2015 LSBC 53
Decision issued: November 30, 2015
Citation issued: July 18, 2014

THE LAW SOCIETY OF BRITISH COLUMBIA

In the matter of the *Legal Profession Act,* SBC 1998, c. 9

and a hearing concerning

JOHN DAVID BRINER

RESPONDENT

DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION

Hearing date:	June 30, 2015
Panel:	Thomas Fellhauer, Chair Dr. Gail Bellward, Public representative Richard B. Lindsay, QC, P. Eng., Lawyer
Discipline Counsel:	Alison Kirby
Appearing on his own behalf:	John D. Briner

INTRODUCTION

[1] The Law Society issued a citation against John David Briner (the "Respondent") in accordance with s. 38 of the *Legal Profession Act*, alleging that:

(a) The Respondent misappropriated $50,439.44 received on behalf of his client, GK (the "Client's Funds");

(b) The Respondent failed to cooperate with the Law Society's investigations into the receipt and disbursement of the Client's Funds; and

(c) The Respondent failed to comply with his obligations under Part 3, Division 7 of the Law Society Rules, with respect to recording the receipt and withdrawal of the Client's Funds.

[2] A hearing on Facts and Determination was held on December 9, 2014. The Respondent did not attend.

[3] Following the hearing on Facts and Determination, we found that the Respondent:

(a) misappropriated trust funds of $50,439.44;

(b) failed to cooperate with the Law Society in this investigation; and

(c) breached the trust accounting rules set out in the citation.

We found that, in each case, the Respondent committed professional misconduct.

[4] The Respondent is a former member of the Law Society. He resigned and ceased to be a member on October 16, 2013.

PRELIMINARY MATTERS

[5] By email dated June 3, 2015, the Respondent confirmed that a hearing on June 30, 2015 was acceptable to him.

[6] On June 3, 2015, the Respondent was served with the Notice of Hearing pursuant to Rule 4-24 of the Law Society Rules. That Notice of Hearing stated that the hearing would be held on June 30, 2015 at 9:30 a.m.

[7] By email dated June 15, 2015, the Respondent was provided with the Law Society's Book of Authorities.

[8] By email dated June 16, 2015, the Respondent was provided with a draft Bill of Costs of the Law Society.

[9] By email dated June 22, 2015, the Respondent was provided with two additional cases that the Law Society intended to rely upon.

[10] By email dated June 29, 2015, the Respondent was provided with the Law Society's written submissions.

[11] The Respondent did not respond to any of the foregoing emails referred to in paragraphs [6], [7], [8], [9] and [10].

[12] The Panel convened at 9:30 am on June 30, 2015 as scheduled. At that time the Respondent was not present. The Respondent did appear at 9:45 am and apologized for being late.

[13] Counsel for the Law Society provided written submissions, its Book of Authorities, the Respondent's Professional Conduct Record and a draft Bill of Costs. The Respondent did not provide any written materials and only wished to make oral submissions.

[14] The Law Society is seeking a penalty of disbarment. As this is the most severe penalty, we asked the Respondent if he had notice that the Law Society was seeking disbarment. The Respondent advised that he had just learned of this the day before the hearing when he received the Law Society's written submissions. After a short break, counsel for the Law Society provided a copy of a letter dated April 17, 2015 to the Respondent, which stated that:

> At the disciplinary action phase of the hearing, the Law Society will be recommending that the Hearing Panel seek disbarment.

The Respondent agreed that he had received this letter, and that he was prepared to proceed with the hearing on disciplinary action.

SUBMISSIONS OF THE LAW SOCIETY

[15] The Law Society's position is that the appropriate disciplinary action in respect of the Respondent's professional misconduct is disbarment.

[16] The Law Society referred to the decision of the hearing panel in *Law Society of BC v. Ogilvie*, 1999 LSBC 17, and referred to paragraph [9] of the decision:

> 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 to practice.

[17] Counsel for the Law Society submitted that the assessment of sanction for the three findings of professional misconduct by us in our decision on Facts and

Determination should be made on a global basis as discussed in *Law Society of BC v. Lessing*, 2013 LSBC 29, which counsel for the Law Society submits follows the approach taken in *Law Society of BC v. Gellert*, 2014 LSBC 05 and *Law Society of BC v. Tak*, 2014 LSBC 57.

[18] Counsel for the Law Society referred to *Law Society of BC v. McGuire*, 2006 LSBC 20, where the lawyer was disbarred for misappropriation of client trust funds. One of the arguments he advanced was that the public could be protected by imposing conditions on his use of the trust account, as had been done on an interim basis pending hearing of the citation. The hearing panel considered the issue and stated at paragraph [24] of its decision as follows:

> The second reason relates to the protection of the public. We accept that disbarment is a penalty that should only be imposed if there is no other penalty that will effectively protect the public. Protecting the public, however, is not just a matter of protecting the Respondent's clients in future. Even if the latter could properly be done by imposing restrictions on the Respondent's use of his trust account, we do not think that such a measure adequately protects the public in a larger sense. Wrongly taking a client's money is the plainest form of betrayal of the client's trust. In our view, the public is entitled to expect that the severity of the consequences reflect the gravity of the wrong. Protection of the public lies not only in dealing with ethical failures when they occur, but also in preventing ethical failures. In effect, the profession has to say to its members, "Don't even think about it." And that demands the imposition of severe sanctions for clear, knowing breaches of ethical standards. A penalty in this case of a fine and practice restriction is, in our view, wholly inadequate for the protection of the public in the larger sense.

[19] Mr. McGuire appealed the decision of the hearing panel to the BC Court of Appeal. His appeal was dismissed, *McGuire v. Law Society of BC*, 2007 BCCA 44.

[20] Counsel for the Law Society submitted that misappropriation of client trust funds is one of the most egregious forms of professional misconduct a lawyer can commit and referred to the comments of the hearing panel in *Tak* at paragraph [35]:

> Misappropriation of client trust funds is perhaps the most egregious misconduct a lawyer can commit. Wrongly taking clients' money is the plainest form of betrayal of a client's trust and is a complete erosion of the trust required for a functional solicitor-client relationship. The public is entitled to expect that the severity of the consequences reflect the gravity of the wrong. In the absence of multiple, significant mitigating factors,

> public confidence in the profession and its ability to regulate itself would be severely compromised if anything short of disbarment is ordered for misappropriation of client funds.

[21] Counsel for the Law Society submitted that the Respondent has provided no evidence of any significant mitigating circumstances that would justify anything less than disbarment as the appropriate sanction for his misconduct.

[22] Counsel for the Law Society submitted that, in addition to misappropriating client funds, the Respondent was found to have committed professional misconduct by failing to cooperate with the Law Society in its investigation and by failing to comply with various Part 3, Division 7 Law Society Rules. The Law Society's position is that this misconduct, while serious, is not as serious as misappropriating client funds, and can fairly be described as the Respondent failing to honour his obligations to the Law Society, thereby interfering with the Law Society's regulatory functioning. The Law Society's position is that its ability to carry out its regulatory responsibilities is significantly compromised if lawyers are permitted to ignore Law Society accounting rules and requirements of communicating with the Law Society, including the requirement to respond substantively to communications from the Law Society. The Law Society's position is that this additional misconduct reinforces that disbarment is the appropriate sanction.

[23] Citing *Ogilvie*, counsel for the Law Society submitted that the public must have confidence in the ability of the Law Society to regulate and supervise the conduct of lawyers and that it is only by the maintenance of such confidence in the integrity of the profession that the self-regulatory role of the Law Society can be justified and maintained.

[24] Counsel for the Law Society submitted that, in the absence of any compelling evidence of significant mitigating circumstances, where a lawyer has intentionally misappropriated trust funds the usual sanction for misappropriation is disbarment. In support of that position she cited *Law Society of BC v. Ali*, 2007 BCSC 57; *Gellert*; *Tak*; *Law Society of BC v. Harder*, 2005 LSBC 48; and *McGuire*.

[25] Counsel for the Law Society submitted that public confidence in the integrity of the legal profession would be eroded if the sanction imposed does not reflect the seriousness with which the Law Society and the legal profession views misappropriation of trust funds. She referred to the decision of the hearing panel in *Tak* at paragraph [38]:

> There should be no doubt that a strong message of general deterrence should be sent to other members of the Law Society in respect of

> misappropriating funds, and it should be unequivocal that such misconduct will almost certainly result in the revocation of the right to practise law.

[26] Counsel for the Law Society also referred to the decision of *Gellert*, where the panel went on to find, at paragraph [44]:

> Yet this sanction is usually imposed for deliberate misappropriation from a client – almost always where the amount is substantial (*Harder*, para. 9; MacKenzie, *Lawyers & Ethics: Professional Responsibility and Discipline*, (Toronto: Carswell, 1993), 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*, BCCA, para. 15; *Goulding*, 2007 BCSC 39, para. 17; *Harder*, 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.

[27] Counsel for the Law Society referred to the decision of *Harder*, where the respondent had misappropriated client trust funds, failed to provide an acceptable quality of service, failed to remit collected PST and GST and breached various Law Society accounting rules, which included failure to account to clients, to maintain sufficient trust funds, to report trust shortages and to prepare and deliver accounts to clients. He also failed to supervise employees adequately and practised while uninsured. The lawyer provided evidence that he suffered from depression. In ordering disbarment of the lawyer, the panel commented at paragraphs [57] and [58]:

> In circumstances such as these, it is our opinion that the protection of the public demands that this Respondent be disbarred and this decision is necessary not just because we must ensure that this Respondent is no longer able to practise and that we provide a safeguard to the public by this action, but also we must generally deter any other member of the Law Society who might think that deteriorating health will offer a defence to a misappropriation scheme such that disbarment will not necessarily follow in the result.
>
> … It is the view of this Panel that there will almost never be an "explanation" for misappropriation that will save a Respondent from the most severe penalty available to the Law Society.

[28] Counsel for the Law Society reviewed the *Ogilvie* factors and focused on the following four factors:

(a) the nature and gravity of the misconduct;

(b) the respondent's professional conduct record;

(c) the need to ensure the public's confidence in the integrity of the profession; and

(d) the range of penalties imposed for similar conduct.

SUBMISSIONS OF THE RESPONDENT

[29] The Respondent's submission regarding penalty is that a term of suspension or fine is appropriate rather than disbarment.

[30] The Respondent submitted that the misappropriation was not deliberate and that, in our decision on Facts and Determination, we did not use the word "deliberate" in our findings of fact. The Respondent also submitted that his situation is distinguishable from the decision in *Harder*, where the panel found that there was a "misappropriation scheme." The Respondent submits that, in his case, there was no misappropriation scheme. It was a one-time accounting error made by him.

[31] The Respondent did not appear at the hearing on Facts and Determination, and the Respondent wished to provide evidence by way of his own testimony. Although the appropriate forum for this would have been at the hearing on Facts and Determination, we agreed to swear in the Respondent and allow him to provide evidence on his own behalf. Counsel for the Law Society was provided with the opportunity to cross-examine the Respondent.

[32] The Respondent testified that he was going through a number of personal challenges and had gotten considerably far behind in maintaining his accounting records. He was also not spending a lot of time in the office. He had new personnel working in his office, and when catching up on his accounting records, he accidentally credited the funds incorrectly. The Respondent testified that it was not deliberate.

[33] In terms of the *Ogilvie* factors, the Respondent's position was as follows:

The age and experience of the respondent

[34] The Respondent submitted that he is 38 years old and has 20 or 25 years of working life ahead of him and would like to be able to have the option at some point of practising in the future, possibly in an environment where he would not be operating a trust account.

The previous character of the respondent including details of prior discipline

[35] The Respondent submitted that his prior disciplinary record consisted solely of a conduct review, and that the conduct review report did not make a finding of wrong-doing in any way and had recommended no further action.

The impact upon the victim

[36] The Respondent submitted that his client's business was in the private mortgage business and that this mortgage was only one of many files that he did for this client. The Respondent also submitted that the client was reimbursed by the Lawyers Insurance Fund and that the Respondent had since reimbursed the Lawyers Insurance Fund in full. So there was no long-term impact on the client.

The advantage gained, or to be gained, by the respondent

[37] The Respondent submitted that ultimately there was no advantage in that the funds were disbursed to a third party and he had to reimburse the Lawyers Insurance Fund with his personal funds.

The number of times the offending conduct occurred

[38] The Respondent's submission is that there is only one incidence here.

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

[39] The Respondent's submission is that he has done his best to redress the wrong: the client was paid back. With respect to acknowledging his misconduct, the Respondent submitted that he had tried to make this process as simple as possible for the Hearing Panel. The Respondent also noted that he did not object to the findings the Law Society had brought forward prior to the hearing on Facts and

Determination and that is why he did not attend and did not contest those findings at the hearing on Facts and Determination.

The possibility of remediating or rehabilitating the respondent

[40] The Respondent resigned as a member of the Law Society on October 9, 2013. The Respondent submitted that, if and when he re-applies to the Credentials Committee of the Law Society, he believes that he will be required to take some courses.

The impact on the respondent or criminal or other sanctions or penalties

[41] The Respondent submitted that there are no criminal or other sanctions with respect to this matter.

ANALYSIS AND DISCUSSION

[42] Since we did not have the opportunity to hear from the Respondent personally at the hearing on Facts and Determination, and at that hearing we relied on the Notice to Admit prepared by the Law Society, we wish to address the Respondent's testimony first.

[43] On cross-examination by counsel for the Law Society, the Respondent testified that his staff properly receipted the trust funds when they arrived at his office on December 20, 2012. The Respondent testified that, when he was catching up on his accounting records approximately one month later (in January 2013), he incorrectly credited the deposit to the account of another client (RD).

[44] Under cross-examination the Respondent regularly answered questions with "I don't recall." The Respondent was mostly unable to recall specific events during this period, and was generally unable to explain the reasons for his actions. The Respondent's recollection of important events during this time was very poor.

[45] The Respondent clearly testified that the misappropriation was a simple mistake. However, the Respondent offered no corroborating evidence to support his position. The Respondent acknowledged that his staff properly receipted the funds when they arrived on December 20, 2012. The Respondent also admitted that he altered this in his accounting records to credit the funds to another client (RD). The Respondent acknowledged that RD's account was in an overdraft position, but testified that he was unaware of this at the time.

[46] The responses and demeanour of the Respondent left us with the impression that he was not being honest and forthright with us. We do not believe that the Respondent was unaware of the events involving the receipt of funds on behalf of his client GK and the overdraft position of his client RD.

[47] We note that the Respondent had numerous occasions to consider this file. This file involved the repayment by a third party (EC), who was represented by a lawyer, of a loan to the Respondent's client GK to be deposited into the Respondent's trust account and then deposited by the Respondent into GK's self-directed RRSP:

(a) December 16, 2012: the Respondent was copied with an email from his client GK to EC advising EC of the payout amount of the loan and that it needed to be paid to the Respondent by 12 pm on December 21, 2012;

(b) December 18, 2012: the lawyer for EC couriered a letter to the Respondent and a copy of the bank draft for $50,439.44;

(c) December 20, 2012: the Respondent forwarded a December 16, 2012 email from his client GK about the loan repayment to the Respondent's legal assistant;

(d) December 20, 2012: the bank draft for $50,439.44 is deposited to the Respondent's trust account at a credit union. The deposit slips references "EC";

(e) December 20, 2012: the trust account for RD was in an overdraft position (-$11,500.47);

(f) December 20, 2012: the Respondent prepared (or authorized) a bill to RD for $10,000, on December 20, 2012. We note that this bill appears to have been hastily prepared, as it lacks detail. We also note that this bill could not have been paid from trust since the trust account for RD was in an overdraft position. The Respondent has stated that he made the accounting error (i.e. incorrectly crediting the $50,439.44 to RD) several weeks later. So the Respondent's accounting error had not yet occurred on December 20, 2012 when he authorized the bill;

(g) December 31, 2012: the Respondent wrote a letter to the lawyer for EC thanking her for her letter of December 18, 2012 and confirmed his client's position on the terms of repayment and requested an additional $2,725 for final payout of the loan;

(h) January 2013: the Respondent added the name of RD to a second version of the December 20, 2012 "Receipt Voucher" for the $50,439.44. We note that there were two versions of the December 20, 2012 "Receipt Voucher" in the Respondent's records;

(i) January 17, 2013: the Respondent's client GK emailed the Respondent and asked the Respondent "if EC has paid yet, or if they are still arguing";

(j) January 20, 2013: the Respondent acknowledged receipt of a letter dated January 3, 2013 from the lawyer for EC and restated his position that an additional $2,725 was required to satisfy the loan;

(k) January 23, 2013: the Respondent sent an email to his client GK regarding the loan from EC;

(l) January 2013: the Respondent prepared a caveat to be signed by his client GK regarding the balance owing by EC. Paragraph 6 of the caveat says:

> On December 18, (EC) purchased and delivered to my solicitors a bank draft in the amount of $50,439.44, which represented the outstanding principal and per diem interest, leaving a balance payable of $2,725 comprised of the following:
>
> (a) Renewal fee: $1,000
> (b) Prepayment fee: $1,500
> (c) Accounting fee $ 150
> (d) Discharge fee: $ 75

(m) December 20, 2012 to January 30, 2013: the Respondent authorized numerous withdrawals (over 30) from the trust account of RD after the deposit of the $50,439.44 on December 20, 2012, which was formerly in an overdraft position of -$11,500.47;

(n) January 31, 2013: the balance in the trust account for RD had been reduced to $563.19.

[48] We find these circumstances show that the Respondent would have been aware of the payment of $50,439.44 by EC into his trust account and that there was a dispute about the balance owing. We have difficulty believing that the Respondent would

not have known this when he made an accounting error in January 2013 when he was reconciling his accounts.

[49] In the period following the error made by the Respondent, the Respondent had numerous further occasions to review the file and correct his errors:

(a) March 6, 2013: the Respondent emailed his client GK and reported that the Respondent had started up a small claims action against EC. The Respondent also reported that he filed a lien but it was rejected twice.

(b) March 6, 2013: the Respondent's client GK responded to the Respondent's emails and asked "are you still holding the payout amount in your trust account?"

(c) March 6, 2013: the Respondent replied to his client's email regarding the small claims action and the liens but did not answer regarding the payout amount in the Respondent's trust account. The Respondent finished his email with "I'll keep you posted as things develop here, but this will probably be resolved fairly quickly now that the reply has been filed."

[50] Nothing further appears to have been done by the Respondent until October 8, 2013 when the Respondent signed an Undertaking and Consent to the Law Society of British Columbia to resign from membership in the Law Society and to cooperate with all Law Society investigations. Excerpts from that document are set out below:

> [1] I, John D. Briner, Barrister and Solicitor, voluntarily undertake to the Law Society of British Columbia (the "Law Society"):
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> ...
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> (b) not to engage in the practice of law with or without the expectation of a fee, gain or reward, whether direct or indirect, until such time as I may again become a member in good standing of the Law Society;
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> (c) to cooperate with all Law Society investigations, present or future, relating to my conduct, including, without limitation, not altering, deleting, destroying, secreting, or withholding evidence;
>
> ...

> [3] I consent to the appointment ("Appointment") of a custodian pursuant to the *Legal Profession Act* under the usual terms and conditions to determine the status of, manage, arrange for the conduct of, and terminate my practice …

[51] By October of 2013, no funds were remaining in the Respondent's trust account when the custodian took over the Respondent's practice. The Respondent did not advise the Law Society of the on-going file regarding his client GK or the missing funds.

[52] In December of 2013, GK's brother went to small claims court on behalf of GK (who lived in Grand Forks, BC) and settled the dispute with EC about the unpaid amount by EC.

[53] On January 24, 2014, a Law Society investigator spoke to GK by telephone. GK said that he instructed the Respondent to hold the funds from EC in his trust account until he received the interest owing by EC and then the Respondent was to deposit the entire amount into GK's RRSP (where the funds which were loaned to EC had originally come from).

[54] On March 6, 2014, the Law Society opened an investigation file regarding the missing funds received on behalf of GK and wrote a letter to the Respondent requiring a response by March 17, 2014. The Respondent did not respond.

[55] On March 18, 2014 the Law Society sent a further letter to the Respondent requiring a response by April 1, 2014.

[56] On April 1, 2014, the Respondent emailed the Law Society to say he will respond by Friday, April 4, 2014.

[57] On April 1, 2014, GK filed a claim with the Lawyers Insurance Fund against the Respondent for the loss of $50,439.44.

[58] We believe that the Respondent would have been aware at this stage of the fact that he had misappropriated the $50,439.44 in his trust account from EC for his client GK. There were numerous communications that would have reminded the Respondent of this situation.

[59] The Respondent's submission that he has been helpful throughout this disciplinary process is surprising to us. We find that his actions were actually unhelpful and his cooperation and participation would have been helpful. For example, the Respondent's communications appeared to indicate that he approved of the Agreed Statement of Facts prepared by the Law Society but would never sign it. The Law

Society prepared a Notice to Admit and the Respondent's communications appeared to indicate that he did not disagree with it. The Respondent did not appear at the hearing at the Facts and Determination stage.

[60] We do not find that the Respondent's testimony at this hearing would have affected our determination on each of the three allegations in the citations at the Facts and Determination stage.

[61] We have reviewed the *Ogilvie* factors to be considered in disciplinary matters. In *Ogilvie*, the hearing panel provided at paragraph 10 a non-exhaustive list of factors to consider in disciplinary dispositions:

> 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:
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> (a) the nature and gravity of the conduct proven;
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> (b) the age and experience of the respondent;
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> (c) the previous character of the respondent, including details of prior discipline;
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> (d) the impact upon the victim;
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> (e) the advantage gained, or to be gained, by the respondent;
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> (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.

[62] We have considered the Respondent's position. We appreciate that the misappropriation occurred only once, and we further acknowledge that the Respondent's prior disciplinary record is not particularly relevant other than the fact that the Respondent had a conduct review just a few months before his misconduct in December of 2012.

[63] We appreciate that disbarment is the most severe sanction that can be imposed and it has severe consequences for the Respondent.

[64] However, misappropriation of a client's trust funds is very serious misconduct. There was a clear advantage gained by the Respondent by using his client's trust funds to cover an overdraft in another client's trust account (RD). This enabled the Respondent to bill RD and pay his account out of trust and also use those funds to pay third parties using funds that did not belong to RD.

[65] We find that the Respondent has not demonstrated to us an appreciation of his misconduct or how it impacted on his clients or the legal profession. We also do not feel that the Respondent has properly acknowledged the misconduct. To the best of our knowledge, the Respondent has not apologized to his client. We do appreciate that the Respondent has repaid the Lawyers Insurance Fund, but we note that he had much earlier opportunities to address his client's shortfall, particularly in the period of January to March of 2013, when his client GK specifically asked if he had the funds in trust. The Respondent did not reply and did not take the opportunity to reimburse his client. Instead, the Respondent took a very passive role in the Law Society's investigations.

[66] We have previously found that the Respondent's lack of cooperation with the Law Society constituted professional misconduct.

[67] We do not agree that the fact that his client GK was in the private mortgage business mitigates the impact of the misappropriation of his funds of his client. GK is an individual and used his RRSP to make the loans.

[68] We agree with the statements made by the hearing panel in *McGuire* that disbarment is a penalty that will effectively protect the public, and that the public is entitled to expect that the severity of the consequences reflects the gravity of the wrong.

[69] We also agree with the statements from other hearing decisions (previously referred to) that state that misappropriation of client funds leads to disbarment except in the most exceptional circumstances, and we highlight again the comments made by the hearing panel in *Tak*, at paragraph [35]:

> In the absence of multiple, significant mitigating factors, public confidence in the profession and its ability to regulate itself would be severely compromised if anything short of disbarment is ordered for misappropriation of client funds.

[70] This Respondent has not provided us with compelling evidence that any mitigating factors present were significant enough to overcome a decision to disbar.

[71] We find that the Respondent has presented no compelling evidence that a suspension and/or fine would be more appropriate than disbarment.

DISCIPLINARY ACTION

[72] We order that the Respondent be disbarred.

COSTS

[73] The Law Society provided us with a draft Bill of Costs that did not include the proper amount for the disciplinary action hearing or the disbursements for the disciplinary action hearing.

[74] We ask that the Law Society provide us with an amended draft Bill of Costs within 14 days of the date of this decision with a copy to the Respondent. The Respondent will then have 14 days in which to provide any further submissions.