

**NOTE: Portions of this decision have been redacted by order of the Hearing Panel under Rule 2-104(3)**

2017 LSBC 07  
Decision issued: March 20, 2017

**THE LAW SOCIETY OF BRITISH COLUMBIA**

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

**and a hearing concerning**

**APPLICANT 11**

**APPLICANT**

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**DECISION OF THE HEARING PANEL ON APPLICATIONS  
CONCERNING ANONYMOUS PUBLICATION,  
SEALING CERTAIN INFORMATION AND COSTS**

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Written submissions received: January 16 and 23, 2017

Panel: Bruce LeRose, QC, Chair  
Graeme Roberts, Public representative  
Brook Greenberg, Bencher

Counsel for the Law Society: Jean P. Whittow, QC  
Counsel for the Applicant: Garth McAlister

**INTRODUCTION AND SUMMARY OF DECISION**

- [1] On November 18, 2016, this Panel issued a decision (the “Admission Decision”), indexed at 2016 LSBC 38, in which we found the Applicant eligible to be called to the Bar of British Columbia and admitted as a solicitor of the Supreme Court of British Columbia.
- [2] In the Admission Decision the Panel invited the parties to provide additional submissions in writing with respect to the issue of costs and the application initiated

by the Applicant pursuant to Law Society Rule 2-104(3) to have the Admission Decision published without identifying the Applicant.

- [3] The parties have reached agreement with respect to costs, as well as regarding publication of the Admission Decision without identifying the Applicant.
- [4] The parties have also reached agreement on some, but not all issues regarding proposed restrictions on the disclosure of certain information (the “Confidential Information”) produced in the course of this matter. The Confidential Information at issue is further described below.
- [5] The Panel will make the orders that have been agreed to by the parties as set out below.
- [6] The remaining issues that the parties have not agreed upon relate to the scope of additional restrictions that are proposed to be placed on disclosure of the Confidential Information.
- [7] In particular, the Applicant seeks to preclude disclosure of the Confidential Information to anyone. [redacted]
- [8] [redacted] The Law Society takes the position that, while any further actions it may initiate should take account of the Applicant’s interests and wishes, it is statutorily obligated to at least investigate the issues arising from the Confidential Information disclosed in these proceedings in order to safeguard the public interest.
- [9] The parties also do not agree as to whether other potentially interested parties should be at liberty to apply for further disclosure of the Confidential Information.
- [10] The *Legal Profession Act*, SBC 1998, c. 9 (the “LPA”) provides that protection of the public interest is the primary object and duty of the Law Society.
- [11] [redacted]
- [12] To the extent these considerations are in conflict, the overall impact of the requested orders on the public interest must be balanced to minimize the negative impacts and maximize the overall protection of the public interest.
- [13] It would not be in the public interest in the circumstances of this matter to preclude the Law Society from making the investigations arising from the Confidential Information that it considers necessary and appropriate for the protection of the public.

[14] [redacted] However, here, the Applicant chose to disclose the Confidential Information in a public hearing process. That decision was clearly a difficult one for the Applicant. Nevertheless, the result of the Applicant's election cannot be to leave the Law Society in a position where it is aware of matters it reasonably considers it is obliged to investigate to protect the public interest, but that it is unable to address.

[15] Nothing in this decision has the effect of compelling someone to make an involuntary disclosure for the purposes of initiating a complaint against their wishes.

[16] While it is not possible to accommodate fully the Applicant's position that she should have control over whether and when any further Law Society processes are initiated, the Law Society has committed to providing as much consideration of her wishes and as much protection of her interests as possible in any further processes.

[17] In balancing the competing considerations, the protection of the public interest favours allowing the Law Society to have disclosure and use of the Confidential Information for the purpose of conducting further investigations and taking such other further steps and initiating such processes as it considers to be necessary to protect the public interest, while extending as much consideration for and protection of the Applicant's interests as possible.

[18] With respect to other parties who may wish to seek additional disclosure, if further hearings are initiated that relate to the matters disclosed in the Confidential Information, any interested party's right to disclosure will be determined in those proceedings. The Applicant should receive as much notice from the Law Society as is reasonably possible if it becomes aware that a party intends to bring a disclosure application in another proceeding. The Applicant's right to participate in such an application will be determined in the proceeding in which it is brought.

## **THE CONSENT ORDERS**

[19] The parties have consented to a number of proposed orders with respect to the Confidential Information. The Panel has considered the proposed orders agreed to by the parties and has concluded that each is appropriate for the reasons set out below.

### **Costs**

[20] The parties have agreed that, despite the fact that the Applicant was successful in the Admission Decision, the Applicant should pay the Law Society \$500 in costs.

[21] In light of the Applicant's conduct during PLTC, a hearing to determine the Applicant's character, repute and fitness was necessary and appropriate.

[22] Consequently, the parties' agreement that the Applicant pay \$500 in costs to the Law Society is warranted in the circumstances.

### **Publication Without Identifying the Applicant**

[23] The parties have also agreed that the Admission Decision should be published without identifying the Applicant.

[24] Law Society Rule 2-104(1) makes identification of an applicant in the publication of a credentials decision mandatory, subject to the exceptions set out in the remainder of Rule 2-104.

[25] Rule 2-104(3) permits a panel to order that publication of a credentials decision not identify the applicant if:

- (a) the application is approved without conditions or limitations on the practice or articles of the applicant, and
- (b) publication will cause grievous harm to the applicant or another identifiable individual that outweighs the interest of the public and the Society in full publication.

[26] The application was approved in the Admission Decision without conditions or limitations on the practice or articles of the Applicant.

[27] The Applicant submits that the evidence in this matter included material that was highly personal to the Applicant such that the disclosure of her identity would meet the test of "grievous harm" in Rule 2-104(3)(b).

[28] The parties agree that the test for grievous harm is as set out in:

- (a) *Law Society of BC v. Doyle*, 2005 LSBC 06, 2005 LSBC 24;
- (b) *Re Applicant 9*, 2016 LSBC 14; and
- (c) *Re Fitzmaurice*, 2015 LSBC 29.

[29] In *Fitzmaurice* at paragraph 6, the panel adopted the description of grievous harm set out in *Doyle*, including the following:

In order to be grievous, the harm must be exceptional, unusual, onerous, and injurious to a member, and cause a member to experience catastrophic loss both personally and professionally. The harm must involve significantly more than damage to the member's reputation or embarrassment that would normally be expected to flow from being found guilty of professional wrongdoing.

[30] The Law Society agrees in its submissions that, in light of the highly personal details of the evidence led in this matter, the test for grievous harm to the Applicant if her identity is published has been satisfied.

[31] The Law Society also agrees that, in the circumstances, the potential for grievous harm to the Applicant outweighs the public interest in publication of the Applicant's name.

[32] In particular, the Law Society has confirmed that publication of the Panel's decision without reference to the Applicant's name will not impair the Law Society's ability to publish the result of the case and the reasons for that result. The publication of the decision without including the Applicant's identity is sufficient to safeguard the public interest.

[33] The Panel accepts the position advanced by both parties that publication of the Applicant's identity could potentially cause the Applicant grievous harm and that the potential harm outweighs the public interest in full publication that includes the Applicant's identity.

[34] Consequently, if the Admission Decision or this decision, or a summary of either of the decisions is to be published, such publication must not identify the Applicant by name.

### **Agreed Restrictions on Disclosure of the Confidential Information**

[35] The Applicant and the Law Society have agreed that the Confidential Information introduced in the hearing of this matter should be subject to certain restrictions on disclosure.

[36] The basis for such an order is found in Law Society Rules 5-8, 5-9 and 5-10.

[37] Rule 5-8 provides in part:

#### **Public hearing**

- 5-8(1)** Every hearing is open to the public, but the panel or review board may exclude some or all members of the public in any circumstances it considers appropriate.
- (2) On application by anyone, or on its own motion, the panel or review board may make the following orders to protect the interests of any person:
- (a) an order that specific information not be disclosed;
  - (b) any other order regarding the conduct of the hearing necessary for the implementation of an order under paragraph (a).
- ...
- (5) When a panel or review board makes an order or declines to make an order under this rule, the panel or review board must give written reasons for its decision.

[38] Rule 5-9 provides:

**Transcript and exhibits**

- 5-9(1)** All proceedings at a hearing must be recorded by a court reporter, and any person may obtain, at his or her expense, a transcript pertaining to any part of the hearing that he or she was entitled to attend.
- (2) Subject to solicitor-client privilege or an order under Rule 5-8 (2) [*Public hearing*], any person may obtain, at his or her own expense, a copy of an exhibit entered in evidence when a hearing is open to the public.

[39] Rule 5-10(3) provides:

- (3) When a hearing panel gives written reasons for its decision, it must not disclose in those reasons any information that is confidential or subject to solicitor and client privilege.

[40] Accordingly, the transcript of the hearing of this matter and the exhibits filed are presumptively available to any person, subject to an order that is made to protect the interests of a person.

[41] In *Applicant 9*, the panel considered a request by the applicant that certain information disclosed in that hearing not be disclosed to the public. There, the Law Society consented to the order restricting disclosure.

[42] The panel in *Applicant 9* described the test for making such an order as follows:

[53] The Panel must weigh the value of hearing transparency and openness on one hand, and the value of personal privacy — for the Applicant and third parties alike — on the other. ...

[54] The hearing record included a substantial amount of highly personal and sensitive information regarding the Applicant and other individuals directly and indirectly involved in his past and present circumstances. Beyond the information provided in this decision, we see no public interest value in the disclosure of any remaining personal information.

[55] We therefore ordered, pursuant to Rules 5-8 and 5-9, that exhibits in this proceeding that relate in any way to the Applicant's criminal conduct in and around 2009, and subsequent criminal charges, plea, sentence and counselling must not be disclosed to anyone other than members of this Panel, a review board, counsel and their clients, or a court for purposes of any review, appeal or judicial review arising from this hearing.

[43] The circumstances in the matter at hand are similar to those in *Applicant 9*.

[44] We accept that the parties, through their agreement, have identified the Confidential Information within the hearing record and the Admission Decision that is highly personal and sensitive for the Applicant and other individuals. We further accept that, to the extent the parties have reached agreement, disclosure of the Confidential Information has no public interest value. We address below the question of the public interest value of the Confidential Information in respect of which the parties do not agree.

[45] Again, the Law Society in its submissions accepts that the agreed to restrictions on disclosure of the Confidential Information would not compromise the Law Society's ability to inform the public of the result of the Admission Decision and the essential reasons for that result.

[46] Consequently, the Panel accepts that the following orders should be made by agreement of the parties, but subject to the further exceptions described below:

- a. If the Admission Decision or a summary of it is published, it must be published with the following paragraphs (or the information contained within these paragraphs) redacted or otherwise omitted: 34, 49, 50, 59 to 65, 86, 98, 100 to 101, 111, the last sentence of paragraph 143, the last sentence of paragraph 185, and 195 to 199.

- b. If any person requests disclosure of a transcript of the hearing in this matter, the following portions of the transcript must be withheld from disclosure:
  - i. the submissions of the parties;
  - ii. the Applicant's evidence: p. 13 line 7 to p. 39 line 2; p. 45 line 16 to p. 46 line 18; p. 47 line 13 to line 15; p. 63 line 10 to p. 66 line 3; p. 83 line 9 to line 20;
  - iii. SH's evidence: p. 94 line 20 to p. 101 line 6; p. 102 line 23 to p. 103 line 24; p. 106 line 6 to line 14; and
  - iv. all references to the Applicant's name, SH's name, Student 1's name and the Principal's name,
- c. If any person seeks disclosure of the exhibits entered into evidence in this matter, Exhibit 2, Tab 15 must be provided in a redacted form that does not disclose the information contained in paragraph 5, the second to the thirteenth word in paragraph 7 and the second sentence of paragraph 8.
- d. Although not included in the parties' list of agreed to restrictions on disclosure, in light of the orders that the identity of the Applicant, SH, Student 1 and the Principal referred to in the transcript not be disclosed, if any person requests disclosure of any exhibit entered into evidence in this matter, the exhibits must be provided with any reference to the Applicant's name, SH's name, Student 1's name or the Principal's name redacted or otherwise omitted.
- e. None of the orders in subparagraphs (a) to (d) apply to restrict disclosure of the full, unredacted record of this matter to counsel and their clients in this matter, to a review board, or to a court for the purposes of any review, appeal or judicial review arising from either the Admission Decision or this decision.

#### **FURTHER RESTRICTIONS ON DISCLOSURE OF THE CONFIDENTIAL INFORMATION**

[47] Despite the parties' agreement as to the restrictions on disclosure of the Confidential Information, there are two matters about which they do not agree:

- a. whether the Law Society itself ought to be subject to the orders restricting disclosure of the Confidential Information, or if the Law Society should be permitted to use the Confidential Information in respect of potential investigations or other potential regulatory proceedings arising from the evidence in this matter; and
- b. whether other potentially “interested” parties should be permitted to apply for full disclosure of the Confidential Information, and if so whether the Applicant should have the right to have notice of and make submissions in response to such an application.

[48] In addressing these issues, it is necessary for the Panel to make further reference to submissions and evidence that we have already concluded should not be disclosed publicly. Consequently, we make orders below in regard to publication of these reasons and our references in this decision to the Confidential Information that should not be disclosed.

### **Position of the Applicant**

[49] The Applicant submits that the Confidential Information should not be subject to further disclosure to or use by anyone for any purpose.

[50] [redacted]

[51] [redacted]

[52] [redacted]

[53] [redacted]

[54] [redacted]

[55] [redacted]

[56] [redacted]

[57] [redacted]

[58] Essentially, the Applicant’s position is that:

- a. any complaint about the conduct to which she was subjected is hers to make, and she should not be deprived of the decision whether and when to make a complaint;

- b. if the Law Society takes steps against the Applicant's wishes, it could have significant deleterious effects on her emotionally and professionally, as well as impact others; and
- c. in the Applicant's view, it is not necessary for the Law Society to take any steps against the Applicant's wishes in order to protect others.

[59] In her submissions, the Applicant also takes the position that there should be no ability by any other "interested" party to request disclosure of the Confidential Information.

[60] In the alternative, the Applicant submits that she should have notice of any application for disclosure of the Confidential Information and an opportunity to make submissions with respect to whether disclosure should be ordered.

[61] The Applicant also seeks an order that this decision be made without identifying the Applicant, and an order that the submissions in respect of this application and the Applicant's affidavit in support of the application should not be disclosed to any party.

### **Position of the Law Society**

[62] As set out above, the Law Society has agreed to many of the restrictions on disclosure of the Confidential Information. However, the Law Society's position is that an exception to those restrictions must be made to permit the Law Society to disclose the Confidential Information within the Law Society itself, including to staff, benchers and agents of the Law Society, for use in potential investigations and other potential regulatory processes.

[63] [redacted]

[64] According to the Law Society, the ability to properly address these issues falls within the fundamental mandate of the Law Society as defined in section 3 of the LPA:

3. It is the object and *duty of the society to uphold and protect the public interest in the administration of justice* by
  - (a) preserving and protecting the rights and freedoms of all persons,
  - (b) *ensuring the independence, integrity, honour and competence of lawyers,*

- (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,
- (d) *regulating the practice of law*, and
- (e) supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.

[emphasis added]

[65] [redacted]

[66] [redacted]

[67] [redacted]

[68] [redacted]

[69] On this basis the Law Society takes the position that there is a serious issue that engages protection of the public that it must investigate and address in accordance with its primary statutory mandate.

[70] The Law Society submits that an order that prohibits any disclosure of the Confidential Information within the Law Society itself, “would unduly restrict the Law Society in fulfilling its mandate.”

[71] In its submissions the Law Society referred the Panel to *Finney v. Barreau du Québec*, 2004 SCC 36, [2004] 2 SCR 17. In *Finney*, the Barreau was found to have delayed dealing with a lawyer who had been the subject of a number of complaints and discipline proceedings. As a result of the delay, the Supreme Court of Canada concluded that the Barreau had not diligently carried out its mission of protecting the public in general, and therefore, was liable to a client who was badly served by the lawyer during the period in which the Barreau ought to have taken action.

[72] [redacted]

[73] The Law Society submits that there are sufficient grounds for the Law Society to investigate whether there has been a breach of the Code, particularly given the seriousness of the conduct described by the Applicant.

[74] The Law Society also submits that it has an obligation in protecting the public interest to ensure that only lawyers who are suitable are permitted to act as principals to articulated students.

[75] In that regard, Law Society Rule 2-57 provides in part:

- (4) On the recommendation of the Discipline Committee or Practice Standards Committee, or on its own motion, the Credentials Committee may inquire into a lawyer's suitability to act or to continue to act as principal to an articulated student and may do any of the following:
  - (a) conduct or authorize any person to conduct an investigation concerning the fitness of the lawyer to act as a principal;
  - (b) require the lawyer to appear before the Credentials Committee and to respond to questions of the Committee;
  - (c) order the lawyer to produce any documents, records or files that the Credentials Committee may reasonably require.
- (5) After allowing the lawyer to make submissions, the Credentials Committee may do any of the following:
  - (a) permit the lawyer to act as a principal to an articulated student;
  - (b) permit the lawyer to act as a principal to an articulated student subject to conditions or limitations;
  - (c) order that the lawyer not act as a principal to an articulated student.
- (6) The onus is on the lawyer to show cause why an order should not be made under subrule (5) (b) or (c).

[76] The Law Society submits that, given the conduct described by the Applicant, there is a basis for the Credentials Committee to investigate whether the Principal satisfies the requirements to continue acting as a principal to articulated students.

[77] While the Law Society acknowledges the Applicant's evidence in her affidavit as to her belief that other students are not at risk of being subjected to conduct similar to that which she described, it submits that such evidence is not sufficient to satisfy the Society's obligation to ensure only those who are suitable are permitted to act as principals to articulated students.

[78] According to the Law Society, it must be able to engage in whatever potential investigations it considers necessary to fulfill its primary mandate of protecting the public interest. To satisfy its obligations effectively, the Law Society submits that it must be able to utilize the Confidential Information that has come into its possession and knowledge through this proceeding.

[79] The Law Society further submits that, while the interests and concerns of the Applicant described in her submissions are valid and important and must be taken into account in any further Law Society processes, the Applicant's wishes cannot preclude the Law Society from fulfilling its mandate.

[80] The Law Society notes that an investigation of a potential discipline violation may be initiated by the Executive Director of the Law Society based on information received from any source, not just from a complainant directly.

[81] Law Society Rule 3-4 provides:

**Consideration of complaints and other information**

**3-4** (1) The Executive Director *must consider every complaint* received under Rule 3-2 [*Complaints*].

(2) Information received *from any source* that indicates that a lawyer's conduct *may constitute a discipline violation must be treated as a complaint* under these rules.

[emphasis added]

[82] The Law Society submits that the Confidential Information already in possession of the Law Society from this matter comprises a source under Rule 3-4 that should be treated as a complaint by the Executive Director.

[83] Additionally, the Law Society argues that there are safeguards within the Law Society processes that at least mitigate the impacts of some of the Applicant's concerns about losing the ability to determine whether or not a complaint is initiated.

[84] During a Law Society investigation, some disclosure and an opportunity to respond must be provided to the person under investigation. However, the Law Society submits that disclosure of all evidence in its possession is not required at the investigation stage.

[85] Furthermore, section 88(3) of the LPA provides that any disclosure made during a Law Society investigation or hearing is confidential and is not to be further

disclosed. Similarly, complaints and the information that forms part of the investigation of a complaint is deemed to be confidential pursuant to Law Society Rule 3-3(1).

[86] Consequently, the scope of potential disclosure of the Confidential Information that could permissibly arise as a result of a Law Society investigation is limited.

[87] The Law Society has not yet determined what processes may be required to address the issues that arise from the evidence in this matter. The Law Society has not determined whether further hearings related to these matters are required, or the level of involvement in the processes, if any, it will request of the Applicant.

[88] The Law Society also submits that, in determining what actions it may take in respect of these matters, the Law Society, through its representatives and processes, will take account of the Applicant's interests, wishes and willingness to participate.

[89] As a result, while the Law Society acknowledges the concerns of the Applicant, it submits that they are prospective at this point, and the Law Society will seek to mitigate any negative effects on the Applicant to the extent it is possible to do so while fulfilling its mandate to protect the public interest.

[90] Nevertheless, should further regulatory processes become necessary, the Law Society submits that any "interested party" involved in such a process should have the ability to apply to this Panel for further disclosure of the Confidential Information to ensure procedural fairness.

[91] In summary the Law Society submits that:

- a. It is statutorily obligated to investigate and address conduct that may be a discipline violation once it becomes aware of such behaviour. It is also statutorily required to ensure that only suitable lawyers are permitted to act as principals.
- b. A complaint does not "belong" exclusively to the person who has been subjected to wrongful conduct, but can be initiated from any source.
- c. The Applicant's position would prevent the Law Society from satisfying its statutory mandate of protecting the public interest.
- d. The Applicant's concerns, while valid, can be mitigated to some extent through the Law Society's conduct of its processes.

- e. In order to ensure procedural fairness, any party that is the subject of a related Law Society proceeding should be entitled to apply for disclosure of the Confidential Information.

[92] The Law Society took no position with respect to the Applicant's request that the submissions and the Applicant's affidavit provided in this application be restricted from disclosure.

[93] As a result, the Law Society submits that the order this Panel should make is:

The Information in the [Admission] Decision (2016 LSBC 38), exhibits, and transcript not be disclosed to anyone outside the Law Society, except for the purposes of addressing the Applicant's principal's conduct either through the Law Society's complaint/discipline process or for the purposes of assessing his suitability to act as a principal to an articling student, and with liberty to apply (to this Panel or a substitute panel if necessary in future).

## **ANALYSIS AND DISCUSSION**

[94] The parties have identified the relevant authorities, statutory provisions and Law Society Rules in their submissions as set out above.

### **Restrictions on Disclosure of the Confidential Information**

[95] Absent an order, all of the Confidential Information would be available to anyone, including the Law Society, pursuant to Rule 5-9.

*Does the Complaint "Belong" to the Applicant?*

[96] [redacted] As a result, she submits that there should be a complete restriction on disclosure of the Confidential Information, including an order precluding the Law Society from using the Confidential Information in any further investigation or regulatory process.

[97] While that position is understandable, it is not consonant with the Law Society Rules.

[98] Law Society Rule 3-4(2) makes it clear that a complaint can be triggered by any source, not just the person impacted by a lawyer's conduct. [redacted]

[99] It is not the case that the Applicant alone may determine whether the Law Society treats conduct of which it is aware as a complaint. Therefore, that is not a basis on which this Panel can or should order restrictions on disclosure of the Confidential Information.

[100] Nevertheless, the Applicant has raised a number of substantial concerns with respect to the harm that may be incurred by her or others if restrictions on disclosure of the Confidential Information are not ordered.

[101] Consideration of potential harm to the Applicant or others is a basis on which the Rules, particularly Rule 5-8(2), empower us to order restrictions on disclosure of the Confidential Information.

### *Balancing the Interests*

[102] The starting point for determining whether restrictions ought to be placed on disclosure of the Confidential Information in order to protect the interests of an applicant or others is the decision in *Applicant 9*.

[103] In *Applicant 9*, the panel sought to weigh the public interest in hearing transparency and openness on the one hand against the value of personal privacy on the other. The panel concluded that some of the information in evidence was highly sensitive, and its disclosure could be damaging to the privacy interests of the applicant. Conversely, there was no public interest value in disclosing the sensitive personal information. Therefore, the balance clearly favoured restricting disclosure of the information.

[104] In this matter, a similar balancing of interests is required; however, the considerations are not as straightforward as in *Applicant 9*.

[105] There, the underlying issues had all been finally determined. The competing interests being weighed were relatively discrete and known. The public interest was limited to ensuring that the process was transparent and that the community could be sufficiently informed of the decision and the reasons for it. The applicant's interest was limited to preserving his personal privacy in respect of past conduct.

[106] Here, the public interest goes beyond transparency and openness in regard to a completed hearing process. Rather, consideration must be given to the public interest in enabling the Law Society to pursue its core mandate of protection of the public by engaging in additional prospective processes arising from the evidence disclosed in this matter.

[107] The Law Society's ability to take additional steps for the protection of the public following the conclusion of this matter is a significant factor to consider in balancing the competing interests.

[108] On the other hand, the considerations militating in favour of restrictions on disclosure of the Confidential Information include not only the Applicant's personal privacy, but also matters of broader public interest, including avoiding additional new harms to the Applicant and others.

[109] The Applicant has deposed that she is concerned about the impact a complaint could have on her, including the prospect of having to re-experience the conduct she has already described and re-experienced as a result. [redacted]

[110] [redacted]

[111] Therefore, the Applicant raises concerns about tangible additional harms that may be incurred by her or others if the Confidential Information is made available to the Law Society and treated as a source of information for a complaint.

[112] Protection of the public interest includes avoiding visiting additional harm to the Applicant or third parties.

[113] [redacted]

[114] [redacted]

[115] [redacted]

[116] Consequently, unlike in *Applicant 9*, there are significant public interest considerations militating in favour of each party's position. This Panel must weigh the various interests and potential harms in a manner that minimizes the negative impacts and maximizes the overall protection of the public interest.

[117] The Law Society has a statutory mandate to investigate and address conduct that comes to its attention and which may constitute a discipline violation. The importance of this obligation as part of its duty to protect the public interest is underscored by the language of section 3 of the LPA, as well as the fact that Rule 3-4(2) requires information received by the Law Society from any source to be automatically treated as a complaint.

[118] The duty of the Law Society to investigate conduct that may constitute a discipline violation lies at the core of its purpose and duty. That factor weighs strongly in

favour of permitting further disclosure of the Confidential Information to the extent necessary to fulfill the Law Society's fundamental purpose.

[119][redacted]

[120][redacted]

[121][redacted]

[122] [redacted]

[123] As set out above, it would be untenable for the Law Society to be aware of conduct that it considers warrants an investigation, to be obliged by statute to investigate such conduct in those circumstances, and yet to be prevented from conducting an investigation.

[124] The ability of the Law Society to carry out its mandate must be balanced against the potential harms identified by the Applicant should the Law Society proceed to treat the Confidential Information as a complaint and potentially undertake an investigation and other processes.

[125] The potential harms identified by the Applicant described above are serious.

[126] While the prospect of these impacts on the Applicant and others cannot be eliminated, it is significant that they may be mitigated through the Law Society's application of its processes.

[127][redacted]

[128] The Applicant raised in her submissions a fear of retribution or blame in the form of negative discussion within the legal community. Again, while this may be a legitimate concern, all members of the profession within British Columbia are required to abide by rule 7.2-1 of the Code, including Commentary [3]:

A lawyer should avoid ill-considered or uninformed criticism of the competence, conduct, advice or charges of other lawyers ...

[129] Similarly rule 7.2-4 of the Code prohibits a lawyer from engaging in communications that are inconsistent with a proper, professional tone.

[130] The existence of these provisions does not preclude the possibility of blame or of attacks on the Applicant's reputation, but it ought to serve to temper the risk.

[131] The Applicant properly pointed to our finding at paragraph 185 of the Admission Decision that we considered it inappropriate to compel the Applicant to relive the conduct she described. That concern remains a significant consideration in this application. Forcing the Applicant to re-experience that conduct further should be avoided to the greatest extent possible.

[132] However, if the Law Society does undertake an investigation, the Applicant's participation will not necessarily be required. In fact, it is possible that the availability of the Confidential Information may make the Applicant's participation in the investigation unnecessary, or at least significantly attenuated.

[133] Additionally, the Law Society has submitted that it will, in any form of process, give due consideration to the Applicant's wishes and the degree of her willingness to participate in the process.

[134] [redacted]

[135] Here, the Law Society became aware of the conduct at issue as a result of evidence led in a public hearing. [redacted] In light of the Applicant's election, difficult though it may have been, it would be inappropriate to place the Law Society in the conundrum of being unable to fulfill its obligation to investigate conduct of which it has become aware and about which it has reasonable concerns.

[136] Nothing in this decision has the effect of compelling someone [redacted] to make an involuntary disclosure that is then treated as a complaint, against their wishes. A person availing themselves of any of the confidential resources identified in the Admission Decision would not be affected by this decision.

[137] As a result, the public interest is best served by allowing the Law Society to fulfill its core function and examine conduct it reasonably considers itself obliged to investigate.

[138] [redacted]

[139] In the circumstances of this matter where the potential harms can be mitigated through the Law Society's conduct of its processes, and where the Applicant's original disclosure of the Confidential Information was voluntary, albeit distressing, the balance of interests weighs in favour of the Law Society being permitted to disclose and use the Confidential Information to satisfy its mandate.

### **Further Applications for Disclosure of the Confidential Information**

[140] The Law Society submits that other potentially interested parties should have leave to seek more or full disclosure of the Confidential Information from this Panel.

[141] The Applicant takes the position that no such leave should be permitted, or in the alternative, if an interested party is allowed to seek additional disclosure, the Applicant should have notice and a right to make submissions with respect to whether further disclosure will be ordered.

[142] The Law Society points out in its submissions that it must provide sufficient disclosure to those involved in its processes to satisfy the principles of natural justice. However, the level of disclosure required of the Law Society varies depending on the nature of the process at issue.

[143] At the investigation stage, the disclosure obligation is far less than that required when a hearing has been ordered.

[144] For the same reasons that the Law Society should not be prevented from investigating the conduct at issue, the Law Society must also not be placed in a position where it is unable to provide procedural fairness and satisfy the principles of natural justice in respect of any other Law Society regulatory process.

[145] At the investigation stage, the Law Society is responsible for determining the level of disclosure it is obligated to provide. Consequently, if the Law Society considers that it requires greater disclosure to an interested party than our orders permit, it can apply to this Panel, (or a substitute panel if necessary) to vary our orders.

[146] Such an application should be brought on notice to the Applicant via her counsel, unless the Law Society is advised that the Applicant wishes to receive any notice directly. In such an application, the Applicant would have the usual rights to make submissions as a party to the hearing that resulted in the orders.

[147] The Applicant may also apply to vary our orders on notice to the Law Society if circumstances change that may impact our analysis of the balancing of interests set out above.

[148] If any future matter results in a hearing, whether a credentials hearing or a discipline hearing, the Law Society Rules provide for document disclosure issues to be addressed by way of a pre-hearing conference. It is preferable to have any document disclosure application relating to the Confidential Information determined within the proceedings in which the application arises, rather than

asking this Panel to resolve issues of procedural fairness in respect of another, future proceeding.

[149] In the event an application relating to disclosure of the Confidential Information is brought in another hearing proceeding, the Law Society should provide as much notice as it reasonably can to the Applicant, since she could potentially be affected by any disclosure order. The level of participation to which the Applicant will be entitled in that matter is a question for resolution in the proceeding in which the application is brought.

## **CONCLUSION AND ORDERS**

[150] For the reasons set out above, the Panel makes the following orders.

### **Costs**

[151] The parties consent and this Panel orders that the Law Society have its costs of the Admission Decision payable by the Applicant in the amount of \$500.

[152] In light of the order as to costs of the Admission Decision, as well as the orders regarding restrictions on disclosure of the Confidential Information, this Panel orders no additional costs of this application paid to any party, subject only to either party bringing any further consideration of which we were not previously aware to our attention within 14 days of receipt of this decision.

### **Anonymous Publication**

[153] The parties consent and this Panel orders that, if either the Admission Decision or these reasons are to be published, they must not identify the Applicant.

### **Restrictions on Disclosure and Use of the Confidential Information**

[154] With the consent of the parties, this Panel makes the following orders, subject to the further orders set out below:

- a. If the Admission Decision or a summary of it is to be published, it must be published with the following paragraphs (or the information contained within these paragraphs) redacted or otherwise omitted: 34, 49, 50, 59 to 65, 86, 98, 100 to 101, 111, the last sentence of paragraph 143, the last sentence of paragraph 185, and 195 to 199.

- b. If any person requests disclosure of a transcript of the hearing in this matter, the following portions of the transcript must be withheld from disclosure:
  - i. the submissions of the parties;
  - ii. the Applicant's evidence: p. 13 line 7 to p. 39 line 2; p. 45 line 16 to p. 46 line 18; p. 47 line 13 to line 15; p. 63 line 10 to p. 66 line 3; p. 83 line 9 to line 20;
  - iii. SH's evidence: p. 94 line 20 to p. 101 line 6; p. 102 line 23 to p. 103 line 24; p. 106 line 6 to line 14; and
  - iv. all references to the Applicant's name, SH's name, Student 1's name and the Principal's name.
- c. If any person requests disclosure of any exhibit entered into evidence in this matter, the exhibits, if disclosed, must be provided with any reference to the Applicant's name, SH's name, Student 1's name or the Principal's name redacted or otherwise omitted.
- d. If any person seeks disclosure of exhibits entered into evidence in this matter, Exhibit 2, Tab 15, if disclosed, must be provided in a redacted form that does not disclose the information contained in paragraph 5, the second to the thirteenth word in paragraph 7 and the second sentence of paragraph 8.
- e. The written submissions provided by the parties in the Admission Decision hearing and in this application must not be disclosed to any person.
- f. The Applicant's affidavit provided in support of this application must not be disclosed to any person.
- g. None of the orders in subparagraphs (a) to (f) apply to restrict disclosure of the full, unredacted record of this matter to counsel and their clients in this matter, to a review board, or to a court for the purposes of any review, appeal or judicial review arising from either the Admission Decision or this decision.
- h. None of the orders in subparagraphs (a) to (f) apply to restrict disclosure of the full, unredacted record of this matter within the Law Society, including to the staff, benchers and any agent of the Law Society, as well

as to the members of the Discipline Committee and the Credentials Committee, to the extent such disclosure is necessary to investigate any conduct and to pursue any discipline process or to pursue any Credentials Committee process that the Law Society considers to be appropriate and necessary to fulfill its statutory mandate.

[155]The Panel further orders that:

- a. The Applicant and the Law Society are at liberty to apply to this Panel, or a substitute panel if necessary, on notice to the other party, to vary the terms of these orders.
- b. If the Law Society becomes aware of any application seeking disclosure of any of the Confidential Information in another Law Society proceeding, it must provide as much notice of the application as reasonably possible to the Applicant.

#### **Restrictions on Confidential Information Within these Reasons**

[156]Because it was necessary for the Panel to make reference in these reasons to Confidential Information that has been ordered not to be disclosed, if this decision or a summary of it is to be published, it must be published with the following paragraphs redacted or otherwise omitted: the second sentence of paragraph 7, the first sentence of paragraph 8, 11, the first sentence of paragraph 14, 50 to 57, 63, 65 to 68, the first sentence of paragraph 72, the first sentence of paragraph 96, the second sentence of paragraph 98, the last sentence of paragraph 109, 110, 113 to 115, 119 to 122, 127, 134, the second sentence of paragraph 135, paragraph 136 from after the words “compelling someone” up to the words “to make involuntary disclosure,” and 138.

[157]If either party takes the position that the redactions in respect of these reasons should be varied before this decision or a summary of it is published, then either party may bring a further application in writing within 14 days of delivery of this decision to vary the order set out in paragraph 156. Publication should be delayed to allow the parties to consider their positions and, if an application is made, to allow the Panel to rule on it.