2009 LSBC 33
Report issued: November 24, 2009
Citation issued: August 9, 2006

The Law Society of British Columbia
In the matter of the *Legal Profession Act*, SBC 1998, c.9
and a section 47 review concerning

Michael Curt Scholz

Applicant

Decision of the Benchers on Review

Review date: September 9, 2009

Quorum: Bruce LeRose, QC, Chair, Leon Getz, QC, Peter Lloyd, David Mossop, QC, Thelma O'Grady, David Renwick, QC, Meg Shaw, QC, Herman Van Ommen

Counsel for the Law Society: Henry Wood, QC
Counsel for the Respondent: George Gregory

Introduction

[1] In a decision on Facts and Verdict the Applicant was found by a Hearing Panel to have committed professional misconduct with respect to three counts contained in a citation issued on August 9, 2006 and subsequently amended. In a subsequent decision on Penalty the Panel ordered that he be suspended for one month and that he indemnify the Law Society for costs in the amount of $26,437.50.

[2] The Applicant challenges both the finding of professional misconduct and the sanctions imposed. He does so pursuant to section 47 of the *Legal Profession Act.*

[3] The relevant allegations in the citation are:

> 1. ... in releasing funds which were held pursuant to an Order of the Supreme Court of British Columbia made November 17, 1997, in Vancouver Registry Action No. C975944, which required that such funds " be held in trust by Alexander Holburn Beaudin & Lang unless otherwise ordered by the court or agreed by all parties with any interest or claim to the funds." On July 20, 2001, you caused the release of these funds as a loan to your client G Inc.:
>
> (a) contrary to the investment provisions of section 15 of the *Trustee Act*, RSBC 1996, c. 464;
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> (b) without appropriate instructions contrary to Rule 3-51 of the Law Society Rules; and
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> (c) in breach of the terms of the Court Order.
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> 2. ... in acting for W Ltd. and G Inc. in relation to the same matter in circumstances which gave rise to divided loyalties contrary to Chapter 6, Rule 1 of the *Professional Conduct Handbook*.

4. ... in acting for W Ltd. to arrange a loan of funds over which it had a claim to G Inc., when he was in a conflict of interest by reason of your employment by and financial interest in G Corp., the parent company of G Inc.

[4] The Law Society did not proceed with the allegation respecting the investment provisions of the *Trustee Act.*

Jurisdiction

[5] The effect of section 47(5) of the *Legal Profession Act,* considered in the light of a well-developed body of jurisprudence that we do not need to canvass, is that if a review panel such as this is satisfied that a challenged decision of the Hearing Panel is correct, it must confirm that decision; and if it is not so satisfied it must substitute some other decision that the Hearing Panel had the power to make.

[6] The threshold question that must be answered is whether the conclusions of the Hearing Panel were correct.

The First Issue on Review - Allegation 1(c)

[7] The Hearing Panel found the Applicant's conduct in failing to properly obtain the consents of the appropriate parties to the payment out of funds from his trust account where such payment was not approved by Order of the Court, to be professional misconduct in that it represented a marked departure from what the Law Society expects from its members. *Law Society of BC v. Scholz*, 2008 LSBC 02 at paragraph [55].

[8] The evidentiary background to this conclusion is set out in paragraphs [9] to [13] of the decision on Facts and Verdict, as follows:

[9] In 1997, as a result of the failure of Eron Mortgage Corporation, the Registrar of Mortgage Brokers froze the bank account of W Ltd. W Ltd. was a client of the Respondent. This bank account was at the Bank of Montreal and had a balance of $179,246.70 at the date it was frozen. The Bank of Montreal commenced interpleader proceedings to have those funds paid into Court for ultimate determination as to the rightful owner of those funds.

[10] DC, who gave evidence at the hearing, was an investor in W Ltd. He commenced an action to recover $100,000.00 of funds he had loaned to W Ltd. He sought an order that the funds of W Ltd., frozen at the Bank of Montreal, be paid to the credit of the action that he had commenced. This application was served on 34 respondents, many of whom, like DC¸ were investors in W Ltd.

[11] Appearances to this application were filed on behalf of the Bank of Montreal, the Province of British Columbia and the Registrar of Mortgage Brokers. An Appearance was also filed by one LM, an investor in W Ltd.

[12] Ultimately, the Respondent proposed and obtained agreement that the " frozen" funds held by the Bank of Montreal be paid to the Respondent's firm, Alexander Holburn. This was confirmed by the Order of Mr. Justice Tysoe, made November 17, 1997, which provides:

> ... the Bank of Montreal pay the funds in its possession held to the credit of the defendant W Ltd. to Alexander, Holburn, Beaudin & Lang, in trust, and that such funds be held in trust by Alexander, Holburn, Beaudin & Lang unless otherwise ordered by the court or agreed by all parties with any interest in or claim to the funds.

[13] On December 24 of that year, the Bank of Montreal paid the funds in the amount of $179,245.70 to the firm pursuant to such Order, and the funds remained in such status, with the Respondent as the lawyer at Alexander Holburn primarily responsible therefore.

[9] The Applicant challenges this finding. He frames the issues this way:

COUNT 1(c)

" 1 Did the Panel err in finding that the conduct amounted to professional misconduct?

1(a) The Court Order that required notice be given to: " all **parties** with any interest in or claim to the funds" [emphasis added]. Did the Panel err in faulting the Applicant for failing to give notice to entities that the Panel found were not parties such as the 33 other respondents . . .?

1(b) Did the Panel err in finding (implicitly) that the Registrar of Mortgage Brokers and the Province had an interest in the funds in the face of the unanimous evidence to the contrary, including that from the Registrar of Mortgage Brokers and the Province?

The Consent of the Registrar of Mortgage Brokers

[10] We will deal first with the issue raised in paragraph 1(b) above concerning the consent of the Registrar of Mortgage Brokers. The Hearing Panel found, at paragraph [34] of the decision on Facts and Verdict, that " the consent of the Registrar of Mortgage Brokers and the Province of British Columbia was necessary" and, at paragraph [41], that it was not obtained.

[11] It is not disputed that the Registrar's consent was not obtained. The Applicant contends, in essence, that it was not required.

[12] We do not agree. In our view the Hearing Panel correctly concluded that this consent was necessary.

[13] The funds held by the Bank of Montreal were frozen by the Registrar of Mortgage Brokers acting under section 7 of the *Mortgage Brokers Act*. That section authorizes the Registrar to freeze funds if: (a) the Registrar is about to examine, or is examining, or has examined a person under the *Act*; (b) the Registrar is about to make or has made a direction, decision, order or ruling suspending or cancelling a person's registration under the *Act*; or (c) criminal proceedings or proceedings in respect of a contravention of the *Act*, or the regulations, or the orders or directions of the Registrar, are about to be, or have been, instituted. It is an extraordinary power to act unilaterally on an emergent basis to obviate an apprehended risk of harm to the public. The manifest purpose of such a " freezing order" is to ensure the safety of the funds pending further determinations as to who has a claim to them.

[14] The Registrar has no " claim" to the frozen funds. Clearly, however, the Registrar has, as the public official at whose behest they were frozen, an " interest" in them. That interest is to protect the funds, so far as it can be done and for so long as the Registrar considers it necessary, for the claims of others.

[15] On November 10, 1997 the Applicant, acting as solicitor for W Ltd., proposed to the Bank that, instead of paying the funds into court as contemplated by the interpleader proceedings it had commenced, the Bank should instead, if the consent of DC could be obtained, pay the funds to Alexander Holburn in trust. In light of the nature and purpose of the freezing order, it is entirely unsurprising that the Bank's counsel responded that this could not be done " without having [DC's] consent and the consent of the Registrar of Mortgage Brokers." [Statement of Agreed Facts, paragraph 22].

[16] The necessary consents to the payment into trust, including that of the Registrar, were obtained; and

the Court Order, on which the Registrar was identified as a party, was issued.

[17] In our view, neither the fact that the Registrar consented to the funds being deposited in one place rather than another nor the fact that the Court, knowing of that consent, issued the Court Order authorizing that this be done, extinguished or otherwise released his interest in those funds. Nothing changed as the result of his having consented or as the result of the Court Order, except the location of the funds. The Registrar's interest continued undiminished. We fail to understand why it might be thought that the change in the location of the funds caused his interest in them to evaporate.

[18] There is no evidence that the Registrar's consent to the making of the Court Order was either sought or obtained on any understanding that he was giving up all further rights (and arguably obligations) in the matter and so in effect disabled himself from continuing to ensure that the public interest in their proper disposition was adequately protected.

[19] The Applicant's evidence was that he had spoken to counsel for these parties during the period subsequent to the Order of Mr. Justice Tysoe and before the disbursal of the funds to G Inc. Counsel had indicated to the Applicant that the Registrar and the Province had no further interest in these funds.

[20] Among the documents received in evidence by the Hearing Panel was a letter dated April 20, 2007 from counsel to the Registrar, addressed to counsel for the Applicant. The Hearing Panel quoted from that letter in paragraph [35] of the decision on Facts and Verdict. In full, the letter is as follows:

> This will confirm our discussions today and that I am counsel for the Province of British Columbia and Robert J. Hobart, the former Registrar of Mortgage Brokers, in [the action between DC and W Ltd.]. The action was commenced in 1997 and has long since been dormant.
>
> This action concerned funds which were placed in a trust account at the Bank of Montreal which were subsequently the subject of a freeze order made at the time of the Eron Mortgage scandal. You have asked me to determine whether the office of the Registrar or the Financial Institutions Commission has any interest in those funds and whether they had any interest in them as of July 1, 2001.
>
> I understand you act for Michael Scholz in proceedings before the Law Society of British Columbia.
>
> *I confirm that neither Hobart, FICOM nor the Province has a claim to the funds as of today nor did they on July 1, 2001. In 2001, FICOM's only interest would have been to ensure that the funds were not diverted in violation of court orders.*
>
> I can say that it was my expectation that as counsel for two of the defendants in this action, I would have received notice of any application for payment out of the funds. At the time I would have sought instructions, but again, subject to the nature of that application I expect it would have been unlikely we would have taken any position.
>
> I have no recollection of having ever having spoken to Mr. Scholz concerning this matter. I have reviewed my file and can see no notes indicating we spoke at any time. I did not advise Mr. Scholz that my clients had no interest in the funds.
>
> [emphasis added]

[21] The Applicant relies on the first sentence in the italicized passage. With all respect, however, we do not think it is relevant. So far as we have been able to determine, the Registrar never asserted a " claim" on the funds or suggested that he might have one, nor could he. The key part of the passage is the second sentence, which is entirely consistent with our view of the nature of the Registrar's *interest* and that it survived the Court Order.

[22] In support of the contention that the Registrar was not a party with any interest in the funds, the Applicant also relies on some evidence given by DC before the Hearing Panel to the effect, as described in the Applicant's written submission to us, that " FICOM had not expressed a positive interest in the funds, and its main concern was protecting itself from criticism." It is clear from a careful reading of DC's evidence, however, that his view amounted to little more than a lay impression. It was not based on any advice received from FICOM or the Registrar or, indeed, anyone else. It rested, in any event, upon the mistaken belief that the word " interest" in the Court Order, referred to a financial interest or claim to the funds. Moreover, we are far from persuaded that any evidence is relevant to the question of whether the Court Order required that the consent of the Registrar be obtained.

[23] Taking into account:

> (a) the context of the interpleader motion and the fact that the Court Order was made as an application in proceedings in which the Registrar was named as a party;
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> (b) the nature and extent of the Registrar's interest in the funds and their treatment; and
>
> (c) the express language of the Court Order,

we think the Hearing Panel was clearly correct in reaching the conclusion that the consent of the Registrar was required and that the failure to obtain that consent was, for the reasons that the Panel gave and to which we have nothing to add, professional misconduct.

[24] The Hearing Panel also considered whether the consents of W Ltd., LM, the Province of British Columbia and the 33 persons who were given notice of the original interpleader motion were necessary before the Applicant could have properly paid out the funds from trust. The Hearing Panel found that the consents of all those persons were necessary and were not in fact obtained. We do not believe it is necessary to deal with the consents of those persons given our findings with respect to the lack of consent by the Registrar. Count 1(c) is proven on that fact alone.

The Second Issue on Review - Allegation 1(b)

[25] With respect to allegation 1(b), the Hearing Panel found as follows:

> [43] This Panel also finds that Rule 3-51 applied to the funds that Alexander Holburn was required to hold pursuant to the terms of the Court Order. The term of the Court Order that provided that the [sic] were to " be held in trust by Alexander, Holburn, Beaudin & Lang unless otherwise ordered by the court or agreed by all parties with any interest in or claim to the funds" defined the written instructions that the Respondent required before the funds could be removed from the type of trust account required by Rule 3-51(2) and (4).
>
> [45] This Panel has previously determined that the Respondent did not obtain the consents required by the Court Order. It follows therefore that the Respondent did not have the written instructions required by Rule 3-51(3) that would have permitted him to pay the funds to G Inc. The Respondent was therefore in breach of Rule 3-51.

[26] Counsel for the Applicant argued:

> It is submitted that Mr. Scholz could owe no duty to anyone higher than that created by Mr. Justice Tysoe's order; after all, he could have finally disposed of that money if he complied with the order. Accordingly all he needed was the consent of W Ltd. and DC.

If the review panel accepts that the Applicant only needed the consents of DC and W Ltd. this count fails.

[27] We have found that the Applicant needed the consent of the Registrar and did not obtain it. It follows that he caused the funds to be paid from trust in breach of Rule 3?51. The Hearing Panel found that allegation 1(b) of the citation was made out. In our view it was correct in this.

Allegations 2 and 4

[28] Both allegations 2 and 4 contain as an essential element the allegation that the Applicant acted for W Ltd. in relation to the loan to G Inc. of the funds held in trust.

[29] The Hearing Panel found:

> [39] At the time of the provision of funds to G Inc., the Respondent was legal advisor to W Ltd., the provider of the funds and was also the legal advisor in addition to being President and Vice-Chairman of G Corp., the parent company to G Inc. He was aware of the Court Order requiring Court approval or consents of the parties with any interest in or claim to the funds.
>
> [49] The evidence established that the Respondent had his foot in two houses, adverse in interests at the time that the funds were loaned. In the first house, the Respondent was still associated with the law firm who was the Trustee of the fund on behalf of those ultimately entitled to it. The law firm, as trustee, was the lender. In the second house, the Respondent was also the lawyer for G Inc., the borrower. The Respondent was also the President, employee, and Vice-Chair of G Corp., the parent of the lender, G Inc. The interests of G Inc. and G Corp. were the same.
>
> [54] Accordingly, the Panel has determined that the Respondent acted in circumstances that gave rise to divided loyalties and in circumstances of a conflict of interest. Counts 2 and 4 of the citation have therefore been made out by the Law Society, and the Respondent's conduct in these circumstances is professional misconduct.

[30] It was argued on behalf of the Applicant that:

> Contrary to allegations 2 and 4, the evidence was unanimous that the Applicant was not acting for W Ltd. at the time of the loan. The Panel seems to have recognized this in analyzing the Applicant's conduct on these counts, because it did not refer to the fact that the Applicant was acting for W Ltd. in its analysis of allegations 2 and 4.

[31] While it is true that in paragraphs [46] to [55] of the reasons, which deal with allegations 2 and 4, the Hearing Panel does not refer to the Applicant acting for W Ltd. It did do so, however, in its findings of background facts contained in paragraphs [1] to [35], make clear findings that the Applicant acted for W Ltd.

[32] In paragraph [8] and [14]:

> [8] At all material times, the Respondent acted in the following capacities: for G Corp., he was President, legal counsel, Vice-Chair, and Solicitor; for G Inc., he was Solicitor; and for W Ltd., he was its Solicitor.
>
> [14] The Respondent continued to represent W Ltd. and provided significant legal services, for

which accounts were rendered in the years 1998 to 2001 by the Respondent's firm to W Ltd. in the amount of approximately $106,000.

[33] There is ample evidence in the Record that the Applicant acted for W Ltd. in respect of the loan to G Inc.

[34] In the Agreed Statement of Facts the Applicant agreed to the following:

> 37. On June 28, 2001, DC met with Mr. Scholz at his office at Alexander Holburn. During this meeting, Mr. Scholz told DC that there was an opportunity to earn a higher rate of return on the Funds by investing them in G Corp. and gave DC a copy of G Corp.'s annual report. At the conclusion of the meeting, Mr. Scholz asked DC to provide confirmation by email of the authorization of W Ltd. to invest the Funds in the Subsidiary.
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> 38. A bill was issued by Alexander Holburn to W Ltd. which included a charge in respect of this meeting (Attachment 21).

[35] Attachment 21 is an account from Alexander Holburn to W Ltd. dated November 30, 2001 signed by the Applicant. It covers legal services provided on a range of matters from April 14, 1999 to July 19, 2001. It included charges for the meeting the Applicant had with DC as described in paragraph 37 of the Agreed Statement of Facts quoted above. It also included charges for preparing a memo regarding the " disbursement of trust monies to GCC" .

[36] At the time of the loan to G Inc. Alexander Holburn was holding funds in trust for W Ltd. and was its registered and records office. (Agreed Statement of Facts para. 6)

[37] The promissory note signed by the Applicant states as follows:

> **G Inc**., a company incorporated in the Province of British Columbia, Canada, promises to pay to the order of Alexander, Holburn, Beaudin & Lang " In Trust" for W Ltd., ...
>
> The monies from the promissory note are a loan from Alexander, Holburn, Beaudin & Lang " In Trust" for W Ltd., a legal firm doing business in the Province of British Columbia for a client of that firm ...

[38] The signature block is as follows:

> **Alexander, Holburn, Beaudin & Lang** " In Trust" for W Ltd., the LENDER

[39] During the hearing, Mr. Gregory acknowledged on behalf of the Applicant that, in obtaining the consents of DC and LM to the loan of the trust funds to G Inc. he did so as counsel for W Ltd.

[40] We find there is ample evidence to conclude that the Applicant was acting for W Ltd. in respect of the loan in question.

[41] The balance of allegation 2 alleges that the Applicant acted in circumstances that gave rise to divided loyalties; that is he acted for both W Ltd. and G Inc. The balance of allegation 4 alleges that the Applicant was in a conflict when acting for W Ltd. in respect of the loan because of his employment with and financial interest in G Corp.

[42] It is clear that the Applicant owed duties to G Corp. and G Inc., was employed by G Corp., and had a financial interest in G Corp.

[43] In the Agreed Statement of Facts, the Applicant agreed to the following:

Relationship with G Corp.

8. In or about March 2000, Mr. Scholz was retained by G Corp. to provide legal advice and services to it and to its wholly-owned subsidiary, G Inc. (the " Subsidiary"). (Attachment 3, para. 4)

9. On or about April 25, 2000, Mr. Scholz was appointed a director of G Corp. (Attachment 4).

10. On June 1, 2001, Mr. Scholz was appointed President of G Corp. (Attachment 5).

[44] His contract of employment with G Corp. states:

> **Position**: The Employer [G Corp.] shall employ the Executive as President, legal counsel and Vice Chair of the Board of G Corp. as well as a member of the Board of G Inc. upon the terms and conditions set out in this agreement

[45] Attached to the Agreed Statement of Facts as Tab 37 is the quarterly report of G Corp for the quarter ended June 30, 2001 signed by the Applicant on August 14, 2001. It reports that the Applicant was granted an incentive option on June 4, 2001 of 350,000 shares with an exercise price of $2.25.

[46] The Applicant also disclosed that, when he became a Director of G Corp in the spring of 2000, he was given an option on 150,000 shares with an exercise price of $2.70 per share (Tab 36 Agreed Statement of Facts). This, of course, shows that the Applicant was an officer, director, solicitor, employee, and a person who stood to gain financially from the success of G Corp. and its wholly-owned subsidiary G Inc.

[47] The Hearing Panel expressed their reasons about the conflict in paragraph [49] in the terms of " the law firm as Trustee" on the one hand and his duties and interests to and with G Corp and G Inc. on the other. This is the basis of the Applicant's submission. Allegations 2 and 4 allege that the Applicant was in conflict because he acted for W Ltd. not because he was associated with the law firm. Mr. Gregory argues that is a different conflict, which is not included in the citation.

[48] In fact the beneficiary for whom the law firm was acting was W Ltd. We agree with the Panel's reasoning and conclusion on the basis that the Applicant was acting as counsel for W Ltd. on one hand and, on the other, for G Inc. of which he was a Director and which was the wholly-owned subsidiary of G Corp, of which he was the President and Vice-Chair of the Board. He of course was counsel to both G Corp. and G Inc. and owed duties to them that conflicted with his duties to W Ltd. By reason of the stock options he held he had a personal financial interest in G Corp.

Professional Misconduct

[49] It was argued on behalf of the Applicant that " the Applicant's conduct must be viewed through his eyes." Further it was argued that this was not a case of a fully practising lawyer acting in conflicts; the Applicant was hanging up his spurs; he had stopped thinking like a lawyer.

[50] No support was provided for the first proposition. In any event, it does not withstand analysis. A lawyer's conduct must be viewed objectively and in the context of all the surrounding circumstances. Many lawyers believe that they have done nothing wrong. That belief is irrelevant to whether the impugned conduct is consistent with and permissible under the standards that govern lawyers' behaviour.

[51] The explanation given, namely the Applicant's intention to retire in the future, does not relieve him of his obligation to continue to act as a practising lawyer until he is in fact no longer one, and this did not happen until the end of 2001. Because the Applicant continued to act as a lawyer, including charging fees for his services, he was obliged to continue to think and act as a lawyer.

[52] The standard for finding professional misconduct is set out in *Law Society of BC v. Martin*, 2005 LSBC 16. In order to find professional misconduct a panel must find that " the facts as made out disclosed a marked departure from that conduct the Law Society expects of its members ..."

[53] In paragraph [55] the Panel found:

> [55] In arriving at its decision that the Respondent's conduct is professional misconduct, this Panel is of the view that the conduct of the Respondent established by the evidence discloses a marked departure from what the Law Society expects from its members, in his failure to properly obtain the consents of the appropriate parties to the payment out of funds from his trust account where such payment was not approved by Order of the Court; by acting in circumstances of conflict of interest in the placement of the funds with a Company of which he was President and legal advisor; and in investing those funds contrary to Rule 3-51 of the Law Society Rules.

[54] We agree with the Hearing Panel's decision that all of the Applicant's conduct amounted to professional misconduct.

Penalty

[55] The Hearing Panel, in reasons issued on June 2, 2008 suspended the Applicant for one month and ordered him to pay costs in the amount of $26,437.50. On Review, the Applicant argues that the penalty should be reduced to a reprimand, the costs of the hearing below should be reduced, and he should be given costs of this Review.

[56] The Applicant argues that his conduct does not warrant a one month suspension. He characterizes his conduct as follows:

> (a) the sole purpose of the loan was to benefit those entitled to those trust funds;
>
> (b) the lack of attention to formalities was consistent with the actions of a burnt-out lawyer whose heart had left the office a few days before his body; and
>
> (c) he believed he had the consent of everyone whose consent was required.

[57] The Applicant says the Panel imposed a more severe penalty because they improperly and incorrectly found:

> (a) that the Applicant had gone behind DC's counsel to obtain a consent;
>
> (b) that the Applicant had not obtained W Ltd.'s authority;
>
> (c) the Applicant had improperly signed the trust cheque;
>
> (d) that the Applicant was required to give notice to FICOM and the 33 other respondents.

[58] On Review we have not found it necessary to deal with the first three points but have found against the Applicant on the necessity of obtaining the consent of the Registrar of Mortgage Brokers.

[59] The Hearing Panel, in its reasons on Penalty, did not mention any of the first three factors. Their reasons on Penalty are stated in paragraphs [7] to [10] as follows:

> [7] The misconduct in the circumstances of this case is important as it involves the breach of a Court Order and acting for two clients in a situation of divided loyalties.

[8] All citizens have a duty to observe Court Orders. This is particularly true for members of the Law Society, who are Officers of the Court and owe a duty to maintain the integrity of our legal system. Courts and Court Orders are at the core of our legal system.

[9] In addition, the duty of a lawyer to give each client undivided loyalty is fundamental. This is stressed by the Supreme Court of Canada in *R. v. Neil* (2002), 218 D.L.R. (4th) 671 and by the Benchers in *Law Society of BC v. Coglon*, [2002] LSBC 21.

[10] It is noted that there was ultimately no financial loss for any of the parties involved; however, this is not a significant factor in mitigation of the appropriate disposition of this matter.

[60] It is worthy of note that that Applicant was no longer a member of the Law Society at the time penalty was opposed. As a result, no stay was sought and the one month suspension had been fully served before the Review was argued. Changing the penalty will have no practical benefit to the Applicant. We are of the view that, in the circumstances, a one month suspension is appropriate for the reasons expressed by the Hearing Panel set out above.

[61] We consider the costs ordered below to be appropriate given our decision to uphold the Hearing Panel's decision on the outcome and order the Law Society be paid its costs of this Review in an amount to be determined.