2015 LSBC 56
Decision issued: December 11, 2015
Citation issued: September 8, 2009

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

ROBERT COLLINGWOOD STROTHER

RESPONDENT

DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION

Hearing date:	August 19, 2015
Panel:	Gavin Hume, QC, Chair Gregory Petrisor Alan Ross
Discipline Counsel:	Henry Wood, QC and Lars Kushner
Counsel for the Respondent:	Peter Gall, QC

BACKGROUND

[1] In our decision dealing with the Facts and Determination phase of this proceeding (2015 LSBC 07), we found that the Respondent's actions in failing to advise his client M Corp. that he had a financial interest in a potential commercial enterprise in the unique circumstances pertaining to his financial interest, failing to advise M Corp. that his previous negative legal opinion concerning an amendment to the *Income Tax Act* should be reconsidered and failing to advise M Corp. of a favourable tax ruling constituted professional misconduct. The actions that gave rise to these findings occurred in 1998.

[2] Our findings were summarized in paragraphs 96 to 104 of our decision as follows:

[96] In accepting the retainer, the Respondent placed himself in a fiduciary relationship with M Corp, and obliged himself to provide to M Corp:

(a) undivided loyalty;

(b) full disclosure of any circumstances relevant to his ongoing representation of M Corp.; and

(c) candid advice.

[97] It is clear that the Respondent had a duty of loyalty to M. Corp., and he breached that duty by failing to:

(a) provide material disclosure to M Corp. of his financial interest in a potential commercial competitor;

(b) advise M Corp. that his previous negative legal opinion concerning an amendment to the *Income Tax Act* should be reconsidered; and

(c) advise M Corp. of a favourable tax ruling.

[98] M Corp. was a significant client of the Respondent. His professional, fiduciary, relationship with M Corp. spanned approximately six years. As stated previously, M Corp. relied heavily on the Respondent.

[99] The Respondent's failure to provide material disclosure to M Corp. of his financial interest in a potential competitor deprived M Corp. of any opportunity to consider whether it wanted to continue to retain and rely on the Respondent despite that financial interest, or whether it wanted to retain a new solicitor. As stated, the Respondent breached his duty to M Corp. in favour of his own financial interest. The Respondent's failure to provide that disclosure to M Corp. persisted for approximately one year.

[100] In the circumstances of:

(a) the Respondent's relationship with M Corp.;

(b) M Corp.'s level of reliance on the Respondent;

(c) M Corp.'s loss of an opportunity to make a properly informed decision as to whether or not it wished to continue to rely on the Respondent;

(d) the Respondent's favouring his own financial interest over his duty to M Corp.; and

(e) the length of time during which the Respondent failed to make appropriate disclosure to M Corp.,

the Respondent's failure to provide material disclosure to M Corp. of his interest in a potential competitor, as set out in allegation 2(i) of the citation, constitutes professional misconduct.

[101] The Respondent's failure to advise M Corp. that his previous negative legal opinion concerning an amendment to the *Income Tax Act* negatively impacted M Corp.'s opportunity to consider re-entering into the tax-assisted film production business in a timely way. The prospects of the venture in which the Respondent was involved initially appeared to have a small chance of success. However, over time, the venture's prospects improved, and eventually its success was certain. It is reasonable to infer that the Respondent, but for his interest in S Corp., would have advised M Corp. that his earlier opinion needed to be reconsidered. The Respondent's failure to advise M Corp. to revisit his earlier advice took place over a period of time, when:

(a) M Corp. had an ongoing retainer agreement with the Respondent, and continued to look to him for advice on tax-assisted business opportunities; and

(b) the Respondent had a direct financial interest in keeping M Corp. out of the tax-assisted film production business.

[102] In the circumstances, including:

(a) the Respondent's relationship with M Corp.;

(b) M Corp.'s ongoing retainer of the Respondent for advice on matters related to the opinion he should have advised M Corp. to reconsider;

(c) the impact of the Respondent's conduct on M Corp.'s opportunity to re-enter the tax-assisted film production business in a timely way;

(d) the significant period of time during which the Respondent knew or ought to have known his previous opinion needed to be reconsidered; and

(e) the Respondent's favouring his own financial interest in keeping M Corp. out of the tax-assisted films production business,

the Respondent's failure to advise M Corp. that his previous negative legal opinion concerning an amendment to the *Income Tax Act* should be reconsidered, as set out in allegation 2(ii) of the citation, constitutes professional misconduct.

[103] The Respondent's failure to advise M Corp. of the favourable tax ruling negatively impacted M Corp.'s opportunity to re-enter the tax-assisted film production business. On the evidence, a competitor of S Corp. heard of the Advance Tax Ruling within two days of its being released, and within approximately four to five months had obtained its own ruling and began marketing its syndication. As stated previously, it was in the Respondent's financial interest to keep knowledge of the favourable tax ruling from M Corp., in direct conflict with his retainer to provide tax advice to M Corp.

[104] In the circumstances, including:

(a) the Respondent's relationship with M Corp.;

(b) M Corp.'s ongoing retainer of the Respondent;

(c) the impact of the Respondent's conduct on M Corp.'s opportunity to re-enter the tax-assisted film production business; and

(d) the Respondent's favouring his own financial interest in keeping M Corp. out of the tax-assisted film production business,

> the Respondent's failure to advise M Corp. of the favourable tax ruling, as set out in allegation 2(iii) of the citation, constitutes professional misconduct.

JURISDICTION

[3] Before providing our reasons with respect to the appropriate discipline given our findings set out above, we deal with our jurisdiction. The Respondent is a former member of the Law Society. He has not been a member since 2008 as a result of not paying his annual fees.

[4] Section 38(4)(b)(v) of the *Legal Profession Act* provides that a hearing panel has the jurisdiction to make a finding of professional misconduct against a former member if the conduct of the former member, if he or she had been a member, constituted professional misconduct. Having made that finding as we have set out above, we must now impose one of the disciplinary actions set out in Section 38(5).

[5] One might ask what is to be gained by imposing discipline on a person who has not been a member since 2008 and with respect to matters that occurred in the last century. Having made the findings set out above, we have the obligation to determine what the appropriate sanction is for those actions. In doing so, we provide a message to the public that the Law Society takes seriously the misconduct of its members and that the fact that the person involved is no longer a member is not a way of escaping the scrutiny of the Law Society. In addition, it is a way of advising the profession of the Law Society's view of the action that might be imposed for similar misconduct. See also *Law Society of BC v. Power*, 2009 LSBC 23.

[6] More specifically, in this instance the misconduct of the Respondent involved a significant disregard of his obligations flowing from the duty of loyalty. As the Supreme Court of Canada has said in paragraph 12 of *R. v. Neil*, 2002 SCC 70, [2002] 3 SCR 631:

> > ... the duty of loyalty — is with us still. It endures because it is essential to the integrity of the administration of justice and it is of high public importance that public confidence in that integrity be maintained: *MacDonald Estate v. Martin*, [1990] 3 SCR 1235, 1990 CanLII 32, at pp. 1243 and 1265, and *Tanny v. Gurman*, [1994] RDJ 10 (Que. CA)."

This extract from *Neil* further illustrates the need to deal with discipline in the circumstances of this matter.

DISCIPLINARY ACTION

The position of the parties

[7] We now give our reasons with respect to what we consider to be the appropriate disciplinary action given our findings of professional misconduct.

[8] The Law Society submitted that the appropriate disciplinary action is a lengthy suspension of five to six months. In argument it placed emphasis on the Law Society's obligations under section 3 of the *Legal Profession Act* to uphold and protect the public interest in the administration of justice, including the need to maintain high professional standards with respect to important values of client loyalty and integrity, which is key to supporting the public confidence in the profession. In addition, the Law Society references the non-exhaustive list of factors set out in *Law Society of BC v. Ogilvie*, [1999] LSBC 17, used in determining the appropriate disciplinary action.

[9] In response, the Respondent submitted that, as our conclusion of professional misconduct is based on our finding that the Respondent's retainer with M Corp. involved providing ongoing advice to M Corp. with respect to tax assisted business opportunities, the disciplinary action should simply consist of a reprimand. That submission is based on the argument that the trial judge and four judges of the Supreme Court of Canada reached a different conclusion with respect to the scope of the retainer and that, as a result, it can be said that it was not obvious that the Respondent was in a conflict situation. The Respondent argues that he did not, as a result, flagrantly disregard his ethical duties to M Corp. In addition the Respondent argues that public interest does not require a substantial suspension. The Respondent also reviews the *Ogilvie* factors in support of the submission that a reprimand is appropriate in the circumstances.

[10] In addition, the Law Society seeks an order for costs and disbursements in the amount of $57,947.95 on the basis that the matter was of more than ordinary difficulty. That order is opposed by the Respondent. The Respondent argues that each party should bear its own costs or that, as the matter was of ordinary difficulty, the cost should be substantially reduced.

Respondent's retainer

[11] We turn first to the Respondent's submission the trial judge and four judges of the Supreme Court of Canada reached the conclusion that the Respondent's retainer did

not involve providing ongoing advice to M Corp. with respect to tax assisted business opportunities. We do not agree with that submission.

[12] We do agree that the trial judge, Mr. Justice Lowry, as he then was, concluded that the retainer did not involve the provision of ongoing advice with respect to tax assisted business opportunities. See paragraphs 102, 106 to 108 and 117 of the reasons for judgment in *3464920 Canada Inc. v. Strother*, 2002 BCSC 1179, [2002] BCJ No. 1982. However, in our view the dissent in *Strother v. 346920 Canada Inc.*, 2007 SCC 24, [2007] 2 SCR 177, does not reach the same conclusion. Instead it concludes that the findings of fact by the trial judge with respect to the scope of the retainer should not be interfered with. See paragraphs 119 and 134 of the dissent in particular. It is clear from reading those paragraphs that the minority was not prepared to interfere with the findings of fact of the trial judge. There was no analysis of the scope of the retainer, let alone an independent finding, that the retainer did not involve an ongoing obligation to M. Corp. to provide advice with respect to tax assisted business opportunities. The conclusion we reached on the evidence before us was that the retainer did involve that ongoing obligation.

The *Ogilvie* factors

[13] We now turn to the assessment of the *Ogilvie* factors. The list of factors in *Ogilvie* is not exhaustive, and not every factor is appropriate in every case. Some factors may be given more weight in particular circumstances than in other circumstances.

The nature and gravity of the conduct proven

[14] The Respondent argues that the he did not flagrantly disregard his ethical duties. We do not agree. In the Facts and Determination decision we did an extensive review of the submission of the Respondent that the Supreme Court of Canada changed the law in *Neil* and in his own case. (See paragraphs [48] to [82] of the Facts and Determination decision). In paragraph [75] we stated:

> All of the decisions reviewed above were decided before 1998 and consistently emphasized the fiduciary nature of the relationship between a client and a lawyer, the need for openness with a client and the need to avoid putting oneself in a position of conflict with a client. The Respondent failed in this regard.

For the reasons set out above, we do not agree that both the trial judge and four judges of the Supreme Court of Canada were of the view that the Respondent's retainer did not involve the provision of tax-assisted advice to M Corp. In our view

the Respondent favoured his own personal financial interest over the interest of his client M Corp. contrary to his fiduciary obligations. This factor leads to the conclusion that a significant disciplinary action should be imposed.

The age and experience of the Respondent

[15] The Respondent was a very experienced expert in his field, having practised for over 20 years. This factor also leads to the conclusion that a significant disciplinary action should be imposed.

The previous character of the Respondent, including details of prior discipline

[16] The Respondent had no prior discipline record and had practised for over 20 years as an acknowledged leader in his field. This factor supports a conclusion of limited discipline.

The impact upon the victim

[17] The trial judge concluded that M Corp. was not likely to have been in a position of re-entering the tax shelter business in 1998. See paragraphs 178 to 187 of the trial decision found in *3464920 Canada Inc. v. Strother*. This factor supports a conclusion of limited discipline.

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

[18] The Respondent submitted that he gained no advantage by continuing to represent M Corp. He says that, if he had ceased acting for M Corp., his financial advantage would have been the same. On the other hand, he could equally have refused to act for S Corp. Instead, he was financially motivated to act for S Corp., which led to his breach of his fiduciary obligations. As the Law Society submitted, this led to "keeping M Corp. in the dark" for as long as possible, which in fact he did. As we concluded in paragraph 42 of our decision on Facts and Determination, he did so "for the purpose of advancing his own financial interest in preference to M Corp.'s." This factor leads to the conclusion that a significant disciplinary action should be imposed.

The number of times the offending conduct occurred

[19] The Respondent submits that there is no pattern of misconduct or repeated conduct. However, the conduct was not a single instance of not taking the correct steps with respect to M Corp. Instead, over a significant period of time, as a result of

preferring his own financial interest, the Respondent kept M Corp. "in the dark." This factor, in our view, also leads to the conclusion that a significant disciplinary action should be imposed.

Acknowledgement of the misconduct, steps taken to redress the wrong and the possibility of remediating or rehabilitating the Respondent

[20] We have considered the two factors of the acknowledgement of the misconduct and the potential of rehabilitation together. That is because, as the Law Society submitted, both involve a question of whether or not the Respondent appreciates the significance of his actions. The Respondent submitted that there are a number of factors that support the proposition that the disciplinary action sought by the Law Society is excessive. These include: the concession in this proceeding that the factual allegations in count 2 of the citation were correct, his acceptance of the finding of the Supreme Court of Canada and the fact that the Respondent cooperated with the Law Society and sought to streamline the proceedings. However, the Respondent has not acknowledged that the misconduct included the financial interest that he took in S Corp. The Respondent maintained during the course of the hearing that he had no financial interest until it was approved by Davis & Co. We found that the Respondent had a contingent financial interest as of January 1998 and kept that interest until he left Davis & Co. as of March 31 1999. (See paragraph 39 and 42 in the Facts and Determination decision). He breached his fiduciary duty to M Corp. as a result of that financial interest. His failure to acknowledge any misconduct in this regard also leads to the conclusion that rehabilitation is not a factor under the circumstances. In any event, the Respondent is no longer a practising lawyer and has no intention of returning to practice. The fact that the Respondent ceased to be a member of the Law Society is, in our view, a neutral fact under this heading, but the failure to acknowledge his financial interest and the impact of that on his failure to meet his fiduciary obligations to M Corp. leads to the conclusion that a significant disciplinary action should be imposed.

The impact on the Respondent of criminal or other actions and penalties

[21] The Respondent submits that the litigation that the Respondent was party to weighs against a significant disciplinary action in that the litigation took years, involved millions of dollars in legal fees and resulted in a significant damage award against him. However, as the Law Society points out, the Respondent enjoyed profits from S Corp. in the amount of approximately $32 million against a damage award of approximately $1 million, which is significantly smaller than the financial gain

related to his misconduct. This would tend to support the imposition of a more significant disciplinary action.

The impact of the proposed disciplinary action on the Respondent

[22] The Respondent is no longer a lawyer and, in the circumstances, it does not appear likely he will return to the profession. The proposed discipline is likely a neutral event in that he will not be suspended from practice as he is no longer practising and does not intend to return to practice. A suspension though can be a reflection on the significance of his misconduct.

The need for specific and general deterrence

[23] The Respondent submits that there is no need for specific deterrence as more than 15 years have passed since the events of 1997 to 1999, the Respondent has not practised since that time, has not been a member of the Law Society for the past eight years and has no intention of returning to practice. We agree with that submission. However, we do not agree with the Respondent's submission that, in view of the Court of Appeal and Supreme Court of Canada decisions, there is no need for a significant action as a general deterrence. The profession and the public should know the view of the Law Society with respect to actions of the sort the Respondent engaged in.

The need to ensure the public's confidence in the integrity of the profession

[24] The Respondent submits that a reprimand and a decision advising and cautioning lawyers in similar circumstances are sufficient to ensure the public's confidence. We do not agree with that submission. As Mr. Justice Binnie stated in paragraph 12 of *Neil*, "it is of high public importance that public confidence in" the integrity of the administration of justice be maintained. A simple reprimand in our view does not achieve that result. Having found that the Respondent engaged in a significant breach of his fiduciary obligations, it is necessary to impose significant disciplinary action appropriate for the breach.

The range of discipline imposed in similar circumstances

[25] We were referred to a number cases by both parties. The Respondent submitted that the cases relied on by the Law Society could be distinguished in general on the basis that, in this case, the Respondent's failure flowed from an honest but mistaken belief in the scope of the retainer. We do not agree with that submission. As we have found, the Respondent engaged in his conduct as a result of taking a

personal financial interest in S Corp., which led to his failure to comply with his fiduciary obligations.

[26] It was also argued that the cases relied on by the Law Society could be distinguished on the basis that none of those cases involved lengthy civil litigation culminating in a decision of the Supreme Court of Canada commenting negatively on the Respondent's conduct. Clearly that is an accurate submission. However, in our view it is also necessary for the Law Society, given its responsibilities under Section 3 of the *Legal Profession Act*, to express its view of the significance of the professional misconduct the Respondent engaged in. Section 3 obligates the Law Society to "uphold and protect the public interest in the administration of justice." In our view that obligation requires the Law Society, and in particular this Panel, to indicate clearly its view of the significance of the professional misconduct of the Respondent. That will not be done if we defer to the results of the civil litigation. As Chief Justice McLachlin said in *Canadian National Railway Co. v. McKercher LLP*, 2013 SCC 39, [2013] 2 SCR 649:

> [16] Both the courts and law societies are involved in resolving issues relating to conflicts of interest — the courts from the perspective of the proper administration of justice, the law societies from the perspective of good governance of the profession: see *R. v. Cunningham*, 2010 SCC 10, [2010] 1 SCR 331. In exercising their respective powers, each may properly have regard for the other's views. Yet each must discharge its unique role.

[27] Instead, in discharging our role, we must impose discipline that the professional misconduct of the Respondent requires. As the panel in *Power* stated in paragraph 46: "When imposing a penalty appropriate to the circumstances, a panel sends an important message to lawyers as well as to the public that such conduct is deserving of that kind of penalty." In imposing appropriate disciplinary action, we are discharging the Law Society's responsibility to the public with respect to the administration of justice.

[28] The Law Society, on the other hand, submitted that the appropriate disciplinary action in the circumstances is a suspension of five or six months. In its submission, such a suspension sends a strong message of deterrence and reinforces the public respect for and trust in the profession. We agree that reinforcing the respect for the administration of justice, which includes the high standards of the legal profession, is of paramount importance (see paragraphs 50 to 52 of our decision on Facts and Determination).

[29] We have reviewed the cases provided by counsel for the Law Society on disciplinary action as well as the submissions of counsel for the Respondent with respect to the Law Society cases. The Respondent's submissions identify how the facts in the Law Society's cases differ from the facts before us. No two cases are the same. In addition, the Respondent's submissions clearly identify that the disciplinary action sought by the Law Society of five to six months is on the high side of penalties imposed in Canada where a lawyer is suspended for acting in a conflict situation. However, given the actions of the Respondent as outlined in our decision on Facts and Determination, we have concluded that the appropriate discipline in all the circumstances is a lengthy suspension.

CONCLUSION ON DISCIPLINARY ACTION

[30] A review of the *Ogilvie* factors has led us to the conclusion that a significant suspension should be imposed. That conclusion was also reached as a result of our view that the Law Society, given its obligation to protect the public interest in the administration of justice, needs to express its view to the public and the profession concerning actions of the sort the Respondent engaged in. This will assist in ensuring the public's perception of the integrity of the profession is maintained. As was expressed in *McDonald Estate v. Martin*, respect for the integrity of the administration of justice is of paramount importance. (See paragraphs 50 to52 of the Decision on Facts and Determination). As a result we have concluded that a suspension of five months is appropriate.

[31] It is so ordered. Since the Respondent will not require time to put a law practice in order before a suspension begins, the order is effective on the day after this decision is issued.

COSTS

[32] Costs of these proceedings are in issue. Counsel for the Law Society submits these proceedings were difficult and complex. Law Society counsel submits that costs should be calculated according to the tariff for Hearing and Review Costs, Schedule 4 of the Law Society Rules. Counsel for the Respondent submits that this was a matter of ordinary difficulty, but was protracted because of the Law Society's conduct, over-reaching and failing or refusing to clarify its allegations against the Respondent. Respondent's counsel submits that the Law Society and the Respondent should each bear their own costs, or in the alternative, share costs. Respondent's counsel also takes issue with several specific items of costs and disbursements claimed by the Law Society.

[33] Under Schedule 4, the calculation of costs for matters of ordinary difficulty is at Scale A, and each "unit" awarded under the schedule has a value of $100. Units awarded with respect to matters of more than ordinary difficulty are at Scale B and have a value of $150.

[34] The Respondent was a party to lengthy civil proceedings that required a trial in the British Columbia Supreme Court, and appeals to the British Columbia Court of Appeal and the Supreme Court of Canada.

[35] Before the hearing of the matter on its merits began, counsel and this Panel engaged in two pre-hearing conferences, opening submissions, and three contested applications.

[36] The first of the contested applications this Panel dealt with was brought by the Respondent. The application was brought by way of written submissions from counsel. The Respondent sought an order limiting the evidence to be relied upon by the Law Society in the hearing. The Respondent, through counsel, argued that allowing the Law Society to introduce new evidence, aside from the evidence put before the Supreme Court of British Columbia at the trial of the civil action, would amount to an abuse of process. At that stage, we declined to make an order limiting the evidence the Law Society could call. We determined that issues of relevance could better be addressed at the hearing of the citation. Our decision in respect of that application is indexed as *Law Society of BC v. Strother*, 2012 LSBC 01.

[37] The second application brought by the Respondent sought the striking of the first allegation in the citation. Again, the application was brought by written submissions from counsel. We determined that Chapter 7, Rule 1(a) of the *Professional Conduct Handbook* did not create an "absolute prohibition" against the lawyer contracting with a client. We also determined that Chapter 7, Rule 1(a) does not apply to protect the interests of M Corp. in this case. Accordingly, we dismissed allegation 1 of the citation. Our decision in respect of that application is indexed as *Law Society of BC v. Strother*, 2012 LSBC 14.

[38] As a consequence of the dismissal of the first allegation in the citation, the Law Society brought an application to amend the citation, or in the alternative, adjourn the hearing of the citation. The Law Society sought to amend to include allegations of fact that had been contained in allegation 1 of the citation, so that the remaining allegation could stand alone in a meaningful way. The Respondent, through counsel, argued against the amendment, on two grounds. First, he argued the amendment sought to reintroduce an allegation that was the subject of allegation 1, which had been dismissed. Second, he argued that, because the hearing of the

citation had already commenced, the Panel did not have jurisdiction to order the amendment. We determined that the amendment sought did serve useful purposes, better defining the issues and allowing the remaining allegation to be read and understood on a stand-alone basis.

[39] Our ruling respecting the dismissal of allegation 1 of the citation and our ruling respecting amendment of the citation were the subject of review applications brought by the Law Society and the Respondent respectively.

[40] Ordinarily in discipline hearings, costs should follow the event. We are required by Rule 5-11(3) of the Law Society Rules to have regard for the tariff of costs in Schedule 4. Because the authorization of the citation in this matter predated the creation of the tariff of costs, and because of Rule 5-11(4), we have discretion to award no costs, or an amount other than the amount determined by application of the tariff.

[41] The Law Society was successful in this proceeding overall, in that:

(a) the Respondent has been found by this Panel to have committed professional misconduct; and

(b) the disciplinary action imposed is in the range suggested by counsel for the Law Society.

[42] The Law Society was also successful in respect of the Respondent's application to preclude the calling of new evidence, and in respect of the Law Society's application to amend the citation. The Respondent was successful in his application for dismissal of allegation 1 of the citation. The Law Society's application for review was put in abeyance, following a review panel's decision that the review could proceed. The Respondent's application for review of this Panel's decisions regarding amendment of the citation was dismissed by a review panel.

[43] This matter has been one in which issues arose regarding the allegations contained in the citation itself, evidence in a general sense, jurisdiction, and the proper interpretation of a civil trial judgment, as well as two appeal judgments, have been thoroughly contested.

[44] The Respondent, throughout this proceeding, conceded that he breached his duty to M Corp. by not advising M Corp. that his earlier advice needed to be revisited at some point. However, the Respondent could not say when that obligation arose. In addition, the Respondent maintained throughout the hearing that he retained no

interest in S Corp. between August 11, 1998, and March 31, 1999. As stated at paragraph 39 of our decision on Facts and Determination, we found that the Respondent had a contingent financial interest in S Corp. from January 30, 1998, onward, during a period when he owed M Corp. a duty of undivided loyalty. Despite the Respondent's admission, the subject matter of the Respondent's relationship with M Corp., and the circumstances giving rise to the Respondent's taking an interest in S Corp. are complex. This matter has been of more than ordinary difficulty and complexity. Accordingly, an award of costs at Scale B is appropriate, and we so order.

[45] As we have stated, in discipline proceedings, costs should generally follow the event, and the Law Society was successful in this proceeding overall. Accordingly, we do not believe that a set-off or adjustment of costs is appropriate in relation to the Respondent's successful applications for dismissal of allegation 1 of the citation and for adjournment of the hearing of the citation. The parties will each bear their own costs in relation to those applications. Similarly, we do not believe an adjustment of costs in relation to the amendment of the citation is appropriate.

[46] In reviewing the items identified by counsel for the Law Society in the draft bill of costs he submitted, we comment as follows in respect of the units claimed:

> Item 1 – ten units is appropriate in light of the time and effort required to complete this matter
>
> Units allowed – 10
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> Item 5 – the matter was adjourned, as a result of the Respondent's application, and we decline to award costs to the Law society in respect of the successful application of the Respondent
>
> Units allowed – 0
>
> Item 6 – two pre-hearing conferences were held, and given the Law Society's success, we allow the claim
>
> Units allowed – 6
>
> Item 12 – the volume of evidence counsel was required to consider was large, even though only one witness was examined in the end
>
> Units allowed – 10

Item 15 – Rule 5-11(6)(b) and the tariff specify 15 units per half day (less than two and a half hours) of attendance, and 30 units per day (two and a half hours or more) of attendance; we do not consider it appropriate to record units according to portions of half-days as urged by counsel for the Respondent

Units allowed – 150

Item 16 – (4) and (5) are one submission and 15 units are allowed for those sub-items collectively – otherwise, given the volume of material and complexity of the matter, 15 units for each of the written arguments is appropriate

Units allowed – 165

Total units allowed: 341 x $150 = $51,150

[47] In respect of disbursements, we agree with the submissions from counsel for the Respondent that court filing fees are outside of our jurisdiction and we cannot allow them.

[48] We also agree with counsel for the Respondent that airfare claimed for a witness who was ultimately not called to testify should not be allowed. We find the other disbursements appropriate as claimed. Accordingly, total disbursements are allowed as follows:

Total disbursements:	$3,447.50 ($1,823.54 of which are not taxable)
GST:	$ 81.20
PST:	$ 113.68
Total disbursements and taxes	$3,642.38

[49] We order that the Respondent pay costs of this matter to the Law Society in the total amount of $54,792.38, for the reasons described above. The Respondent will have until March 31, 2016 to pay the costs.