2012 LSBC 27
Report issued: August 22, 2012
Oral Reasons: April 30, 2012
Citations issued: May 5, 2011 and February 16, 2012

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

Laird Russell Cruickshank

Respondent

Decision of the Hearing Panel

Hearing date: April 19, 2012
Panel: **Majority decision:** Tony Wilson, Bencher, Chair, Adam Eneas, Public representative
Minority decision: Carol Hickman, QC, Lawyer

Counsel for the Law Society: Alison Kirby
Counsel for the Respondent: Gerald Cuttler

Background

[1] This is a decision of a Hearing Panel convened under Rule 4-22 of the Rules of the Law Society. The hearing arises out of two separate citations against the Respondent, Laird Russell Cruikshank, who was called in 1983.

[2] The first citation was authorized April 14, 2011 and issued on May 5, 2011. The second was authorized January 26 2012 and issued February 16, 2012. Service of the citations was acknowledged by the Respondent. An application was made to join the two citations, and the Chambers Bencher granted the application on March 23, 2012. Accordingly, this Hearing Panel will deal with both citations.

[3] The first citation set out six allegations of misconduct during the period 2005 – 2008, which were uncovered during a compliance audit and subsequent investigation of the Respondent's practice. In the first citation, the Respondent is cited for:

> (a) failing to comply with various accounting rules and, in particular, failing to deposit trust funds as soon as practicable (two instances), withdrawing trust funds prior to delivering a bill for fees (five instances), failing to maintain proper records, failing to prepare monthly trust reconciliations within 30 days and failing to prepare monthly trust reconciliations for a separate trust account;
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> (b) two allegations of breach of undertakings given in separate civil litigation matters;
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> (c) failing to enter into written contingent fee agreements with five clients;
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> (d) failing to remit PST in a timely way; and
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> (e) failing to remit GST in a timely way.

[4] The second citation set out four allegations of misconduct during the period 2009 – 2010 which were self-reported on the Respondent's Annual Trust Report for the period ending April 30, 2010. In the second citation, the Respondent is cited for:

> (a) failing to remit PST in a timely way;
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> (b) failing to remit GST in a timely way;
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> (c) failing to remit employee source deductions; and
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> (d) failing to comply with various accounting rules and, in particular, withdrawing trust funds by way of unsigned trust cheques (four instances), withdrawing trust funds by way of improper

electronic transfers (three instances), failing to immediately eliminate trust shortages (bank charges) and failing to immediately eliminate trust shortages (nine instances relating to client retainers).

[5] The Respondent made conditional admissions under Rule 4-22 to the above instances of a breach of the Law Society accounting Rules and also admitted to professional misconduct. Both the Respondent and the Law Society agreed, subject to the ruling of this Panel, to a proposed disciplinary action, which involved a one-month suspension and $8,500 costs.

[6] On April 30, 2012, in the interest of providing a decision in a timely manner so that the Respondent could advise clients of his suspension and make other arrangements with his practice for the period of his suspension, the Law Society advised the Respondent that the Hearing Panel had accepted his proposal pursuant to Rule 4-22 including his admission and consent to disciplinary action noted above, with written reasons to come later.

[7] Panel member Carol Hickman, QC dissented from the majority opinion of Mr. Wilson and Mr. Eneas.

RELEVANT FACTS

[8] The parties submitted an Agreed Statement of Facts in respect of each of the two citations. Both Agreed Statements of Facts are extensive, being 18 pages in length in respect of the first citation and 23 in respect of the second. Both append numerous documents. They deal with technical breaches of the accounting Rules and an inadvertent breach of an undertaking. However, the underlying facts can be summarized as follows:

1. Between 2005 and 2008 Mr. Cruickshank failed to comply with Part 3 of the Law Society Rules, in the following manner:

(a) on two occasions in 2005 and 2006, he received trust funds, but he did not deposit the funds in a pooled trust account as soon as practicable;

(b) he withdrew or authorized the withdrawal of trust funds in payment of his fees without first preparing a bill for those fees and/or immediately delivering the bill to the client;

(c) he did not record all funds received and disbursed in connection with his law practice by maintaining the records and/or did not retain all supporting documents for both trust and general accounts.

2. Between 2009 and 2010 Mr. Cruickshank failed to comply with Part 3 of the Law Society Rules, in the following manner:

(a) in four instances, he permitted the withdrawal of funds by trust cheques that were not signed by a practising lawyer;

(b) in three instances, he withdrew or authorized the withdrawal of funds from trust by electronic transfers;

(c) at various times in 2009 and 2010, he failed to immediately pay enough funds into his trust account to eliminate trust shortages caused by service charges, credit card discounts and bank errors;

(d) in 2009 and 2010, on approximately nine occasions, he received trust funds that were deposited to his general account causing trust shortages that he did not immediately eliminate.

3. Mr. Cruickshank did not prepare a monthly trust reconciliation for his pooled trust account within 30 days of the effective date of the reconciliation, in respect of some or all of November 2005, December 2005, April 2006, September 2006, October 2006, September 2007 and March 2008.

4. Mr. Cruickshank did not prepare a monthly trust reconciliation for the separate trust account within 30 days of the effective date of the reconciliation, in respect of some or all of the following months: April 2007, May 2007, December 2007, January 2008, February 2008, March 2008, May 2008, June 2008, July 2008, August 2008 and September 2008.

5. While acting for two different clients in 2007 and 2008, Mr. Cruickshank breached trust conditions or undertakings imposed on him by opposing counsel, by disbursing from trust in breach of the terms of

the undertakings, the funds enclosed with a letter. In both cases, he disbursed trust funds forwarded to him in settlement prior to complying with his undertaking to return a signed release and, in one of the cases, prior to complying with his undertaking also to return an endorsed consent dismissal order.

6. On several occasions between approximately 2006 and 2008, Mr. Cruickshank entered into a contingency fee agreement with a client and received remuneration pursuant to such agreement, even though he had not entered into such an agreement in writing, and/or he did not provide the statements required in writing by the Rules.

7. At various times between 2004 and 2010 Mr. Cruickshank collected BC provincial sales tax as well as goods and services tax from his clients but failed to remit such taxes and interest to the provincial and federal governments in a timely way.

8. Between 2009 and 2010 Mr. Cruickshank deducted and collected funds to source deductions from wages owing to employees but failed to remit such funds and interest payable to Canada Revenue Agency in a timely way. Mr. Cuttler, counsel for the Respondent, highlighted the facts that the Respondent received no personal benefit and that he had no dishonest intent and was not guilty of deceit in respect of the conduct referred to in the citations. He submitted that the Respondent was a poor administrator of the business side of his practice, and was taking steps to remedy that by complying with accounting rules the Law Society requires of its members. The Respondent had also hired a bookkeeper experienced in law firm accounting practices.

RULE 4-22

[9] The purpose of Rule 4-22 is to permit a member of the Law Society to make admissions of disciplinary violations on the condition that he or she would receive a specified disciplinary action. If the Discipline Committee accepts the lawyer's proposal, discipline counsel is instructed to recommend to the hearing panel that it be accepted.

[10] The hearing panel may only accept or reject the proposal. It may not substitute a different adverse determination or disciplinary action than the one proposed by the Respondent and agreed to by the Discipline Committee.

[11] In considering whether to accept the proposal, the hearing panel must be satisfied that:

> (a) the proposed admissions on the substantive matter are appropriate, and
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> (b) the proposed disciplinary action is within the range of a fair and reasonable disciplinary action in all the circumstances.

[12] In this case, the Respondent admitted all of the underlying facts set out in the Agreed Statement of Facts in support of the allegations in the citations. He admitted that he acted in breach of the Law Society Rules by committing the disciplinary violations and that he had committed professional misconduct.

[13] The Respondent consented to:

> (a) a suspension from the practice of law for one month, commencing on May 15, 2012; and
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> (b) costs in the amount of $8,500, payable by April 30, 2013.

[14] The Respondent expressly acknowledged that publication of the circumstances summarizing these admissions would be made pursuant to Rule 4-38 and that such publication would identify the Respondent.

[15] The Agreed Statements of Facts, summarized above, explained the circumstances surrounding the breach of accounting rules, the facts that gave rise to the breach of undertakings and other incidents of professional misconduct specified in the citations. The Agreed Statements of Facts also indicated the steps the Respondent had taken to alleviate what could only be called horrendously sloppy bookkeeping, accounting and law firm management practices that fell far beneath the standard expected by the Law Society of its members.

[16] The Respondent, it should be noted, fully co operated with the Law Society in respect of its investigations.

[17] In light of these admissions it is for this Panel to accept or reject the proposed disciplinary action. The Panel cannot modify the proposed disciplinary action.

DECISION OF THE MAJORITY

[18] The Discipline Committee accepted the Respondent's conditional admissions and proposal pursuant to Rule 4-22 with respect to both citations.

[19] The majority determined that the proposed admissions on the substantial matters were appropriate. The Respondent admitted to the Rules breach and the incidents of professional misconduct. In addition, he had taken steps in his practice to alleviate management and accounting deficiencies in the future.

[20] As for the disciplinary action, there was a legitimate question as to whether a one-month suspension was an appropriate outcome in these circumstances. But the majority, comprising Mr. Wilson and Mr. Eneas, accepted the proposed disciplinary action of a one-month suspension and costs of $8,500.

[21] The Agreed Statement of Facts shows that the Respondent was profoundly sloppy in the management of the financial and accounting side of his law practice. These are serious breaches of Law Society accounting rules and other rules occurring over an extended period of time. The facts also show that the Respondent breached undertakings in two instances by disbursing trust funds forwarded to him in settlement prior to complying with his undertaking to return a signed release and, in one of the cases, prior to complying with his undertaking also to return an endorsed consent dismissal order.

[22] But what is noticeably absent is any malice or deception by the Respondent, nor was there any profiting by him in respect of any of the violations. For example, he had problems with respect to retainers being paid for by charge card. Because he did not maintain a float in his trust account to deal with charge card service fees, those fees were deducted from the trust account, leading to shortfalls. It was very sloppy accounting practices and not anticipating that service charges would be taken out of his trust account instead of his general account. But he did not profit from this.

[23] Indeed, although the misconduct amounted to numerous breaches over a period of five years, the majority of the misconduct was caused by the Respondent paying little or no attention to the administrative side of his practice. The Law Society found no evidence of widespread or systematic failure to comply with the accounting rules when the Respondent was investigated. There was no evidence of any harm to clients. Indeed, there were no letters of complaint from any client. He did not gain any financial advantage from his conduct.

[24] During the period of the infractions between 2005 and 2010, the Respondent relied on one or more office managers who were unfamiliar with Law Society trust accounting practices and procedures. Clearly, this is no excuse. But it explains, in part, why he is in the position in which he now finds himself, and is an instructive lesson to all lawyers that they must ensure their professional staff is qualified and capable of performing the duties and responsibilities expected of members of the Law Society.

[25] The submission of the Respondent's counsel is that the Respondent is now utilizing the services of an experienced bookkeeper who has worked with numerous lawyers and who is familiar with trust accounting for lawyers. This individual is now overseeing the Respondent's trust and accounting functions and has been authorized by the Respondent to fully cooperate with the Law Society to ensure ongoing compliance. Moreover, in February 2011, the Respondent took and completed the Law Society's Trust Accounting course.

PRIOR DISCIPLINE HISTORY

[26] Since he was called to the bar in 1983, the Respondent has had numerous dealings with the Law Society including:

> (a) A Conduct Review in 1987 arising out of his conduct during a criminal trial where the presiding judge complained about the Respondent's inadequate research, inappropriate court conduct, lateness and the unnecessary obtaining of adjournments;
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> (b) A Conduct Review in 1995 with respect to the Respondent's conduct respecting the breach of an undertaking to pay another lawyer's disbursements within 21 days after the transfer of a file and failing to respond to communications from that other lawyer;
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> (c) A Conduct Review, also in 1995, with respect to the Respondent's dealings in an acrimonious custody and access matter during which he lost his temper in a verbal exchange with the unrepresented husband;

(d) A citation issued in September 1994 with respect to the Respondent being involved in a motor vehicle accident while intoxicated. The Respondent allowed his client to mislead the police by claiming that the client was driving the motor vehicle and not Mr. Cruickshank. He admitted the professional misconduct and was fined $6,000

[27] The Respondent admitted to having had a drinking problem many years ago and said that he no longer drank alcohol.

LAW

[28] Counsel for the Law Society referred to a number of cases, including *Law Society of BC v. Ogilvie*, [1999] LSBC 17, which sets out the following factors that should be considered by a Hearing Panel:

(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.

[29] In the Respondent's case, factors in support of a suspension included:

(a) there were multiple instances of misconduct;

(b) the misconduct occurred over a five-year period;

(c) the Respondent did not adequately address his accounting problems until May 2011 when he hired a qualified bookkeeper;

(d) the various instances of misconduct involved his failure to comply with his obligations to the Law Society, his obligations to his clients and his obligations to other lawyers, all of which indicate a common theme of inattentiveness, and indeed sloppiness, in relation to the requirements of practice;

(e) the importance of undertakings to the legal profession (Law Society of BC v. Heringa, 2004 BCCA 97); and

(f) his prior discipline history and, in particular, the fact that he has a previous conduct review for a breach of undertaking.

[30] However, factors suggesting the appropriateness of a one month suspension rather than a longer period of suspension are:

(a) the lack of any element of dishonesty by the Respondent;

(b) the fact that some of the misconduct was self-reported;

(c) the improvements made by the Respondent to his accounting practices; and

(d) the lack of current disciplinary decisions that would support a longer suspension in these circumstances.

[31] The Respondent admits to breaching Law Society accounting Rules, and professional misconduct respecting his:

(a) failure to eliminate trust shortages;

(b) breaches of undertakings;

(c) failure to enter into written contingency fee agreements;

(d) failure to remit PST, GST and employee source deductions.

[32] With respect to the importance of undertakings, although the breaches were inadvertent and the Respondent did not personally gain from the breaches, the Court of Appeal commented on undertakings in *Law Society of BC v. Heringa*, 2004 BCCA 97 and quoted the hearing panel at paras. [37] and [38]:

> [37] Undertakings are not a matter of convenience to be fulfilled when the time or circumstances suit the person providing the undertaking; on the contrary, undertakings are the most solemn of promises provided by one lawyer to another and must be accorded the most urgent and diligent attention possible in all of the circumstances.
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> [38] The trust and confidence vested in lawyer's undertakings will be eroded in circumstances where a cavalier approach to the fulfillment of undertaking obligations is permitted to endure. Reliance on undertakings is fundamental to the practice of law and it follows that serious and diligent efforts to meet all undertakings will be an essential ingredient in maintaining the public credibility and trust in lawyers.

[33] With respect to the issue of professional misconduct, which is admitted, the test for professional misconduct was established in *Law Society of BC v. Martin*, 2005 LSBC 16 at paragraph [171] as:

> … whether the facts as made out disclose a marked departure from that conduct the Law Society expects of its members; if so, it is professional misconduct.

[34] In *Martin*, the panel observed that a finding of professional misconduct did not require behaviour that was disgraceful or dishonourable. The conduct could be negligent. The panel concluded at paragraph [154]:

> … The real question to be determined is essentially whether the Respondent's behaviour displays culpability which is grounded in a fundamental degree of fault, that is whether it displays gross culpable neglect of his duties as a lawyer.

[35] What is an "appropriate penalty" is discussed in *Law Society of BC v. Rai*, 2011 LSBC 02. In that case, the respondent was part of a scheme designed by a realtor to obtain mortgage proceeds under false pretenses, and the respondent facilitated mortgage fraud, although not knowingly. The respondent failed to make any inquiries to assess the bona fides of the mortgage transactions or of his clients, who were not at arm's length with the realtor. The respondent also failed to recognize the fraudulent nature of the scheme, notwithstanding the many red flags raised by the characteristics of the real estate transactions. The panel in Rai acknowledged the three-month suspension proposed by the respondent and the Law Society fell at the lower end of the range of sanctions imposed in similar cases as a fair and reasonable penalty. But the panel had observations on the purpose of Rule 4-22 and what a fair and reasonable penalty is:

> [6] … Rule 4-22 of the Law Society Rules … allows for the Discipline Committee of the Law Society and the Respondent to agree that professional misconduct took place and agree to a specific disciplinary action, including costs. This provision is to facilitate settlements, by providing a degree of certainty. However, the conditional admission provisions have a safeguard. The proposed admission and disciplinary action do not take effect until they are "accepted" by a hearing panel.
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> [7] This provision exists to protect the public. The Panel must be satisfied that the proposed admission on the substantive matter is appropriate. In most cases, this will not be a problem. The Panel must also be satisfied that the proposed disciplinary action is "acceptable". What does that mean? This Panel believes that a disciplinary action is acceptable if it is within the range of a fair and reasonable disciplinary action in all the circumstances. The Panel thus has a limited role. The question the Panel has to ask itself is, not whether it would have imposed exactly the same

> disciplinary action, but rather, “Is the proposed disciplinary action within the range of a fair and reasonable disciplinary action?”
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> [8] This approach allows the Discipline Committee of the Law Society and the Respondent to craft creative and fair settlements. At the same time, it protects the public by ensuring that the proposed disciplinary action is within the range of fair and reasonable disciplinary actions. In other words, a degree of deference should be given to the parties to craft a disciplinary action. However, if the disciplinary action is outside of the range of what is fair and reasonable in all the circumstances, then the Panel should reject the proposed disciplinary action in the public interest.

[36] So for this Panel, it is not what disciplinary action we might otherwise wish to order. We must consider other cases of a similar nature to assess whether the proposed disciplinary action is within the range of a fair and reasonable disciplinary action in all the circumstances.

[37] Although each of the separate allegations of misconduct (including the breaches of undertakings) set out in the two citations against the Respondent would, if assessed separately, attract a small to medium fine, the Panel agrees with counsel for the Law Society that, when considering the appropriate disciplinary action, the appropriate and usual approach is to make this assessment on a “global” basis taking into account the nature of all the misconduct as set out in the factual material. This is the standard approach taken by hearing panels (*Law Society of BC v. Gellert*, 2005 LSBC 15).

[38] In *Law Society of BC v. Smith*, 2004 LSBC 29, the respondent failed to prepare and maintain monthly trust reconciliations in the form and within the time required by the Law Society Rules; failed to maintain trust accounting records necessary to enable the Law Society to properly evaluate the circumstances surrounding trust shortages; having had a trust shortfall in his trust account, contrary to Law Society Rules; not immediately paying enough funds into the accounts to eliminate the shortfall; and not immediately reporting the shortfall to the Law Society. It was another case of sloppy bookkeeping and accounting, although not as extensive as the circumstances giving rise to Mr. Cruikshank’s citations. Mr. Smith was required to pay a fine of $2,000 and costs of $7,500 and was referred to the Practice Standards Committee to satisfy such remedial programs that Committee considered necessary. There was no suspension in the Smith case.

[39] Under *Smith*, a breach of the Law Society Rules does not in itself constitute professional misconduct. A breach of the Act or the Rules that constitutes a Rules breach rather than professional misconduct is one where the conduct, while not resulting in any loss to a client or done with any dishonest intent, is not an insignificant breach of the Rules and arises from the member paying little attention to the administrative side of practice.

[40] In *Law Society of BC v. Lyons*, 2008 LSBC 09, a citation was issued against the respondent for accepting cash in the amount of $7,500 in contravention of Rule 3 51 which is known as the “no-cash rule”; the respondent breached the rule four times over a period of nine months and made conscious decisions not to abide by the clear wording of the Rule, deliberately living with the risks of breaching it. That panel accepted the respondent’s admission of misconduct. No suspension was ordered by the panel.

[41] A one month suspension, in the majority’s view, is within the range of a fair and reasonable disciplinary action in all the circumstances of this case.

COSTS

[42] An order for costs in the amount of $8,500 was proposed by the Respondent and accepted by the Law Society, subject to the determination of this Panel. A table of costs in other proceedings was submitted to the Panel.

[43] The Panel determines that the costs agreed to are reasonable, having regard to the factors set out in Law Society of BC v. Racette, 2006 LSBC 29 at paragraphs [13] and [14]. Those factors are:

> (a) the seriousness of the offence;
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> (b) the financial circumstances of the Respondent;
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> (c) the total effect of the penalty, including possible fines and/or suspensions; and
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> (d) the extent to which the conduct of each of the parties has resulted in costs accumulating, or conversely, being saved.

ORDER

[44] The Panel orders that the Respondent:

1. Be suspended from practice for one month, beginning May 15, 2012.
2. Pay costs in the amount of $8,500 on or before April 30, 2013.

[45] The Panel instructs the Executive Director to record the Respondent's admission on his professional conduct record.

[46] We thank counsel for their preparation of the Agreed Statements of Facts, and their submissions.

MINORITY DECISION OF CAROL HICKMAN, QC

Background

[47] I agree with the background and facts as stated by the majority.

[48] It is important to note that the misconduct relating to the first citation resulted from a compliance audit and related to incidents from 2004 to 2008.

[49] The misconduct relating to the second citation was self-reported by the Respondent in his Annual Trust Report and related to incidents from 2009 and 2010.

[50] I accept the submissions of both counsel that there was no malice or personal gain for the Respondent. Further, it is acknowledged that the Respondent has been cooperative with the Law Society and admitted the errors.

[51] However, I disagree with the majority as to the characterization of the misconduct. I do not accept that the Respondent's behaviour can simply be characterized as "profoundly sloppy". These incidents do not relate to a few isolated incidents that occur over a short period of time. They span over a period of five years and occur on a repeated basis.

[52] The first citation refers to six allegations of misconduct. It is important to note that each allegation occurred on more than one occasion. Specifically:

(a) failure to deposit trust funds occurred on two occasions;

(b) withdrawal of trust funds prior to delivery of an account occurred on five occasions;

(c) breach of undertaking occurred on two occasions;

(d) failure to enter into a written contingency fee agreement occurred on five occasions;

(e) failure to prepare monthly trust reconciliations occurred on 18 occasions;

(f) failure to remit PST in a timely fashion occurred on 13 occasions;

(g) failure to remit GST in a timely fashion occurred on at least 15 occasions.

[53] What is even more disturbing is that a Compliance Audit was prepared as part of the first investigation. The Law Society wrote to the Respondent on several occasions throughout 2008, so he should have been well aware of the mistakes he was making by 2008. Despite this, the Respondent continued this behaviour throughout 2009 and 2010, which resulted in the second citation.

[54] The second citation refers to four allegations of misconduct; however again these allegations occurred on more than one occasion, as follows:

(a) failure to remit PST in a timely fashion occurred on over 15 occasions;

(b) failure to remit GST/HST in a timely fashion occurred on at least five occasions;

(c) failure to remit employee source deductions occurred on at least five occasions;

(d) failure to sign trust cheques occurred on four occasions;

(e) failure to sign electronic trust transfer occurred on three occasions;

(f) there were over 15 occasions that the Respondent had shortages in his trust account due to credit card charges;

(g) on nine occasions the Respondent failed to deposit trust funds into his trust account as soon as practicable resulting in trust shortages.

[55] Further, as indicated by the majority, the Respondent has had a number of previous dealings with the Law Society. These are set out in the decision of the majority.

LAW

[56] The law relating to a Rule 4-22 admission is set out in the decision of *Law Society of BC v. Rai*, 2011 LSBC 2. Counsel for the Law Society referred us to paragraphs [6] through [8].

[57] This decision establishes a two-pronged test. Firstly, the hearing panel must accept that the proposed admission is acceptable. Secondly, the hearing panel must accept that the proposed penalty is "within the range of a fair and reasonable disciplinary action in all of the circumstances."

[58] Clearly, there is no issue with regard to the admissions to the various discipline violations. The Respondent admits to several breaches of the Law Society Rules, as well as several findings of professional misconduct, which I accept.

[59] What I disagree with is the proposed disciplinary action. Given the severity and duration of the breaches and misconduct, I do not accept that a one-month suspension is "fair and reasonable" or in the public interest.

[60] Trust accounting and undertakings are hallmarks of the legal profession. The public must be confident that lawyers will do everything possible to maintain their trust accounts and fulfill their undertakings.

[61] This was confirmed by the Court of Appeal in the decision of the *Law Society of BC v. Heringa*, 2004 BCCA 97. In that decision, the hearing panel was referring to undertakings, but I believe the same applies to trust accounting. Lawyers cannot adopt a "cavalier approach to the fulfillment" of these obligations.

[62] The leading authority with regard to disciplinary action is the decision of *Law Society of BC v. Ogilvie*, [1999] LSBC 17. The factors to be considered are set out in the decision of the majority.

[63] At paragraph 60 of the Law Society's written submissions, counsel summarizes the reasons for a suspension as the appropriate disciplinary action as follows:

(a) the multiple instances of misconduct;

(b) the misconduct occurred over a six-year period;

(c) the Respondent did not adequately address his accounting problems until May 2011 when he hired a qualified bookkeeper;

(d) the various different types of misconduct which involve failures to comply with his obligations to his regulatory body, his obligations to his clients and his obligations to other lawyers, all of which suggest a common theme of inattentiveness to the requirements of practice;

(e) the importance of undertakings to the legal profession generally as set out in Heringa, (supra); and

(f) the Respondent's prior discipline history and in particular the fact that he has a previous conduct review for a breach of undertaking.

[64] I adopt these submissions and agree that a suspension is required in these circumstances. However, I believe that it should be for significantly longer than the one month proposed. Accordingly, I find that the one-month suspension proposed is not fair and reasonable in all the circumstances of this case and would reject the Rule 4-22 conditional admission.