2018 LSBC 20
Decision issued: July 17, 2018
Citation issued: May 11, 2015

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

PIR INDAR PAUL SINGH SAHOTA

RESPONDENT

DECISION OF THE REVIEW BOARD

Hearing date:	February 27, 2018
Review Board:	Elizabeth Rowbotham, Chair Pinder Cheema, QC, Bencher Gillian M. Dougans, Lawyer John Lane, Public representative Robert Smith, Public representative Michelle D. Stanford, Bencher William Sundhu, Lawyer
Discipline Counsel:	Alison Kirby
Counsel for the Respondent:	Robin McFee, QC

BACKGROUND

[1] On May 11, 2015 a citation was issued against the Respondent pursuant to the *Legal Profession Act* regarding events that occurred between July 2008 and July 2011. The citation contained seven separate allegations of misconduct. Within some of those allegations were sub-allegations of misconduct. The allegations all related to the Respondent's failure to maintain appropriate accounting practices. The vast majority, but not all, of the instances of non-compliance with the Law Society's accounting rules involved the Respondent's real estate practice.

[2] In describing the inadequacy of the Respondent's accounting practices, the hearing panel, at para. 41 of the decision on Facts and Determination, *Law Society of British Columbia v. Sahota*, 2016 LSBC 29 (the "F&D Decision"), stated:

> The Panel begins with an appreciation that the state of the financial records of the Respondent at all material times was beyond description. The English language has insufficient adjectives to pay proper respect to the mess that was the financial records of the Respondent for the period of time from the commencement of the private practice to the date of the completion of the Law Society visits to gather records and information.

[3] The hearing panel found that the Respondent's accounting practices amounted to misappropriation of client funds and that the Respondent's conduct constituted professional misconduct. In coming to its decision, the hearing panel stated, at paras. 66 to 71, and para. 73 of the F&D decision:

> We believe that the circumstances of the Respondent are unique. He is clearly guilty of negligence and gross incompetence in the conduct of the financial aspects of his practice. So comprehensively inept is he that it may not be appropriate to characterize his behaviour as negligent. Negligence suggests that there has been dereliction of a duty owed. That characterization requires there to be an understanding of an initial duty that is owed. Nothing in the evidence before us suggests that the Respondent was aware of the duty owed to clients in the financial administration of his practice.
>
> We believe that the Respondent, at the times material to this citation, had no appreciation of the trust accounting rules, of how to comply with those rules or of the extent to which his practices were offside even elementary compliance.
>
> We have struggled with the requirement to find a mental element of wrongdoing or fault. The forensic auditor determined that no such mental element existed. The forensic auditor specifically negated intention on the part of the Respondent and attributed all fault to the chronic poor management practices of the Respondent.
>
> The wilful blindness test is also awkward with this Respondent as it is necessary to find wilful "blindness" to something that should be accorded attention. It is not at all clear that the Respondent understood the need to pay attention to the compendious Law Society accounting rules and the

> meticulous compliance that is required. Mr. Barbour noted that the Respondent did not know how to reconcile the trust account.
>
> However, it must be acknowledged that there is a line that may not be crossed. A lawyer must not be permitted to operate a trust account with repeated, inexplicable overdrafts, and then say, when caught out "I did not intend the consequences – this is accidental – there is no wrongdoing and therefore no misappropriation." We do not need to draw the line – it is somewhere beyond a single incident of a trust shortage, inadvertent or otherwise, and it is somewhere short of 51 such events.
>
> A finding of professional misconduct without a matching determination of misappropriation does not sufficiently describe the extent to which the public trust has been abused in the circumstances of this citation. The evidence of error upon error upon error is overwhelming and frustrating. This behaviour reaches a level of misconduct that is wrongdoing simpliciter. The sheer volume of the delicts establishes the necessary element of fault. This extent of trust account mismanagement must in itself demonstrate the necessary elements of wrongdoing and fault. More is not required.
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> …
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> All required elements of the definition of misappropriation are made out in these circumstances. The use of the client's funds (to cover a shortage in another sub-ledger) was not authorized. The unauthorized use must occur either knowingly or with gross negligence or incompetence. We are clear that this test has been satisfied.

[4] In its decision on disciplinary sanction, *Law Society of British Columbia v. Sahota*, 2017 LSBC 18 (the "Discipline Decision"), the hearing panel determined that the appropriate disciplinary action was for the Respondent to be suspended from practice for one month and for the Respondent to be prohibited from engaging in any capacity with files involving the purchase, sale or financing of real estate until relieved of that practice restriction by the Practice Standards Committee of the Law Society.

[5] The Law Society has appealed the decision on disciplinary action. The Law Society seeks to have the Review Board set aside the decision of the hearing panel, suspend the Respondent for 6 to 12 months and impose conditions on the practice of the Respondent.

STANDARD OF REVIEW

[6] Counsel for the Law Society and the Respondent agree that the standard of review is correctness as set out in *Law Society of BC v. Hordal*, 2004 LSBC 36, and *Law Society of BC v. Berge*, 2007 LSBC 7.

[7] As submitted by counsel for the Law Society, the correctness test is subject to two qualifications:

(a) Where a finding of fact is based on *viva voce* evidence and credibility is in issue, a review board should defer to the hearing panel's findings of fact and only intervene in cases where the panel made a clear and palpable error; and

(b) When the review is of a disciplinary sanction, the review board should accept the sanction if it falls within a range of sanctions applied in similar situations in the past.

[8] The review in this matter is a review of the disciplinary sanction, and the first qualification to the correctness test is not engaged. With respect to the second qualification of the correctness test, which is engaged, counsel for the Respondent reminded us that a review board is not to "tinker" with a sanction that is within an appropriate or reasonable range of penalties (*Hordal).*

Review of relevant factors

[9] In determining whether the disciplinary sanction falls within an appropriate or reasonable range of penalties we, like the hearing panel, have considered the factors set out in *Law Society of BC v. Ogilvie*, 1999 LSBC 17 (the "*Ogilvie* Factors"). The hearing panel found that this was not a case where it was appropriate to consider an abridged version of the *Ogilvie* Factors. We have likewise also considered all of the *Ogilvie* Factors.

[10] The *Ogilvie* Factors are:

(a) the nature and gravity of the conduct proven;

(b) the age and experience of the respondent;

(c) the previous character of the respondent, including details of prior discipline;

(d) the impact upon the victim;

(e) the advantage gained, or to be gained, by the respondent;

(f) the number of times the offending conduct occurred;

(g) whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;

(h) the possibility of remediating or rehabilitating the respondent;

(i) the impact on the respondent of criminal or other sanctions or penalties;

(j) the impact of the proposed penalty on the respondent;

(k) the need for specific and general deterrence;

(l) the need to ensure the public's confidence in the integrity of the profession; and

(m) the range of penalties imposed in similar cases.

The nature and gravity of the conduct proven

[11] We agree with the hearing panel's determination at para. 23 of the Discipline Decision that "abiding and enduring breaches of Law Society accounting rules are a grave and serious matter."

[12] The purpose of the Law Society accounting rules is to protect the public, and they do so in two respects. First, they ensure that trust monies held on behalf of individual clients are safeguarded, and second, they ensure that lawyers' trust accounts are not used for improper purposes.

The age and experience of the respondent

[13] The Respondent is 59 years of age. The conduct at issue in the present matter occurred from the commencement of his practice in British Columbia in July 2008 through to July 2011. The Respondent was 49 to 52 years of age during that time.

[14] The hearing panel found that the Respondent had 20 or so years of practice in India but had no exposure to trust accounting in India. The hearing panel characterized the accounting rules as a new challenge for the Respondent. Given the Respondent's rather limited practice experience in British Columbia, the hearing

panel, at para. 25, gave the Respondent "the benefit of a lack of experience and reduced expectations in the result."

[15] In our view, it is incumbent on all members of the legal profession to understand the Law Society Rules that apply to their practice and to abide by those rules. As mentioned, the Law Society's accounting rules are in place to protect the public.

[16] The Law Society Rules are readily available on the Law Society's website. In addition, several times a year the Law Society sends out notices to lawyers of any amendments that have been made to the Law Society's Rules or *Code of Professional Conduct*.

[17] The Respondent had taken the Law Society's Small Firm Practice Course in 2008, prior to commencing his sole practice (as is required). The Respondent has admitted that he is personally responsible to ensure compliance with the duties and responsibilities imposed on lawyers by the Law Society Rules regarding accounting practices and the treatment of trust funds.

[18] A lawyer who does not know or understand the Law Society Rules, negligently fails to observe them, or deliberately or recklessly fails to comply with them does so at his or her own peril. Consequently, we give little weight to this factor.

Previous character of the respondent including details of prior discipline

[19] The Respondent had no prior discipline proceedings. As the Respondent was a two- to five-year call at the time of the incidents, and thus had limited time to establish a conduct record, we also give this factor limited weight.

The impact on the victim

[20] The hearing panel found there was no victim of the Respondent's failure to comply with the Law Society's accounting rules, which was "likely in part due to the fact that the Respondent restored the trust shortages from his own pocket." We accept this finding.

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

[21] The hearing panel found that the Respondent gained nothing from his misbehaviour. We agree that the Respondent did not receive a direct financial benefit from his misconduct. We note, however, that he did receive an indirect benefit in the form of time by not adhering to the trust accounting rules.

The number of times the offending conduct occurred

[22] The hearing panel considered the 51 documented instances of rule breaches over a long span of time to be a substantially negative factor. We agree.

Whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and presence or absence of mitigating factors

[23] Counsel for the Law Society and the Respondent both acknowledge that the Respondent's factual admissions significantly reduced the hearing time.

[24] However, the Law Society submits that the Respondent's failure to acknowledge that his conduct constituted misconduct is an aggravating factor. Counsel for the Respondent submits that a respondent ought to be entitled to make legal arguments about the legal significance of the conduct without risk of facing a more severe penalty.

[25] We agree that respondents should not fear facing a more severe penalty merely for making legal arguments in their defence.

The possibility of remediating or rehabilitating the respondent

[26] Counsel for the Law Society submitted that a Trust Assurance compliance auditor had, in 2015 and after the citation had been issued, noted further non-compliance with the Law Society Rules. That matter is under investigation. Counsel for the Law Society submitted that, in addition to the restriction on the Respondent's practice not to practise real estate law, conditions should be imposed on the Respondent's ability to receive and handle trust funds in other areas of legal practice.

[27] Counsel for the Respondent submitted that the restriction on practising real estate law was sufficient.

[28] We accept that the Respondent is not practising real estate law and, given that the vast majority, but not all, of the allegations in the citation arose from the Respondent's real estate practice, we are of the view that the volume of accounting non-compliances is unlikely to be repeated. We appreciate that there is an investigation arising from the 2015 Trust Assurance compliance audit but are of the view that, if that investigation results in a citation and a finding of misconduct, it will be for the panel hearing that citation to consider the disciplinary sanction based on the information before it.

The impact on the respondent of criminal or other sanctions or penalties

[29] There are no criminal or other sanctions or penalties, and this is not a relevant factor on this review.

The impact of the proposed penalty on the respondent

[30] The hearing panel found that a suspension of 6 to 12 months would be difficult if not impossible for the Respondent to re-establish an economically viable enterprise and that a suspension of 6 to 12 months would be the equivalent to a disbarment.

[31] Counsel for the Law Society submits that the hearing panel erred in conflating the appropriate type of sanction with the appropriate duration of the suspension. We disagree. As counsel for the Law Society indicated in her submissions, disbarment is essentially a question of character – whether the lawyer is unsuitable to practise law.

[32] What the hearing panel did was consider the practical impact of a lengthy suspension on the Respondent. Both counsel for the Law Society and counsel for the Respondent referred to past decisions where panels have stated that firm size is insufficient in and of itself to avoid a suspension but that a suspension will have a greater effect on a single practitioner or small firm than on a large firm. While we agree that firm size is not sufficient in and of itself to avoid a suspension, we question whether, in the context of lawyer regulation, a suspension has a greater impact on sole practitioners than lawyers who practise in firms. Such a conclusion presumes that a lawyer who is a member of firm will be invited to return to the firm upon completion of his or her suspension.

[33] In the present matter, we accept the hearing panel's determination that a lengthy suspension will have an impact on this Respondent's practice. We note, however, this is only one of the many factors that we have considered.

The need for specific and general deterrence

[34] The hearing panel rejected the Law Society's position that a strong message must be sent to the profession to ensure proper respect for strict compliance with the Law Society's accounting rules. Instead, the hearing panel found, at paras. 34 and 35 of the Discipline Decision that the "usual penalty that follows intentional misappropriation is well-known and provides all the general deterrence that is required." The hearing panel also found that need for specific deterrence was overstated as "no lawyer, including the Respondent, would knowingly embark on the program in which he found himself."

[35] Counsel for the Law Society submitted that the hearing panel erred in determining there was little need for general or specific deterrence. We agree.

[36] As mentioned, the primary purpose of the Law Society's rules, including the accounting rules, exist to protect the public. The Law Society does what it can to assist lawyers in complying with the accounting rules. It provides an on-line course where the accounting rules are discussed. The Respondent took this course.

[37] Also, as mentioned, the Law Society sends out notices to all lawyers of changes to the Law Society Rules, including changes to accounting requirements. The accounting rules were known and ought to have been known by the Respondent.

[38] Further, the Respondent's failure to comply with the Law Society's accounting rules constituted misappropriation. Although the misappropriation arose from the Respondent's gross negligence or incompetent approach to his trust accounting responsibilities (para. 73 of the F&D Decision) and not from any intention to use a client's monies for his own benefit, it was misappropriation nevertheless.

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

[39] The hearing panel determined that a suspension of 6 to 12 months was not necessary to satisfy the public confidence in the integrity of the profession. Its reasoning was based in part on the absence of any clients who had lost money and, on the hearing panel's finding that that there was no moral risk with the Respondent.

[40] With respect, we disagree. It is important that the public have confidence that lawyers will properly handle and account for trust funds and that lawyers will use their trust accounts appropriately. A longer suspension demonstrates to the public and to the profession that the Law Society takes these matters seriously.

The range of penalties imposed in similar cases

[41] In *Law Society of BC v. Andres-Auger*, [1994] LSDD No. 127, *Discipline Case Digest* 94/11, the lawyer breached Law Society accounting rules by failing to maintain the required books, records and accounts, to record all funds received and disbursed, to maintain a general ledger, to adequately account for bank deposits to her general and trust accounts or keep records of the source of deposits. The lawyer's mishandling of trust funds amounted to misappropriation on several files. The lawyer did not act dishonestly or fraudulently but demonstrated an unacceptable degree of inattention, even wilful neglect, of her trust obligations. The lawyer had ceased membership in the Law Society in 1992. Given the length

of time the lawyer had been out of practice, the fact that she would likely be required to attend a credentials hearing before being readmitted, a fine of $1,750 rather than a suspension was imposed.

[42] *Law Society of BC v. Sarai*, 2005 LSBC 17, [2005] LSDD No. 126, involved a junior lawyer (two- year call). The lawyer performed well on non-real property files. However, his conduct in his real estate practice was described by the hearing panel, at para. 33 as "bizarre in the extreme". The hearing panel found, at para. 13:

> …there are more than 150 separate instances of either neglect, misconduct, breach of Rules, or breach of undertaking in respect of this Respondent's conduct of the real estate practice …

The lawyer was suspended for one year.

[43] In *Law Society of Alberta v. McGechie*, 2007 LSA 21, [2007] LSDD No. 139, the lawyer failed to follow the Law Society's accounting rules, failed to render accounts prior to releasing funds from trust, breached an undertaking to respond to the Law Society of Alberta, failed to respond to the Law Society of Alberta in a timely manner, failed to serve a client in a competent manner, breached a court order and failed to comply with trust conditions imposed by the *Excise Tax Act*. The lawyer's failure to keep his books in proper order was largely due to serious depression suffered by the lawyer. There was no intentional misappropriation, but rather the misappropriation was based on careless behaviour. The lawyer was suspended for 18 months.

[44] In *Law Society of BC v. Ali*, 2007 LSBC 18, 2007 LSBC 33 (corrigendum)], 2007 LSBC 57, the lawyer had a small practice. The lawyer was found to have misappropriated client trust funds and to have failed to pay practice debts. Her personal use of funds held for payment of GST, PST and employee income tax were said to exhibit a disregard for her professional obligations. The lawyer also failed to respond to the Law Society and to satisfy a monetary judgment. The hearing panel found there was no reasonable explanation for her failure to properly deal with her trust account and trust funds. The lawyer was disbarred. The panel found, at para 107 of the decision on Facts and Verdict:

> … Her failure to keep adequate records led to other trust shortages and created a situation in which it was not possible for the Law Society to quickly audit her books and records to determine the cause of each trust shortage. A complete reconstruction of the Respondent's trust records was necessary to determine what had occurred.

[45] In *Law Society of Saskatchewan v. Angus*, 2010 LSS 6, [2010] LSDD No. 232, the lawyer, through recklessness, misappropriated client funds, prepared false accounts, breached an undertaking that he provided to the Law Society and failed to respond substantively or at all to various inquiries from the Law Society. The lawyer did not maintain proper books and records. The hearing panel found that the lawyer's failure to follow the basic protocol in the handling of his trust account was reckless. The panel also found that the misappropriation was not intentional or dishonest. The lawyer was suspended for 12 months. In reaching its decision, the hearing panel referred to *Law Society of Upper Canada v. Kazman,* 2008 ONLSAP 7, [2008] LSDD No. 46, where recklessness in the context of professional discipline was discussed. In *Kazman,* at para. 48 (para. 30 in *Angus*) the panel stated:

> It is said that maintaining public confidence in the integrity of the legal profession is the responsibility of the Law Society. In reality, it is the responsibility of every licensee of the Law Society. The Law Society is merely the primary agency by which the licensees at large achieve that goal. The integrity of the legal profession must be vigilantly guarded so that the public's reliance on, and confidence in, the legal profession remain at the highest level. Where a licensee is either willfully blind or reckless, then, to protect the public and maintain their faith, we may impute to the wrongdoer the knowledge requisite for culpability. Willful blindness and recklessness are merely the conduits for the imputation, i.e., once knowledge of either the risk or possible consequence of the risk or both is imputed to the wrongdoer by whatever conduit, culpability will follow.

[46] In *Law Society of Upper Canada v Burns,* 2011 ONLSHP 101, [2011] LSDD No. 114, a lawyer was found to have misappropriated funds in four separate instances over a period of four years. The lawyer's account records fell into disarray in 2003. From 2004 to 2008 the lawyer did not look at his monthly trust bank statements but just put his trust and general bank account monthly statements in a drawer. Claims were made on the Law Society's compensation fund by some of the lawyer's clients. The lawyer was disbarred. At para. 8 of that decision the panel stated:

> The Lawyer's use of the four sums set out in the Agreed Statement of Facts was clearly unauthorized. It was negligent or reckless because the Lawyer failed to maintain proper accounting records and allowed the funds to be diverted improperly. The absence of any explanation – indeed, any attendance by the Lawyer to provide his own testimony to disclose his motivations – causes us to draw an adverse inference that his actions were deliberate or wilfully blind.

[47] In *Law Society of BC v. Cruickshank*, 2012 LSBC 27, [2012] LSDD No. 141, the lawyer was found, at para. 21, to have been "profoundly sloppy in the management of the financial and accounting side of his law practice." The lawyer breached the Law Society's accounting rules over an extended period of time (five years). The lawyer did not profit by his violation of the rules. The lawyer had a prior discipline history. The Law Society and the lawyer agreed to a one-month suspension, with which the majority of the hearing panel agreed. The minority, however, found that the suspension should be significantly longer than one month and stated, at para 59:

> … Given the severity and duration of the breaches and misconduct, I do not accept that a one-month suspension is "fair and reasonable" or in the public interest.

[48] In *Law Society of BC v. Sas*, 2016 LSBC 03, [2016] LSDD No. 12, the lawyer held in trust money that she had received when practising as a sole practitioner. When she joined a firm of lawyers, the lawyer engaged in a file review to deal with outstanding files with unbilled time and disbursements. In tidying up the accounting, the lawyer improperly billed for disbursements that were not incurred and did so either knowingly, or was wilfully blind or reckless in doing so. The amount taken was not large, and was not done to enrich the lawyer but instead to clean up the accounting records relating to her sole practice and to windup that practice. The lawyer was suspended for four months.

[49] In *Law Society of BC v. Samuels*, 2017 LSBC 25, the lawyer improperly withdrew $9,600 US from his trust account and transferred the money to his general account and did not rectify the matter for five years. The money was to have been remitted to the Ministry of Health, but the lawyer had an honest but mistaken belief that the Ministry of Health was not entitled to a subrogated share of the monies in trust. The lawyer was suspended for 30 days.

[50] In *Law Society of BC v. Faminoff*, 2017 LSBC 04, [2017] LSDD No. 17, the review panel upheld a hearing panel's decision to suspend a lawyer for two months. After receiving notice of a compliance audit, a lawyer and his assistant created 44 statements of account over a three-day period. The statements were backdated with dates between February 2008 and November 2008. The lawyer was found to have failed to maintain proper accounting records, to have breached an undertaking regarding the disbursement of funds, and to have intentionally misrepresented to the Law Society by backdating statements of account. The lawyer had not misappropriated funds and had not received a direct financial benefit from his conduct. The review board found that the appropriate range of penalty was six

weeks to six months, and as the two-month suspension was within that range, the review board upheld the two-month suspension.

[51] Of the cases discussed above, the *Sarai* and *Cruickshank* matters bear the greatest degree of similarity to the matter before us. In *Sarai* the lawyer was suspended for one year, in *Cruickshank* the lawyer was suspended for one month. The *Sarai* decision was decided in 2005, the *Cruickshank* decision in 2012. However, we do not think the importance placed on the proper handling and accounting for trust funds has diminished over the years. We do note that, in *Cruickshank*, the Discipline Committee had approved a proposal for a one-month suspension under Rule 4-22 (now Rule 4-30). As a result, the hearing panel could only accept or reject the recommended discipline sanction. The majority decided to accept the recommendation. As noted above, the minority would have imposed a "significantly longer suspension." We agree with the minority's assessment.

[52] In *Faminoff*, at paragraphs 84 and 85, the review board commented that decisions on penalty are individualized processes and stated:

> In determining a disciplinary penalty, it is only necessary to identify those circumstances and principles that are important to the disciplinary decision. Decisions on penalty are an individualized process that requires the hearing panel to weigh the relevant factors in the context of the particular circumstances of the lawyer and the conduct that has led to disciplinary proceedings.
>
> In addition, disciplinary action must be appropriate based on the particular circumstances of the case. Although consistency and lack of arbitrariness are important in a self-regulated profession, the *Ogilvie* factors are designed to help to select the appropriate disciplinary action to best rehabilitate the Respondent and also to promote public confidence in the legal profession. This means that hearing panels will attempt to impose penalties that are appropriate for that particular individual.

[53] While we agree with the comments that decisions on penalty are individualized processes as the circumstances in each case are different, we are also of the view that, in order to engender confidence in both the public and the profession in the fairness of the discipline process and the discipline process outcomes, similar types of misconduct ought to attract similar discipline sanction. Inconsistent sanctions for similar conduct create an air of arbitrariness that can undermine confidence in the discipline process. Both the public and the profession need to know the likely consequences of misconduct.

[54] As stated by the hearing panel in *Sarai*, at para. 41:

> It is important to ensure that the message of condemnation of a member's misconduct is consistently delivered. …

[55] In our view, the minimum appropriate range of suspension was between three and six months. We have considered all of the circumstances, which, in our view, include the uncertainty that the *Cruickshank* decision introduced to the importance the Law Society places on adhering to the Law Society's accounting rules. Consequently we find, in the present matter, that a suspension of three months, including the one month already served by the Respondent, is appropriate.

[56] In addition, we would maintain the restriction that the Respondent not engage in any capacity with files involving the purchase, sale or financing of real estate until relieved of that practice restriction by the Practice Standards Committee.

[57] Given the Respondent's past accounting practices, we add a further restriction that the Respondent have a second signatory on his trust account who is approved by the Executive Director, until relieved of that restriction by the Practice Standards Committee.

ORDER

[58] This Review Board orders that:

(a) the Respondent be suspended for 90 days, with credit given for the 30 days already served, commencing on or before December 1, 2018;

(b) the Respondent not engage in any capacity with files involving the purchase, sale or financing of real estate until relieved of that practice restriction by the Practice Standards Committee of the Law Society; and

(c) the Respondent have a second signatory on this trust account who is subject to the approval of the Executive Director of the Law Society, until relieved of that restriction by the Practice Standards Committee.

[59] If the parties wish to address the issue of costs by way of written submissions, we invite them to do so within 45 days of the release of this decision.