2014 LSBC 24
Report issued: June 11, 2014
Oral decision on Facts and determination: March 27, 2014
Citation issued: October 8, 2013

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

Tim Yao-Yuan Xia

Respondent

Decision of the Hearing Panel
on Facts, Determination and Disciplinary Action

Hearing date: March 27, 2014
Panel: David Mossop, QC, Chair, Jasmin Ahmad, Lawyer, Clayton Shultz, Public representative

Counsel for the Law Society: Kieron Grady
Counsel for the Respondent: Henry Wood, QC

BACKGROUND AND SUMMARY OF PARTIES' POSITIONS

[1] The citation authorized on September 26, 2013 and issued on October 8, 2013 sets out a single allegation that the Respondent committed professional misconduct by affixing his signature as a witness to an agreement between two parties when he had not witnessed either party execute the agreement.

[2] The specific allegation in the citation is as follows:

> 1. On or about November 8, 2008, at the request of your client ZG you affixed your signature as a witness to an agreement dated March 31, 2004, between ZG and his son HG, when you had not witnessed either of them execute the agreement, contrary to Chapter 2, Rule 1 of the *Professional Conduct Handbook*, then in force.

[3] It is alleged that the conduct constitutes professional misconduct pursuant to section 38(4) of the *Legal Profession Act*, SBC 1998, c. 9 (the "Act").

[4] In an Agreed Statement of Facts (the "ASF") jointly filed by the parties, the Respondent has admitted the facts alleged in the citation. He has also admitted that his conduct constitutes professional misconduct. The parties did not agree on the disciplinary action to be imposed in respect of that misconduct.

[5] These are our reasons with respect to both the facts and determination and disciplinary action phases of this proceeding.

[6] In addition, we have been asked to make a sealing order in respect of certain of the documents marked as exhibits in this proceeding being:

> (a) The citation issued October 8, 2013;
>
> (b) The ASF, including the documents attached to the ASF; and

(c) The personal income tax returns of the Respondent for the years 2011 and 2012.

ISSUES

[7] The substantive issues to be determined by this Panel are:

(a) Does the Respondent's conduct in affixing his signature as a witness to an agreement when, in fact, he did not witness the execution of the agreement constitute professional misconduct under section 38(4) of the Act; and

(b) If so, what is the appropriate disciplinary action to be imposed?

[8] The ancillary issue to be determined is whether a sealing order should be granted in respect of certain of the documents marked as exhibits in this proceeding.

Facts

[9] The relevant portions of the ASF are summarized below (with confidential information deleted):

1. During October 2008, ZG (the "Husband") phoned Mr. Xia and requested an appointment. The Husband was given an appointment on October 31, 2008.

2. Prior to October 31, 2008, Mr. Xia had no dealings with the Husband and had never met him before.

3. On October 31, 2008, the Husband attended at the office of Mr. Xia and asked Mr. Xia to draft a marital separation agreement. The Husband advised Mr. Xia he had already discussed the terms of the agreement with his wife, KT (the "Wife") and that she was in agreement with its terms.

4. Based on the information and instructions given to him by the Husband, Mr. Xia prepared a separation agreement on or about October 31, 2008, and provided two copies to the Husband who then signed it; his signature was witnessed by Mr. Xia, who signed the agreement as a witness and affixed his stamp. The Husband told Mr. Xia that he would arrange for his wife's signature on the separation agreement in the presence of another lawyer.

5. On November 8 2008, the Husband again attended at Mr. Xia's office (the "Second Meeting") and requested that Mr. Xia prepare the necessary paperwork to effect a transfer of property from the Husband to his son, (the "Son"). The Husband brought with him certain documents.

6. Based on the instructions received from the Husband, Mr. Xia prepared a Land Title Act Form A Freehold Transfer that was signed by the Husband on November 8, 2008. Mr. Xia witnessed the Husband's signature and signed the officer certification.

7. Also at the Second Meeting, the Husband presented copies of two one-page agreements between the Son and the Husband, both dated March 31, 2004. One agreement only had the signatures of the Son and the Husband (the "First Agreement"). When the Husband presented the First Agreement to Mr. Xia, it did not indicate that it had been witnessed by anyone and Mr. Xia's signature and stamp were not on the document at the time.

8. The other agreement was signed by the Son and witnessed by a Notary Public (the "Second Agreement"). The Husband asked Mr. Xia to witness the signatures of the Son and the Husband that were already on the First Agreement.

9. Mr. Xia advised the Husband that the First Agreement was legally binding without witnesses to the

signatures. However, the Husband was insistent and requested that Mr. Xia "formalize" the First Agreement by signing it as a witness. Mr. Xia signed the First Agreement as witness to the signatures contained in it. He also affixed his stamp containing his name, title and address. In addition, he initialed a redaction in paragraph B of the First Agreement.

10. Mr. Xia did not, in fact, witness the signature of either the Husband or the Son contained on the First Agreement, nor did he affix a date when he purported to witness the two signatures on the First Agreement. By signing the First Agreement as a witness, Mr. Xia confirmed that the signatures of the Husband and the Son were genuine.

11. On April 18, 2009, Mr. Xia, on behalf of the Husband, began an action for divorce in the New Westminster Registry (the "New Westminster Action"). In December 2011, the Wife filed a Notice of Family Claim in the Vancouver Registry (the "Vancouver Action.").

12. The Son was a Defendant/Respondent in both the New Westminster Action and the Vancouver Action.

13. The First Agreement was appended to a total of four documents in relation to the New Westminster Action and the Vancouver Action. In the New Westminster Action, the agreement was included as a document in the Son's List of Documents dated October 5, 2009 and appended as an exhibit to the Son's Affidavit #2 sworn January 13, 2010.

14. In the Vancouver Action, the Son's Affidavit #1, sworn September 13, 2012, appended the entirety of the Son's Affidavit #2 in the New Westminster Action.

15. The Respondent admits that his conduct on November 8, 2008 in affixing his signature as a witness to the First Agreement when he had not witnessed either of the signatures constitutes professional misconduct.

FACTS AND DETERMINATION

[10] The well-settled test for "professional misconduct" is "whether the facts as made out disclose a marked departure from that conduct the Law Society expects of its members …" That test, set out in *Law Society of BC v. Martin*, 2005 LSBC 16, has been consistently applied in disciplinary hearings in this Province.

[11] In *Law Society of BC v. Cranston*, 2006 LSBC 36, the hearing panel considered the issue of whether conduct similar to the facts alleged in this case constituted "professional misconduct". In *Cranston*, the citation directed the panel to inquire into the respondent's conduct as follows:

> You affixed your signature as a witness to the signing of a Transport Canada Bill of Sale dated November 1, 2004 when the document had already been completed and signed outside your presence.

[12] In that case, the respondent signed the bill of sale in the spot intended for a witness to the signature of the vendor in circumstances where: (a) the purported vendor was not present before him; (b) to the respondent's knowledge, the owner of the boat did not, in fact, sign the bill of sale; and (c) the "vendor's" signature on the bill of sale was not that of the owner of the boat.

[13] In those circumstances, the hearing panel found at paragraph 5 as follows:

> We also find that the failure on Count 1 was professional misconduct as it reflects a marked departure from the conduct that the Law Society expects of its members. Affixing a signature as a witness on a legal document when a member has not in fact witnessed that document was held to be professional misconduct in *Law Society of BC v. Bennett*, Discipline Case Digest 85/4, penalty heard December 5,

1984 and in *Law Society of BC v. McLean*, Discipline Case Digest 93/12, hearing report dated April 14, 1993. It is manifestly in the public interest that a lawyer's signature as witness to a legal document must be viable evidence of the fact that the member indeed witnessed the affixed signature.

[14] Indeed, pursuant to section 3 of the Act "it is the object and duty of the society to uphold and protect the public interest in the administration of justice." There can be no doubt that it is in the public interest that members of the public be able to confidently rely on a lawyer's written and oral word as being representative of the truth. Without that confidence, it would be difficult, if not impossible, to maintain the public's confidence in the legal profession generally or in lawyers as individuals.

[15] In this matter, by affixing his signature purporting to witness the signatures on the First Agreement, the Respondent represented to any member of the public who viewed the First Agreement that he witnessed the signatures on the document. That representation was false. Without doubt, that false statement casts doubt on the Respondent's professional integrity and reflects adversely on the integrity of the legal profession.

[16] As noted in *Cranston* (supra), "… a lawyer's signature as witness to a legal document *must* be viable evidence of the fact that the member indeed witnessed the affixed signature." [emphasis added]

[17] Furthermore, as a result of his conduct, any member of the public viewing the First Agreement would conclude that the signatories signed it on the date of the First Agreement: March 31, 2004, four years before the Respondent purported to "witness" it. That conclusion might or might not be true.

[18] We recognize that, unlike the situation in *Cranston*, there is no evidence before this Panel to suggest that the parties whose signatures the Respondent purported to witness did not actually sign the First Agreement on the date shown on the document.

[19] We also note that:

(a) There is no evidence that the signatories to the First Agreement signed the documents for any improper purpose;

(b) There is no evidence that the Respondent's conduct caused any direct harm or resulted in any adverse consequences to any party;

(c) The First Agreement did not require a witness to the signatures and was valid even without the Respondent "witnessing" it;

(d) The First Agreement was not a sworn document; and

(e) There is no evidence that the Respondent purported to witness the First Agreement for any particular purpose (nefarious or otherwise) or that either he or his client gained any advantage as a result.

[20] However, it is not enough for a respondent to defend his or her conduct on the basis of "no harm, no foul". (We do not suggest that the Respondent in this case did. On the contrary, to his credit, he candidly conceded through counsel that his conduct had the "potential for mischief".)

[21] While the fact that no harm was occasioned may be relevant to the determination of the appropriate disciplinary action, it does not detract from the fact that the Respondent falsely represented that he witnessed signatures when he did not.

[22] Irrespective of any mitigating factors, it is sufficient that the Respondent's conduct had the potential for the same type of "mischief" that occurred in *Cranston*. Especially given the "object and duty of the Society to uphold and protect the public interest in the administration of justice," that potential mischief must be

avoided.

[23] In the circumstances, we accept the Respondent's admission of the facts set out in the citation. The Panel concludes that that conduct contravenes Chapter 2, Rule 1 of the Handbook and "disclose[s] a marked departure from that conduct the Law Society expects of its members …".

[24] We accept the Respondent's admission of professional misconduct and, accordingly, under section 38(4) of the Act, we determine that the Respondent has committed professional misconduct.

Disciplinary Action

[25] Having concluded that the Respondent's conduct constituted professional misconduct, this Panel must determine the appropriate disciplinary action to be imposed as a result of that finding

[26] Section 38(5) of the Act set outs a wide range of sanctions that are available to a panel if an adverse determination is made against a respondent. Paragraphs (a), (b), (c), and (f) are most relevant to the issues before this Panel. Collectively, they allow the Panel to do one or more of the following:

(a) Reprimand a respondent (section 38(5)(a));

(b) Fine a respondent an amount not exceeding $50,000 (section 38(5)(b));

(c) Impose conditions or limitations on a respondent's practice (section 38(5)(c)); or

(d) Require a respondent to, among other things, complete a remedial program to the satisfaction of the practice standards committee or appear before a practice standards committee and satisfy it that he or she is competent to practice law (section 38(5)(f)).

[27] In addition, section 38(7) of the Act provides further discretion to a hearing panel to "… make any other orders and declarations and impose any conditions it considers appropriate."

[28] As noted by the review panel in *Law Society of BC v. Lessing*, 2013 LSBC 29, "… section 38(7) of the Act allows hearing panels a "degree of creativity" in formulating disciplinary action. It urged that "Panels should not be timid in using this power."

[29] The "degree of creativity" allowed by subsection 38(7) means that hearing panels are not limited to the imposition of fines and suspensions or, in severe cases, disbarment. We encourage counsel in future disciplinary hearings to fully consider and assist hearing panels with respect to the whole range of disciplinary options available to a hearing panel, including the discretionary power conferred by section 38(7). The question at bar is should we impose conditions. We will deal with this later.

[30] The guiding principle in exercising its discretion is section 3 of the Act. That section provides that "it is the object and duty of the society to uphold and protect the public interest in the administration of justice …." The "object and duty" are reflected in the non-exhaustive list of factors to consider in discipline proceeding as set out in *Law Society of BC v. Ogilvie*, [1999] LSBC 17, at paragraphs 9 and 10 (*Lessing* (supra) at para. 55). Those factors are:

a. the nature and gravity of the conduct proven;

b. the age and experience of the respondent;

c. the previous character of the respondent, including details of prior discipline;

d. the impact upon the victim;

e. the advantage gained, or to be gained, by the respondent;

f. the number of times the offending conduct occurred;

g. whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence of absence of other mitigating circumstances;

h. the possibility of remediating or rehabilitating the respondent;

i. the impact upon the respondent of criminal or other sanctions or penalties;

j. the impact of the proposed disciplinary action 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.

[31] We will discuss the factors relevant to this proceeding below.

The nature and gravity of the conduct proven

[32] As noted above, the hearing panel in *Cranston* (supra) held that "it is manifestly in the public interest that a lawyer's signature witnessed to a legal document must be viable evidence of the fact that the member indeed witnessed the affixed signature."

[33] The reason is obvious: without that certainty, the public could have no confidence of the authenticity or veracity of any document in which signatures are witnessed by a lawyer. On a more global level, that would undoubtedly undermine the public's confidence in a legal profession generally and in lawyers as individuals.

[34] In this case, by affixing his signature to the First Agreement, the Respondent falsely represented to any person who viewed that document that he witnessed the parties' execution of the agreement on the date specified.

[35] In our view, that false representation has the potential to undermine the public's confidence in the profession. The Respondent's misconduct was serious. However, it is at the lower end of the "witnessing" cases.

Previous character of the Respondent, including details of prior discipline

[36] The whole of the Respondent's professional conduct record was before the Panel. However, counsel for the Law Society limited its reliance on incidents that occurred prior to the issuance of the citation summarized in paragraphs 1 and 2 of this Decision; accordingly we did not extend our consideration to that portion of the record that occurred after the events that give rise to the citation.

[37] The conduct record discloses a history of involvement with the Practice Standards Committee. While the conduct record does not, and cannot, include the reasons for that involvement, it indicates that the Respondent had, at least in the past, struggled with practice standards. The conduct record also discloses that the Respondent is currently conducting his practice under a Practice Supervision Agreement.

[38] In our view, the conduct record is an aggravating factor.

Impact upon the victim/advantage gained or to be gained by the Respondent

[39] The Panel considers that circumstances present in this case will be a mitigating factor in the assessment of the appropriate disciplinary action.

[40] These are as follows:

(a) There is no evidence to suggest that the Respondent was aware, or had any reason to believe, that the parties whose signatures the Respondent purported to witness did not, in fact, sign the First Agreement on the date set out on the document;

(b) There is no evidence that the Respondent's conduct caused any direct harm or resulted in any adverse consequences to any party; and

(c) There is no evidence that the Respondent's conduct was done for any particular purpose or that either he or his client gained any advantage as a result.

Acknowledgement of the misconduct

[41] Not only has the Respondent agreed to the ASF and admitted the facts giving rise to the citation, he has also admitted that his conduct constitutes professional misconduct. The Panel notes that he did so early in the process, and we find this to be a mitigating factor.

[42] The Panel takes favourable note of the Respondent's early, written admission of wrongdoing. This is a mitigating factor.

Impact of the proposed disciplinary action on the Respondent

[43] The Law Society argued that the appropriate discipline is a fine of $5,000 and costs of $3,000, each payable by October 31, 2014 or such other reasonable date as the Respondent may propose.

[44] The Respondent argued that his financial circumstances militated in favour of a lesser fine and suggested that the combined amount of the fine and costs awarded be taken into account. He suggested that a fine of $3,000 and reduced costs would be more appropriate.

[45] In support of that position, the Respondent tendered as evidence his T1 income tax returns for the years 2011 and 2012. (Those tax returns are subject of an application for a sealing order which is dealt with below).

[46] The respondent in *Law Society of BC v. Walters*, 2005 LSBC 39, also relied on personal circumstances to advocate "greater leniency and a lesser disciplinary action." The conduct that constituted professional misconduct in that case was similar to the Respondent's. In *Walters*, the parties jointly filed an agreed statement of facts in which the respondent "admits that her conduct in administering an oath to her client TRJ, on the Affidavit … and signing the jurat of the Affidavit as having being sworn before her as Commissioner for taking Affidavits, while leaving the jurat of the Affidavit undated, constitutes professional misconduct."

[47] Although her main argument for leniency focused on the "difficult family circumstances in which the respondent found herself in and around the time of the misconduct", the respondent also cited "somewhat strained" financial resources as a factor for the panel to consider.

[48] In *Walters*, the panel expressed its sympathy and regret for the respondent's "difficult personal and family circumstances" but declined to reduce the amount of the fine or costs for those reasons, stating at paragraph 11 that, "… the Panel is nonetheless of the view that the nature of that misconduct is such that it

cannot and ought not to be condoned by the profession and is deserving of censure. Those difficult circumstances cannot be used to justify unprofessional conduct by a member." And further at paragraph 12:

> This Panel is of the view that the words of the Hearing Panel in *Re: Lawyer 3*, 2004 LSBC 27 (reversed on other grounds) apply equally here:

[28] Allowing this conduct to go uncensored would harm the standing of the legal profession. Documentary evidence sworn before lawyers would lose its value if the public and the courts become aware that scrupulous adherence to the rules of swearing such documents was not being practised.

[49] In our view, allowing personal circumstances to influence the disciplinary action that otherwise would be imposed would unduly give precedence to the Respondent's individual circumstances over maintaining the public confidence and the integrity of the profession. Especially in light of section 3 of the Act, we decline to consider the Respondent's income tax returns in our assessment of the appropriate disciplinary action.

Need for specific and general deterrence

[50] This matter is significant in the fact that no apparent harm resulted from the Respondent's conduct.

[51] However, there is a need for general deterrence of such inappropriate conduct even if, in hindsight, no actual harm is demonstrated.

The need to ensure the public's confidence in the profession/possibility of remediation or rehabilitation

[52] The importance of the need to ensure the public's confidence cannot be overstated when determining an appropriate disciplinary action.

[53] As noted by the review panel in *Lessing* (supra) protection of the public, together with the rehabilitation of the respondent, "will, in most cases, play an important role" in determining the sanction to be imposed against a lawyer who commits professional misconduct. It noted:

> 60. Undoubtedly, if there is 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 practise while attempting to rehabilitate him or herself under conditions imposed by the hearing panel. …

[54] Given the "degree of creativity" allowed by section 38(7) of the Act, it is possible in the circumstances of this case to balance the two important factors, being the protection of the public and the rehabilitation of the member while allowing the Respondent to continue to practice law. If necessary, this means imposing conditions on the member.

Range of disciplinary action imposed in similar cases

[55] The penalties imposed in similar cases will factor into a panel's determination on discipline. In this case, each of the Law Society and the Respondent referred to a number of cases dating from 1996 to 2012 and involving fines ranging from $2,600 to $5,000 for conduct similar to the conduct of the Respondent.

[56] Of course, the universal truth that "no two cases are the same" (*Lessing* (supra) at para. 79) applies to the cases that we were asked to consider in this case. In particular, many of the cases referred to by the

Law Society are distinguishable on the significant basis that they involve situations in which the respondent had actual knowledge of some inaccuracy or impropriety in the document that he or she purported to witness. For example:

(a) As previously noted, in *Cranston* (supra) the respondent falsely affixed his signature as a witness to a "vendor's" signature on a bill of sale knowing that the owner of the boat did not sign the bill of sale and, in fact, the "vendor's" signature was not that of the owner. In that case, a third party tendered the falsified bill of sale, which resulted in the transfer of the boat to him. Litigation ensued as a result. The respondent was reprimanded and ordered to pay a fine of $5,000;

(b) In *Law Society of BC v. Bhatti*, 2000 LSBC 32, the respondent purported to witness a wife's signature on both power of attorney and a mortgage knowing that the document had in fact been signed by the husband in the wife's name. The respondent also witnessed the execution of several documents that were incorrectly dated. The respondent was reprimanded and ordered to pay a $5,000 fine;

(c) In *Law Society of BC v. Persad*, [1998] LSDD No. 132, the respondent witnessed the purported signature of a mortgagor when he knew that the document had been signed by another person who did not hold the power of attorney authorizing him to sign for the mortgagor. The respondent was reprimanded and ordered to pay a fine of $5,000; and

(d) In *Law Society of BC v. Foo*, [1997] LSDD No. 197, the respondent, knowing that it was not true, allowed a client to swear an affidavit in a divorce proceeding stating that the client's wife had been served with a divorce petition. In separate matters, the respondent also witnessed a client swear two affidavits, each of which purported to annex a document that was not attached. The panel ordered the respondent pay a fine of $2,600, costs and be subject to conditions should be return to practice.

[57] The respondents' actual knowledge of the inaccuracies (at best) and false statements (at worst) in the documents in those cases make them distinguishable from the case before this Panel.

[58] In our view, two of the cases referred to by the parties more closely reflect the circumstances giving rise to the present citation and are more relevant to the circumstances of this case. They are these:

(a) In *Law Society of BC v. Wong*, 2012 LSBC 15, the respondent instructed a junior associate to prepare what he called a "take out affidavit" in which the client signed the sworn or jurat part of a financial statement document before the whole document was finalized or completely filled out and at a time when the client was not physically present before the lawyer.

The panel noted that "most important, the client was never physically present before the lawyer to allow the lawyer to see the client personally sign and to be able to properly satisfy the requirements of swearing an affidavit."

In that case, the facts set out in the statement were correct, and as is the case in this matter, no harm was suffered by any person and the respondent gained nothing from misconduct. There was evidence before the panel that the conduct had occurred before. The respondent was ordered to pay a fine of $3,500 and costs of $3,000; and

(b) In *Law Society of BC v. Walters*, 2005 LSBC 39, the respondent left the date of the jurat blank when administrating an oath and signing the jurat on an affidavit of her client. She was waiting for an entered copy of a consent order referred to as an exhibit in the affidavit and expected that the date would be inserted in the jurat once the consent order had been received. She was ordered to pay a fine of $3,000 and costs of $3,500.

[59] To the extent that the penalties imposed in similar cases are a factor in our determination on

disciplinary action, we prefer the decisions in *Wong* and *Walters*.

[60] Having considered all of the law and evidence before us and, in particular, having regard to the "*Ogilvie* factors", we have concluded that the appropriate disciplinary action is the imposition of a fine of $3,000.

COSTS

[61] Rule 5-9 of the Law Society Rules provides, in part, as follows:

> (1.1) Subject to subrule (1.2), the panel or review board must have regard to the tariff of costs in Schedule 4 to these Rules in calculating the costs payable by an applicant, a respondent or the Society in respect of a hearing on an application or a citation or a review of a decision in a hearing on an application or a citation.
>
> (1.2) If, in a judgment of the panel or review board, it is reasonable and appropriate for the Society, an applicant or a respondent to recover no costs or costs in an amount other than that permitted by the tariff in Schedule 4, the panel or review board may so order.
>
> …

[62] Notwithstanding Rule 5-9(1.1), the Law Society did not submit a bill of costs in accordance with the Tariff. Rather, it relies on Rule 5-9(1.2). It seeks costs in the fixed amount of $3,000, inclusive of disbursements and counsel time.

[63] The Respondent also relies on Rule 5-9(1.2). He argued that Rule 5-9(1.2), together with the decision of the hearing panel in *Law Society of BC v. Racette*, 2006 LSBC 29, confers discretion on a panel in making a costs award. Counsel for the Respondent urged the Panel to consider various factors, including the early admissions made by the Respondent and his financial circumstances, in exercising that discretion.

[64] At paragraph 13 of *Racette* the hearing panel stated:

> [13] This Panel has previously held that any order for costs should be based on a careful consideration of all relevant factors including:
>
> (a) The seriousness of the offence;
>
> (b) The financial circumstances of a Respondent;
>
> (c) The total effect of the penalty, including possible fines and or suspensions; and
>
> (d) The extent to which the conduct of each of the parties has resulted in costs accumulating, or conversely, being saved.
>
> [14] Full indemnity for costs should never become "automatic". In every case the total penalty, including costs, should "fit the crime".

[65] This Panel realizes the above case was decided before the amendment that brought in the present Tariff of costs. However, we consider that decision of some value in exercising the discretion to reduce the amount ordered for costs.

[66] There is no doubt that as a result (at least in part) of the Respondent's quick response and admission to the citation that was issued in October 2013, this matter was heard and could be determined in an efficient manner.

[67] We also accept that the financial circumstances of the Respondent dictate that he may be incapable of

paying costs of any material amount.

[68] In the circumstances, we set the amount of costs payable at $1,000.

CONCLUSION

[69] The Panel accepts the Respondent's admission of professional misconduct with respect to the allegation made in the citation.

[70] We impose a fine of $3,000 and costs of $1,000 against the Respondent.

[71] We are confident that, together with the fact that the Respondent is currently conducting his practice under a Practice Supervision Agreement, the imposition of a fine and costs will serve the important functions of rehabilitation and ensuring public confidence in the disciplinary process. With the current practice supervision, this disciplinary action is sufficient to protect the public interest. There is no need for additional conditions.

[72] This is not a binding precedent for future panels. A future panel may come to a different conclusion; in a future situation a hearing panel may, depending on the facts of that case, decide that additional conditions are required, even if the respondent is under practice supervision.

ORDER

[73] The Panel orders that, on or before December 31, 2014, the Respondent pay:

(a) a fine in the sum of $3,000, and

(b) costs in the sum of $1,000.

ORDER TO PROTECT CONFIDENTIAL INFORMATION

[74] There is a request for an order under Rule 5-6(2) that confidential information and third party information, including the Respondent's personal tax returns, documents and correspondence between the Law Society and the Respondent identifying documents relating to clients' files not be disclosed and that the citation, the Agreed Statement of Facts, and the transcripts of this hearing be sealed.

[75] This was requested on the basis of a concern that the particulars of the client's legal issues appropriately included in the ASF, should not be accessible to the public, based on solicitor/client privilege and client confidentiality. The Law Society did not oppose the request for such an order.

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

[77] The Rules 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."

[78] 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 utilize Rules 5-6(2) and

5-7(2) to seal materials filed at a hearing in order to prevent confidential information from being accessible to the public.

[79] The citation issued October 8, 2013 should be sealed because this document contains the name of the Respondent's client, and the particulars of legal arrangements between the client and others. This information generally constitutes confidential information (Code of Professional Conduct for British Columbia, rule 3.3-1(5(a)). The ASF and the transcripts of this hearing should be sealed for the same reasons.

[80] We note that a version of the citation from which confidential information has 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 this decision. The public thus has access to versions of the citation from which the confidential information has been removed.

[81] We have also included all relevant portions of the ASF in our decision without confidential information and information that is subject to solicitor/client privilege. Therefore, we find that the public has access to the essential information to understand the context of the professional misconduct by the Respondent and the reasons for our decision.

[82] For those reasons, we order that the citation, the ASF, and transcripts of this hearing be sealed. We make the same order in regards to the Respondent's income tax returns.