the Respondent in the place of the members of the hearing panel and would detract from the Law Society's duty to protect the public interest."

[47] In *Law Society of BC v. Guo*, 2022 LSBC 03, at para. 40, the panel explained that "… our task is not to gauge the Respondent's popularity, but rather to impose a disciplinary action that appropriately furthers the objectives of protecting the public and its confidence in the justice system and the legal profession."

[48] In *Law Society of BC v. Hordal*, 2004 LSBC 36, at paras. 68 to 69, the respondent's character references mirror, in many respects, the Respondent's character references in this case:

> [68] We note that this Respondent produced at the Hearing an unprecedented array of letters of support from his colleagues at the Bar in the community in which he practices [sic]. The support was characterized as coming from virtually every lawyer of significance in the community in which this member conducted his practice. It is also true that these letters of support were generated from members of the Bar who were fully apprised of the circumstances of the Respondent's misconduct. It is clear that this

> significant outpouring of support for the Respondent had a bearing upon the Hearing Panel as well it should have done.
>
> [69] It is however improper to confuse popularity with probity. Most letters of support noted that this conduct was out of character for this Respondent. The apparent inconsistency of that observation appeared to be lost on many of the members providing letters of support. They were faced with two essentially identical and concurrent events of misconduct within twelve months of each other, and in those circumstances it must be difficult to suggest that this conduct is out of character. It is clear that this is a very popular member of the community Bar in which he practices [sic]. It is however also true that he has significantly impaired the reputation of the legal profession in that community by this conduct. That misconduct must be identified, criticized and penalized in an appropriate manner.

[49] The Panel has taken into account that the Respondent is well-respected by his colleagues. We accept that the Respondent's misconduct is out of character for him. However, we note as the panel did in *Law Society of BC v. Yen*, 2021 LSBC 30, at para. 30, that character reference letters are not determinative and amount to only one factor to be considered when determining the appropriate sanction. As character reference letters are to be given limited weight, they provide limited consideration to mitigating penalty.

Acknowledgement of the misconduct and remedial action

[50] The Law Society's position is that the Respondent has not admitted his misconduct or taken any remedial action. The Law Society submits that throughout the lengthy and careful investigation of this matter, the Respondent denied that his conduct amounted to misconduct and continued to refuse to accept that the circumstances required him to make reasonable inquiries or efforts to obtain client information.

[51] The Law Society submits that a lawyer has the right to dispute the allegations in a citation at a hearing and doing so does not constitute an aggravating factor. We agree. The Law Society further submits that when a respondent denies the alleged misconduct and the panel finds otherwise, the respondent loses the ability at the discipline phase to then say that they acknowledge their mistake and take responsibility for their actions. We do not need to address this point as we have found that the Respondent has not acknowledged his misconduct. Thus, there is no acknowledgement that would serve to mitigate the penalty.

[52] The Respondent's position is that he made the following acknowledgments in the course of his testimony:

(a) he characterized his letter of June 18, 2018 as "intemperate", attributing that to the anger over feeling mistrusted during the early stages of the investigation;

(b) it was entirely proper that the Law Society stepped in to ask about the transaction;

(c) he accepted that the media outlet article was "a massive red flag";

(d) he admitted to failing to "get down to the file", acknowledging the long, resulting delays; and

(e) he described his lack of sophistication regarding money laundering, admitting "I can see now that every transaction involving illegal proceeds is money laundering."

[53] The Panel finds that while the Respondent has acknowledged certain facts, such acknowledgements amount to admissions of specific facts rather than culpability. Such limited acknowledgements do not add up to an acknowledgement that the Respondent assumes full responsibility for the misconduct itself. To the contrary, at this hearing, the Respondent continued to suggest that he did not commit misconduct because he relied on the advice provided by other lawyers, he was chronically depressed and that the Law Society's unwarranted intrusion into his practice was stressful for him. In regard to his depression, Dr. Arbuckle did not suggest that the Respondent was unable to function as a practising lawyer or was otherwise in a depressive state that impaired his practice of law. In other words, Dr. Arbuckle did not suggest that the Respondent could not practise law or, for that matter, deal with the Law Society's investigation, due to his depressive state.

[54] The Panel notes that it has no evidence before it that the Respondent ever "got to the bottom of it" - that is, confirming the transfer of funds from client A to the opposing party or, put another way, identifying the source of funds for his client's alleged loan and mortgage. The Respondent filed false affidavits on behalf of his client. We also note that the Respondent still remains counsel of record in client A's foreclosure proceeding. We find these facts to be aggravating factors. Since the Respondent did not have his client's documents translated, he only discovered that his client's financial information did not support the alleged loan when the opposing party provided a proper translation.

[55] The circumstances show that the Respondent does not possess the requisite evidence to support client A's foreclosure proceeding. Yet, we have no evidence before us that the Respondent has taken any remedial action, such as getting off record as counsel, or discontinuing the foreclosure action to spare the opposing party the expense, time and spectre of foreclosure on his family home. While the Respondent's client has signed a notice of intention to act in person, the Respondent admitted that the notice is not actually in effect as it has not been filed nor delivered to opposing counsel.

Public confidence in the legal profession and the disciplinary process

[56] Under this heading, we have considered public interest, the need for specific and general deterrence and the range of penalties imposed in similar cases.

[57] The *Legal Profession Act*, SBC 1998 c. 9 (the "*Act*") imposes a duty on the panel to uphold and protect the administration of justice, which includes maintaining public confidence in the profession and the Law Society's disciplinary process (see s. 3, *Act*; *Lessing*, at paras. 54 to 55; *Gellert*, at para. 26; *Law Society of BC v. Faminoff*, 2017 LSBC 04, at para. 80, affirmed 2017 BCCA 373, at para. 37). As explained in *Yen*, the overarching goal of the *Act* is the protection of the public and public interest.

Public interest

[58] The Law Society's position is that a responsible member of the public would impose a significant sanction on a lawyer who filed false affidavits from two of the alleged money launderers specifically named in the media article in order to advance a foreclosure proceeding on one of the properties named in the same media article after learning that sometimes lawyers play a role in facilitating fraudulent real estate and money laundering. We would add that a responsible member of the public would also impose a significant sanction after learning that the same lawyer had read the media article and continued a foreclosure proceeding without checking their client's facts to see whether the lawyer was facilitating their client's money laundering.

[59] In *Yen*, at paras. 39 to 41, the panel described as an imperative the need for public confidence in the ability of the Law Society to regulate and supervise the conduct of lawyers.

[60] We agree with the review panel in *Lessing*, at para. 60, that where there is a conflict between protecting public interest and the lawyer's rehabilitation, the protection of public interest should prevail.

[61] The media article discussed public interest concerns about lawyers facilitating their clients' money laundering schemes. The article was critical of lawyers who give "shady" real estate transactions an "air of legitimacy" by writing up mortgage agreements and filing lawsuits on behalf of drug traffickers who were laundering their money in the Greater Vancouver area real estate market. The article suggested that the rules governing lawyers are weak and are met with little enforcement. These public interest concerns should have raised a flag for the Respondent to understand what money laundering was, confirm the source of his client's funds regarding the foreclosure transaction and of his own retainer.

[62] We share the view that public interest requires strong enforcement of the rules that require lawyers to make reasonable inquiries about their clients' suspicious transactions. Public interest concern, as demonstrated by the media outlet article, requires a clear message to be sent to the legal profession to guard against being duped so that "shady" mortgage and real estate transactions that facilitate their clients' criminal activities are not legitimized. Lawyers should avoid becoming involved unwittingly in their clients' money laundering scheme or criminal activities.

The need for specific and general deterrence

[63] Under this heading, we have also considered the need for specific and general deterrence and rehabilitation of the lawyer, including mental health considerations.

[64] The Law Society's position emphasizes the need for general deterrence. The Law Society submits that this case requires a suspension to deter other lawyers from failing in their duties to make reasonable inquiries and ensure complete client records. The Law Society's position is that a suspension is required to maintain public confidence in the integrity and trustworthiness of the legal profession.

[65] The Law Society submits that a sanction will serve as an effective deterrent to other members of the profession only if it is commensurate with the misconduct. Otherwise, the message to the profession is that the misconduct is not as serious. The Law Society submits further that a suspension serves the important objectives of denunciation and deterrence. A suspension also communicates a commitment to protect the public and maintain public confidence in the integrity and trustworthiness of members of the profession (*Yen*, at para. 53). The Law Society submits that but for the absence of a professional conduct record and the positive

character letters, it would have sought a longer suspension than two to three months.

[66] The Respondent's position emphasizes the need for specific deterrence. The Respondent submits that a fine is the appropriate penalty based on his exemplary record and reputation. The Respondent's position is that a suspension is not required. He emphasizes the following circumstances:

(a) his previously unblemished history over a career of 40 years;

(b) his exemplary character and reputation, both of which are attested to by a large number of people who have interacted with him in diverse ways. They have presented a compelling body of thoughtful letters that reflect his extensive contributions to the profession and the community;

(c) the exacerbation of his chronic major depressive disorder that paralleled and significantly affected his handling of this matter in a manner that contrasted markedly with his normal functioning. As a society and as a profession, we are becoming ever better-informed about the effects of depression upon one's characteristic behaviour, as well as its abnormal prevalence amongst lawyers. The circumstances here provide an opportunity to convey to the profession and to the public that the Law Society is utilizing that knowledge to treat issues of mental health as the illnesses they are and to react more compassionately to some of the pernicious effects that are manifest in this case;

(d) his extensive seeking of legal advice and guidance; and

(e) the fundamental nature of his misconduct as negligence, not intentional malfeasance.

The issue of mental health considerations

[67] The Respondent submits that a mitigating circumstance to his misconduct is his chronic major depressive disorder which affected his handling of this matter contrasted markedly with his normal functioning. The Respondent testified about his depression and his resulting paralysis when he tried to explain his difficulty in gaining a meaningful understanding of his client's transactions and his general avoidance of understanding his client's transactions until late November, 2018. However, the Respondent also testified at the hearing on Facts and Determination that his depression did not affect his judgment and that he was responsible for his decisions (Transcript, September 3, 2020, page 47, lines 8 to 14).

[68] Based on the Respondent's own testimony, the Panel accepts that the Respondent's chronic depression did not adversely affect his judgment at the material times. The evidence before the Panel shows that the Respondent had a busy practice, with many referrals from colleagues.

[69] The Respondent relies on Mr. Cuttler's testimony at the hearing on Facts and Determination to support his view that he should be treated more leniently. Mr. Cuttler testified about the "paralysis" that the Respondent appeared to be experiencing at the material times. However, the Panel notes from Mr. Cuttler's character reference letter that he did not appear to know that the Respondent was suffering from depression at the material times. When he was advising the Respondent, Mr. Cuttler explained that he was not aware that the Respondent was suffering from depression. He wrote "had I known that George may have been suffering from depression at the time, I may have had better insight into his particular situations, and I may have suggested to him, as a concerned colleague, that he should simply withdraw from the file for the sake of his own health."

[70] Additionally, although the Respondent relies on Dr. Arbuckle's two-page written report dated August 27, 2020, the report does not support the suggestion that the Respondent could not practise law due to his mental health condition or that he was so stressed from the practice of law that he needed to take a break to ensure proper mental health.

[71] Dr. Arbuckle's report provided a summary of the Respondent's mental health conditions from the perspective of being the Respondent's family physician. His brief report summarized the Respondent's depressive flares and his use of exercise and medications to control a chronic, longstanding history of major depressive disorder and associated anxiety dating back to the late 1980's.

[72] Dr. Arbuckle described fluctuations in the Respondent's chronic depression from the summer of 2017 through to September 2019. He advised that he provided extended counselling sessions to the Respondent during 2018 and 2019 regarding two particular issues. The first issue was the Respondent's chronic hip pain, which required a total hip replacement in June 2019. The second issue was stress arising from the Law Society's investigation. This was described as a "major trigger" that led to the Respondent having mood alterations, increased insomnia, increased irritability, decreased concentration and attention and poor coping skills. When Dr. Arbuckle met with the Respondent during this time period, he described the Respondent as being very anxious, more scattered in thinking and distracted. He also advised that he, together with the Respondent, decided not to increase the Respondent's medications due to the fear of side-effects at higher doses. Dr.

Arbuckle opined that the Respondent's flares were consistent with acute major depressive episodes in a patient with chronic major depressive disorder.

[73] In our view, it is significant that Dr. Arbuckle did not suggest that the Respondent was unable to perform his duties as a lawyer due to his chronic depression. Dr. Arbuckle's report did not suggest that the Respondent was debilitated by his mental health conditions such that he was unable to respond to the Law Society investigation, give legal advice, practise law or continue to represent clients. Dr. Arbuckle did not suggest that the Respondent should take a break from the stresses of being a lawyer or the Law Society investigation. Rather, although the Respondent was addressing chronic mental health conditions, our understanding of Dr. Arbuckle's report is that the Respondent could cope and function as a practising lawyer.

[74] The Law Society does not dispute that the Respondent has suffered from depression for decades. In considering the Respondent's mental health, the Law Society submits that the proper question is whether the Respondent's depression significantly affected his handling of the matter. We agree. The Law Society submits that that the Respondent's depression may have contributed to delays in responding to the Law Society's communications and in completing his retainer, but it did not significantly contribute to his failure to make reasonable inquiries and efforts.

[75] We agree that the Respondent's chronic depression did not significantly contribute to his misconduct. In our view, the Respondent was in full command of his faculties. This is reflected most clearly in the Respondent's June 18, 2018 letter. The Respondent's letter demonstrates that he had turned his mind to the Law Society's concerns and was writing to convey his own thoughts, choices and frustrations.

The issue of following legal advice

[76] The Respondent also submits that a mitigating factor in his favour is his proactive seeking of legal advice from several lawyers, including Mr. Cuttler, Mr. Steinbach, Mr. Bury and Mr. Mackoff. We note that this proactiveness also demonstrates that the Respondent was high functioning despite his chronic depression.

[77] The Respondent submits that he relied primarily on Mr. Cuttler as his legal advisor, whose advice he was channeling. The Respondent also submits that Mr. Mackoff indicated that he had reviewed the November 16, 2018 letter from Mr. Wedel and that Mr. Wedel's advice was specific rather than general advice. The Respondent

submits that his reliance on other legal advisors "cannot just be ignored" and further, that their advice is significant in the context of imposing sanction.

[78] At the hearing on Facts and Determination, we heard testimony from Mr. Cuttler, Mr. Steinbach, Mr. Bury and Mr. Mackoff. We generally found those lawyers to be credible. However, except for Mr. Cuttler, we did not find that Mr. Steinbach, Mr. Bury and Mr. Mackoff provided advice about the Law Society's main concern, which was whether the Respondent had the necessary banking documents to support the foreclosure transaction and whether the Respondent knew of the source of funds for the alleged loan. In other words, the Law Society was seeking to have the Respondent make more inquiries from client A, not necessarily to withdraw as counsel due to client A's criminal activities.

[79] At para. 157 of the F&D Decision, we found that "… except for Mr. Cuttler, the other lawyers generally did not know the specifics of the Respondent's client transaction nor the actual concerns raised by the Law Society about the failing to make reasonable inquiries." The Law Society submits, and we agree, that even Mr. Cuttler had a limited understanding of the facts of the Respondent's file before being retained to respond to the Law Society's November 16, 2018 letter. We agree.

[80] Mr. Cuttler testified (Transcript, January 15, 2021, p. 65, line 23 to page 66, line 10):

> Q … did you ask Mr. Gregory, 'Well, what do you know about your clients? What kind of income do they have? What kind of business? What kind of employment do they have?' Did you ask him what he knew about his clients, beyond the fact that they were apparently money launders and drug traffickers?
>
> A I didn't. As I said, it wasn't not my role. He didn't ask me to and I did not question him in that way. I, I gave him advice that he needed to get to the bottom of these allegations and their relationship, if any, to the petition that he was acting as counsel on.

[81] To be clear, except for Mr. Cuttler, the other lawyers' understanding of the Respondent's position, in our view, focused mainly on whether client A had the right to counsel and whether the Respondent should be required to withdraw as counsel for client A. The focus of the Law Society investigation, however, was the lack of evidence to support client A's foreclosure proceeding which sought to foreclose on a party's residential family home.

[82] The Respondent submits that a mitigating factor is his following Mr. Cuttler's advice. In his written submissions on Facts and Determination, the Respondent set out Mr. Cuttler's advice as:

> (a) Distinguishing solicitors from counsel in contested litigation;
>
> (b) The timing of Inquiries: the evolving nature of litigation and the ultimate end date being '*not later than*' determinative submissions being made to a court or settlement negotiations;
>
> (c) It was premature to determine the adequacy of Mr. Gregory's inquiries during the period of their consultations because of the early and slowly evolving nature of the litigation;
>
> (d) Ethical obligations related to withdrawal …;
>
> (e) Distinguishing between the foreclosure action and the underlying loan; and
>
> (f) The role of the Courts in dealing with the legality of underlying transactions …
>
> [emphasis in original]

[83] As we discussed at para. 190 of the F&D Decision, and earlier in this Decision, Mr. Cuttler's evidence did not support the Respondent's view:

> Mr. Cuttler testified that the essence of his advice to the Respondent was that 'the key issue was to get to the bottom of whether this foreclosure or this, this mortgage, I guess it was a mortgage, was funded with proceeds of crime.' Mr. Cuttler testified that the Respondent understood that cash was not an essential component of money laundering and that, even if the loan had not been made in cash, he still had to get to the bottom of whether the loan monies were proceeds of crime:

[84] In fact, there is no evidence before us that the Respondent followed Mr. Cuttler's key advice to "get to the bottom of it." Mr. Cuttler testified that he advised the Respondent to find satisfactory evidence of consideration for the alleged loan and mortgage, otherwise the case would fail. Mr. Cuttler further testified that he advised that if there was consideration, then the Respondent should make reasonable inquiries to determine whether the consideration involved the proceeds of crime. He testified that "the first question was, was money advanced, how was it advanced, and … if money was advanced, where did it come from" (Transcript,

January 15, 2021, p. 25, line 18 to page 26, line 9; page 30, line 16 to page 31, line 9; page 75, lines 16 to 23).

[85] There is no evidence before us that the Respondent searched for satisfactory evidence of consideration for the alleged loan and mortgage. The Respondent discovered that client A's banking information was "false" only after reviewing the opposing party's sworn affidavit and certified translation of client A's banking document. Had the Respondent diligently followed Mr. Cuttler's advice and had client A's documents translated, he would have discovered the problem himself.

[86] We find that the Respondent did not, in fact, follow Mr. Cuttler's advice. To date the Respondent still does not know whether consideration was advanced for the alleged loan and mortgage. Thus, even if the Respondent was following Mr. Cuttler's advice, he could not have proceeded to the second step of making reasonable inquiries of whether any funds were proceeds of crime.

[87] It is an aggravating factor that there is no evidence before us that the Respondent has failed to unearth evidence that client A actually funded the alleged loan that is the subject of the foreclosure proceeding. The Respondent submits that the legal advice he received suggested there was "no logical nexus" between a fraudulent loan and a proceeding that seeks to foreclose on that loan. Further, the Respondent submits that he relied on advice that "a court proceeding is a proper and legitimate means to resolve disputes in accordance with the Rule of Law." We take no issue with that latter proposition. However, in these circumstances, the Respondent had initiated foreclosure proceedings without diligently finding evidence to support the alleged loan when the opposing party disputed the existence of the alleged loan. The Respondent testified that he was a seasoned foreclosure practitioner and that he often received referrals because of his expertise in this area. In this instance, the Respondent should have known better.

[88] Essentially, the Respondent submits that his conduct in failing to make reasonable inquiries was reasonable because in litigation, the judge is tasked with resolving the dispute. With respect, we disagree. In these circumstances, there were enough red flags to require the Respondent to confirm the source of funds for the alleged loan. The lawyer is subject to a duty to make reasonable inquiries which is not a duty that can be fulfilled by a judge. The Respondent was required by the Rules to fulfill a duty to make reasonable inquiries, which is a separate issue from how a judge would rule. Given client A's lack of evidence, the judge's ruling would have been obvious.

[89] The Respondent further submits that the professional obligations placed upon counsel in litigation differ from those placed upon a solicitor because the solicitor

is engaged in immediate transactions. He submits that "the nature of contested litigation allowed for more time in which to make an eventual decision about continued representation, but that the *ultimate* deadline (i.e. the 'crossing of the Rubicon') would not be reached before substantive submissions were made to a Court for relief or before entering upon settlement negotiations."

[90] The Respondent's position that a litigator should not be held to the same standard as a solicitor in making reasonable inquiries, or should be allowed to delay fulfilling those duties in litigation, is unreasonable. The view that litigation somehow displaces a lawyer's duty or lowers the standard to make reasonable inquiries because a judge will eventually figure things out does not guard against the Respondent being duped into facilitating his client's unscrupulous activities.

[91] Finally, the Respondent submits that he believed he had finally resolved the "first step" when he filed the client affidavits on November 30, 2018. However, the affidavits still did not "get to the bottom of it". The banking records were never properly translated or considered or explained. The Respondent's blind loyalty to his client coupled with contempt for the Law Society clouded his judgment, even when the opposing party's evidence demonstrated that client A's banking records did not support the alleged loan. Client A's alleged banking documents were false documents.

[92] The Law Society's position is that the Respondent has overstated the impact of the discussions he had or the advice he received from the other lawyers in his office. Further, the evidence shows that the Respondent did not refer to any reliance on legal advice as an explanation or justification to the Law Society.

[93] We agree with the Law Society's position. In his communications with the Law Society, the Respondent made no reference to reliance on legal advice as a possible shield. The Law Society's letter of November 16, 2018 invited the Respondent to provide the investigator with full details of any legal advice, as follows:

> I also want to invite you to provide us with full details … concerning the legal advice you appear to have sought and received, as indicated in your letter dated June 18, 2018 where you stated, "Giving this matter thought after my interview, **and speaking with one senior member of the member-complaint bar**, I ask myself why I should not act for a hypothetical party merely because it is alleged that he was laundering money … Please note that I am not requiring you to provide this information as it may be subject to solicitor client privilege. However, depending on the circumstances, including what the advice was and what

> information it was based on, the advice you received may be of relevance to the Law Society's assessment of the matter. …

[94] The Law Society further submits that the legal advice or discussions the Respondent had with the other lawyers were more in the nature of casual conversations between colleagues, as no files were opened and no notes were made by any of the lawyers, including the Respondent, of any of that advice or those discussions.

[95] We appreciate the Respondent was depressed while he was representing client A. However, the evidence demonstrates that the Respondent remained high functioning and was taking deliberate steps to advance client A's claim, such as communicating with opposing counsel, meeting with his client, drafting and filing affidavits, ensuring that someone provided an endorsement of interpretation for his client's affidavit and responding to the Law Society before subsequently retaining and instructing counsel. There is also no evidence before us that the Respondent had taken steps to slow down his practice in light of his depression or that his depression was obvious or known to other colleagues, such as his legal advisor, Mr. Cuttler.

The Respondent's oral submissions

[96] At the hearing on February 3, 2022, the Respondent was granted permission to address the Panel directly. The Respondent described his depression as a "big black monster" and admitted that he did not have a "grip on my file." Among other things, the Respondent provided his view that there was no real urgency in the foreclosure matter and he was guided by a desire to give good service to his client. He stated that not one of the three lawyers he spoke with thought there was any rush or peril to make any decisions related to the foreclosure.

[97] In his address to the Panel, the Respondent did not, in our view, admit responsibility for failing to make reasonable inquiries or efforts. In our view, the Respondent's address underscored a deflection of responsibility for his actions or inactions, in that he sought to mitigate his misconduct because of his reliance on legal advice, his depression or his perception regarding the Law Society's overzealousness.

[98] We are mindful of the fact that the Respondent's address, which included facts and opinions, was not made under oath. Accordingly, we accord limited weight to the Respondent's address. To be clear, the Respondent's position has been well-presented by his counsel. Accordingly, where we characterize the Respondent's

position, those characterizations are drawn primarily from the oral and written submissions of counsel for the Respondent.

[99] We note the similarities between the Respondent's professional circumstances and that of Mr. Mastop. In *Law Society of BC v. Mastop*, 2013 LSBC 37, the review panel found that it was unlikely that the respondent would commit another similar offence. The respondent's circumstances included a lack of a prior record and numerous letters of support. Commenting on the respondent's individual circumstances, the review panel questioned whether those individual circumstances mattered. The review panel explained:

> [36] The public does not need protection from Mr. Mastop. However, the public needs protection from any lawyer who may think that crossing this line will not attract the ultimate regulatory penalty. We adopt the reasoning as previously set out above in the decision of *Law Society of BC v. McGuire*, 2007 BCCA 442; the profession has to say to its members: 'Don't even think about it.'
>
> …
>
> [39] … We think it is important to apply a sanction that will be effective in deterring other lawyers who will need to resist requests from clients for illegal assistance. In order to maintain public confidence in the legal profession, there should be no possibility of doubt that the Law Society takes such conduct with the utmost seriousness, and the profession needs to know that as well.

The range of penalties in similar cases

[100] The Law Society submits that a suspension between two and three months is appropriate based on similar cases and the aggravating circumstances.

[101] In *Yen*, the respondent was found to have committed professional misconduct when she allowed millions of dollars to flow through her firm's trust accounts without providing any substantial legal services and when she failed to make reasonable inquiries about the circumstances of the transactions, including the subject matter and objectives of the retainer, the source of the funds, the purpose of the funds and the reasons for payment of the funds, and failed to make a record of the results of any inquiries of the circumstances.

[102] In *Yen*, the Law Society submitted that a suspension of at least six months was an appropriate penalty while the respondent submitted that a fine in the range of

$20,000 to $25,000 was appropriate or, alternatively, a suspension of between two to three months, suggesting that a timeframe of between two weeks and one month would be appropriate. The panel determined that a three-month suspension was warranted. The panel reviewed similar cases and found that they supported a suspension in the range of two weeks to six months. The panel reviewed five decisions dealing with failures to make adequate inquiries and failures to provide legal services. Those cases were:

(a) *Law Society of BC v. Gurney*, 2017 LSBC 32, a six-month suspension*;*

(b) *Law Society of BC v. Hammond*, 2020 LSBC 30, Rule 4-30 admission, a two-week suspension;

(c) *Law Society of BC v. Hsu*, 2019 LSBC 29, Rule 4-30 admission, a three-month suspension and a practice restriction;

(d) *Law Society of BC v. Daignault*, 2020 LSBC 18, joint submission, a five-year delay between commencement of the Law Society investigation and the issuance of the citation, a two-week suspension; and

(e) *Law Society of BC v. Uzelac*, 2020 LSBC 58, Rule 4-30 admission, a four-month suspension.

[103] The Law Society submits that the Respondent's misconduct in this case was not as severe as the misconduct in *Yen* given the misuse of trust funds and the amount of funds at stake. Nevertheless, the Law Society submits that like the respondent in *Yen*, the Respondent in this case failed to make appropriate inquiries, ignored a multitude of obvious red flags and failed to act on objectively suspicious circumstances. The respondent in *Yen* maintained that she had done nothing wrong and continued to act for the client. Similarly, the respondent in *Yen* was an experienced lawyer, had no disciplinary record and provided numerous positive character references.

[104] In *Gurney*, the panel determined that a six-month suspension was an appropriate penalty despite the respondent not having a disciplinary record and being an experienced solicitor. Notably, the respondent in *Gurney* submitted that money laundering was a relatively new concern and that since he had little experience with that concern, he was not suspicious as he should have been. The panel rejected that position in light of his years of experience and explained that he should have known better.

[105] In *Law Society of Upper Canada v. Peddle*, 2001 CanLII 21502 (ON LST), the panel imposed a three-month suspension and a fine of $5,000 for misconduct arising from being duped by a client while acting as escrow agent for a group of investors. The respondent not only admitted his misconduct, but admitted that he ignored red flags, failed to take independent steps to confirm the investment venture existed, failed to exercise due diligence and allowed himself to be a dupe.

[106] In *Law Society of BC v. Rai*, 2011 LSBC 02, the panel imposed a three-month suspension for failing to make reasonable inquiries about fraudulent mortgage transactions. The respondent made conditional admissions and consented to the three-month suspension.

[107] In *Law Society of Upper Canada v. Tucciarone*, 2005 ONLSHP 36, the panel imposed a six-month suspension for unknowingly participating in 16 real estate transactions that involved fraudulently obtained mortgage funds.

[108] In *Law Society of Upper Canada v. Di Francesco,* 2003 CanLII 33487 (ON LST), the panel imposed a one-month suspension for allowing an unscrupulous client to launder $340,000 through the respondent's trust account without exercising any due diligence.

[109] The Respondent relies on *Hordal*, at para. 54, for the proposition that there are significant differences in impact between a fine and a period of suspension, which was adopted by the review panel in *Lessing*. The panel in *Hordal*, at para. 55, also explained that the imposition of a period of suspension is significantly more severe than a fine and that suspensions are reserved for the more serious demonstrations of misconduct.

[110] The Respondent also relies on *Martin* where the review panel considered the following factors in regard to a suspension: elements of dishonesty; repetitive acts of deceit or negligence; and a history of significant personal or professional conduct issues. The Respondent submits that none of these factors are present in the circumstances.

[111] The Respondent also relies on *Law Society of BC v. Nguyen*, 2016 LSBC 21, at paras. 38 to 42 and 49 to 50, where the review panel also considered the impact of a suspension on a respondent, including hardship on sole practitioners and small firms. The review panel explained that a suspension of almost any length is a serious penalty that results in significant adverse impacts on a lawyer.

[112] The Respondent relies on a decision by the English Court of Appeal in *Bowman v. Fels*, 2005 EWCA Civ 226. We have already found this case distinguishable and

not binding on this Panel (F&D Decision, para. 106). The *Bowman* case is also irrelevant to our determination on penalty.

CONCLUSION ON PENALTY

[113] It is imperative that the Panel impose a serious penalty to deter other lawyers from being potential dupes in facilitating unscrupulous clients' criminal activities. Despite the Respondent's prior unblemished record, the primary concern in the circumstances of this case is to maintain public confidence in the legal profession and in the Law Society as a self-governing body.

[114] The Panel makes an order that the Respondent be suspended for a period of two months. The suspension is to take effect the first full month after the date of this decision, or on such date as otherwise agreed to in writing by the parties.

[115] The Respondent's misconduct occurred despite the Law Society urging him to do what the *BC Code* required. His misconduct was prolonged, defiant and deliberate. There were several aggravating factors, including the media article, the Respondent's blind loyalty to his client, the lack of an independent translator and the Respondent's contempt for the Law Society. To date, the Respondent has not yet followed his legal advisor's advice to "get to the bottom of it" and determine whether client A had, in fact, advanced funds for the disputed loans. Additionally, the Respondent has not acknowledged his misconduct nor taken any remedial action.

[116] We have considered the Respondent's unblemished professional conduct record and his character reference letters. But for these circumstances, we would have imposed a lengthier suspension. In the particular circumstances of this case, we did not find the Respondent's reliance on legal advisors or chronic depression to be mitigating factors.

[117] As a senior, respected lawyer, the profession and the public had a right to expect more from the Respondent. The Respondent's judgment was clouded by contempt for the Law Society's investigation and blind loyalty to his client. We find that this misconduct is out of character for the Respondent. However, after 40 years at the Bar, the Respondent should have known better.

COSTS

[118] We understand the parties have settled the issue of costs. If we are wrong, we invite the parties to address the Panel with a schedule setting out dates and times for the exchange of written submissions.

APPLICATION FOR NON-DISCLOSURE ORDER

[119] The Respondent has withdrawn his application for an order for non-disclosure under Law Society Rule 5-8(2).