2016 LSBC 19
Decision issued: May 30, 2016
Oral reasons on Facts and Determination: March 2, 2016
Citation issued: March 16, 2015

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

IAN DAVID REITH

RESPONDENT

DECISION OF THE HEARING PANEL

Hearing date:	March 2, 2016
Panel:	Phil Riddell, Chair Donald Amos, Public representative Richard Lindsay, QC, Lawyer
Discipline Counsel:	Patrick McGowan
Appearing on his own behalf:	Ian David Reith

INTRODUCTION

[1] Ian David Reith (the "Respondent") is a practising member of the Law Society of British Columbia (the "Law Society"). The citation was authorized on March 6, 2015 and issued on March 16, 2015. The citation states:

> 1. Between January 2013 and September 2013, in the course of providing legal services in connection with the transfer of shares in LLE from RL and SL to LR, you [the Respondent] failed to serve your client(s) in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to that which would be expected of a competent lawyer in a similar situation,

contrary to Rules 3.1-2 and 3.2-1 of the *Code of Professional Conduct for British Columbia*, by failing to do one or more of the following:

(a) properly consider, determine or understand who your client(s) were;

(b) discuss or clarify with the parties as to whom you were acting for;

(c) discuss with the parties the nature of a joint retainer or what you would do if a conflict between the parties arose;

(d) discuss with the vendors and purchaser what tasks you would perform or what legal fees you would charge, if any;

(e) disclose to the vendors and purchaser that you were no longer the agent for the company handling share transfers;

(f) provide confirmation to the purchaser in a timely manner that you had received funds from him in the amount of $150,000 after he requested confirmation;

(g) prepare an adequate Statement of Adjustments for either party;

(h) advise the vendors or the purchaser that you were leaving on a five week holiday during the period in which the share transaction was to complete; and

(i) make arrangements for other counsel to handle the closing of the share transaction when you knew or ought to have known that you would be on vacation when the parties wished the transaction to complete.

This conduct constitutes professional misconduct or incompetent performance of duties, pursuant to section 38(4) of the *Legal Profession Act*.

2. Between January 2013 and September 2013, you acted for both LR as purchaser and RL and SL as vendors in a share transaction without complying with the requirements of Rule 3.4-5 of the *Code of Professional Conduct for British Columbia,* by failing to advise the parties of one or more of the following:

(a) that you had been asked to act for both parties;

(b) that no information received in connection with the matter from one client could be treated as confidential so far as any of the others were concerned; and

(c) that if a conflict developed that could not be resolved, you could not continue to act for both and may have had to withdraw completely.

This conduct constitutes professional misconduct or incompetent performance of duties, pursuant to section 38(4) of the *Legal Profession Act*.

[2] When the matter came on for hearing before us, counsel for the Law Society and the Respondent advised that they had arrived at a set of admitted facts entitled Admitted Facts and Conduct, which was marked as Exhibit 5. This document encompassed the admissions made by the Respondent pursuant to Rule 4-28 and the Notice to Admit dated January 15, 2016 and pursuant to the Agreed Statement of Facts and Admission of Misconduct signed by the Respondent on February 26, 2016.

[3] The parties asked us to find that, on the basis of the Admitted Facts and Conduct, the Respondent had committed professional misconduct. Prior to accepting this position, we canvassed with the Respondent that he had made the admissions voluntarily, that he was aware that the admissions would lead to a finding of professional misconduct being made against him, and that the Hearing Panel was not bound by any agreement as to penalty. The Respondent acknowledged that he was making the admissions voluntarily, that the admissions would likely lead to a finding of professional misconduct, and that the Panel was not bound by any position taken by the parties with regard to penalty.

[4] We accepted the Admitted Facts and Conduct and found that the Respondent had professionally misconducted himself as follows:

1. Between January 2013 and September 2013, in the course of providing legal services in connection with the transfer of shares in LLE from RL and SL to LR, the Respondent failed to serve his clients in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to that which would be expected of a competent lawyer in a similar situation, contrary to Rules 3.1-2 and 3.2-1 of the *Code of Professional Conduct for British Columbia*, by failing to do one or more of the following:

    (a) properly consider, determine or understand who his clients were;

    (b) discuss or clarify with the parties as to whom he was acting for;

    (c) discuss with the parties the nature of a joint retainer or what he would do if a conflict between the parties arose;

(d) discuss with the vendors and purchaser what tasks he would perform or what legal fees he would charge, if any;

(e) disclose to the vendors and purchaser that he was no longer the agent for the company handling share transfers;

(f) provide confirmation to the purchaser in a timely manner that he had received funds from the purchaser in the amount of $150,000 after the purchaser requested confirmation;

(g) prepare an adequate Statement of Adjustments for either party;

(h) advise the vendors or the purchaser of his summer plans, including holiday plans, during the time they wished the transaction to complete

This conduct constituted professional misconduct, pursuant to section 38(4) of the *Legal Profession Act*.

2. Between January 2013 and September 2013, the Respondent acted for both LR as purchaser and RL and SL as vendors in a share transaction without complying with the requirements of Rule 3.4-5 of the *Code of Professional Conduct for British Columbia*, by failing to advise the parties of one or more of the following:

(b) that no information received in connection with the matter from one client could be treated as confidential so far as any of the others were concerned; and

(c) that if a conflict developed that could not be resolved, he could not continue to act for both and may have had to withdraw completely.

This conduct constituted professional misconduct, pursuant to section 38(4) of the *Legal Profession Act*.

3. Paragraphs 1(i), 2(a) and 3 were not pursued by the Law Society at the hearing.

[5] We made the finding of professional misconduct orally, and advised that written reasons would follow. We then heard submissions on disciplinary action and reserved to provide our reasons. These are our reasons on Facts and Determination and Disciplinary Action.

SERVICE OF CITATION

[6] The Respondent admitted that he was served with the Citation in the Agreed Facts and Conduct.

FINDINGS OF FACT

[7] We rely on the following facts from the Admitted Facts and Conduct in determining that the Respondent had professionally misconducted himself:

1. From his call to the Bar in 1989 until January 2010, the Respondent worked as in-house counsel for a company engaged primarily in the sale of time-share properties. The Respondent also maintained a part-time private practice in Whistler, BC, primarily in the area of real estate conveyancing.

2. The Respondent left his in-house position on January 31, 2010 and has continued his private practice since that time.

3. L Estates is a subdivision near Lillooet Lake in British Columbia. LLE Ltd. is a company that manages the subdivision.

4. Acquiring a lot in the subdivision involves purchasing shares in LLE Ltd. A registered holder of shares is entitled to beneficial ownership of a particular lot.

5. Changes in beneficial ownership of lots are done by way of cancelling the shares of the seller and issuing new shares to the purchaser. For such transfers, a directors' resolution must be signed by at least two directors of LLE Ltd.

6. In his private practice prior to January 2013, the Respondent acted as counsel on several LLE Ltd. share transfers.

7. In January 2013, RL and SL were registered holders of shares in LLE Ltd. and had exclusive use of a lot in the subdivision.

8. On January 31, 2013, after seeing the Respondent's name on the LLE Ltd. website, RL and SL sent the Respondent an email stating they understood that he looked after transactions involving LLE Ltd. RL and SL advised the Respondent of their agreement with LR and said they

planned to do some cleanup before the transaction could take place. They asked in the email if there was anything else they needed.

9. On February 2, 2013, the Respondent sent an email to the RL and SL agreeing to assist with the share transfer.

10. Between February 5 and February 15, 2013, further emails were exchanged between the parties. In these further emails:

    (a) the Respondent obtained contact details for LR and questioned whether the parties had a contract or written agreement for the sale;

    (b) LR advised that so far the sales agreement was just a "gentlemen's agreement made in the presence of their ladies" and acknowledged that he assumed a simple contract would be drawn up;

    (c) the Respondent asked RL and SL to provide confirmation that all annual fees had been paid and asked LR what name(s) he would like on the share certificates; and

    (d) LR asked the Respondent about a tax question, and the Respondent answered that the question should more properly be put to an accountant.

11. On February 22, 2013, the Respondent sent an email to LR and RL and SL asking if they wanted to use his trust account for the handling of the $150,000 purchase price. The Respondent also provided LR with an LLE Ltd. standard form agreement (which was created by LLE Ltd. or previous counsel for LLE Ltd.) to sign, setting out that LR wished to purchase the beneficial ownership of Lot #4.

12. Because the LLE Ltd. website had named the Respondent as the agent to contact in order to transfer shares and because of their correspondence with the Respondent, LR and RL and SL, each understood that the Respondent was acting for all of them and would assist all of them with whatever was necessary to carry out their agreement, and were each relying upon the Respondent for advice with respect to how to handle the transaction.

13. The Respondent did not discuss or clarify for whom he was acting with either LR or RL and SL, did not advise either party to seek independent legal advice, and did not discuss with either party the nature of a joint

retainer or what he would do if a conflict between the parties arose, such as withdrawing completely if necessary. The Respondent did not explain to either party that no information received in connection with the matter from one party could be treated as confidential so far as any of the others were concerned.

14. The Respondent did not discuss the matter of legal fees with either party.

15. In October 2012, RT, a director of LLE Ltd., advised the Respondent of LLE Ltd.'s decision to change counsel. On October 29, 2012, RT sent an email to a lawyer at R Company seeking to transfer LLE Ltd.'s corporate legal work to R Company. In this email, RT noted that the Respondent had already been advised of LLE Ltd.'s decision.

16. The Respondent did not discuss LLE Ltd.'s change in counsel with LR or RL and SL.

17. On February 24, 2013, the RL and SL sent an email to the Respondent advising him that they were going out of town and would return by April 5, 2013.

18. On May 31, 2013, LR sent the Respondent an email advising that he was about to mail the certified cheque for the $150,000 purchase price to the Respondent. LR asked the Respondent to confirm that he would be around to receive the cheque.

19. On or about June 3, 2013, LR sent a short letter and certified cheque for $150,000 to the Respondent. On or about the same day, LR called the Respondent and left a message, asking the Respondent to let him know when the cheque arrived. The Respondent does not have a record of this call.

20. On June 4, 2013, the Respondent sent an email to LR advising that he would watch for the cheque. When the cheque arrived, the Respondent did not confirm that he had received it, and did not communicate with LR again until June 26, 2013.

21. On June 21, 2013, RL and SL sent an email to the Respondent advising that the closing date of June 15, 2013 had passed and that they had not heard anything regarding the closure of the sale. RL and SL told the Respondent that they could meet him in his office the following week to complete anything that needed to be done.

22. On June 21, 2013, the Respondent sent a reply to RL and SL advising that he had "been swamped with work and family matters since this first began, but will review on weekend and see where we're at."

23. Between June 25 and 27, 2013, further emails were exchanged between the Respondent and RL and SL. On June 26, 2013, the Respondent asked if RL and SL had received their 2013 property tax bill and 2013 assessment from LLE Ltd. The Respondent also attached a draft Vendor's Statement of Adjustments, which RL and SL signed and faxed to the Respondent on July 18, 2013.

24. On June 26, 2013, the Respondent sent an email to LLE Ltd. directors RT, GY and MB advising: "I'm acting for buyers of two properties at L Estates [one of which was the subject of an unrelated transaction], and need confirmation of 2013 annual dues and any outstanding balances: Lot 4: RL & SL …" The Respondent further advised that "I am handling both ends of RL and SL's sale" and attached a directors' resolution for the LLE Ltd. directors to sign.

25. On June 26, 2013, the Respondent sent the R Company lawyer a letter attached to an email with the subject line, "Lot 4 L Estates – RL and SL to LR." In his letter, the Respondent advised that "I am acting for both parties on the above transfer of shares in LLE Ltd." and stated that he was enclosing documentation. The Respondent also agreed to pay R Company's fee of $504, the new transfer fee posted on LLE Ltd.'s website.

26. The Respondent had not discussed R Company's fee of $504 with RL and SL or LR.

27. On June 26, 2013, the Respondent sent LR an email attaching a draft Purchaser's Statement of Adjustments, which referred to the $504 transfer fee for R Company and legal fees payable to the Respondent. LR's wife emailed the Respondent, on her husband's behalf, advising the Respondent that RL and SL had agreed to pay the fees associated with the sale and requesting that the Respondent revise the draft accordingly. The Respondent responded to LR's wife with an email agreeing to revise the draft, copying RL and SL and asking if this was "okay" with them. RL and SL did not reply to the Respondent's email.

28. Having not received signed directors' resolutions from the three LLE Ltd. directors, the Respondent re-sent his June 26, 2013 email to the directors on June 28, 2013 and July 3, 2013.

29. On July 8, 2013, the LLE Ltd. director RT advised the Respondent by email that RL and SL were not in arrears prior to the current billing cycle, and that LLE Ltd.'s 2013 assessment for the lot was $1,869. (The Respondent had requested this information in preparing a Vendor's Statement of Adjustments.)

30. On July 9, 2013, MB, one of the LLE Ltd. directors, returned to the Respondent the directors' resolution signed by himself.

31. In early July 2013, RL and SL were apparently still arranging for the removal of an old camper from the property, which was one of the conditions of the sale.

32. On July 8, 2013, LR sent an email to RL and SL, copying the Respondent, in which LR acknowledged that the deadline of June 15, 2013 had obviously been missed and suggested that they try to wrap everything up no later than July 31, 2013.

33. On July 11, 2013, the Respondent sent an email to RL and SL, in which he advised that he was revising the draft Vendor's Statement of Adjustments. The Respondent asked whether RL and SL had already paid LLE Ltd. its 2013 assessment of $1,869. On July 12, 2013, RL and SL sent the Respondent and LR an email advising that they were paying LLE Ltd. the $1,869 assessment for 2013.

34. On July 16, 2013, RL and SL sent an email to LR and the Respondent advising that they had arranged for the removal of the old camper and would be signing the Vendor's Statement of Adjustments that had been drafted and sent to them by the Respondent. On July 19, 2013, the Respondent acknowledged receiving a signed Vendor's Statement of Adjustments from RL and SL.

35. The Respondent did not discuss with RL and SL or LR his summer holiday plans or work schedule.

36. On July 23, 2013, RL and SL sent an email to the Respondent advising that matters could proceed since the old camper was removed and LLE Ltd. had cashed their cheque for the 2013 assessment of $1,869.

37. On July 29, 2013, RL and SL received an out-of-office email from the Respondent stating the following:

> Thank you for your email. I will now be out of the office for a summer holiday, not returning until the 20th [of August]. None or sporadic access to email, if any, so I may be only able to occasionally answer emails of a positive nature. Enjoy the sunshine. Ian

38. On July 30, 2013, RL and SL corresponded with LLE Ltd. regarding the transaction.

39. On August 21, 2013, following the Respondent's return from vacation, RL and SL and the Respondent exchanged emails. RL and SL advised that they would like to complete the matter, and the Respondent advised that he needed a signed directors' resolution (which had only been signed by one LLE Ltd. director, MB, so far).

40. In a subsequent email on August 21, 2013, the Respondent requested that RL and SL endorse the backs of their share certificates, a required step in the LLE Ltd. share transfer. The Respondent also requested that RL and SL sign a revised Vendor's Statement of Adjustments, which RL and SL faxed to the Respondent on August 22, 2013.

41. On August 21, 2013, the Respondent and LR exchanged emails in which the Respondent advised LR that he was still waiting for further signatures on the directors' resolution, and provided LR with the Purchaser's Statement of Adjustments. LR expressed concerns regarding the Purchaser's Statement of Adjustments, including inaccurate completion, possession and adjustment dates, a higher transfer fee ($504) and legal fees payable to the Respondent of which LR had not previously been advised. The Respondent told LR that the parties were free to write in a different possession date, that the $504 fee was "what R Company, the firm whom RT arranged to issue the share certificates, now charges," and that there were certainly legal costs and fees, attributable to the "time and effort involved in preparing resolutions, documents, purchase materials, handling of funds, etc."

42. LR did not sign the Purchaser's Statement of Adjustments because of the inaccurate completion, possession and adjustment dates, a higher transfer fee ($504) and legal fees of which he had not previously been advised. The Respondent did not prepare a revised Purchaser's Statement of

Adjustments, and consequently there is no signed Purchaser's Statement of Adjustments in respect of the transaction.

43. The Vendor's Statement of Adjustments that RL and SL signed and returned to the Respondent in mid-July 2013, as well as the revised version RL and SL signed and returned to the Respondent on August 22, 2013, each referenced the same completion, possession and adjustment dates as the Purchaser's Statement of Adjustments. They also referenced legal fees and disbursements payable to the Respondent.

44. On August 21, 2013, the Respondent replied to R Company's email of July 4, 2013 in which a legal assistant had informed the Respondent that R Company had not received RL and SL's share certificates endorsed for transfer or the signed purchase agreement for the transaction. The Respondent advised the legal assistant that he was still waiting for the balance of funds from the buyer and signed certificates from the seller, and that he would forward the purchase agreement under separate email.

45. On August 22, 2013, the Respondent sent a fax to R Company with his June 26, 2013 letter re-dated as August 22, 2013, the purchase agreement signed by LR, the LLE Ltd. directors' resolution signed by MB and the share certificates endorsed by RL and SL. Because the letter and attachments were sent by fax, he did not provide the original share certificates, which were required to complete the LLE Ltd. share transfer.

46. On August 22, 2013, the Respondent sent an email to LR and RL and SL and advised that he had received RL and SL's faxed documents and confirmation "that they would cover the costs and fees." The Respondent further advised that he had "forwarded the required documents to LLE Ltd. via R Company" and would await the issuance of new share certificates to LR.

47. The Respondent did not contact LR or RL and SL during the following week.

48. On August 30, 2013, LR emailed SS of R Company, the new lawyers for LLE Ltd., and asked if he had received all of the required documentation from the Respondent. SS advised LR that he had not yet received RL and SL's original share certificates from the Respondent.

49. On September 2, 2013, LR emailed the Respondent and advised that he had met with two LLE Ltd. directors the day before and that the documents had been completed. LR asked the Respondent to send RL and SL the trust funds. LR asked that the Respondent acknowledge receipt of his email.

50. On September 6, 2013, having not received a response from the Respondent, LR emailed the Respondent again asking if he had transferred the funds to RL and SL and sent their original share certificates to R Company.

51. On September 6, 2013, the Respondent replied to LR stating that he was "pretty much caught up on the emails, faxes, calls, etc. that accumulated while I was away, so will attend to your matter this weekend."

52. On September 9, 2013, the Respondent emailed LR again, stating that he had not delivered RL and SL's original share certificates to R Company until the issue of fees and costs was resolved."

53. On September 9, 2013, LR emailed the Respondent advising that the responsibility for fees and costs was resolved some time ago. (On August 22, 2013 the Respondent had emailed LR confirming that RL and SL had agreed to pay the costs and fees.)

54. On September 13, 2013, RL and SL received from the Respondent a cheque in the amount of $148,642.80, which was the purchase price less transfer fees of $504 to R Company for the share transfer and the Respondent's claimed legal fees and disbursements of $853.20.

55. By letter dated October 2, 2013, LR made a complaint to the Law Society.

56. By letter dated October 9, 2013, RL and SL made a complaint to the Law Society.

LEGAL PRINCIPLES IN FACTS AND DETERMINATION ANALYSIS

[8] Although this is a case in which the Respondent and the Law Society agree that the Respondent committed professional misconduct based upon the Admitted Facts and Conduct, we must be satisfied that the Respondent committed professional misconduct.

[9] The Law Society bears the onus of proof on the balance of probabilities: *Law Society of BC v. Tak*, 2009 LSBC 25.

[10] In *Law Society of BC v. Martin*, 2005 LSBC 16 at para. 171, the test for professional misconduct was set out as: "whether the facts as made out disclose a marked departure from the conduct the Law Society expects of its members; if so, it is professional misconduct."

[11] Rules 3.1 and 3.2 of the *Code of Professional Conduct for BC* sets out the definition of a "competent lawyer" and the requirement for "competence." The paragraph 5 commentary to Rule 3.2-1 provides an illustrative but non-exhaustive list of expected practice:

(a) keeping a client reasonably informed;

(b) answering reasonable requests from a client for information;

(c) responding to a client's telephone calls;

(d) keeping appointments with a client, or providing a timely explanation or apology when unable to keep such an appointment;

(e) taking appropriate steps to do something promised to a client, or informing or explaining to the client when it is not possible to do so; ensuring, where appropriate, that all instructions are in writing or confirmed in writing;

(f) answering, within a reasonable time, any communication that requires a reply;

(g) ensuring that work is done in a timely manner so that its value to the client is maintained;

(h) providing quality work and giving reasonable attention to the review of documentation to avoid delay and unnecessary costs to correct errors or omissions;

(i) maintaining office staff, facilities and equipment adequate to the lawyer's practice;

(j) informing a client of a proposal of settlement, and explaining the proposal properly;

(k) providing a client with complete and accurate relevant information about a matter;

(l) making a prompt and complete report when the work is finished or, if a final report cannot be made, providing an interim report when one might reasonably be expected;

(m) avoidance of self-induced disability, for example from the use of intoxicants or drugs, that interferes with or prejudices the lawyer's services to the client;

(n) being civil.

[12] Paragraph 6 of the commentary to Rule 3.2-1 deals with a lawyer's obligation to act promptly. It states:

> A lawyer should meet deadlines, unless the lawyer is able to offer a reasonable explanation and ensure that no prejudice to the client will result. Whether or not a specific deadline applies, a lawyer should be prompt in prosecuting a matter, responding to communications and reporting developments to the client. In the absence of developments, contact with the client should be maintained to the extent the client reasonably expects.

[13] Rule 3.4-5 deals with a lawyer's obligations when dealing with joint retainers, and states:

> Before a lawyer is retained by more than one client in a matter or transaction, the lawyer must advise each of the clients that:
>
> (a) the lawyer has been asked to act for both or all of them;
>
> (b) no information received in connection with the matter from one client can be treated as confidential so far as any of the others are concerned; and
>
> (c) if a conflict develops that cannot be resolved, the lawyer cannot continue to act for both or all of them and may have to withdraw completely.

[14] We find in determining if the Respondent committed professionally misconduct in dealing with LR and RL and SL the following facts particularly significant:

(a) He acted for both RL and SL and LR in that he took instructions from both parties, prepared draft Statements of Adjustments from both parties, and planned to bill both parties. In the course of doing this he, failed to comply with Rule 3.4-5 by failing to advise the parties of the nature and limitations of a joint retainer;

(b) He failed to consider and understand who his clients were. He was acting for two distinctive clients, and did not discuss this with his clients;

(c) He failed to advise the parties what would occur if a conflict developed between his clients. In this case, a conflict did almost develop when RL and SL threatened to withdraw from the transaction due to delays in closing the transaction;

(d) He did not explain to his clients the nature of his retainer, including the tasks that he would perform, and the fees that he would charge;

(e) He prepared Statements of Adjustments for his clients that were incomplete and inaccurate. The closing date had passed, the statements did not reflect the agreement of the clients as to who would pay the transfer fees, and the Respondent's legal fees were not as agreed between the clients. The Respondent did not complete the statements in that he left it to his clients to determine LR's share of the property tax and the 2013 LLE Ltd. assessment; and

(f) He failed to advise the clients that he was taking vacation and the effect of the other commitments he had in the summer of 2013, and how this might affect his ability to complete the transaction. Although the closing date on the transaction was not a firm date, the Respondent held the closing proceeds in trust and was aware that the clients wished the transaction to complete in the summer of 2013.

[15] Failure to serve a client in a conscientious, diligent and efficient manner has been found to constitute professional misconduct. Counsel for the Law Society drew our attention to the following decisions:

(a) *Law Society of BC v. Epstein,* 2011 LSBC 12 – failure to communicate with a client;

(b) *Law Society of BC v. Harding*, 2014 LSBC 52 – lack of activity;

(c) *Law Society of BC v. Hart*, 2014 LSBC 17 – failure to keep the client reasonably informed, failure to respond to reasonable requests from clients for information, and failure to perform tasks by a certain date;

(d) *Nova Scotia Barrister's Society v. Wood*, 2009 NSBS 1 – failure to prepare correct statements of adjustments properly on multiple transactions;

(e) *Law Society of BC v. Hattori*, 2009 LSBC 9 – failure to explain the principle of undivided loyalty in a joint retainer setting; and

(f) *Law Society of BC v. Rai,* 2005 LSBC 37 – failure to provide an appropriate quality of service in mortgage transactions and continuing to act when a conflict arose in a joint retainer.

[16] The Respondent failed to comply with his obligation to inform the clients that this was a joint retainer situation and failed to provide the advice as mandated by Rule 3.4-5. Counsel for the Law Society referred us to the following cases where a lawyer has been found to have committed professional misconduct in analogous situations:

(a) *Law Society of BC v. Wing*, 2003 LSBC 21;

(b) *Law Society of BC v. Van Twest*, [1994] LSDD No. 129; and

(c) *Law Society of BC v. Allgaier,* [1992] LSDD 21.

[17] Based upon the test as set out in *Martin* and the application of the authorities provided to us, we find that the Respondent committed professional misconduct with regard to paragraphs 1(a) to (h) (with subparagraph (h) amended to read: "advise the vendors or the purchaser of his summer plans, including holiday plans, during the time they wished the transaction to complete") inclusive, and paragraphs 2(b) and (c) of the citation.

DISCIPLINARY ACTION

[18] The purpose of the discipline process is not to punish or exact retribution; it is to discharge the Law Society's statutory obligation as set out in section 3 of the *Legal Profession Act* to protect the public interest in the administration of justice: *Law Society of BC v. Hill*, 2011 LSBC 16.

[19] The factors in assessing a penalty are set out in *Law Society of BC v. Ogilvie*, 1999 LSBC 17.

[20] The Respondent has related Professional Conduct Record. Counsel for the Law Society summarized it in his submissions on sanction at paragraphs 17 to 21:

> 17. In 2012, following a review, the Practice Standards Committee made recommendations related to accounting and file management practices.
>
> 18. In October 2014, the Respondent was the subject of a citation alleging conduct somewhat analogous to that at issue in this matter. While apparently acting for multiple parties in the transfer of an interest in a time-share property, the Respondent submitted land title documents to transfer the interest that was held by a defunct company which the Respondent believed no longer had the capacity to transfer the interest. The Respondent failed to serve his clients in a conscientious, diligent and efficient manner by failing to:
>
> (a) Consider, determine or understand who his clients were;
>
> (b) Take reasonable steps to determine whether an individual had authority to sign documents; and
>
> (c) Take reasonable steps to determine whether another party had authority to give instructions for a relative.
>
> 19. The Respondent also acted for two or more parties without complying with the rules respecting acting for multiple parties and took fees from trust without first issuing and delivering an account.
>
> 20. The Respondent admitted his misconduct and the underlying facts, and the panel imposed a fine of $3,000 and costs of $2,000.
>
> 21. In June 2015 (report dated September 17, 2015) the Respondent was the subject of another conduct review for failing to provide his clients notice of his holiday plans and failing to make provisions to allow his clients to complete their real estate transaction.

[21] While discipline should generally be applied in a progressive manner, the nature of the conduct for which a penalty is being imposed must be considered, in light not only of the conduct that is being sanctioned, but also with regard to how that

conduct relates to the lawyer's previous professional conduct record: *Law Society of BC v. Lessing*, 2013 LSBC 29, paras. 73 and 74.

[22] The Respondent in his submissions advised us that he was called to the Bar in British Columbia in 1989. He is 55 years of age. In 2014 he had a net income of approximately $55,000. He is a single parent of two children. He has experience doing simple conveyances.

[23] The Respondent took the approach that, since the transaction closed, there was no harm, no foul. He continually emphasized that this was not a transaction for which he received a large fee. His attitude conveyed that he felt aggrieved as a result of the clients complaining of his conduct.

[24] The Respondent entered into the Admitted Facts and Conduct, shortening the hearing, and acknowledged the fact that he committed professional misconduct. These are factors that are to the Respondent's credit.

[25] The Law Society seeks a suspension of 30 days and an order for costs.

[26] The Respondent seeks a reprimand and an order for costs in an amount less than that sought by the Law Society.

[27] In determining the disciplinary action to be imposed upon the Respondent, we have considered the *Ogilvie* factors. The troubling factor in this case is the previous Professional Conduct Record of the Respondent. He has been found to have committed professional misconduct for conduct in which he did not determine who his client was and acted for multiple clients without complying with the Rules. The Respondent has also been subject to a conduct review for failing to advise his client when he was away on vacation and not making adequate arrangements to provide the client with representation when he was away.

[28] The Law Society sought a suspension of 30 days. In considering the factors set out in *Ogilvie* we are of the view that a significant monetary penalty will be more effective in satisfying those considerations than a short suspension. In light of the Respondent's conduct and his previous Professional Conduct Record, even when considering the admissions made by the Respondent and the other mitigating factors in his favour, we gave serious consideration to a suspension. But we found that the protection of the public and general deterrence could best be satisfied by the imposition of a fine.

[29] In light of the Respondent's circumstances, we find that a fine in the amount of $7,500 will be more effective in satisfying the *Ogilvie* factors than a short suspension.

COSTS

[30] The Law Society seeks an order for costs in the amount $5,636.25. This is composed of $5,400 for Rule 5-11 Schedule 4 costs and disbursements in the amount of $236.25.

[31] Rule 5-11 requires the Panel to award the tariff costs unless we are satisfied that we should depart from the tariff under Rule 5-11(4). *Law Society of BC v. Racette*, 2006 LSBC 29, sets out some of the factors to determine the reasonableness of an award from costs.

[32] Having considered the financial information of the Respondent and the circumstances of this matter, we do not find the facts justify us departing from the tariff as set out in Rule 5-11, Schedule 4. Costs are in the amount of $5,636.25, composed of $5,400 in costs and $236.25 in disbursements.

ORDER

[33] The Respondent is ordered to pay the following on or before November 30, 2016:

a. a fine of $7,500, and

b. costs in the amount of $5,636.25.