2013 LSBC 29
Report issued: October 16, 2013
Citations issued: March 23, 2011 and July 28, 2011

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

Aaron Murray Lessing

Respondent

Decision of the Benchers on Review

Review date: May 29, 2013
Benchers: Jan Lindsay, QC, Chair, Satwinder Bains, Lynal E. Doerksen, Benjimen Meisner, David Mossop, QC, Thelma O'Grady, Gregory Petrisor

Counsel for the Law Society: Geoffrey B. Gomery, QC
Counsel for the Respondent: Henry Wood, QC

PUBLIC SUMMARY

[1] The Respondent, Aaron Murray Lessing, has been married five times. The supervision of the romantic lives of lawyers is not within the legislative mandate of the Law Society of British Columbia. In addition, on a practical basis, the Discipline Committee, the Discipline staff and the Benchers as a whole lack both the skills and the resources to analyze and to advise members on their romantic endeavours. Simply put, the Law Society is not Dear Abby or Doctor Laura.

[2] However, sometimes a lawyer's success or failure in love has collateral consequences that require scrutiny by and sanctions from the Law Society. This is what happened here. There are two such consequences that are the subject of this review.

[3] First, the breakup of his marriages resulted, in part, in the Respondent becoming indebted. Eight judgments were entered against him totalling in excess of $187,000. He failed to report these judgments to the Law Society as required by the *Professional Conduct Handbook*. This is professional misconduct. The Respondent does not contest this finding.

[4] Secondly, the Respondent breached three court orders made against him in a matrimonial dispute in which he represented himself. At one point, he was found in contempt of court, though later he was able to purge the contempt. The Law Society cannot tolerate lawyers breaching court orders and being found in contempt of court. This is conduct unbecoming a lawyer. Again, the Respondent does not contest this finding.

[5] The hearing panel below did not suspend the Respondent, but rather levied a heavy fine and costs against him, for a total penalty of $22,000. The Law Society seeks a Review and asks for a period of suspension from practice in the range of from one to three months instead of a fine. The Respondent says a fine is sufficient. This is where the battle lines are drawn.

[6] In the normal case, this Review Panel would have an easy task. It would simply substitute a period of suspension for a heavy fine. Lawyers who breach court orders and find themselves in contempt of court should face severe sanctions from the Law Society. This is particularly true in the case of the Respondent for a number of reasons, including these two: First, he has practised for over 20 years, restricting his practice to family law matters. Second, his professional conduct record contains multiple warnings and suggestions. During a conduct review in 2011, the Respondent acknowledged to the Law Society that he was “a frequent flyer”, as far as disciplinary matters were concerned. His behaviour does not inspire public confidence in the legal profession.

[7] However, this is not a simple case. The Respondent has raised his mental state, namely his depression, his avoidance behaviour, anxiety and symptoms of post-traumatic stress disorder. The hearing panel below accepted this evidence, including expert evidence, and it was a major reason for the Hearing Panel to order a fine instead of a suspension.

[8] The important and central issue in this Review is: What role does a lawyer’s mental health play in disciplinary action? Does it play no role? Does it play some role? If so, how much? Does it reduce a disciplinary action from suspension to a fine? Does it reduce the length of time of the suspension?

[9] These are some of the issues that this Review Panel has had to deal with. To put it simply, how does the Law Society balance the public’s confidence in the legal profession with a lawyer’s struggle with mental health issues?

[10] This Review is also important for another matter. This is a pure review on a disciplinary action (penalty). It gives this Review Panel the opportunity to review the legislative basis for disciplinary action. In addition, this Review gives this Panel the opportunity to review and clarify the factors to be considered in disciplinary action including, but not limited to, the following:

(a) the role of the professional conduct record;

(b) whether progressive discipline should be a factor;

(c) whether disciplinary action should be globalized where there is more than one citation; and

(d) the role of prior decisions.

[11] This Review Panel was fortunate enough to have two able counsel present the opposing views on this Review. We are referring to Geoffrey B. Gomery, QC and Henry Wood, QC.

[12] After considering the Record in the proceedings and the submissions of counsel, this Review Panel orders that the Respondent be suspended for one month. This Panel further orders the Respondent not to self-represent in any court or a tribunal without the prior consent of the appropriate committee of the Law Society.

[13] The public interest and, in particular, public confidence in the legal profession plays an important role in the disciplinary process. However, rehabilitation of a lawyer also plays a part.

[14] In this case, the Respondent:

(a) failed to report to the Law Society eight judgments, two of which took place after the Respondent, in writing, agreed to follow the rule;

(b) breached three court orders; and

(c) was, at one point in time, found in contempt of court, though he later purged that contempt.

[15] In this case his mental health issue should be taken into account, or in other words, mitigate the disciplinary action usually imposed. If the mental health issue were not a factor, this Review Panel would impose more severe disciplinary action. In other words, a longer suspension would have been imposed.

[16] However, this Panel feels that the mitigating factor of the Respondent's mental health does not go as far as diminishing the disciplinary action to a fine. Public confidence in the legal profession, as seen through the eyes of the average citizen requires a suspension. Disciplinary action, generally, requires a hearing panel or a review panel to impose the appropriate disciplinary action primarily through the eyes of the average citizen.

[17] In this case, a fine would not inspire confidence in the legal profession or the disciplinary process. However, a minimum suspension would.

PROCEEDINGS BELOW

Summary for the Profession

[18] There were two citations issued against the Respondent. One related to his non-reporting of judgments issued against him; the other citation related to his breach of various court orders. The citation also mentioned his finding of contempt and his subsequent purging of the contempt order.

[19] Like most other discipline hearings, the matter proceeded in two stages. In the first stage, the question was one of liability. This is called facts and determination. See *Law Society of BC v. Lessing*, 2012 LSBC 19. The matter proceeded on an Agreed Statement of Facts. In fact there were two Agreed Statements of Fact, each corresponding to the citation. No oral evidence was presented. The issue of the Respondent's mental health was not raised at this stage as a possible defence.

[20] The hearing panel held that, by failing to notify the Executive Director of the eight judgments registered against the Respondent, the Respondent had committed professional misconduct.

[21] In regard to the second citation, the hearing panel held that the Respondent had breached three court orders and had been held in contempt on June 4, 2009. The hearing panel found that this was conduct unbecoming a lawyer.

[22] At the second stage, the hearing panel dealt with the appropriate disciplinary action. That decision is found in *Law Society of BC v. Lessing*, 2012 LSBC 29.

[23] The hearing panel, in regard to the first citation, held that the Respondent had engaged in professional misconduct and levied a fine of $2,000.

[24] In regard to the second citation, the hearing panel levied a fine of $12,000. The hearing panel further ordered costs of $8,000.

Citations

[25] The two citations in this matter were addressed to the Respondent as follows:

> You failed to notify the Executive Director of the Law Society in writing of the circumstances of the following unsatisfied monetary judgments against you and/or your proposal for satisfying such judgments, contrary to Rule 3-44 of the Law Society Rules:
>
> (a) an order made September 23, 2002 in an action in British Columbia Supreme Court;

(b) a Crown debt owing under the *Medicare Protection Act* registered against property owned by you on October 3, 2005 in the amount of approximately $5,748;

(c) an income tax certificate filed in the Federal Court of Canada on January 26, 2006 in the amount of approximately $13,983.27;

(d) an income tax certificate filed in the Federal Court of Canada on August 22, 2008 in the amount of approximately $62,490.96;

(e) a judgment granted on October 15, 2008 in an action in British Columbia Supreme Court, in the amount of approximately $60,000;

(f) a Crown debt owing under the *Medicare Protection Act* registered against property owned by you on January 13, 2009 in the amount of approximately $1,204;

(g) a judgment granted on March 5, 2009 in an action in Provincial Court of British Columbia, in the amount of approximately $7,319.84;

(h) a judgment granted on March 19, 2009 in an action in British Columbia Supreme Court, in the amount of approximately $42,536.18;

(i) an order made December 2, 2010 in an action in British Columbia Supreme Court, for costs in the amount of $1,000 payable forthwith;

(j) an order made February 9, 2011 in an action in British Columbia Supreme Court, New Westminster for costs in the amount of $500 payable forthwith.

This conduct constitutes professional misconduct or a breach of the [*Legal Profession*] *Act* or [Law Society] Rules.

[edited and redacted]

[26] The second citation states:

In 2008 and 2009, in the course of representing yourself in matrimonial proceedings in BC Supreme Court between yourself and your former spouse [TL], you failed to comply with the following orders, which resulted in an order pronounced on June 4, 2009 finding you in contempt of court:

(a) Order of Madam Justice Smith pronounced August 25, 2008, paragraph 7, requiring you to produce specified documents by August 29, 2008,

(b) Order of Master Scarth pronounced April 14, 2009 requiring you to provide a list of documents and produce specified documents on or before May 7, 2009, and

(c) Order of Master Tokarek pronounced May 20, 2009 requiring you to produce specified documents on or before May 27, 2009.

This conduct constitutes professional misconduct or conduct unbecoming.

FACTS REGARDING LIABILITY

[27] The relevant facts are set out in full in the hearing panel's decision at *Law Society of BC v. Lessing*, 2012 LSBC 19 at paras. 1 to 27 inclusive. The hearing panel below held the first citation resulted in professional misconduct and the second citation resulted in conduct unbecoming a lawyer.

FACTS PERTAINING TO DISCIPLINARY ACTION – HEARING PANEL BELOW

[28] There were two witnesses at the second stage of the proceeding before the hearing panel: the Respondent and Dr. Elterman, a well-known and respected psychologist who has prepared various reports for the courts of British Columbia over the years. The hearing panel below summarized the facts pertaining to the disciplinary action. See paras. [10] to [17].

[29] During the Review hearing, there were submissions made about Dr. Elterman's evidence. Did his opinion about the avoidance behaviour apply only to the Respondent's breach of the court orders, or did it apply also to his failure to report the judgments, and particularly the last two judgments, to the Law Society? It should be emphasized that Mr. Wood, counsel for the Respondent, stressed the avoidance behaviour and not his depression.

[30] The Respondent's position was that he did not know about his professional obligation to report judgments to the Law Society. He did so by a letter dated August 19, 2009. In addition, in that letter he notified the Law Society that he would be complying with that Rule. Yet in December, 2010 and February 2011, further judgments were entered against the Respondent and he did not report these matters to the Law Society.

[31] Was his mental health a factor in the failure to report the last two judgments?

[32] Counsel for the Law Society before the hearing panel dealt with that issue in her cross-examination:

> Q In your report at paragraph 3, page 2, you say that you have seen clients that can't face dealing with their day-to-day demands.
>
> A Right.
>
> Q But, as far as you're aware, Mr. Lessing is only unable to deal with his ex-wife and the divorce. Is that correct?
>
> Q. Well, I'm saying that that was a situation that would lead to him losing sleep, feeling traumatized, feeling somewhat paralyzed as to knowing what to do about the situation. And, you know, the thing of it is, what he describes is a situation where, most often in my experience, wives experience, where you go through emotional abuse and you have been told that you are worthless, and that you are not good for anything, you'll lose your self-confidence. In my experience, it's the wives in the marriage that say that's how they feel when they leave the marriage. And he was simply saying the same sort of thing: that her treatment of him was such that he had lost considerable self-esteem and self-confidence and that when he had to deal with her; it was a reawakening of those feelings in him that he had somehow put aside in his new relationship with his new partner. But when he had to deal with his ex-wife, it brought back all those feelings of aversion and not having to deal with her. And it brought back the lack of self-esteem that he had experienced at the end of the relationship.
>
> And I noted at the time in my mind that that was a very unusual thing I hear from men but very common in women.
>
> Q The question was: Other than dealing with his ex-wife and matters related to the divorce, do you have any other evidence of not being able to deal with the day-to-day demands? What day-to-day demands?
>
> A No. I don't have any other evidence of that.
>
> Q So, again, as far as you're aware, it's limited to his ability to deal with his wife and the divorce

proceedings. That's my understanding, yes? And that's the avoidance behaviour he's describing?

A Yes.

[33] There was evidence for the hearing panel to restrict the relevance of the mental health problems that Mr. Lessing had to his failure to comply with the court orders.

[34] As we will see below, the hearing panel, in the opinion of the Review Panel, made a specific finding of fact that the mental health issues that Mr. Lessing had were related to the matrimonial litigation (second citation) and did not mention that his mental health problems were related to the non-reporting of the judgments and specifically, the Seventh and Eighth judgments.

[35] Finally there are the letters that were exchanged between Henry Wood, QC and Dr. Elterman. In a May 27, 2012 letter, Mr. Wood asked Dr. Elterman to comment on both the disobeying of the court orders and the non-reporting of the judgments. In his written reply and his oral evidence, Dr. Elterman does not explicitly deal with the non-reporting of the judgments.

[36] The Review Panel cannot accept that his clinical depression somehow affected the Respondent's failure to report the Seventh and Eighth judgments. The Respondent told Dr. Elterman that his period of clinical depression started before he separated from his wife and lasted about 18 months. The Respondent separated from his wife in June or July of 2008. Therefore, it is probably near the end of 2009 that his clinical depression ended. The Seventh and Eight Judgments came into existence in December of 2010 and February of 2011. This is well outside the period of the clinical depression.

[37] In fact, the Respondent never voluntarily reported the Seventh and Eighth Judgments at any time. The Law Society had to draw the matter to his attention. The hearing panel held that the failure to report the Seventh and Eighth judgments required a more severe disciplinary action. Again, they did not specifically relate it either to his avoidance behaviour or his depression. This can be contrasted with the finding of the hearing panel that his avoidance behaviour and depression contributed to his non-observance of the court orders and contempt.

DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION

[38] At paras. [28] to [37] of its decision on disciplinary action, the hearing panel said:

> [28] If, as is the case with the first six of the unsatisfied monetary judgments, all eight judgments had been entered when the Respondent was not aware of Rule 3-44 and his obligations under that Rule, we would have reprimanded the Respondent as the appropriate disciplinary action. The fact the Respondent was aware of his obligations under Rule 3-44 *when the last two of the unsatisfied monetary judgments were entered warrants more severe disciplinary action*.
>
> [29] In respect of the First Citation, we order that the Respondent pay a fine of $2,000 no later than December 31, 2012.
>
> **Second Citation**
>
> [30] Failing to comply with court orders and being found in contempt of court by a judge of the Supreme Court of British Columbia is very serious conduct that undermines the Rule of Law, and failure to impose a significant sanction would be inappropriate.
>
> [31] There are, however, mitigating circumstances.
>
> [32] First, the Respondent represented himself in the matrimonial litigation in which the orders were

made. This was a serious mistake on his part, and simultaneously acting as litigant and his own counsel undoubtedly clouded his judgment.

[33] Second, the first order with which the Respondent did not comply was a consent order requiring him to provide various information and documents to counsel for his spouse by August 29, 2008. The Respondent produced all of those documents except for the incorporation documents for a corporation ("A Ltd."). The second order with which the Respondent did not comply required the Respondent to produce a list of documents on or before May 7, 2009, and the third order required the Respondent to deliver certain documents and information on or before May 27, 2009. The order finding him in contempt was made on June 4, 2009, which was less than four weeks after the deadline for production pursuant to the second court order and only seven days after the deadline for production pursuant to the third court order. Therefore, except for the incorporation documents for A Ltd., which should have been documents of public record, the delay in producing the documents required by the court orders was not substantial.

[34] Third, the court permitted the Respondent to cure his contempt by producing within 14 days the documents that the earlier orders had required him to produce, and the Respondent did so.

[35] Fourth, we accept the Respondent's testimony regarding his mental state and his inability to deal with the matrimonial proceedings in which he acted as his own counsel, and we accept the testimony of Dr. Elterman that he concluded, based on the conduct in question and his interviews with the Respondent, the Respondent was suffering from clinical depression in 2008 and 2009.

[36] *Balancing the seriousness of the conduct of the Respondent in failing to comply with the court orders with the mitigating factors, we believe that a significant fine is the appropriate disciplinary action.*

[37] In respect of the Second Citation, we therefore order that the Respondent pay a fine of $12,000 no later than December 31, 2012.

[emphasis added]

[39] The hearing panel below also made an order for costs. That matter is not subject to this Review.

GROUNDS OF REVIEW

[40] The issues on Review as stated by counsel for the Law Society are whether the hearing panel erred:

(a) in placing no weight on the Respondent's Professional Conduct Record as supporting a more serious penalty;

(b) in its assessment of "mitigating factors" such as the Respondent's decision to act on his own behalf, the duration of the misconduct, and the Respondent's curing of his contempt of court;

(c) in failing to assess the appropriate disciplinary action for the two citations on a global basis; and

(d) in failing to impose a suspension or, in the alternative, more substantial fines, in the circumstances.

[41] There is also the issue of what is the appropriate standard of review. However, it is fair to say that most of the argument in front of the Review Panel centred on whether a fine or suspension was the appropriate disciplinary action.

ANALYSIS – LEGAL PRINCIPLES

Introduction

[42] We will now go over the major legal principles involved in this Review. Later on, under Analysis for the Case at Bar, we will apply those legal principles to this particular Review.

Standard of Review

[43] An important issue on this Review is the appropriate standard of review. In what circumstances can a review panel substitute a hearing panel's disciplinary action with a qualitatively different disciplinary action? When can a review panel substitute a fine with a suspension? The leading case in this matter is *Law Society of BC v. Hordal*, 2004 LSBC 36. There, a review panel held that the standard of review was one of correctness. The *Hordal* decision also stated that the correctness standard applied when deciding whether to disbar or to suspend a member. The review panel further held that a review should not "tinker" with a disciplinary action.

[44] These principles are found in *Hordal* at paras. [14], [17], [18] and [19]. The important paragraphs dealing with the power of the review board to substitute one disciplinary action with another disciplinary action are set out in paras. [14] and [17]:

> [14] Similarly, questions of whether particular misconduct should lead to particular penalties can often be easily answered by the Benchers. *Should particular conduct lead to penalty of disbarment versus a penalty of suspension, is a question often faced by Benchers, and again is a question which is relatively susceptible to the test for correctness*. For example, it is the nearly unanimous view of the Benchers, that a misappropriation of client funds, the ultimate breach in trust, should carry the ultimate penalty of disbarment. Should a panel find to the contrary, it would not be surprising for the Benchers to substitute their judgment in seeking to establish a "correct" determination in that matter.
>
> [17] While we have determined that these issues are not as easily capable of the application of the correctness test, they are nonetheless questions to which there is a correct answer. *If the Benchers in review are satisfied that the proper penalty differs from that imposed by the Hearing Panel, the Benchers must substitute their judgment for that of the Hearing Panel*.
>
> [emphasis added]

[45] It logically follows that the correctness standard applies when deciding to apply a suspension or a fine. Therefore, this Review Panel has the jurisdiction to decide whether a hearing panel erred in failing to provide for a suspension instead of a fine.

[46] In this Review, the question is not one of the quantity of the disciplinary action; the dispute is not one concerning the amount of the fine. Instead, the dispute is over the quality of the disciplinary action. Should it be a suspension or a fine?

[47] The Law Society seeks a suspension instead of a fine. The Respondent maintains the fine imposed is appropriate. That issue is squarely within the jurisdiction of the Review Panel.

Statutory Provisions

[48] The starting point for the legal analysis for disciplinary action is not a learned textbook, law review article or the latest case law. The starting point is the statute, the *Legal Profession Act*, SBC 1998 c 9 (the "Act"). The ability of the Law Society to sanction lawyers stems from a specific section of the Act.

[49] The important section is section 38 of the Act and specifically, section 38(5) and (7) which reads as follows:

> 38(5) If an adverse determination is made against a respondent other than an articled student, under subsection (4), the panel must do one or more of the following:
>
> (a) reprimand the respondent;
>
> (b) fine the respondent an amount not exceeding $50,000;
>
> (c) impose conditions or limitations on the respondent's practice;
>
> (d) suspend the respondent from the practice of law or from practice in one or more fields of law
>
> (i) for a specified period of time,
>
> (ii) until the respondent fulfills a condition imposed under paragraph (c) or subsection (7) or complies with a requirement under paragraph (f) of this subsection,
>
> (iii) from a specified date until the respondent fulfills a condition imposed under paragraph (c) or subsection (7) or complies with a requirement under paragraph (f) of this subsection, or
>
> (iv) for a specified minimum period of time and until the respondent fulfills a condition imposed under paragraph (c) or subsection (7) or complies with a requirement under paragraph (f) of this subsection;
>
> (e) disbar the respondent;
>
> (f) require the respondent to do one or more of the following:
>
> (i) complete a remedial program to the satisfaction of the practice standards committee;
>
> (ii) appear before a board of examiners appointed by the panel or by the practice standards committee and satisfy the board that the respondent is competent to practise law or to practise in one or more fields of law;
>
> (iii) appear before a board of examiners appointed by the panel or by the practice standards committee and satisfy the board that the respondent's competence to practise law is not adversely affected by a physical or mental disability, or dependency on alcohol or drugs;
>
> (iv) practise law only as a partner, employee or associate of one or more other lawyers;
>
> (g) prohibit a respondent who is not a member but who is permitted to practise law under a rule made under section 16(2)(a) or 17(1)(a) from practising law in British Columbia indefinitely or for a specified period of time.

(7) In addition to its powers under subsections (5) and (6), a panel may make any other orders and declarations and impose any conditions it considers appropriate.

[50] The key part of section 38 is section 38(5). This section has two components. One is mandatory and the other is discretionary. Once a hearing panel decides that a lawyer has engaged in professional misconduct or conduct unbecoming, the hearing panel must do one or more of the following:

(a) reprimand the lawyer;

(b) fine the lawyer;

(c) impose conditions and limitation on the lawyer's practice;

(d) suspend a lawyer for a specific period of time with or without conditions;

(e) disbar the lawyer;

(f) require the lawyer to do a number of things to improve or control his practice.

[51] It is important to realize the hearing panel is mandated to do one or more of the above. However, the hearing panel has discretion as to which one or ones it should impose.

[52] In addition, there is further discretion given to the hearing panel. This is set out in section 38(7) of the Act. The hearing panel may make such further orders and declarations and impose any conditions it considers appropriate. The hearing panel therefore has a wide discretionary power to add conditions upon a lawyer who has been fined or suspended.

[53] Traditionally, hearing panels impose fines and suspensions and, in severe cases, disbarment. However, section 38(7) of the Act allows hearing panels a degree of creativity. Panels should not be timid in using this power.

[54] The next question is: how does the hearing panel exercise this discretion to impose a disciplinary action? Certainly it cannot be arbitrarily imposed. In the opinion of this Review Panel, the starting point is section 3 of the Act, which reads as follows:

3. It is the object and duty of the society to uphold and protect the public interest in the administration of justice by

(a) preserving and protecting the rights and freedoms of all persons,

(b) ensuring the independence, integrity, honour and competence of lawyers,

(c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,

(d) regulating the practice of law, and

(e) supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.

The Ogilvie Factors

[55] The above objects and duties set out in section 3 of the Act are reflected in the factors set out in *Law Society of BC v. Ogilvie*, [1999] LSBC 17, at paras. 9 and 10 of the penalty stage:

9 Given that the primary focus of the *Legal Profession Act* is the protection of the public interest, it

follows that the sentencing process must ensure that the public is protected from acts of professional misconduct. Section 38 of the Act sets forth the range of penalties, from reprimand to disbarment, from which a panel must choose following a finding of misconduct. *In determining an appropriate penalty, the panel must consider what steps might be necessary to ensure that the public is protected, while also taking into account the risk of allowing the respondent to continue in practice.*

10 The criminal sentencing process provides some helpful guidelines, such as: the need for specific deterrence of the respondent, the need for general deterrence, the need for rehabilitation and the need for punishment or denunciation. In the context of a self-regulatory body one must also consider the need to maintain the public's confidence in the ability of the disciplinary process to regulate the conduct of its members. While no list of appropriate factors to be taken into account can be considered exhaustive or appropriate in all cases, the following might be said to be worthy of general consideration in disciplinary dispositions:

(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 added]

[56] All the *Ogilvie* factors do not come into play in all cases. In 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.

Public Confidence

[57] However, two factors will, in most cases, play an important role. The first is protection of the public, including public confidence in the disciplinary process and public confidence in the profession generally. The second factor is the rehabilitation of the member. Why is this so?

[58] These two factors are mentioned up front in *Ogilvie* (supra). That decision indicates there is a balance between protecting the public, including confidence in the disciplinary process, and allowing the member to

practise. This is set out in *Ogilvie* at paragraph 9:

> In determining the appropriate penalty, the panel must consider what steps might be necessary to ensure the public is protected, while also taking into account the risk of allowing the respondent to continue in practice.

[59] Further, at paragraph 10(l) the following is stated:

> (l) the need to ensure public's confidence in the integrity of the profession.

[60] Undoubtedly, if there is a conflict between these two factors, then protection of the public will prevail. However, in many cases, conditions or limitations can be imposed on the lawyer and the public is still protected. In addition, disciplinary action less than full disbarment can be imposed. In such situations, the lawyer can continue to practise while attempting to rehabilitate him or herself under conditions imposed by the hearing panel. It is important to realize that the protection of the public is not limited to protecting the public from lawyers who might, for instance, steal money from clients. It has a much broader meaning. It also includes public confidence in lawyers generally.

[61] People retain lawyers for a number of reasons. Lawyers become a depository of large sums of money, family secrets and wishful commercial aspirations in connection with the matters on which they have been retained. In providing legal services to the public, lawyers dispense large sums of money, give undertakings and make representations to the Court. They must be persons in whom the public have confidence. This public confidence relates to the legal profession generally.

Achieving Public Confidence

[62] The goal of hearing panels and review panels is to work together in achieving public confidence in the disciplinary action. Both the lawyers and the non-lawyers bring their work experiences and their life experiences to the table. For the non-lawyers, this work experience may be in education, journalism or in some other field. Their life experiences can be just as varied. Lawyers too have much to bring to the table. First, they have the technical knowledge of the law. Of equal importance, and in some cases of more importance, they too have worked and have had life experiences. No lawyer has just been a lawyer. Many lawyers have had a variety of jobs prior to being a lawyer. In addition, many lawyers have faced great personal challenges before and after becoming members of the Bar. Lawyers can take off their notional wigs and put on their baseball caps to add to the work experiences and the life experiences of the non-lawyers on the panels. The result is a common sense approach to the disciplinary action in which the public can have confidence. If a disciplinary action has a common sense foundation, the public will have confidence in it.

Rehabilitating the Lawyer - Mental Health Issue

[63] Section 3 of the Act contemplates respecting the rights of all individuals. Section 3 of the Act also contemplates assisting lawyers in fulfilling their duties under the Act. In addition, in the *Ogilvie* decision, the possibility of rehabilitating the individual plays a role in determining the disciplinary action.

[64] Therefore a hearing panel or review panel has to consider rehabilitation in imposing disciplinary action. This takes on many aspects. Has the respondent lawyer a mental health issue? What efforts has the lawyer taken to deal with the mental health issue? What confidence can the hearing panel have that this particular mental health issue will not arise again?

[65] The mental health issue may play a role in actually deciding whether the lawyer engaged in

professional misconduct or conduct unbecoming a lawyer. However, it is more likely to arise at the disciplinary action (penalty) stage.

[66] At that point the hearing or review panel has several options available to it. These include:

(a) reducing the severity of the disciplinary action; and

(b) adding conditions to ensure the lawyer does not repeat his or her behaviour.

[67] This range of options can include reducing the amount of a fine, reducing the length of a suspension, or changing a suspension into a fine. In addition, a hearing panel or review panel may, in dealing with a person with a mental health or addiction problem, require the lawyer to:

(a) provide medical reports to the Law Society; and

(b) restrict his or her practice in such a way as to prevent a re-occurrence of the health issue.

[68] Such an approach has been taken in regard to members of the Law Society who have had addiction problems, primarily in the area of alcohol.

Professional Conduct Record and Progressive Discipline

[69] What role does the professional conduct record play in determining a disciplinary action? The starting point is Rule 4-35(4), which reads as follows:

> The panel may consider the professional conduct record of the respondent in determining a disciplinary action under this Rule.

[70] Rule 1 explicitly defines a member's professional conduct record as including Conduct Review Subcommittee reports and Practice Standard Committee recommendations.

[71] In this Review Panel's opinion, it would be a rare case for a hearing panel or a review panel not to consider the professional conduct record. These rare cases may be put into the categories of matters of the conduct record that relate to minor and distant events. In general, the conduct record should be considered. However, its weight in assessing the specific disciplinary action will vary.

[72] Some of the non-exclusionary factors that a hearing panel may consider in assessing the weight given are as follows:

(a) the dates of the matters contained in the conduct record;

(b) the seriousness of the matters;

(c) the similarity of the matters to the matters before the panel; and

(d) any remedial actions taken by the Respondent.

[73] In regard to progressive discipline, this Review Panel does not consider that *Law Society of BC v. Batchelor*, 2013 LSBC 9 stands for the proposition that progressive discipline must be applied in all circumstances. At the same time, the Review Panel does not believe that progressive discipline can only be applied to similar matters.

[74] Progressive discipline should not be applied in all cases. A lawyer may steal money from a client. In such a case, we generally skip a reprimand, a fine or even a suspension and go directly to disbarment. Equally, a lawyer may have in the past engaged in professional misconduct requiring a suspension. Subsequently that lawyer may be cited for a minor infraction of the rules. In such a situation, progressive

discipline may not apply, and a small fine may be more appropriate.

Globalization

[75] Should disciplinary action be globalized where there is more than one citation? That is, should there be separate penalties for each of the allegations that is proven, or should a single penalty be imposed for all? When one looks at this issue, it is important to remember that the disciplinary process is civil in nature and informal. It is neither criminal in nature nor overly technical. A regulatory process can be informal and, at the same time, fair to the individual involved. This is the goal of the Law Society's disciplinary process.

[76] Various cases on globalization were referred to the Review Panel:

(a) *Law Society of BC v. Taschuk*, 2000 LSBC 22;

(b) *Law Society of BC v. Gellert*, 2005 LSBC 15;

(c) *Law Society of BC v. Cruickshank*, 2012 LSBC 27.

[77] None of the above cases give an overall approach to this question. This Review Panel believes, as a general rule, in a situation of multiple citations, the following principles should apply:

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

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

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

[78] It should be noted that the above principles are general in nature. They are, in a way, a default position. It may be, in any given case, that it would be unfair to the lawyer to follow the above rules. That determination should be made by the hearing panel or review panel on an individual basis.

Prior Decisions

[79] Prior decisions play an important role in the disciplinary action. Prior decisions are one of the factors mentioned in *Ogilvie* (supra). However, no two cases are the same. Facts may differ significantly from one case to another.

ANALYSIS FOR THE CASE AT BAR

Introduction

[80] The Law Society has raised three major issues:

(a) the role of the professional conduct record;

(b) self-representation; and

(c) globalization of the two citations.

[81] There was a fourth issue raised in written submissions, namely a higher fine as an alternative. In oral argument, the Law Society did not pursue this matter.

[82] In addition, during the course of the submissions a number of additional issues came up. These include:

(a) standard of review;

(b) the mental health of the Respondent; and

(c) progressive discipline.

[83] These issues are multiple and interconnected in nature. Previously in this decision, we dealt with them as legal principles. In this part, we will apply them to the facts in the present case.

[84] In addition, all these issues stated above are subsidiary to the main issue in this Review. That main issue is whether a suspension or fine should be given to the Respondent.

Ogilvie Factors Generally

[85] There is a question concerning how to deal with all these issues. *Ogilvie* (supra) is a good starting point and provides a skeleton or roadmap to deal with these multiple issues.

[86] However, as a preliminary matter, this Review Panel will deal with these two citations on a global basis to determine if a suspension should be given and the length of that suspension. This Review Panel cannot find any compelling reason to detract from the principles stated above under Analysis - Legal Principles. Generally, if a hearing panel on two citations is considering a suspension, the citations should be considered together on a global basis.

Nature and Gravity of Conduct Proven

[87] There are two specific citations. They can be divided into: (1) the failure to report the judgments, and specifically, judgments Seven and Eight; and (2) the breach of the court orders and contempt finding.

[88] These, in the opinion of this Review Panel, are serious violations. Specifically, this Panel finds that the holding of a lawyer in contempt of court is a very serious matter.

[89] The failure to report judgments must be looked at in the context of the purpose of the Rule requiring reporting and the Respondent's failure to report the last two judgments. The purpose of the Rule is to protect the public. Failure to report judgments may be a sign of more severe problems that may pose a danger to the public.

[90] The Respondent's explanation for failing to report was that he didn't know about the Rule. This may make some sense of his actions with respect to the first six judgments, though ignorance of the law is no excuse. Ignorance may go to reduce the disciplinary action.

[91] The difficulty is the last two judgments. At that time he knew he had to report the judgments to the Law Society. These two judgments are dated in December of 2010 and February of 2011. By that time:

(a) The Respondent had received a letter of June 9, 2009 from the Law Society investigating his conduct and quoting Rule 3-44 in its entirety, including subrule (3), which states:

> (3) Subrule (1) applies whether or not any party has commenced an appeal from the judgment.

(b) The Respondent had received a further letter dated August 19, 2009 from the Law Society again quoting Rule 3-44;

(c) The Respondent had received a further letter from the Law Society dated October 30, 2009 again quoting Rule 3-44;

(d) The Respondent had advised the Law Society by a letter dated November 13, 2009 that "I am now advised of these rules and will be complying with these rules."

[92] This Review Panel considers this a serious matter.

[93] We now turn to the breach of the court orders and the finding of contempt. In 2008, the Respondent represented himself in a matrimonial proceeding commenced by his spouse (TL). In 2008 and 2009, the Respondent did not comply with the following three orders made against him in the TL proceeding. They are:

(a) an order made August 25, 2008 that required the Respondent to provide incorporation documents for a company in which he was involved. The Respondent was to provide the documents by August 29, 2009;

(b) a consent order made April 14, 2009 that the Respondent provide a list of documents and various specified documents by May 7, 2009; and

(c) an order made May 20, 2009 that the Respondent provide specified documents by May 27, 2009.

[94] On June 4, 2009, on the application of TL, the court declared the Respondent in contempt of court for his failure to comply with the three orders. The court gave the Respondent 14 days to cure his contempt by complying with these orders. The Respondent complied with the orders by June 18, 2009.

[95] In this Review Panel's opinion, there was a long delay in the Respondent complying with these three orders. The delay was as follows:

(a) 9.8 months (approximately), from August 29, 2008 to June 9, 2009, in respect of the incorporation documents required to be produced under the first order;

(b) 41 days (about 6 weeks), from May 7, 2009 to June 18, 2009, in respect of the documents and list of documents required to be produced under the second order; and

(c) 22 days (about 3 weeks), from May 27, 2009 to June 18, 2009, in respect of the documents required to be produced under the third order.

[96] Even if this Review Panel were of the opinion that there was no delay in complying with the court orders, the fact remains the Respondent did not comply with the court orders and he was found in contempt. This Review Panel considers this a very serious matter.

Age and Experience of the Respondent

[97] The Respondent's age is not in evidence. He was called to the bar in 1991 and is an experienced senior lawyer. He practises primarily in the area of family law. This is an aggravating factor leading to a more severe disciplinary action. We are not dealing with a first-year-call lawyer who lacks experience; nor are we dealing with a lawyer near his or her retirement.

Previous Character of the Respondent including Details of Prior Discipline

[98] On November 5, 1999, the Respondent was the subject of a conduct review. It arose from a transaction where the Respondent accepted and acted on a trust condition imposed by another lawyer and thereafter engrafted additional trust conditions on funds he was required to remit. The Respondent was represented at the conduct review by leading counsel who had thoroughly reviewed with him the impropriety of his conduct. After meeting with the Respondent, the Conduct Review Subcommittee recommended that no further action be taken.

[99] In 2003 and 2004, the Respondent was the subject of a Practice Review. The reviewers noted and

made recommendations to the Respondent to address his responsiveness, dealings involving undertakings, and alleged failure to pay practice debts. The reviewers also advised:

> **Separating your personal life from your professional life –** We recommend that you not … act for a person whose spouse you know or with whom you are intimately involved or know. A number of your complaints could have been avoided if you had applied this rule.

[100] On September 23, 2003, the Respondent was the subject of a second conduct review. It arose from an apparent breach of undertaking. In its report, the Conduct Review Subcommittee stated that it was satisfied that the breach was inadvertent and doubted the appropriateness of a conduct review in the circumstances. No further action was taken. The Review Panel does not consider that this conduct review should be considered in deciding the appropriate disciplinary action.

[101] On August 2, 2005, the Respondent was the subject of a third conduct review. It arose from the Respondent having proceeded in default without inquiry and warning. He had assumed conduct of a family matter from another counsel. The Conduct Review Subcommittee reported that the Respondent had misconstrued the relevant rule, although the Subcommittee felt that the rule could be more clearly worded. In the end, the Subcommittee indicated that the Respondent appeared to understand the Subcommittee's concerns and concluded that he was unlikely to repeat the error. The Subcommittee recommended no further action in the matter.

[102] On February 10, 2011, the Respondent was the subject of a fourth conduct review. It arose from his conduct in attending a meeting in September 2008 with the complainant, a litigant who was represented by counsel, without the knowledge or consent of that litigant's lawyer. The meeting was between the complainant and his former spouse, Ms. S, who were engaged in matrimonial litigation. The Respondent had represented Ms. S for two months, and then had turned over conduct of the matter to an associate and begun a romantic relationship with Ms. S. The meeting in question took place about two months after that.

[103] The Conduct Review Subcommittee reported that the Respondent appeared to develop an understanding of his error in the course of the conduct review meeting. The Subcommittee also addressed the Respondent's complaint and discipline record and accepted his undertaking to take several remedial steps. The Subcommittee ended its report as follows:

> The Subcommittee made it very clear to the Member its view that he had *failed to respond to prior remedial and disciplinary action by the Law Society*. The Subcommittee explained this concern to the Member and also explained the concept of progressive discipline. The Member appreciated the Subcommittee's candor, recognized that he was a "frequent flyer" *and expressed a resolve to undertake fundamental reform of his conduct*.
>
> The Subcommittee is satisfied that upon the Member's fulfillment of his undertakings, no further action will be required by the Discipline Committee in respect of this complaint and makes that recommendation accordingly.
>
> [emphasis added]

[104] The Review Panel believes that the conduct record of the Respondent is an aggravating factor in this case. It is clear from the Respondent's conduct record that the Respondent acknowledged that he was a "frequent flyer". The Review Panel holds that the hearing panel erred in not putting more weight or significance on the professional conduct record when determining the quality and quantity of the disciplinary action. The hearing panel seems to have dismissed its importance out of hand. The conduct record is an aggravating factor.

Impact upon the Victim

[105] This Review Panel takes the expression “impact upon the victim” in its broadest sense. It is not limited to a specific individual who suffers direct impact, but also applies, in this Review Panel’s opinion, to indirect victims. With this in mind, this Review Panel has the following to say about the non-reporting of judgments, including the last two judgments.

[106] In regard to the breach of the court orders, there is the direct victim; namely, TL and her counsel. They were put through unnecessary time and expense. However, there are indirect victims. This matter proceeded to contempt proceedings. Court time was taken up by these proceedings. It was unnecessary. The Respondent should have complied with the orders to begin with. Other litigants’ cases were delayed by the very fact of the contempt proceedings taking up time of the court. This Review Panel considers these people as indirect victims. It is well known that our justice system is stretched to the limit. These indirect victims should be considered in a disciplinary action. They are an aggravating factor.

Advantage Gained or to be Gained by the Respondent

[107] The Respondent’s conduct was self-interested. While one might wonder what the Respondent had to gain by refusing to comply with the court orders, the same might be said for many self-represented litigants who resist the production of documents. It is true that he had mental health issues, and we will deal with those later, but his self-interest is an aggravating factor.

Number of Times the Offending Conduct Occurred

[108] In regard to the non-reporting of the judgments, the first six judgments may be explained, in part, on account of the Respondent not knowing that he had to report them. However, his failure to report the last two is an aggravating factor. At that time, he knew he had to report the judgments.

[109] The breach of three court orders was a serious matter. The breach took place over a long period of time. Of more importance, the Respondent was found in contempt of court. This Review Panel finds it is not a mitigating factor that he cured the contempt. The Law Society would expect any lawyer subject to a contempt order to cure the contempt. If the Respondent failed to cure the contempt, this Panel would have imposed a more severe penalty.

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

[110] It is of some significance that the Respondent did not acknowledge his error in not reporting the judgments until the morning of the first day of hearing. At that time he was willing to admit that his failure to report the judgments was a breach of the Rules. This, in the opinion of the Review Panel, is of some significance. It is quite clear that the Respondent at least had breached the Rules for non-reporting of the judgment. If a lawyer who is under citation admits the citation, this is a mitigating factor. However, the sooner the admission is made in the process, the more important the admission becomes. The Respondent has only made this specific admission at the last minute. Its effect as a mitigating factor is therefore very limited.

[111] The Respondent’s mental health does come into play in regard to the second citation. This Review Panel has to accept the findings of the hearing panel on this matter. The Law Society does not challenge that finding. In the normal course, this mitigating factor may well reduce a suspension to a fine. However, in

this case, there are circumstances that require a suspension. They are:

(a) the number of court orders breached (three); and

(b) the fact that the Respondent was held in contempt.

[112] In our view, a member who is held in contempt of court demands some sort of suspension except in rarest of circumstances.

The Possibility of Remediating or Rehabilitating the Respondent

[113] This Review Panel notes that Dr. Elterman felt that the Respondent was unlikely to re-offend in regard to the breach of the three court orders and of the contempt. This Review Panel is not that certain. We base this on two factors, namely:

(a) the Respondent's past conduct record; and

(b) his late admission on the first citation that it was a violation of the rules.

The Impact of the Proposed Penalty on the Respondent

[114] A suspension has a public protection component. During the period of suspension the member has to arrange for his files to be looked after by another lawyer. Of some significance, the member has to inform his clients that he has been suspended by the Law Society. This can have a significant impact upon his practice and the confidence that his clients have in him.

[115] However, a suspension is also rehabilitative in nature. One of the rehabilitative purposes of a suspension is to give the member an opportunity to think over, undistracted, his practice and his relationship with the Law Society. This is not required in all cases. This, however, is one of those cases. The Respondent needs a period in the wilderness to contemplate these various matters.

The Need for Specific and General Deterrence

[116] The failure of repeated conduct reviews to reform the Respondent's behaviour speaks to a need for a sanction that will deter future misconduct by the Respondent. Both fines and suspensions have financial consequences for the subject, but a suspension sends a stronger signal; see *Law Society of BC v. Hordal* 2004 LSBC 36 at [54]-[55].

[117] General deterrence is also a consideration in relation to both citations. As to the failure to report judgments, it is unfortunately necessary that the profession be reminded of the obligation to report unsatisfied judgments, and that failure to do so is a serious matter.

[118] As to the breaches of the court orders and contempt finding, it is the particular duty of the Law Society to uphold and protect the public interest in the administration of justice by ensuring the independence, integrity, honour and competence of lawyers; *Legal Profession Act*, s. 3(b). A lawyer's failure to abide by court orders and being found in contempt cuts very close to the bone and requires a strong response.

The Need to Ensure the Public's Confidence in the Integrity of the Profession

[119] We have previously discussed public confidence in the profession. Simply put, a lawyer who breached

three court orders and finds himself in contempt should face some form of suspension. Particularly so when he has a conduct record and has failed to report judgments against him. The Respondent has too much disciplinary baggage to excuse himself from a suspension. His mental health issues go to the length of the suspension, not to the requirement of a suspension.

The Range of Penalties Imposed in Similar Cases

[120] The penalties imposed in similar cases plays a role in this case. Counsel for the Law Society presented to the Review Panel a number of cases. These included:

Law Society of BC v. Chetty, [1997] LSDD No. 47

Law Society of BC v. Hart, 1999 LSBC 26

Law Society of BC v. Saini, 2006 LSBC 35

Law Society of BC v. Kirkhope, 2012 LSBC 05

Law Society of BC v. Motiuk, [1998] LSDD No. 125

Law Society of BC v. Dunnaway, [2000] LSDD No. 29

Law Society of BC v Lowther, [2002] LSDD No. 13;

Law Society of BC v. Scholz, 2008 LSBC 02 (F&D)

Law Society of BC v. Scholz, 2008 LSBC 16 (Penalty)

Law Society of BC v. Scholz, 2009 LSBC 33 (Review)

Law Society of BC v. Barron, [1997] LSDD No. 141

LSUC v. Sintzel, [2005] LSDD No. 24

LSUC v. Rusek, [2005] LSDD No. 77

Merchant v. Law Society of Saskatchewan, 2009 SKCA 33

[121] These cases run the range from reprimand to suspension. However, generally, this Review Panel has the following comments about these cases.

(a) Except for the case of *Law Society of BC v. Scholz*, 2009 LSBC 33, all of the BC cases are hearing panel decisions and not review panel decisions. The Review Panel is not bound by hearing panel decisions. The only other exceptions are three cases from other provinces.

(b) Generally, this Review Panel finds that previous decisions in this area have provided a disciplinary action that is too light for breaching a court order and particularly so if there is a contempt proceeding included. This does not inspire public confidence in the legal profession. Many lawyers have spent considerable time trying to convince clients to obey court orders. It sends a very bad signal to the public to have lawyers disobey court orders and the same lawyers finding themselves in contempt of court. It looks like the legal profession is speaking in two different directions. Therefore, this Review Panel finds that lawyers who breach court orders and lawyers who find themselves in contempt should face severe sanctions.

[122] There may be exceptional circumstances affecting a lawyer's disciplinary action when he or she breaches a court order. It may be the breach is inadvertent. However, in most cases, a lawyer who breaches a court order and is held in contempt should face severe disciplinary action. This means some sort

of suspension.

MISCELLANEOUS COMMENTS

[123] There are a number of miscellaneous comments the Review Panel wishes to make.

Medical Evidence Generally

[124] The medical opinion of Dr. Elterman was based in large part on what the Respondent told the doctor about his history and symptoms. There was little or no direct evidence corroborating his story. The hearing panel below was quite within its jurisdiction to assess such evidence and base its findings on such evidence, including hearsay evidence.

Other Problem

[125] The evidence regarding the Respondent's medical state was focused on the issues at bar contained in the second citation. However, this Panel notes some troubling behaviour of the Respondent in the past.

[126] The two citations show a tendency for the Respondent to delay matters or fight them on technical or procedural grounds. He did not report the Seventh or Eighth judgment when he knew he should have. Also, he delayed obeying court orders. These are not isolated incidents. They are part of a pattern. This pattern is further illustrated in the case of *DK v. Lessing*, 2005 BCSC 1913. In that case, another ex-wife sued the Respondent and obtained default judgment on September 21, 2001. The decision of Madam Justice Gropper is filled with references to the Respondent not responding to correspondence, delaying matters and bringing up technical or procedural arguments. He never seems to deal with matters up front. He only brought the application to set aside the judgment some four years later. At that time he had engaged counsel to do the application.

[127] Madam Justice Gropper in DK (supra) at paragraph 38 says the following:

> I find that the defendant's explanation for his delay in applying to set aside the default judgment is inadequate. The plaintiff urges me to find that it is "wanton recklessness". I do not consider that the conduct was either wanton or reckless. I am satisfied that the plaintiff's [sic] delay in applying resulted from arrogant indifference, which is equally blameworthy in my view. The indifference is shown by the defendant from the outset. The defendant ignored the demand letter; he did not file an appearance; when he learned that there was a default judgment against him he did not, as Miracle Feeds suggests he must, make an application as soon as is reasonable. He took no steps to ensure that his message detailing his defence was received by counsel for the plaintiff. He did not respond to any of the correspondence but for the July 21, 2004 letter from counsel for the plaintiff endorsing the notice of motion in respect of the assessment of damages. He received letter after letter which advised that the plaintiff was pursuing damages against him and did virtually nothing. It was not until September 2005 that he appointed counsel and made an application to set aside the default judgment. The obligation remained with the defendant and his explanation for his delay is unsatisfactory.

[128] It is noteworthy that the judge characterized the Respondent's behaviour as "arrogant indifference". This was done in 2005. This was about three years before he separated from his other ex-wife, TL. His behaviour in delaying and setting aside judgment from 2001 to 2004 is remarkably similar to his delay in obeying court orders in the TL matter. Most lawyers, if their behaviour was called "arrogant indifference" by a judge, would have done some serious soul-searching and changed their ways. Unfortunately, the

Respondent did not.

[129] This raises a number of issues. Did his mental health play a part in the default judgment case? What was the triggering event? Was something else in play? The Respondent gave some evidence in reply on this point. It was rather vague and dealt with conversations he had with Dr. Elterman. However, there is no explicit medical evidence from Dr. Elterman on this matter either in writing or in his oral testimony. The default judgment case was not put to Dr. Elterman. In addition, the conduct record was not put to Dr. Elterman. The Hearing Panel did not refer to the default judgment case. This may be, in part, due to the fact that the default judgment case was not part of the citation.

[130] The default judgment case is not a consideration in the one month suspension this Review Panel is imposing. However, it is a factor in the requirement that the Respondent not self-represent in any court or tribunal without the prior written consent of the appropriate committee of the Law Society. This Review Panel considers this condition as necessary in the public interest. The Review Panel feels it has to provide some sort of protection to the public so the Respondent will not disobey any court orders in the future. The Panel further has decided not to put a time limit on this specific condition. Under the Rules of the Law Society, the Respondent can apply at any time to lift this condition.

[131] This Review Panel respectfully disagrees with the hearing panel's position on self-representation. It is not a mitigating factor. Lawyers who choose to self-represent and get themselves into difficulties have only themselves to blame. They must live with the consequences of their decision.

ORDER

[132] This Review Panel grants the review and orders that:

> (a) a one-month suspension effective November 1, 2013, or such other date agreed to by the parties, is substituted for the fines imposed by the Hearing Panel;
>
> (b) the cost award by the hearing panel is confirmed; and
>
> (c) the Respondent must not self-represent in any court or tribunal without the prior written consent of the Practice Standards Committee. The Practice Standards Committee may delegate their authority under this order to any other committee of the Law Society.

[133] Neither of the parties made a submission on costs on this Review. If either of the parties wishes to make a submission on costs, they can do so within 30 days of the date of issuance of this decision. The other party will have 14 days to make a response.