2017 LSBC 02
Decision issued: January 19, 2017
Citation issued: February 10, 2016
Citation amended: December 8, 2016

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

MICHAEL JOHN BUTTERFIELD

RESPONDENT

DECISION OF THE HEARING PANEL

Hearing date:	December 14, 2016
Panel:	C.E. Lee Ongman, Chair James E. Dorsey, QC, Lawyer June Preston, Public representative
Discipline Counsel:	Randy Kaardal, QC and Rebecca Robb
Counsel for the Respondent:	Peter Firestone

RECOMMENDED DISCIPLINARY ACTION ACCEPTED BY HEARING PANEL

[1] The Respondent makes a conditional admission of professional misconduct by sexually harassing two employees between May 14 and July 4, 2014. He consents to pay a $10,000 fine by June 30, 2017. He consents, as a condition pursuant to section 38(7) of the *Legal Profession Act,* to complete a sensitivity training course satisfactory to the Law Society within a time approved by the Law Society, which he has completed. He consents to pay an agreed amount for the costs of the hearing and acknowledges he will be identified in the publication of a summary of the disciplinary action required by Rule 4-48.

[2] The Discipline Committee amended the citation and accepted the Respondent's conditional admission of professional misconduct and consent to the proposed disciplinary action. It instructed discipline counsel to recommend acceptance of the admission and proposal to the hearing panel.

[3] After hearing thorough submissions by discipline counsel and counsel for the Respondent, the Panel unanimously decided to accept the Respondent's proposed disciplinary action.

[4] In accordance with Rule 4-30(5), the Panel instructed the Executive Director to record the lawyer's admission on the lawyer's professional conduct record; imposed the proposed disciplinary action; and notified the Respondent and the complainant of this disposition.

[5] Under Rule 5-11(1), the Panel ordered the Respondent to pay hearing costs as agreed in the amount of $2,236.25 by December 31, 2016. (Law Society Rules 2015, Schedule 4 – Tariff for Hearing and Review Costs, s. 25)

[6] These are our reasons for accepting the proposed disciplinary action.

WHEN EMPLOYEE COMPLAINS, RESPONDENT STOPS AND MAKES CHANGES

[7] The background to the formal complaint and citation is a cautionary tale. The taboo is workplace sexual harassment committed by a person with power in the employment relationship who has come to the fate of public shame, family anguish, financial cost and professional discipline. The tale is enlivened by complainant courage and Respondent contrition, cooperation and personal awareness.

[8] The Respondent, called to the bar in 2001, is a sole practitioner whose practice is principally in family law. He has no prior disciplinary record. He has been a respected participant in the legal community and has engaged in several endeavours in the broader community. He had a weekly radio program; gave interviews on legal matters; did pro bono work; provided mentorship; and funded an award at the University of Victoria to recognize students demonstrating enthusiasm and perseverance who are not necessarily high academic achievers. He had ambitions for future achievements within the profession and as an elected political representative in his community.

[9] The complainant, after completing her first year at law school, was the successful applicant for a summer position as an administrative assistant in the Respondent's firm. The position, like previous ones successfully filled, was posted at the

complainant's law school by the Respondent's wife, JE, who has a Master's degree in Psychology and, among other duties, is the firm's human resources person. She interviewed six applicants and selected the complainant, whose prior receptionist experience qualified her as the best candidate. The complainant began employment May 14, 2014.

[10] In May and June, the complainant was distressed by the Respondent's inappropriate comments of a sexual nature to her and one touch to her lower back. Several of the comments were made in the presence of a full-time employee hired May 12, 2014 to complete her practicum to qualify as a paralegal. A third employee hired January 6, 2014 as a paralegal was on medical leave from April 23 to May 20. She completed her term of employment May 28, 2014.

[11] The Respondent's comments of a sexual nature detrimentally affected the office environment for both the complainant and the newly-hired paralegal, both of whom worked predominantly in a reception area. The paralegal worked occasionally in a spare office.

[12] The complainant kept a journal of her concerns about the Respondent's conduct. She reported her concerns to friends and family by text messages and sought advice in June from a professor to whom she reported feeling "vulnerable, depressed and timid." She wrote in an email:

> ... He is quick to comment on my clothing and has suggested, at different times, that I should show more cleavage and wear shorter skirts. I have been very careful about my clothing, showing no cleavage and making sure that my skirts are no shorter than just above my knees. He pitches his suggestions as being humour, but they are too frequent and direct to be ignored.

[13] During their weeks of employment, because of their vulnerability, the complainant and paralegal were faced with the hard choice of suffering the prospect of unwelcome comments each day at work or speaking out about their impact on them to the Respondent or JE. There was no one else at work to whom they could speak, and they were working to complete qualifications to become a lawyer and a paralegal. What would happen if they did speak out?

[14] On the morning of July 4, 2014, the Respondent shouted the complainant's "name at the top of his lungs for no apparent reason." She arranged a meeting with the Respondent later that day to discuss "office dynamics" and arranged for the paralegal to attend. She raised his shouting and the manner in which he dealt with staff performance issues. The agreed statement of facts includes:

22. ... She then raised the issue of the Respondent's comments in respect of her clothing making her feel uncomfortable. The Respondent asked for examples. The complainant provided the examples of the Respondent's comments on her cleavage and how her skirts could be shorter. He agreed his comments were inappropriate and he also said he thought they had a banter.

23. The Respondent apologized for his conduct in the meeting and took the complaint seriously and agreed to modify his behaviour. The Respondent did modify his behaviour and made changes to his office policies to prevent the repetition of any such conduct. The Respondent in an effort to deal with this complaint introduced office policies on the following issues: dress code, sexual harassment and harassment and bullying. ... The new office policies introduced because of this July 4 complaint were prepared over a number of months by JE and the Respondent.

24. After the meeting, the Respondent's comments and conduct of a sexual nature stopped.

[15] Coincidentally, the Law Society approved temporary articles for the complainant with the Respondent as principal on July 4, 2014. In mid-July, the Respondent offered to convert her employment into a co-op work term, which was back-dated by agreement to the beginning of her employment.

[16] The complainant resigned August 6, 2014 on medical grounds. That day she discussed her concerns about the Respondent with the co-op program coordinator, who advised her to end her co-op placement early. She obtained the University credit.

[17] In August and September 2014, the Respondent and JE developed policies that were reviewed by the employees and implemented in October. In November, the firm adopted a Workplace Bullying and Harassment Policy. In February 2015, the firm installed a communication system to discourage calling between offices. In April 2015, the Respondent entered an agreement with an established mediator to serve as an alternate contact person under the Harassment Policy and to assist with any workplace conflict. The updated policy and the mediator's contact information were posted in May, 2015. Changes to the air conditioning system in June, 2015 reduced background office noise.

[18] The Respondent and JE studied materials and attended seminars on employer responsibilities and regulatory compliance. WorkSafe BC recognizes that bullying

and harassment is a workplace hazard. Mental disorders "predominantly caused by a significant work-related stressor, including bullying or harassment, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment" are compensable (*Workers Compensation Act*, RSBC 1996, c. 492, s. 5.1(1)(a)(ii)).

[19] A full-time administrative assistant employed at the Respondent's firm from May 2015 to February 2016 reports positive experiences working in a firm with written guidelines and current policies on workplace behaviour. She reports the Respondent always treated her "courteously, with integrity and respect and in a wholly professional manner." She left for a similar position closer to home.

SEXUAL HARASSMENT – LEGISLATION AND RULES

[20] The *Code of Professional Conduct for British Columbia* is the governing document concerning professional responsibility for British Columbia lawyers. Chapter 6 addresses relationships with students, employees and others. Rule 6.3-3 explicitly states: "A lawyer must not sexually harass any person."

[21] The Law Society has an Equity Ombudsperson available to firms and individuals to help stop workplace discrimination and encourage equitable workplace practices. The Society's practice resources include "Promoting a Respectful Workplace: A Guide For Developing Effective Policies."

[22] The Law Society's approach is congruent with a recent succinct statement of the British Columbia Court of Appeal: "Persons should not be forced by others who occupy positions of power to suffer insult or abuse as a term or condition of employment." (*Schrenk v. British Columbia (Human Rights Tribunal)*, 2016 BCCA 146, para. 34)

[23] Sexual harassment of a student by a principal is especially serious. In this case, although the Respondent's conduct stopped on the day he was told it was unwanted, which happened to be the day he was approved to be the complainant's principal, the principal-student relationship effectively existed during the period of misconduct.

[24] There is no definition of sexual harassment in the *Code of Professional Conduct*. The principles and terms defined in human rights legislation apply (Rules 6.3-1 and 6.3-2). The Supreme Court of Canada wrote an enduring definition of sexual harassment in 1989:

I am in accord with the following dictum of the United States Court of Appeals for the Eleventh Circuit in *Henson v. Dundee*, 682 F.2d 897 (1982), quoted with approval in the *Meritor Savings Bank* case (106 S. Ct. 2399 (1986)):

> Sexual harassment which creates a hostile or offensive environment for members of one sex is every bit the arbitrary barrier to sexual equality at the workplace that racial harassment is to racial equality. Surely, a requirement that a man or woman run a gauntlet of sexual abuse in return for the privilege of being allowed to work and make a living can be as demeaning and disconcerting as the harshest of racial epithets.

Without seeking to provide an exhaustive definition of the term, I am of the view that sexual harassment in the workplace may be broadly defined as unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment. It is, as Adjudicator Shime observed in *Bell v. Ladas* (1980), 1 CHRR D/155(Ont. Bd.), and as has been widely accepted by other adjudicators and academic commentators, an abuse of power. When sexual harassment occurs in the workplace, it is an abuse of both economic and sexual power. Sexual harassment is a demeaning practice, one that constitutes a profound affront to the dignity of the employees forced to endure it. By requiring an employee to contend with unwelcome sexual actions or explicit sexual demands, sexual harassment in the workplace attacks the dignity and self-respect of the victim both as an employee and as a human being.

(*Janzen v. Platy Enterprises Ltd*., [1989] 1 SCR 1252 at p. 1284 *per* Dickson, CJC)

[25] Unwanted sexual conduct detrimentally affecting the workplace environment contributes to creating a hostile work environment that adversely affects other employees who are not the direct subject of the unwanted conduct.

AGREEMENT CONDUCT CREATED HOSTILE WORK ENVIRONMENT

[26] It is agreed that, between May 12 and July 4, 2014, the Respondent made the following statements to the student in the following situations and contexts. In some instances, the Respondent's sexual harassment of the student occurred in the presence of the paralegal, which the Respondent knew or reasonably ought to have

known would cause both the student and the paralegal to be humiliated or intimidated:

1. In or about May 2014, the Respondent said to the student, who was wearing pants, "You're not wearing a dress today?" in a tone of disappointment. The Respondent does not recall the conversation, but does not deny it.

2. In or about May 2014, the paralegal and the student were in the office kitchen. The paralegal in a joking manner said to the student "alone at last, my love," to which they both laughed. The Respondent came back into the office and asked why they were laughing. When they told him why, he responded saying that his policy on sexual harassment was that only he was allowed to do it. Both the paralegal and the student recall this incident. The Respondent does not recall this specific conversation, but admits it is consistent with the type of banter he engaged in at the office.

3. On May 28, 2014, the student raised with the Respondent a potential conflict of interest on a file, as the opposing party's partner was her ex-boyfriend. The Respondent asked the student for details about the nature of the relationship, asking when she was last in touch with him, and what was said. ... The Respondent asked the student detailed questions about their sexual relationship: "how many times was it?" and "where was it?" Subsequent conversations were held regarding the conflict of interest issue between the student and the Respondent, and jokes were made about it in the office. The paralegal was present for the initial conversation. The other paralegal overheard a conversation between the student and the Respondent regarding the conflict of interest issue as well. Both the other paralegal (for whom this was her last day of employment) and the paralegal viewed the conversation as inappropriate.

4. In late May 2014, the student wore a white shirt to the office that revealed her dark bra. Over top she wore a blazer. While performing office cleaning, the student removed her blazer before the arrival of the Respondent. Upon his arrival, the Respondent commented on her shirt, stating that clients should not see her like that even though he appreciated it. JE and the paralegal were both present when the Respondent made this comment to the student.

5. On June 3, 2014, the Respondent took the student to lunch at the Union Club. The Respondent told the student in a joking manner that he would not make her use the back door. The student responded by asking him what he meant. He responded, explaining the back door was the "ladies' entrance." The student responded, stating that she was not sure whether she should be offended or take his statement as a compliment. The Respondent then added that the ladies' entrance was historically the entrance for prostitutes, or words to that effect. During their lunch, the Respondent also asked the student about why she was single. The student clarified that she was not single. On several occasions the Respondent stated in their conversation that "oh, well I hear you're single now," and the student would repeat that she was not. The student found the lunch awkward.

6. On June 6, 2014, in the course of their meeting for her one-month review, the Respondent commented in a joking manner that he was disappointed the student had not shown more cleavage that week. The Respondent had discussed her revealing cleavage with her a few times. He does not recall that particular statement of June 6, but does not deny it.

7. On or about June 8, 2014, the Respondent complimented the student's dress and said she could really pull off dresses and then said jokingly that she could "pull it off" was inappropriate. He then corrected himself and said "you wear it well." The paralegal recalled this incident. The Respondent has no recollection of this particular conversation, but does not deny it. He did compliment the student about her dresses and acknowledges it is the type of "joke" he would tell.

8. On or about June 12, 2014, the student called the Respondent at home late in the morning on an urgent file matter. He answered "I was napping. This is not how I imagined you waking me up."

9. On or about June 17, 2014, the Respondent asked the student to type her name into his computer keyboard in a blog she had written. As she was bending over to type, he said she was "his favourite." He touched her lower back with his hand. He then joked it was assault. The paralegal was present and witnessed the touching, and she joked it was battery.

10. On June 18, 2014, the Respondent was talking to the paralegal in his office. As the student approached his door to ask a question, he looked at her and said to the student it was her job to turn him on and made reference to her employment contract as requiring that she do his bidding. She commented that was not part of her job description. The paralegal recalled the Respondent telling the student it was her job to turn him on. The Respondent does not recall the exchange but does not deny it occurred. It was the student's job in the morning to turn on the computers.

11. On or about June 18, 2014, the Respondent commented on the student's dress and said he liked it. The Respondent had come back from running and was in shorts himself. He then sang "who wears short skirts." She told him that she got the dress because it was not short and was business appropriate, and he replied, saying she was more than welcome to wear shorter skirts.

12. On June 18, 2014, the student dropped a file fastener on the floor in the Respondent's office. She recalls the Respondent joked that he had thrown it so that she would have to bend over. She told him she was not going to pick it up and went back to her desk. The paralegal was present and recalled the Respondent's comment that he had dropped the file fastener so that he could watch the student pick it up.

13. On June 19, 2014, the Respondent's office received three emails about mail-order brides or something similar. The student made a comment about the emails, to the effect that "we keep getting these emails." The Respondent responded to the student, saying that, if it was for hook-ups, he was totally happy to get the emails. The student believes she made a gross face and shook her head, to which he responded, "What? Don't you think I'm a virile man?" She replied "no comment." The Respondent does not remember the incident, but does not deny it occurred.

14. On June 25, 2014, the Respondent, who had a dentist appointment, made a joke to the student about "drooling" when he saw her.

15. At some time in the student's employment with Butterfield Law, the Respondent asked the student while in a car driving from the office to downtown what her "ultimate limits" were. She felt awkward about the question and responded to the effect of anything illegal, such as drinking and driving.

COMPLAINT, CITATION, CONTRITION AND CONDITIONAL AGREEMENT

[27] The complaint was made on February 12, 2015. The complainant wrote:

> **What would you like to see happen as a result of your complaint?**
>
> There is nothing that Mr. Butterfield or the Law Society can do to remedy the past. I have no interest in compensation or a formal apology whatsoever. My goal is to protect future employees from having to suffer the same harassment. I trust that following an investigation, any decision made by the Law Society in terms of disciplinary action or the lack thereof will be based on a fair evaluation of the facts and potential risks to future employees. I will accept whatever outcome is decided upon ...

[28] The Respondent was informed of the complaint in April and retained counsel. He was interviewed May 25, 2015 when he acknowledged he had crossed the line in his conduct and created an inhospitable work environment for the complainant and the paralegal.

[29] A citation authorized by the Discipline Committee was issued February 10, 2016. It was reported in the Victoria print and broadcast media. The Law Society retained outside counsel. JE writes:

> The effects of the citation upon Michael have been far reaching, both professionally and personally.
>
> Michael spent 15 years building his reputation in this community. When he was informed that a citation was forthcoming, he resigned from his weekly radio show on CFAX, a Charity Board (CNIB-Eye Appeal), and stepped down as the ADR rep for the Provincial Council. These were significant losses for Michael, but he did not want any of the organizations tarnished by the allegations.
>
> Michael accepts that this citation means that achieving a QC or career in politics is unlikely. These are things that he has aspired to as long as I've known him. He accepts the responsibility for this situation, however.
>
> Since the citation, Michael has been reluctant to run any TV ads or major advertising campaigns. This, in addition to the citation, has resulted in less work coming our way and decreased income for our family.

[30] In September 2016, the Respondent actively participated in a five-hour sensitivity training course conducted by Breakview Training. The course included developing a personal action plan with the experienced facilitator who wrote: "In my opinion,

if Michael implements his action plan in full, he will reap success in managing and maintaining professional relationships without crossing boundaries."

[31] In October, the Respondent wrote the following statement:

> I have been asked to write a statement concerning the contrition I feel about conduct, which necessitated the Citation against me. I am pleased to do so.
>
> I take pride in being a lawyer, and the standing that it gives me in the community. When [the student] and [the paralegal] were hired, I was optimistic about the future. I had a busy Family Law Practice. I was very active in the Victoria Legal community, chair of the CBA-ADR Section, and member of the national CBA ADR board. I did pro bono work. I helped out in the Community. I was a regular principle [sic] for law students engaged in the Law Center Program run by the University. I had a weekly radio show. I was a regular commentator on legal matters for the CTV network. All of this came to an end when I received the complaint.
>
> The Victoria Legal community is very small, especially the Family Bar. It became clear to me that even prior to the actual Citation that members of the Family bar were aware of the Law Society Investigation. Members of the bar began to treat me differently and I became the butt of jokes. I felt ostracized. My descent was swift and was very tough on my wife, my son, and me.
>
> Once I received the Complaint from the Law Society, I gave up all of my civic activities. I did not want my shame to impact those organizations.
>
> It has been a tough fall from grace. I take full responsibility for the underlying conduct that led to my Citation and its resulting impact on my employees, my family and me professionally. I am solely to blame for the environment created by my actions at Butterfield Law and I regret them. I am sorry that [the student] and [the paralegal] were subjected to unacceptable behavior on my part. I should have known better and acted better.
>
> I understand that my actions that led to this Citation were inappropriate. In my interview with Ms. Copland, I readily acknowledged that my conduct had crossed a line with [the student] and created a hostile work environment for [the paralegal]. I found the process of the Law Society investigation very difficult. It is hard to admit when you are wrong, but I

> believe that we only learn by taking responsibility for our mistakes and committing to change. I have done so.
>
> Frankly, I did not see that the environment I created at the time was a hostile workplace. In retrospect, I recognize that the issue is not my intent but the impact on the employee. I have studied this issue and I have benefited from the courses I have taken on the issue of sexual harassment. I have insight into this issue now.
>
> Following the July 4, 2014 meeting with [the student] and [the paralegal], I had to look seriously at my conduct. I apologized to [the student]. I then had a very difficult conversation with my wife, JE, and we took immediate steps to prevent future occurrences.
>
> We have created new office policies. I have listened carefully to JE and taken her advice. I have committed to there being no repetition of my conduct. JE has been very supportive and it has helped me get through this.
>
> This Citation has affected my practice. I am currently a sole practitioner without support staff other than my wife. I have been affected detrimentally financially by this process and my family and I have had to deal with the press coverage of my Citation. I am very sorry for the impact that my conduct has caused to my family. I miss my old life. I assure the Law Society that I have learned from this and the conduct at issue will not be repeated.

[32] Consistent with the Respondent's self-awareness and contrition, his counsel cooperated with discipline counsel to develop an agreed statement of facts and proposed disciplinary action. In November 2016, the Respondent wrote the Chair of the Discipline Committee admitting he committed disciplinary violations and professionally misconducted himself. He consented to the proposed disciplinary action and to pay the hearing costs. His conditional admission spared the complainant and perhaps others the distress of testifying.

[33] On December 8, 2016, the Discipline Committee accepted the conditional admission and proposed disciplinary action and approved amendments to the citation to reflect the conditional admissions. The disciplinary violations are that, between May 14 and July 4, 2014, the Respondent sexually harassed the complainant and the paralegal employed by his firm contrary to Rule 6.3-3 of the *Code of Professional Conduct for British Columbia* and this was professional misconduct.

[34] By making conditional admissions of professional misconduct as alleged in the amended citation, the Respondent admits his sexual harassment of the Complainant and paralegal contrary to Rule 6.3-3 of the *Code of Professional Conduct for British Columbia* meets the test for professional misconduct under section 38(4) of the *Legal Profession Act* as stated in *Law Society of BC v. Martin*, 2005 LSBC 16. We agree his conduct is a marked departure from the conduct expected of a member of the Law Society.

ANALYSIS AND ACCEPTANCE OF PROPOSED DISCIPLINARY ACTION

[35] The Panel's mandate is not to simply defer to the recommendation of the Discipline Committee. We must give the proposed disciplinary action close examination and scrutiny. At the same time, the fact that the proposed action passed review by the Discipline Committee is a relevant consideration. Similarly, the fact that acceptance of the recommendation will spare the complainant the burden of testifying is a relevant consideration.

[36] The Rule 4-30 procedure of Discipline Committee review and recommendation of a specific disciplinary action:

> … is to facilitate settlements, by providing a degree of certainty. However, the conditional admission provisions have a safeguard. The proposed admission and disciplinary action do not take effect until they are "accepted" by a hearing panel.
>
> This provision exists to protect the public. The Panel must be satisfied that the proposed admission on the substantive matter is appropriate. In most cases, this will not be a problem. The Panel must also be satisfied that the proposed disciplinary action is "acceptable". What does that mean? This Panel believes that a disciplinary action is acceptable if it is within the range of a fair and reasonable disciplinary action in all the circumstances. The Panel thus has a limited role. The question the Panel has to ask itself is, not whether it would have imposed exactly the same disciplinary action, but rather, "Is the proposed disciplinary action within the range of a fair and reasonable disciplinary action?"
>
> This approach allows the Discipline Committee of the Law Society and the Respondent to craft creative and fair settlements. At the same time, it protects the public by ensuring that the proposed disciplinary action is within the range of fair and reasonable disciplinary actions. In other words, a degree of deference should be given to the parties to craft a

> disciplinary action. However, if the disciplinary action is outside of the range of what is fair and reasonable in all the circumstances, then the Panel should reject the proposed disciplinary action in the public interest.
>
> (*Law Society of BC v. Rai*, 2011 LSBC 02, paras. 6 – 8)

[37] A 2015 hearing panel characterized the proceeding as follows:

> It is not an agreement between counsel for the Law Society and the respondent, at the doorstep on the day of the hearing. Rather, it has been approved by the Discipline Committee, which is composed of benchers, both elected and appointed, and non-benchers. The committee numbers may vary from year to year, but in most cases, far exceed the number of members on a hearing panel. In other words, a lot of eyes review the conditional admission. The same cannot be said of other admissions and agreements on disciplinary action. Therefore, conditional admissions should be given more deference than other admissions and agreements on disciplinary action. In addition, other admissions and agreements on disciplinary actions allow a hearing panel to reject the proposed disciplinary action and provide the parties an alternative disciplinary action. In such circumstances, of course, the hearing panel should give the parties notice. No such right exists in conditional admissions. The hearing panel either must accept the admission and the proposed disciplinary action or reject it and send it back to the Discipline Committee.
>
> (*Law Society of BC v. Penty*, 2015 LSBC 51, para. 84)

[38] The Respondent's admission of professional misconduct is well supported by the evidence. Is the proposed disciplinary action within the range of a fair and reasonable disciplinary action in all the circumstances? Does it fulfill "the object and duty of the society to uphold and protect the public interest in the administration of justice"? (*Legal Profession Act*, SBC 1998, c. 9, s. 3)

[39] Like many generic descriptions of human conduct, "sexual harassment" encompasses a spectrum of behaviour that some might believe does not warrant the label of the most egregious behaviour. It is certainly not overreaching to characterize the Respondent's repeated behaviour as sexual harassment. At the same time, it does not minimize its seriousness or its adverse impact on the complainant and the paralegal to recognize there is more serious misconduct on the spectrum. This, like the principal-student relationship between the Respondent and complainant and the power dynamic in an office dominated by a sole practitioner,

is a relevant factor in assessing the appropriateness of the recommended disciplinary action.

[40] When determining whether a proposed disciplinary action falls within the range of fair and reasonable discipline, the main considerations are the public interest and maintaining public confidence in the legal profession. To these ends, an open-ended list of 13 factors has been repeatedly considered since 1999. (*Law Society of BC v. Ogilvie*, 1999 LSBC 17, [1999] LSDD No. 45, para. 10) The factors encompass specific and general deterrence, rehabilitation, punishment and denunciation. It is not necessary for us to address whether the factors need simplification. (see *Law Society of BC v. Dent*, 2016 LSBC 05)

[41] We have concluded the proposed disciplinary action protects the public and reflects the rehabilitation of the Respondent. In all the circumstances, a reprimand would not maintain public confidence in the disciplinary process. The Respondent has been open, honest, contrite and cooperative. He apologized and changed his behaviour immediately after the July 4 meeting. We conclude there is no serious risk of repeated conduct and a suspension would achieve no greater public protection or lawyer rehabilitation.

[42] We find the proposed disciplinary action proportionate with the misconduct and the Respondent's response to the initial complaint from the student and her complaint to the Law Society. We agree with discipline counsel's characterization:

> Such conduct is evidently serious. It is particularly serious that the Respondent's misconduct was directed toward [the student], whom he was supervising as a student.
>
> However, the misconduct is for the most part in the nature of inappropriate remarks. On several occasions, the comments were made in the presence of more than one person, and were commented upon by others. While this does not excuse the misconduct, it is consistent with the Respondent's statement that he did not know he was impacting his staff and creating a hostile work environment.
>
> … It must be borne in mind that sexual harassment involves "unwanted" conduct of a sexual nature. Once the Respondent understood it was "unwanted", he ceased the conduct. (Law Society Memorandum of Argument, paras. 35 – 37)

[43] The Respondent has gone beyond words. He has made changes in policy and physical changes in his office and completed sensitivity training and other self-education about his responsibilities as an employer. The impact on the complainant, who was made uncomfortable at work to the extent she felt

vulnerable, depressed and timid, was significant, but more severe discipline will not enhance specific deterrence of the Respondent.

[44] There is no prior decision of the Law Society of British Columbia on sexual harassment as professional misconduct. The reported decisions in other provinces where employees were sexually harassed have distinct factual circumstances and provide no additional guidance on a fair and reasonable disciplinary action. (*Law Society of Alberta v. Plantje*, 2007 LSA 22; *Law Society of Manitoba v. Wiens*, 2010 MBLS 3)

[45] We find the proposed disciplinary action to be balanced, proportionate and consistent with the principles applied in determining a fair and reasonable sanction. We accept the proposed disciplinary action as within the range of fair and reasonable disciplinary action in all the circumstances.

[46] Pursuant to Rule 5-8(2), to protect their interests, the Panel orders that information identifying the student and paralegal not be disclosed to the public.