2014 LSBC 05
Report issued: February 13, 2014
Citation issued: December 18, 2012

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

**Rudi Gellert**

Respondent

**Decision of the Hearing Panel on Disciplinary Action**

Hearing date: November 27, 2013
Panel: David Renwick, QC, Chair, Dennis Day, Public representative, David Layton, Lawyer

Counsel for the Law Society: Carolyn Gulabsingh
No-one appearing on behalf of the Respondent

## Background

[1] On August 26, 2013 we determined that the Respondent had committed professional misconduct by misappropriating over $14,000 in client trust funds, making discourteous and threatening comments regarding a Law Society auditor and failing to respond to communications from the Law Society. We also determined that he had breached three Law Society Rules by issuing trust cheques payable to "cash" and failing to maintain proper trust accounting records.

[2] The Law Society submits that the appropriate disciplinary sanction for the Respondent is disbarment.

[3] The Respondent was called to the bar in 1995 and is 70 years old. He ceased being a member of the Law Society on January 1, 2011 for non-payment of fees, and did not appear at this hearing or send anyone to appear on his behalf.

### DECISION TO PROCEED IN THE ABSENCE OF THE RESPONDENT

[4] Section 42(2) of the *Legal Profession Act* (the "Act") provides that, where a respondent fails to attend a hearing on a citation, and the panel is satisfied that the respondent has been served with notice of the hearing, the panel may proceed with the hearing in the respondent's absence and make any order that could have been made were the respondent present.

[5] The Respondent also failed to appear at the hearing on Facts and Determination, and we exercised our discretion under s. 42(2) to proceed in his absence ( *Law Society of BC v. Gellert*, 2013 LSBC 22, paras. 7-14).

[6] At the disciplinary action hearing, we adjourned the proceeding for 20 minutes on learning that the Respondent was absent, in case he was running late.

[7] On reconvening, we relied on affidavits filed by the Law Society to conclude that the Respondent had been served with notice of the hearing and had chosen not to attend. Based on this conclusion, as well as our findings regarding the Respondent's failure to attend at the hearing on Facts and Determination, we exercised our discretion under s. 42(2) to proceed with the disciplinary action hearing in his absence.

### THE RESPONDENT'S PROFESSIONAL MISCONDUCT AND RULE BREACHES

[8] The circumstances relating to the Respondent's professional misconduct and rule breaches are detailed in our Facts and Determination decision. Only a summary of the conduct in question need be provided here.

[9] The Respondent misappropriated $14,486.69 of client funds by means of 31 transactions involving 31 different clients. Most of the transactions involved cancelling a stale-dated trust cheque made out to the

client, after which the same amount was paid either to the Respondent's law firm or a company run by the Respondent's wife. The bulk of the money – $13,714.60 – went to his wife's company. The 31 transactions ranged in size from $0.01 to $5,200, and occurred from March 2008 to September 2010.

[10] For 27 of the misappropriation transactions, involving $14,476.56, the Respondent knew that the recipient, be it his firm or his wife's company, was not entitled to the funds. For the remaining four transactions, involving $10.13, the Respondent was at the very least guilty of gross culpable neglect in transferring the funds to his firm for a purpose unauthorized by the client.

[11] The Respondent's misappropriations were discovered as a result a routine compliance audit commenced in October 2010 at the Surrey law office that he managed. Shortly after the two Law Society auditors arrived, the Respondent expressed displeasure with one of them and told the other that if he had a gun he would shoot someone. He also said that he would not allow the first auditor to look at any files and would not have her in his office. These comments constituted professional misconduct.

[12] Later on during the audit, the Respondent refused to answer an auditor's question about a number of trust cheques he had caused to be made out payable to cash. He subsequently failed to respond to three Law Society letters asking for information regarding these cheques as well as numerous other matters identified as possible or likely professional misconduct. These failures to respond also constituted professional misconduct.

[13] Each of the Respondent's Rule breaches involved trust account matters. First, he failed to identify the source of 21 bank drafts totaling $760,000 deposited to a trust ledger for a named client and a further $400,000 recorded in a ledger identified as "Rudi Gellert Miscellaneous", contrary to Rule 3-60(a)(ii). Second, he caused seven trust cheques totaling $38,000 to be made out to "cash", contrary to Rule 3-56(2)(b). Third, he recorded transactions for eight different clients in a single trust ledger named "Rudi Gellert Miscellaneous" instead of recording the transactions in separate client trust ledgers, contrary to Rule 3-60(b).

## THE RESPONDENT'S PROFESSIONAL CONDUCT RECORD

[14] Rule 4-35 permits a panel to take account of the respondent's professional conduct record in determining the appropriate penalty. Rule 1 defines a "professional conduct record" to include, among other things, prior disciplinary panel decisions and actions, Conduct Review Subcommittee reports and Practice Standards Committee recommendations.

[15] The Law Society filed a number of records relating to the Respondent that fall within the Rule 1 definition of a professional conduct record, from which we have distilled the information set out in this part of our reasons.

[16] Twelve prior findings of professional misconduct have been made against the Respondent, arising from four different citations covering conduct occurring from 1999 to 2003.

[17] On June 18, 2003 he was found to have committed professional misconduct in relation to allegations set out in a May 8, 2002 citation by:

> (a) failing to make PST and GST remittances of $79,235.36, at a time when his general account showed a balance of $11,135.84, leaving a shortfall of over $68,000; and
>
> (b) misappropriating from a client by sending out an account for disbursements that overcharged the client by $182.40.

[18] Also on June 18, 2003 the Respondent was found to have committed professional misconduct in relation to allegations set out in an October 2, 2002 citation by:

> (a) failing to serve a client in a conscientious, diligent and efficient manner; and
>
> (b) failing to respond to the written requests of the Law Society for a response to the complaint of this same client.

[19] On October 14, 2003 the Respondent was found to have committed professional misconduct in relation to allegations set out in a June 20, 2003 citation by:

> (a) failing to respond promptly to the written requests of the Law Society for an explanation of exceptions and deficiencies noted in his 2001 Accountant's Report; and

(b) failing to respond promptly to the written requests of the Law Society for an explanation of exceptions and deficiencies noted in his 2002 Accountant's Report.

[20] On November 13, 2003 the Discipline Committee recommended that a fourth citation be issued against the Respondent containing the six allegations referred to in paragraph [23] below. The Committee also referred the matter to three Benchers under s. 39 of the Act for a determination as to whether the Respondent should be suspended or conditions placed on his practice pending a final determination of this new citation.

[21] On December 15, 2003 the Respondent underwent a diagnostic evaluation by a medical doctor. The doctor concluded that the Respondent suffered from severe major depression, which profoundly impaired his ability to practise law, and recommended that he voluntarily remove himself from practice until he had received and responded to certain treatments.

[22] On December 16, 2003 the Respondent voluntarily provided the Law Society with an undertaking to cease practising law immediately and until a medical practitioner produced a report satisfactory to the Law Society concerning his fitness to practise.

[23] On August 23, 2004 the Respondent was found to have committed professional misconduct in relation to allegations set out in a January 12, 2004 citation by:

(a) failing to respond promptly or at all to the written requests of the Law Society in relation to a complaint by a client;

(b) failing to respond promptly or at all to the written requests of the Law Society in relation to a complaint by another client;

(c) failing to serve this other client in a conscientious, diligent and efficient manner;

(d) breaching an undertaking given to another lawyer;

(e) failing to respond promptly or at all to communications from the other lawyer in relation to the undertaking; and

(f) failing to respond promptly or at all to communications from the Law Society in relation to the undertaking.

[24] On January 21, 2005 the Respondent was subject to a conduct review arising out of an incident that occurred prior to his December 16, 2003 undertaking to cease practice. The incident involved what can only be described as the unfair treatment of an unrepresented and vulnerable litigant in a divorce proceeding. The Conduct Review Subcommittee accepted that the Respondent was in the throes of a deep depression at the time. The Committee was satisfied that he now understood the proper way to handle such matters and had taken the necessary steps to address his illness, and so was satisfied that the problematic conduct would not be repeated.

[25] All 12 findings of professional misconduct referred to above were dealt with globally at a penalty hearing on March 29, 2005. By that point, the Respondent was still not practising law. He had completed pharmacological and cognitive behavioural therapy treatment, and testified that he wanted to resume legal practice but without the responsibility of running a business or meeting a payroll, which he presented as stressors that had triggered his depression. A report by the same medical doctor who had assessed the Respondent in December 2003 was optimistic about his ability to resume practice.

[26] The single-bencher panel conducting the penalty hearing noted that the sheer magnitude of the disciplinary offences combined with the seriousness of some of them, in particular the breached undertaking, would have led, in the absence of mitigating circumstances, to the Respondent's disbarment. However, there were significant mitigating circumstances. The misconduct was rooted in Respondent's major depression, for which he had since received treatment. Furthermore, the Respondent had fully acknowledged his misconduct, had no prior disciplinary record and the Law Society was not seeking disbarment. See *Law Society of BC v. Gellert*, 2005 LSBC 15, paras. 20 - 22.

[27] Given these extenuating circumstances, the Respondent was suspended for 18 months commencing on the date he had voluntarily ceased practice – December 16, 2003. The Respondent was also made subject to two practice conditions: first, that prior to reinstatement to practice he obtain a psychiatric evaluation satisfactory to the Practice Standards Committee; and second, that he practise only as an

employee of one or more lawyers satisfactory to the Committee on such terms as the Committee may impose until relieved of this condition by the Committee. See *Gellert*, (*supra*), paras. 26 - 29, 31.

[28] The single-bencher panel made no specific order regarding the Respondent's ability to handle trust monies if reinstated, reasoning that, as an employee he would not have that responsibility. The bencher added that, if the employment restriction was lifted, the Practice Standards Committee would be in the best position to judge whether the Respondent needed further practice supervision regarding his ability to operate a trust account. See *Gellert*, (*supra*), para. 30.

[29] The Respondent became a non-practising member of the Law Society when his 18-month suspension concluded on June 15, 2005. He successfully applied to be reinstated as a practising member on May 11, 2006, having provided a satisfactory psychiatric assessment and proposed a suitable lawyer to act as his employer and supervisor. The Respondent commenced practising again on May 30 of the same year.

[30] On December 7, 2006 the Practice Standards Committee conducted an initial practice review and, among other things, required that the formal employment contract between the Respondent and his supervising lawyer expressly preclude him from having trust cheque signing authority.

[31] On September 6, 2007 the Committee conducted a follow-up practice review and agreed, among other things, that the Respondent should not be released from the requirements that he work only as an employee for the supervising lawyer and not be permitted to sign trust cheques.

[32] On February 28, 2008 the Committee conducted another follow-up practice review and made a number of recommendations, one of which was to remove the requirements that the Respondent work only as an employee and not be permitted to sign trust cheques.

[33] The Respondent's practice standards file was closed when he provided a March 5, 2008 undertaking to inform the Practice Standards Department if his employment with the supervising lawyer ended, and to provide the Department with a written opinion of a psychiatrist as to his mental state, including any indications of depression and concerns regarding his ability to practise law, if he thereafter commenced practice as a sole practitioner.

**GENERAL PRINCIPLES**

[34] Following a determination adverse to a respondent other than an articled student the panel is obliged to impose one or more of the sanctions set out in s. 38(5) of the Act. The sanctions run the gamut from a reprimand to disbarment.

[35] Although the Respondent has not been a member of the Law Society since January 1, 2011, the provisions in the Act and Rules relating to discipline apply to him. This conclusion flows from the definition of "lawyer" found in s. 1 of the Act, which includes former members for the purposes of discipline matters, as well as from Rule 4-1(1), which states that Part 4 (Discipline) of the Rules applies to a former lawyer as it does to a lawyer, with the necessary changes and so far as applicable.

[36] The primary purpose of disciplinary proceedings, including any disciplinary action imposed, is not to punish the Respondent but rather to protect the public and maintain its confidence in the legal profession (G. MacKenzie, *Lawyers and Ethics*: *Professional Responsibility and Discipline*, Carswell, p. 26-1; *Law Society of BC v. Hordal*, 2004 LSBC 36, para. 51; *Law Society of BC v. McRoberts*, 2011 LSBC 4, para. 8; *Law Society of BC v. Hill*, 2011 LSBC 16, para. 3; *Law Society of BC v. Batchelor*, 2013 LSBC 9, para. 40). This overarching goal is reflected in s. 3 of the Act, which mandates the Law Society to "uphold and protect the public interest in the administration of justice."

[37] In cases involving multiple allegations of professional misconduct and/or rule breaches, the usual approach is to arrive at a disciplinary action that is suitable for all of the incidents viewed globally ( *Gellert*, (*supra*), para. 22; *Law Society of BC v. Basi*, 2005 LSBC 1, para. 2; *Law Society of BC v. Markovitz*, 2012 LSBC 25, para. 13; *Law Society of BC v. Lessing*, 2013 LSBC 29, paras. 75-78). A global approach tends to carry with it the benefit of simplicity and will, in most cases, be particularly well-suited to arriving at a result that furthers the objective of protecting the public. After all, the extent to which the public needs protection, and the manner by which such protection is best provided, must ultimately relate to the entire scope of the misconduct in issue and not to each particular wrongdoing viewed piecemeal.

[38] A helpful and frequently-cited non-exhaustive list of factors that may bear on determining the appropriate disciplinary action in any given case is set out as follows in *Law Society of BC v. Ogilvie*, 1999 LSBC 17, para. 10:

(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.

[39] We have taken the *Ogilvie* factors into account in the Respondent's case. But not all of the factors deserve the same weight in all cases. For instance, the nature and gravity of the misconduct will usually be of special importance (MacKenzie, ( *supra*), p. 26-1; *Law Society of BC v. Williamson*, 2005 BCSC 19, para. 36; *Law Society of BC v. Harder*, 2006 BCSC 48, para. 9; *Law Society of BC v. Goulding*, 2007 BCSC 39, para. 4; *Law Society of BC v. Skogstad*, 2009 BCSC 16, para. 6; *Law Society of BC v. McRoberts*, 2011 BCSC 4, para. 29), not only because this factor in a sense encompasses several of the others, but also because it represents a principal benchmark against which to gauge how best to achieve the key objective of protecting the public and preserving confidence in the legal profession. Indeed, this key objective is the prism through which all of the Ogilvie factors must be applied, a message that shines through clearly in the discussion in *Ogilvie* itself at paras. 9 and 10, and has since been affirmed in other decisions such as *Lessing*, (*supra*), at paras. 57 to 61.

[40] For instance, the rehabilitation prospects of the lawyer are often of importance in determining the proper disciplinary action (*Lessing*, (*supra*), paras. 57-60, 63-68). This is so because the better the prospects for rehabilitation, the less risk that the lawyer will misconduct himself or herself in the future and thereby harm the public or undermine its confidence in the legal profession. It necessarily follows, however, that a concern that the respondent be given a chance at rehabilitation can never trump the goal of protecting the public and ensuring its confidence in the integrity of the profession ( *Lessing*, para. 60).

[41] The assessment of a lawyer's prospects of rehabilitation often overlaps to some extent with another of the *Ogilvie* factors – his or her professional conduct record. The proper weight to be given to this record will vary from case to case, but it will almost always be worthy of consideration. Factors that may bear on the record's importance in arriving at a suitable disciplinary disposition include whether the prior misconduct is recent, its seriousness, rehabilitative steps subsequently taken by the respondent, and the degree to which the prior misconduct resembles the misconduct at issue in the current hearing ( *Lessing*, paras. 71-72).

[42] Finally, where a lawyer has deliberately misappropriated client funds, the application of the principles and factors mentioned above will usually result in disbarment (*Law Society of BC v. Ali*, 2007 BCSC 57, paras. 7-12 and the authorities cited therein; *Law Society of BC v. Kierans*, 2001 LSBC 6, paras. 56-61; *Law Society of BC v. Hall*, 2007 BCSC 26, para. 26; *Law Society of BC v. Dennison*, 2007 BCSC 51, para. 4; *Law Society of BC v. King*, 2007 BCSC 52, para. 4; *Law Society of BC v. Blinkhorn*, 2010 BCSC 36, para. 7).

[43] Granted, disbarment is the most serious penalty available, and will often have a drastic impact on many aspects of a lawyer's life, including his or her economic well-being, sense of self and reputation in the community.

[44] Yet this sanction is usually imposed for deliberate misappropriation from a client – almost always where

the amount is substantial (*Harder*, (*supra*), para. 9; MacKenzie, (*supra*), p. 26-1) – because in such cases disbarment is usually the only means of fulfilling the goal of the protecting the public and preserving public confidence in the legal profession. Deliberate misappropriation of funds is among the very most serious betrayals of a client's trust and constitutes gross dishonesty. Disbarment absolutely ensures no further recurrence of such conduct on the part of the lawyer. It also promotes general deterrence ( *McGuire v. Law Society of BC*, 2007 BCCA 442, para. 15; *Goulding*, (*supra*), para. 17; *Harder*, (*supra*), para. 57). And disbarring a lawyer who has deliberately misappropriated client funds is usually the only way to maintain public confidence in the legal profession.

[45] In this latter respect, the comments from *Lessing*, are apposite:

> [60] ... 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.

[46] This is not to say that a deliberate misappropriation of client funds will invariably lead to disbarment. But as noted in *Blinkhorn*, (*supra*), para. 8, disbarment can only be avoided where the respondent has presented "compelling evidence of extraordinary mitigating circumstances to satisfy the hearing panel that the protection of the public interest and reputation of the profession does not require disbarment." To similar effect, see *Dennison*, (*supra*), para. 4; *Goulding*, (*supra*), para. 6; *Law Society of BC v. Hainer*, 2007 BCSC 48, para. 5; *Law Society of BC v. Hammond*, 2004 LSBC 88, para. 25; *Law Society of BC v. Guthrie*, 2003 LSBC 6, para. 27.

**APPLICATION OF THE GENERAL PRINCIPLES IN THIS CASE**

[47] Applying the principles discussed above, it is clear that the only appropriate disciplinary action in the circumstances of this case is disbarment.

[48] The amount of client money deliberately misappropriated by the Respondent exceeded $14,000, which is a substantial amount. By way of comparison, disbarment has resulted in other cases where lesser amounts were taken (e.g., *Hainer*, (*supra*) ($7,520); *Law Society of BC v. Peters*, 1999 LSBC 38 ($7,000); *Goulding*, (*supra*) ($3,050); *Law Society of BC v. Currie*, [1994] LSDD 123 ($2,800)).

[49] Also relevant is the fact that the misappropriation occurred over a period of almost three years and involved 31 different clients. This was not a one-time misadventure on the Respondent's part.

[50] While there is no evidence that any of the 31 clients ever complained, this is of no real moment for two reasons. First, the money was taken from clients whose matters had concluded, in circumstances where it is likely that they did not realize that any funds were left owing to them. Second, the failure of a client to know or complain about deliberate misappropriation does nothing to mitigate the seriousness of the infraction. In the end it is the lawyer who has acted dishonestly and abused the sacrosanct duty not to misuse a client's trust money.

[51] For this same reason, the fact that the money did not go directly to the Respondent does little if anything to diminish the gravity of his conduct in deliberately misappropriating a substantial amount of client funds. In any event, the Respondent received at the very least an indirect benefit from the misappropriations insofar as most of the funds were transferred to a company in which his wife was the sole director and officer.

[52] A particularly aggravating factor is the Respondent's professional conduct record, which is lengthy and includes a number of serious instances of misconduct such as breach of an undertaking. His professional conduct record also contains a prior finding of misappropriation of client funds, albeit one involving a modest amount of money that appears not to have been taken deliberately.

[53] Notably, the penalty decision in relation to the Respondent's prior instances of misconduct shows that he came close to being disbarred on that occasion. It was only the presence of significant mitigating circumstances that resulted in a less severe disposition, namely, an 18-month suspension and the imposition of conditions on any return to practice. While the principle of utilizing progressively more serious

disciplinary sanctions on lawyers who misconduct themselves on more than one occasion is of much reduced relevance in misappropriation cases ( *Lessing*, (*supra*), para. 74), applying this principle in the present case provides further support for disbarring the Respondent.

[54] This point gains still more strength from the fact that the Respondent, on returning to practice about a year after his suspension concluded, was prohibited from having signing authority over any trust accounts by the Practice Standards Committee. This restriction would have underlined for him the paramount importance of properly managing trust accounts and avoiding any conduct that might put a client's trust money at risk.

[55] And yet the Respondent commenced misappropriating client funds the day after the Practice Standards Committee closed its file on him, and just six days after the Committee removed the restriction regarding his handling of trust money. It had been less than two years since he had returned to practice following his suspension. The Respondent's actions have thereby demonstrated that even a lengthy suspension combined with practice restrictions and Practice Standards Committee supervision is an insufficient means of protecting the public from his continued misconduct.

[56] For all of these reasons, it is extremely difficult to envision exceptional mitigating circumstances that could possibly justify not disbarring the Respondent for his misappropriation of client funds. Regardless, no mitigating circumstances of any sort have been brought to our attention, and the Respondent has offered no explanation for his conduct.

[57] While the misappropriation of client funds is enough, on its own, to require the Respondent's disbarment, this conclusion is further bolstered by our findings of other professional misconduct and rule breaches. Of particular salience in this regard:

> (a) once it became clear to the Respondent that his misappropriations would be detected during a routine Law Society compliance audit, he committed professional misconduct by directing threats at an auditor;
>
> (b) as the audit process progressed, the Respondent refused to respond to the auditor and Law Society requests for information regarding the discovered trust account irregularities, which refusal also amounted to professional misconduct;
>
> (c) this was not the first time the Respondent had failed to respond to Law Society requests for information regarding possible practice problems – his record contains six prior findings of professional misconduct for failing to do so;
>
> (d) the Respondent's three Rule breaches all involve a failure to follow Law Society trust account requirements; and
>
> (e) two of these Rule breaches involve large amounts of money and conduct that is prohibited because it carries a real risk of assisting in client impropriety or facilitating trust fund misappropriation at the hands of a lawyer (although there is no evidence to suggest that such consequences occurred in this case).

[58] We conclude that disbarring the Respondent is necessary both to ensure that the public is adequately protected and to preserve confidence in the legal profession, and thus constitutes the appropriate disciplinary action in this case.

## COSTS

[59] The Law Society asked for costs of $8,840 payable by April 30, 2014. These costs are in accordance with the Tariff for hearing and review costs at Schedule 4 of the Rules and are reasonable and appropriate with one exception, namely, the court reporting costs should be reduced by $210 to reflect that the disciplinary action hearing only took a half-day. The Respondent should therefore pay costs to the Law Society in the amount of $8,630.

## SEALING ORDER

[60] Subsequent to the hearing in this matter, the Law Society brought a written application to seal Exhibits 1 to 5 filed at the hearing for the purpose of preventing third party access to solicitor-client confidential information. These exhibits consist of:

> (a) Exhibit 1: an affidavit of service made January 23, 2013, which contains a number of

service-related documents including the citation dated December 18, 2012;

(b) Exhibit 2: the citation dated December 18, 2012;

(c) Exhibit 3: an affidavit made July 15, 2013, which contains a Notice to Admit without the supporting documents, materials related to service of this Notice and numerous hearing-related emails exchanged between the Respondent and representatives of Law Society;

(d) Exhibit 4: the Notice to Admit plus supporting documents; and

(e) Exhibit 5: the amended citation dated May 2, 2013.

[61] Openness and transparency are hallmarks of disciplinary proceedings. Rule 5-6(1) provides that every hearing is open to the public, while Rule 5-7(2) permits any person to obtain a copy of an exhibit entered during a public portion of a hearing.

[62] The Rules nonetheless recognize that there may be legitimate reasons to restrict public access to a hearing or to exhibits filed at a public hearing. For example, Rule 5-6(2), read in conjunction with Rule 5-7(2), permits a panel to make an order that all or part of an exhibit filed at a public hearing not be made available to third parties "to protect the interests of any person."

[63] It is important that clients not lose the protection of solicitor-client confidentiality simply because the Law Society has relied on documents containing confidential information for the legitimate purpose of bringing disciplinary proceedings against a lawyer or former lawyer. A panel can therefore rely on Rules 5-6(2) and 5-7(2) to seal materials filed at a hearing in order to prevent client confidences from being accessible to the public. However, a panel should avoid making an overly broad sealing order and thereby unjustifiably restricting the openness and transparency of the disciplinary process.

[64] All copies of the citation dated December 18, 2002 and the amended citation dated May 2, 2013 should be sealed because these documents contain the names of numerous clients, which generally constitute confidential information (*Code of Professional Conduct for British Columbia*, Rule 3.3-1(5(a)). Exhibits 2 and 5 should therefore be sealed. So too should be the citation included as part of Exhibit 1. However, none of Exhibit 1, apart from the citation, should be sealed.

[65] In ordering that copies of the citation and amended citation be sealed, we note that a version of the citation from which the client names have been redacted is available on the Law Society's website. The essential nature of the citation is also reproduced, without reference to client names, in our Facts and Determination decision. The public thus has access to versions of the citation from which the confidential information has been expunged.

[66] All copies of the Notice to Admit filed as part of an exhibit should also be sealed because this document makes extensive reference to client identities. The Notice to Admit filed as part of Exhibit 4 should therefore be sealed. The Notice to Admit included as an exhibit to Exhibit 3 should also be sealed. However, no other part of Exhibit 3 should be sealed.

[67] The supporting documents attached to the Notice to Admit filed as Exhibit 4 should be sealed where they contain information that would reveal client identities but not otherwise. These documents are set out in sub-paragraph 69(c)(v) below.

[68] Sealing the Notice to Admit and many of the supporting documents does not unduly deprive the public of access to the facts underlying the Respondent's disciplinary matter because the facts significant to the citation, absent reference to identifiable client names, are comprehensively reviewed in our Facts and Determination decision.

**SUMMARY OF ORDERS**

[69] By way of summary, we order that:

(a) the Respondent be disbarred;

(b) the Respondent pay costs to the Law Society in the amount of $8,630 payable by May 31, 2014;

(c) the following materials filed by the Law Society during the hearing before us be sealed:

(i) the citation attached as Exhibit B to Exhibit 1;

(ii) the citation filed as Exhibit 2;

(iii) the Notice to Admit included in Exhibit A to Exhibit 3;

(iv) the 21-page Notice to Admit filed at Exhibit 4;

(v) the following supporting documents attached to the Notice to Admit filed at Exhibit 4:

1. the citation at Tab 1;
2. the citation included as Exhibit B to the Affidavit made January 23, 2012 at Tab 2;
3. the amended citation at Tab 3;
4. the Law Society memo dated November 1, 2010 at Tab 6;
5. the Rule 4-43 Interim Report dated June 7, 2012 at Tab 9;
6. the client ledgers, cheques and all other documents at Tabs 10-26, 28-37;
7. the Law Society correspondence and schedules at Tabs 39-44, 47.

(vi) the amended citation filed as Exhibit 5.