2017 LSBC 08
Decision issued: March 31, 2017
Citation issued: August 1, 2013

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

CATHERINE ANN SAS, QC

APPLICANT

DECISION OF THE REVIEW BOARD

Review date:	January 23, 2017
Review Board:	Jasmin Z. Ahmad, Chair William Everett, QC, Lawyer Lisa Hamilton, Bencher Thelma Siglos, Public representative Robert Smith, Public representative B. William Sundhu, Lawyer Sarah Westwood, Bencher
Counsel for the Law Society:	Kenneth McEwan, QC Rebecca Robb
Counsel for the Applicant:	Peter Wilson, QC

INTRODUCTION

[1] This Review brought pursuant to section 47 of the *Legal Profession Act* (the "Act") concerns the four-month suspension imposed on the applicant, Catherine Ann Sas, QC (the "Applicant") in respect of a series of transactions that allowed her to "zero out" her clients' trust accounts to facilitate their closing.

[2] The circumstances that required the Applicant to close the trust accounts are not unusual. They were described by the hearing panel in its decision on disciplinary action issued January 25, 2016 (the "Decision") and reported at *Law Society of BC v. Sas*, 2016 LSBC 03, as follows at paragraph 2:

> In March 2010, Ms. Sas ceased practising as a sole practitioner and joined a larger firm of lawyers. In early 2011, she still held monies in trust that had been received from clients while she was practising as a sole practitioner, and there were several outstanding files and unbilled time and disbursements relating to her former sole practitioner practice that needed to be dealt with. At that time, she embarked on a file review project to deal with those outstanding files, including unbilled fees and disbursements and monies held in trust.

[3] The hearing panel's decision on Facts and Determination, reported at *Law Society of BC v. Sas*, 2015 LSBC 19, sets out in detail the transactions by which the Applicant "zeroed out" the trust accounts.

[4] Having reviewed those transactions, the hearing panel concluded that the Applicant breached the Act and the Law Society Rules and that her conduct constituted professional misconduct in the following ways:

(a) The Applicant improperly billed clients for disbursements that were not incurred;

(b) The Applicant knew, or was wilfully blind to the fact, that those clients had been improperly billed for disbursements that were not incurred or, alternatively, was reckless as to whether those billings for disbursements were proper;

(c) The Applicant instructed her bookkeeper to add disbursements that had not been incurred to client ledgers;

(d) The Applicant made payments to her law corporation from trust funds:

(i) for disbursements that she knew, or ought to have known, were not properly incurred by those clients; and

(ii) in some instances without immediately delivering bills to clients; and

(e) The Applicant's conduct in paying her law corporation from trust funds for disbursements that had not been incurred constituted misappropriation of the trust funds.

[5] The Applicant appealed those findings to the Court of Appeal of British Columbia. On August 2, 2016, the Court of Appeal dismissed the appeal and upheld the hearing panel's decision.

[6] On September 24, 2015, the hearing panel heard the parties' submissions on disciplinary action and costs.

[7] On January 25, 2016, the hearing panel issued the Decision on Disciplinary Action in which it ordered that the Applicant be suspended from the practice of law for four months and that she be required to pay costs of $32,038.49 to the Law Society.

[8] The Applicant seeks a review of the suspension.

POSITION OF THE PARTIES

[9] The Applicant submits that, in ordering the four-month suspension, the hearing panel erred in three ways:

(a) First, the Applicant argued that the hearing panel failed to give effect to what her counsel described as the "principle of parity." Specifically, she argued that the hearing panel limited its consideration of "parity" to a determination of whether disbarment or suspension was the appropriate disciplinary action, rather than to the overall length of the suspension;

(b) The Applicant's second and related argument was that the hearing panel failed to appropriately balance all of the factors set out in *Law Society of BC v. Ogilvie*, 1999 LSBC 17, in particular by failing to give appropriate weight to the mitigating factors and by overemphasizing the principle of general deterrence; and

(c) Finally, the Applicant argued that the hearing panel erred in underestimating the impact that a four-month suspension would have on her practice.

[10] On those bases, the Applicant argued that an order for a fine and reprimand should be substituted for the four-month suspension. She did not seek a review of the order for costs.

[11] In response, the Law Society argued that the hearing panel correctly applied the legal principles that govern disciplinary action and that the order for a four-month suspension is appropriate.

[12] The Law Society seeks an order that the hearing panel's decision on disciplinary action be confirmed.

ISSUES

[13] The issues to be determined on this Review are:

(a) Did the hearing panel err in law by failing to apply the correct legal test to determine the appropriate disciplinary action to impose? In particular:

(i) Did the hearing panel err by imposing a penalty that was disproportionate having regard to penalties imposed in similar cases?;

(ii) Did the hearing panel err by placing undue weight on the principle of general deterrence?; and

(iii) Did the hearing panel err by underestimating the impact of a four-month suspension on the Applicant's ability to practise?; and

(b) If the hearing panel did err in failing to apply the appropriate legal test, what is an appropriate disciplinary action?

PRELIMINARY APPLICATION

The nature of the preliminary application

[14] At the commencement of this Review hearing, the Applicant applied to present fresh evidence in the form of:

(a) various Law Society summaries of conduct reviews (the "Conduct Review Digest"); and

(b) a letter dated January 13, 2017 authored by the Applicant (the "Applicant's Letter") in which the Applicant provides information on "the impact that the considerable negative publicity in the media and on

> the Internet regarding [her] Law Society matter has had on [her] practice."

[15] The Law Society consented to the introduction of the Conduct Review Digest, not as evidence but, rather, as potentially relevant authority in the same manner as previous hearing decisions or case authority. We will address whether the Conduct Review Digest is relevant to these proceedings further below.

[16] The Law Society opposes the application to introduce the Applicant's Letter as evidence. It argued that the Applicant's Letter does not meet the criteria for introducing fresh evidence set out in the authorities and as adopted by previous review panels.

[17] The parties argued the application to introduce the fresh evidence during the course of their submissions on the substantive review. We reserved judgment on that application.

The law regarding fresh evidence

[18] Each of section 47(4) of the Act and Rule 5-17(2) allows a review board to hear evidence that is not part of the record in "special circumstances."

[19] In *Palmer v. The Queen*, [1980] 1 SCR 759, the Supreme Court of Canada set out the criteria for the admission of fresh evidence as follows:

(a) The evidence should generally not be admitted if, by due diligence, it could have been adduced at trial;

(b) The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial;

(c) The evidence must be credible in the sense that it is reasonably capable of belief, and

(d) It must be such that, if believed, it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result.

[20] The *Palmer* criteria have been adopted by review panels in *Law Society of BC v. Kierans*, 2001 LSBC 6 and in *Law Society of BC v. Vlug*, 2015 LSBC 59.

[21] As noted at paragraph 25 of *Kierans,* if the proffered evidence does not meet any one of the of *Palmer* criteria, it cannot not be admitted.

The Applicant's letter

[22] The Applicant's Letter sets out "the impact that the considerable negative publicity in the media and on the Internet regarding [her] Law Society matter has had on [her] practice."

[23] As set out in the Applicant's Letter, "it was [the Applicant's] perception that publicity related to the finding on [f]acts and [d]etermination had not produced a significant impact but that changed after the [p]anel's decision on disciplinary action."

[24] The Applicant described the impact of the Decision generally as follows:

(a) it has caused both clients and prospective clients to terminate their relationship with her;

(b) she was expelled from her partnership position at the firm at which she worked "almost immediately" after the release of the panel decision on facts and determination;

(c) the traffic to her website declined and her Google search rankings fell by 25 per cent; and

(d) it resulted in the decision of the Executive Committee of the Canadian Bar Association (CBA) to decline her appointment to a national committee and has effectively curtailed her involvement with the CBA, with which she had an "extensive and longstanding involvement" for which she "had served devotedly for 25 years."

[25] She described the impact of a four-month suspension generally as follows:

(a) it would have a "seriously negative impact" on her clients with pending immigration applications; and

(b) it would result in having to terminate the employment of several of her staff.

[26] The Applicant argued that the Applicant's Letter meets the four *Palmer* criteria to allow this Review Board to admit it as fresh evidence.

[27] For the reasons set out below, we disagree.

Could the evidence have been adduced at the hearing?

[28] On its face, certain portions of the Applicant's Letter describe events that had occurred and could have been adduced at the disciplinary hearing. In particular:

(a) the fact that the Applicant was expelled from her partnership position was known to her "almost immediately" after the hearing panel's decision on Facts and Determination on April 20, 2015 (in fact, that evidence was before the panel); and

(b) although the Applicant does not provide the date on which the CBA's Executive Committee declined to appoint her to serve on a national committee, she has had no significant involvement with the CBA for the "past two years."

[29] Furthermore, even if it had not yet occurred, the potentially negative impacts of a suspension were reasonably foreseeable. Specifically:

(a) the fact that immigration clients contact counsel primarily through the internet was known to the Applicant at the disciplinary hearing. She could have introduced evidence of the importance of that form of communication and the potential impact that a suspension would have on a potential client's Google search;

(b) without doubt, the Applicant would have known the seriousness of the impact that a suspension would have on her clients in general and on her clients with pending immigration applications in particular (in fact, evidence of the impact a suspension would have on an immigration practice was before the panel); and

(c) the Applicant would have known, or ought to have reasonably known, that a suspension would likely result in having to terminate the employment of staff.

[30] None of the evidence that could have been, or was, adduced at the disciplinary hearing meet this *Palmer* criterion to allow it to be considered on this Review.

Is the evidence credible in the sense that it is reasonably capable of belief?

[31] For the purpose of this application to introduce fresh evidence, we do not question the credibility of the information for which the Applicant has direct knowledge.

[32] However, the information contained in the Applicant's Letter with respect to the impact of the decision on the traffic to her website and the corresponding effect on her "search ranking" is not wholly based on information within her knowledge. That information is unsatisfactory in three ways:

(a) the information is premised on the hearsay evidence of the Applicant's unidentified "tech partners" that the 25 per cent decline in search ranking was due to the reduction in visits to her website by repeat visitors;

(b) that hearsay evidence, in turn, is based on the speculation that "When searching my name on engines such as Google, these viewers *were likely* directed first and foremost to negative media coverage of my suspension…" [added emphasis]; and

(c) there is no direct evidence to support the conclusion that the reduction in website traffic was caused, in whole or in part, by the Decision.

[33] Similarly, there is no direct evidence to support the conclusion that the CBA Executive Committee's decision not to appoint the Applicant to its national committee was based, in whole or in part, on the Decision.

[34] In our view, the unsubstantiated and largely speculative nature of this information is such that it does not satisfy the *Palmer* criterion of credibility.

Could the evidence be expected to have affected the result?

[35] The final portion of the Applicant's Letter not referred to above is the Applicant's evidence that "in numerous situations clients advised [her] that they had decided to hire other counsel because of [her] pending suspension." In our view, the result of the disciplinary hearing would not have changed had that evidence been before the hearing panel.

[36] The hearing panel considered the Applicant's submission that a suspension of longer than one month would have a "significant impact" on her professionally and could even destroy her practice. At paragraph 82 of the Decision, the panel agreed that a suspension in the range of three to six months would have an "extremely serious impact" on the Applicant and "could conceivably result in her being unable to return to practice …"

[37] The panel nonetheless imposed a suspension of four months. It is highly unlikely that evidence confirming that the Applicant had, in fact, lost some clients would have affected its decision. In fact, it anticipated that would happen.

[38] In any event, the argument that adverse media publicity should be taken into account as a mitigating factor has been rejected by the panel in *Law Society of BC v. O'Neill*, 2013 LSBC 23, where the panel found at paragraph 20(j) as follows:

> The Respondent and his counsel both said that the Respondent will suffer from the adverse publicity this will bring to the Respondent. His counsel submitted that, as we live in a "Google World", anyone who googles the Respondent will learn of these proceedings and he will carry that stigma with him forever.
>
> We do recognize that possibility exists and that the Respondent may suffer somewhat from it in the future. However, we do not believe that is a significant factor for consideration. When lawyers have misconducted themselves, the adverse publicity that comes with that must be accepted by the lawyer. That is true for all lawyers and is not unique to this case. It should not, in our view, be a factor which should be considered to reduce the penalty that the Panel believes is otherwise appropriate.
>
> All lawyers will face this potential embarrassment if they are disciplined for misconduct, and we believe that to reduce an otherwise appropriate penalty because of potential public knowledge of it would be wrong in principle. It could mean that all penalties should be reduced because of the adverse publicity about the lawyer. We do not believe that is a correct principle to follow.

[39] On the basis of that authority, it is unlikely that anything contained in the Applicant's Letter would have had any effect on the result. That *Palmer* criterion is not satisfied.

Is the evidence relevant in the sense that it bears upon a decisive or potentially decisive issue?

[40] Even if relevant to the issue of determining the impact of the proposed penalty (*Ogilvie* factor (j)), for the above reasons, this Review Board has concluded that the Applicant's Letter does not meet the balance of the *Palmer* criteria and, as such, is inadmissible.

[41] The Applicant's application to admit the Applicant's Letter as fresh evidence on this Review is dismissed.

REVIEW OF DISCIPLINARY ACTION

STANDARD OF REVIEW

[42] The standard of review for determining whether a panel has applied proper legal principles is correctness: *Kay v. Law Society of British Columbia*, 2015 BCCA 303 at paragraph 41.

[43] The standard of review for disciplinary action is less straight-forward. Acknowledging that "[t]here arguably has been some debate as to the precise parameters of the standard of review…", the review board in *Law Society of BC v. Nguyen*, 2016 LSBC 21, noted that the standard of review in ascertaining whether a panel had imposed an inappropriate disciplinary action "has been variously described as correctness, correctness informed by reasonableness or correctness as reasonableness." It described the concept for that standard at paragraph 32 as follows:

> ... The basic concept is said to be that most cases will give rise to a reasonable range of outcomes. Subject to the panel correctly applying the legal principles, if the disciplinary action imposed by the hearing panel is within the reasonable range, it should not be disturbed on review, even if the review board might prefer a different spot on the range. ...

[44] With those standards in mind, in accordance with section 47(5) of the Act*,* a review panel may confirm the decision of the panel or substitute a decision the panel could have made under the Act.

DISCUSSION AND ANALYSIS

Did the panel err by imposing a penalty that was disproportionate having regard to penalties imposed in similar cases?

[45] The Applicant argued that, by imposing a four-month suspension, the panel did not give effect to the "principle of parity," which, in the words of the Applicant, "holds that like transgressors should be treated alike."

[46] She submitted that the panel's assessment of parity was limited to an assessment of whether disbarment or suspension was the appropriate remedy. By the Applicant's argument, the panel failed to engage in any parity analysis with respect to the appropriate length of the suspension by: (a) adequately analyzing previous panel

decisions; or (b) giving appropriate regard to conduct reviews in assessing the range of penalties that are available in similar circumstances.

[47] For the reasons set out below, we reject that submission.

Was the panel's analysis limited to an assessment of whether disbarment or suspension would be the appropriate remedy?

[48] Referring to paragraphs 89 and 90 of the Decision, the Applicant argued that the panel erred in limiting its consideration of the "principle of parity" to a determination of whether disbarment or suspension was the appropriate discipline, rather than to the overall length of the suspension.

[49] Those paragraphs read:

> Counsel for the Law Society submits that the professional misconduct committed by Ms. Sas is singular in many ways and is not similar to any of the authorities cited by counsel. Counsel for Ms. Sas agrees for the most part, but submits the most similar case is that of *Pham,* [*infra*].
>
> Relying on the authorities described in this decision, both counsel submitted that the appropriate disciplinary action is a suspension and not disbarment, although counsel do not agree on how long the suspension should be. Counsel for Ms. Sas submits one month is appropriate, and counsel for the Law Society submits the period of time should be from three to six months. *We agree that a review of previous decisions with respect to disciplinary action indicate that disbarment in this case is not warranted and that an appropriate disciplinary action would be a suspension for a period of time.*
>
> [emphasis added]

[50] One can readily infer from the emphasized portion of paragraph 90 that the panel's review of the previous decisions included consideration of whether disbarment (as opposed to a suspension) would be the appropriate disciplinary action. We do not agree that the panel's analysis of "parity" was limited to paragraphs 89 and 90 or that paragraph 90 is indicative of the panel's failure to consider the previous decisions with a view to determining the appropriate period of time for any suspension to be ordered.

[51] Neither argument is borne out by the Decision when read as a whole.

[52] In the Decision, the panel methodically considered previous panel decisions that had been provided to it in a common book of authorities. Some of those decisions focused on the issue of whether disbarment or suspension was the appropriate penalty. However, not all of the decisions were so limited in their analysis.

[53] Of the decisions the panel reviewed, four resulted in disciplinary action other than disbarment, those being *Law Society of BC v. Schauble*, 2009 LSBC 32, *Law Society of BC v. Pham*, 2015 LSBC 14, *Law Society of BC v. Faminoff*, 2015 LSBC 20, and *Law Society of BC v. Lail*, 2012 LSBC 32.

[54] In its review of those decisions, the panel did more than simply recite their outcomes. Rather, the panel highlighted certain aspects of the facts and reasons in those decisions that led to the outcomes.

[55] It is significant that, for the most part, other than the specific conduct giving rise to the citations, the portions of the decisions that the panel chose to highlight from *Schauble*, *Pham*, *Faminoff* and *Lail* are facts that differentiate those decisions from the Applicant's case.

[56] For example, in summarizing the outcome in *Schauble,* the panel highlighted the fact that the victim of the misappropriation of funds in that case was the lawyer's firm, noting that "[a]fter concluding that misappropriation from one's firm was slightly less serious than misappropriation of a client's funds, the panel suspended the lawyer for three months and awarded costs in the amount of $32,000."

[57] By contrast, the Applicant was found to have misappropriated funds from clients, which, following from the decision in *Schauble*, is a more serious concern.

[58] In reviewing *Pham*, the panel noted that the "the lawyer made a conditional admission of professional misconduct and consented to disciplinary action consisting of a suspension of two months and costs in the amount of $1,800." Both the Discipline Committee and the panel in *Pham* accepted that admission.

[59] The panel noted that the lawyer in *Lail* also made a conditional admission that his conduct amounted to professional misconduct and that that he consented to the disciplinary action of a fine ($3,500) and costs ($2,000) that was imposed. Again, both the Discipline Committee and the panel accepted that admission.

[60] By way of contrast, the Applicant made no admissions with respect to either her misconduct, nor did she consent to an appropriate disciplinary action.

[61] Rather, she has never acknowledged that she committed professional misconduct. As noted at paragraph 70 of the Decision, despite acknowledging that she is

ultimately responsible for how the trust monies were dealt with, she denied having any personal knowledge of the misconduct and placed most of the blame for the misconduct on her staff. The panel expressly noted:

> … She has never acknowledged to this Panel, either in her evidence or through submissions made on her behalf, that she took monies when she knew or ought to have known she was not entitled to do so, or that she knew when she paid bills with monies held in trust for clients that bills had not been sent to those clients.

[62] Other than the fact of Mr. Pham’s conditional admission, the hearing panel also referred to the portions of his decision in which the panel found, among other things, that:

> [The Respondent’s] conduct, however, is somewhat mitigated by the Respondent’s co-operation with the Law Society, both in respect of the compliance audit that gave rise to the citation as well as the admission and proposed disciplinary action in this proceeding. In our view, together, that co-operation and admission indicate that the Respondent has learned from these proceedings and is not likely to repeat the conduct in the future.

[63] Like the panel in *Pham*, the hearing panel in this case also thought it was “highly unlikely” that the Applicant would repeat her misconduct. In contrast to Mr. Pham, however, the Applicant did not fully co-operate with the Law Society’s compliance audit. In that regard, the panel noted at paragraph 11 of the Decision:

> The billings to clients for disbursements that had not actually been incurred and the failure to immediately deliver bills to clients when funds were withdrawn from trust to pay those bills were drawn to the attention of Ms. Sas by way of a letter sent to her by the Law Society on April 16, 2012, following a compliance audit that was conducted on March 1 and 2, 2012. Despite receiving the letter from the Law Society, Ms. Sas failed to take steps to rectify the problems identified until November, 2012.

[64] As noted above, although the transactions leading to the citation in the Applicant’s case may have been similar to those described in *Pham* and *Lail*, the manner in which Mr. Pham and Mr. Lail on the one hand, and the Applicant, on the other, responded to the compliance audit and in the disciplinary proceedings was not.

[65] Finally, in reviewing the decision in *Faminoff*, the panel noted that, despite the finding of professional misconduct in circumstances similar to the Applicant’s, the lawyer did not misappropriate any monies. In describing the penalty imposed in

Faminoff, the panel stated, "Although there was no misappropriation, the disciplinary action consisted of a suspension of two months and costs of $8,430."

[66] In contrast to the decisions in *Faminoff* and *Lail,* in which there was no finding of misappropriation of funds, the Applicant was expressly found to have misappropriated funds.

[67] In our view, the hearing panel's reference to the facts that differentiate *Schauble, Faminoff, Pham* and *Lail* from the Applicant's case indicates that it reasonably considered the relevance of those decisions in determining the appropriate disciplinary action to impose in this case.

[68] Furthermore, we do not accept the proposition that the decisions in which disbarment was ordered are irrelevant to a consideration of the length of suspension.

[69] While the primary focus of those decisions is whether disbarment should be ordered, in our view, they highlight the seriousness with which the misappropriation of clients' trust funds has been treated by previous panels. That seriousness, in turn, must inform the length of any suspension that is imposed.

[70] The hearing panel's comprehensive review of all of the decisions before it does not support the Applicant's assertion that its analysis of parity was limited to paragraphs 89 and 90 of the Decision or that the panel failed to consider the previous decisions with a view to determine the appropriate length for any suspension to be ordered.

[71] Indeed, while it may have been preferable for the panel to have expressly "connected the dots" as to how its analysis of the previous panel decisions (and those in *Schauble*, *Faminoff*, *Pham* and *Lail*, in particular) informed its conclusion that a four-month suspension was appropriate in this case, given its comprehensive review of these decisions, we do not take the panel's failure to do so as being indicative of any failure to appropriately analyze and consider those decisions.

[72] We do not accept the Applicant's argument that the panel failed to consider the length of suspensions imposed in previous hearing decisions in concluding that a four-month suspension was the appropriate disciplinary action.

Did the panel give appropriate regard to the conduct review process?

[73] We also do not accept the argument that the panel failed to give appropriate regard to conduct reviews in assessing the range of penalties that are available in similar circumstances.

[74] In accordance with Rule 4-4(1), after its consideration of a complaint, the Discipline Committee must take one of five actions, being:

(a) decide that no further action be taken (*Rule 4-4(1)(a))*;

(b) authorize the chair of the Discipline Committee to send a letter to the lawyer concerning the lawyer's conduct (*Rule 4-4(1)(b))*;

(c) require the lawyer to attend a meeting with one or more Benchers or lawyers to discuss the lawyer's conduct (*Rule 4-4(1)(c))*;

(d) require that the lawyer to appear before a Conduct Review Subcommittee (*Rule 4-4(1)(d))*; or

(e) direct that that Executive Director issue a citation against the lawyer (*Rule 4-4(1)(e)*).

[75] The options available to the Discipline Committee are mutually exclusive. Except as contemplated by Rule 4-13(5), once the Discipline Committee has chosen to proceed with one of those five options, the remaining four options are no longer available to the lawyer against whom the complaint has been made.

[76] As evidenced by the Conduct Review Digest that was before this Review Board, it appears that a conduct review may be available to lawyers who misappropriate trust funds in circumstances similar to that of the Applicant.

[77] That was not the case for the Applicant. Having considered the circumstances giving rise to the complaint against her, the Discipline Committee directed the Executive Director to issue a citation. Once the decision was made to issue the citation, the possibility of a conduct review was foreclosed. The conduct review process was no longer relevant to any assessment of the Applicant's conduct.

[78] By her argument, the Applicant seeks to place reliance on a process that the Discipline Committee has determined has no application to her.

[79] It is significant that the Discipline Committee's deliberations regarding the decision not to proceed by way of conduct review are not publicly available. It is also

significant that, pursuant to Rule 4-12, conduct reviews themselves are "conducted in private" and that the Law Society's digest of conduct reviews are summary in nature.

[80] For those reasons, even if the conduct reviews did have some bearing on an assessment of the disciplinary action to be imposed in this case, it is impossible to discern any specific findings of fact regarding the circumstances leading to the conduct review. Without those specific findings, the Conduct Review Digest cannot provide any meaningful guidance to enable a panel to conduct a comparative analysis to assess disciplinary action.

[81] The most that we can glean from the matters summarized in the Conduct Review Digest is that, for some reason known only to the Discipline Committee, they did not warrant the issuance of a citation. That alone is enough to distinguish the conduct reviews from the Applicant's case such that the Conduct Review Digest cannot be instructive.

[82] Having concluded that the conduct reviews are not relevant in this context, it follows that it was not open to the hearing panel to consider them in assessing appropriate penalty. For those reasons, we do not accept the Applicant's argument that the hearing panel erred by failing to give regard to the conduct reviews.

Did the panel place undue weight on the principle of general deterrence over the other *Ogilvie* factors?

[83] As is almost invariably the case in all discipline decisions, the hearing panel in this case reviewed the factors set out in *Ogilvie* in its analysis of the appropriate penalty. Its review and analysis of those factors is set out in detail at paragraphs 54 to 90 of the Decision.

[84] Having considered the *Ogilvie* factors, it concluded that "… those [factors] that are mitigating significantly outweigh those [factors] that are aggravating." The fuller context of that conclusion is set out at paragraph 93 of the decision where the panel states:

> The conduct of Ms. Sas was very serious. She misappropriated trust monies from her clients and that misconduct is inexcusable. We have concluded that any disciplinary action must protect the public and its interest, both by deterring lawyers from misappropriation in similar circumstances and by assuring clients of lawyers and other members of the public that appropriate disciplinary action will be taken in such circumstances. We have also taken into account the other factors in

> *Ogilvie* referred to by counsel. Overall, after considering all of those other factors, we have concluded that those that are mitigating significantly outweigh those that are aggravating.

[85] In that context, including both its conclusion that "any disciplinary action must protect the public and its interest" and its assessment of the *Ogilvie* factors, the panel rejected the Applicant's submission that a one-month suspension would be adequate, concluding instead that four months was the appropriate length for a suspension. It stated at paragraphs 94 and 95:

> We believe there are two important considerations in deciding what the appropriate disciplinary action ought to be in this case. One is the protection of the public by deterring other lawyers from engaging in similar misappropriations when they may be motivated to do so by administrative convenience. The other is to assure the public that the Law Society will protect clients of lawyers against misappropriation of monies held in trust for them.
>
> In our view, the actions of Ms. Sas were serious enough that a suspension for a period of one month would not be sufficient to protect the public interest and provide the assurance the public requires. That protection and assurance can only be provided by imposing a longer period of suspension. In our view, the appropriate length of time of a suspension would be four months.

[86] The Applicant argued that paragraphs 94 and 95 reflect the "undue emphasis" the panel placed on general deterrence as a factor in its assessment of the appropriate penalty.

[87] We do not conclude that is the case.

[88] When read more fully, those paragraphs, together with paragraph 93, reflect the weight given by the panel not to "general deterrence" as a stand-alone *Ogilvie* factor, but rather to the public interest. Notably, the panel's only express reference to "general deterrence" in those paragraphs is made as one of two ways to protect the public.

[89] In our view, it was wholly appropriate for the panel to give the public interest the weight it did.

[90] Section 3 of the Act provides that "it is the object and duty of the society to uphold and protect the public interest in the administration of justice by …", among other things, regulating the practice of law.

[91] The panel in *Ogilvie* acknowledged the significance of the overriding and fundamental object and duty of the Law Society in determining an appropriate penalty, stating at paragraph 9 of the discipline decision:

> Given that the primary focus of the *Legal Profession Act* is the protection of the public interest, it follows that the sentencing process must ensure that the public is protected from acts of professional misconduct. Section 38 of the *Act* sets forth the range of penalties, from reprimand to disbarment, from which a panel must choose following a finding of misconduct. In determining an appropriate penalty, the panel must consider what steps might be necessary to ensure that the public is protected, while also taking into account the risk of allowing the respondent to continue in practice.

[92] As noted by the Benchers on review in *Law Society of BC v. Lessing,* 2013 LSBC 29 at paragraph 55, the object and duty set out in section 3 are reflected in the *Ogilvie* factors.

[93] In other words, while the *Ogilvie* factors are, without doubt, an important consideration in determining penalty, those factors are only meant to reflect, and are subordinate to, the overriding duty and object of the Law Society to "protect the public interest."

[94] Referring to the decision in *Ogilvie,* the Benchers in *Lessing* also recognized the importance of the public interest in determining appropriate penalty. They stated at paragraph 57:

> However, two factors will, in most cases, play an important role. The first is protection of the public, including public confidence in the disciplinary process and public confidence in the profession generally. The second factor is the rehabilitation of the member. …

[95] The hearing panel's review of the previous decisions highlights other decisions in which the protection of the public was cited as a consideration for the assessment of the appropriate discipline in cases of the misappropriation of client's trust fund. Those decisions include *Law Society of BC v. McGuire*, 2006 LSBC 20 adff'd 2007 BCCA 442, *Law Society of BC v. Harder*, 2006 LSBC 48, and *Law Society of BC v. Gellert*, 2014 LSBC 05.

[96] In each of those cases, protecting the public was cited as a factor to justify disbarment of the lawyer.

[97] On our reading of paragraphs 93 to 95 of the Decision (in which the panel refers to the protection of the public four times), there is little doubt that the panel also recognized the importance of the public interest in assessing penalty. However, unlike the circumstances in *McGuire*, *Harder* and *Gellert*, the fact that the mitigating *Ogilvie* factors outweighed the aggravating factors allowed the panel to depart from disbarment as the appropriate penalty for misappropriation of trust funds.

[98] In that context, it cannot be said, as the Applicant has asserted, that a four-month suspension is irreconcilable with its assessment of the *Ogilvie* factors.

[99] In light of section 3 of the Act and the authorities, not only was the panel correct in giving weight that it did to its assessment of the public interest in determining penalty, it was incumbent on it to do so.

Did the panel err by underestimating the impact of a four-month suspension on the Applicant's ability to practise?

[100] The Applicant argued that the panel's decision to impose a four-month suspension failed to adequately take into account the impact that a four-month suspension would have on her ability to practise law.

[101] That argument appears to be based, at least in part, on the content of the Applicant's Letter. However, as we have dismissed the application to introduce the Applicant's Letter as evidence, its content has no bearing on our assessment of this issue on review.

[102] The issue to be determined then is, based on the information that was before it, did the panel give adequate consideration to "the impact of the proposed penalty" in its assessment of the appropriate penalty to impose?

[103] We conclude that it did.

[104] In considering penalty, the panel considered the Applicant's evidence with respect to, among other things, the effect these proceedings had both on her practice and on her personal life.

[105] The panel also had before it evidence in the form of character reference letters from nine practising immigration lawyers, three of whom also directly addressed the

potential impact of a suspension on an immigration lawyer's practice. They agreed that a suspension would be a significant hardship.

[106] In fact, both parties acknowledged the negative effect that a suspension of any length would have on the Applicant. The panel summarized their submissions at paragraphs 80 and 81 of the Decision as follows:

> Counsel for the Law Society acknowledges that a suspension within his suggested range of three to six months will have a significant impact both on the practice of Ms. Sas and on her personal life.
>
> Counsel for Ms. Sas submits that, after taking into account the effect these proceedings have already had on Ms. Sas, a suspension of one month with conditions relating to compliance with the Law Society's accounting requirements are appropriate and will have a significant impact on Ms. Sas professionally, financially, emotionally and personally. Counsel for Ms. Sas submits that, if a longer period of suspension is imposed, it may destroy Ms. Sas' practice and could result in her being unable to continue to practise. He submits that, if a suspension in the range of one month is imposed, this will enable Ms. Sas to recover from the suspension and continue practising once the period of suspension has been completed.

[107] Having heard and taken into account those submissions, the hearing panel acknowledged the "extremely serious impact" a suspension in the range of three to six months would have, stating at paragraph 82:

> We agree that a suspension in the range proposed by counsel for the Law Society would have an extremely serious impact on Ms. Sas and could conceivably result in her being unable to return to practice, although we think it is more likely that she would be able to continue to practise even after being suspended for a period of time that is toward the high end of the range suggested by counsel for the Law Society.

[108] In light of those reasons, there can be no doubt that the panel considered the evidence before it with respect to impact and, in fact, acknowledged the extremely serious impact it would have. However, in consideration of all of the factors, it nonetheless concluded that the four-month suspension was appropriate.

[109] In reaching that conclusion, the panel appears to be guided by the comments of the Master of Rolls in the decision of the Court of Appeal of England and Wales in *Bolton* v. *the Law Society*, [1994] 2 All ER 286, a portion of which it recites at paragraph 50 of the Decision:

> ... It often happens that a solicitor appearing before the Tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem bis (sic) reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. *Thus it can never be an objection to an order of suspension in any appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely to be, so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make suspension the wrong order if it is otherwise right*. The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.
>
> [emphasis added]

[110] In our view, the panel's express acknowledgement that a four-month suspension would have "an extremely serious impact" on the Applicant contradicts the assertion that it failed to consider the impact of the suspension. Its reference to the decision in *Bolton* indicates that is also considered the appropriate weight to give to that impact.

[111] On the basis of the above, we are of the view that the panel correctly applied the legal principles that govern disciplinary action and that, in doing so, it arrived at a sanction that was appropriate. We would not disturb the decision of the panel.

CONCLUSION

[112] We conclude that the hearing panel correctly applied the legal tests to determine the appropriate disciplinary action.

[113] We confirm the decision of the hearing panel to suspend the Applicant from the practice of law for a period of four calendar months. The suspension will commence May 1, 2017 or such other date as the parties may agree.

[114] The hearing panel's order for costs for the hearings before it is not disturbed.

COSTS

[115] No submissions were made as to costs of this review. If the parties cannot agree as to costs of the review, they will have 30 days from the date of this decision in which to make any submissions on costs.