2019 LSBC 32
Decision issued: September 5, 2019
Citation No. 1 issued: July 30, 2018
Citation No. 2 issued: May 24, 2019

CORRECTED DECISION: PARAGRAPH [91] OF THE DECISION WAS AMENDED ON SEPTEMBER 10, 2019

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

ROSARIO CATENO DI BELLA

RESPONDENT

DECISION OF THE HEARING PANEL

Hearing date:	June 12, 2019
Panel:	Lindsay R. LeBlanc, Chair Jeevyn Dhaliwal, Lawyer Mark Rushton, Public Representative
Discipline Counsel:	Henry C. Wood, QC
Counsel for the Respondent:	Craig P. Dennis, QC

BACKGROUND

[1] On July 30, 2018, a citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rules of the Law Society ("Citation No. 1"). Citation No. 1 was amended on September 13, 2018 and, as amended, provides as follows (schedule omitted):

> 1. Between approximately December 7, 2016 and July 6, 2017, you breached your undertaking dated November 22, 2016 to the Law Society of British Columbia, contrary to rules 7.1-1(f) and 7.2-11 of the *Code of Professional Conduct for British Columbia*, by doing one or both of the following:

a. taking on some or all of the thirty-four (34) new client matters set out in Schedule "A" to this citation; and

b. omitting reference to some or all of the thirty-four (34) new client matters set out in Schedule "A" to this citation in your audit documents delivered to the Law Society.

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

2. Between approximately December 7, 2016 and October 13, 2017, you misled the Law Society of British Columbia about your active client files or about your adherence to your undertaking dated November 22, 2016 to the Law Society of British Columbia (your "Undertaking"), or both, contrary to rules 2.2-1 and 7.1-1 of the *Code of Professional Conduct for British Columbia*, by doing one or more of the following:

a. omitting reference to some or all of the thirty-four (34) client matters set out in Schedule "A" to this citation in your audit documents delivered to the Law Society;

b. requesting to be relieved of your Undertaking in a letter dated June 23, 2017 in part because you had complied with your Undertaking except for failing to comply with the weekly reporting on four occasions; and

c. adopting the contents of a letter dated August 1, 2017 from your counsel Jean Whittow, QC in a Law Society investigation, in which letter your counsel stated that you have been mindful of your Undertaking not to take on new matters and were conscientious in reducing your file load.

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

[2] On May 24, 2019 an additional citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rules of the Law Society ("Citation No. 2"), which provides as follows:

1. Between June 2017 and April 2018, you failed to provide DA (the "Client") with the quality of service at least equal to that which is generally expected of a competent lawyer in a like situation, contrary

to rule 3.2-1 of the *Code of Professional Conduct for British Columbia*. In particular, you failed to do one or more of the following:

a. communicate effectively with the Client;

b. keep the Client reasonably informed;

c. answer reasonable requests from the Client for information;

d. respond to the Client's telephone calls and other communications;

e. take appropriate steps to do what you promised to the Client;

f. answer, within a reasonable time, any communication that required a reply;

g. ensure that work on the Client file was done in a timely manner;

h. provide the Client with progress updates as to the status of her file; and

i. make all reasonable efforts to provide prompt service to the Client.

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

2. On approximately February 9, 2018 or March 28, 2018, upon your discharge or withdrawal from representation of your client DA (the "Client"), you did not do all that could have been reasonably done to facilitate the orderly transfer of the matter until approximately May 22, 2018, contrary to one or more of rules 3.7-8 and 3.7-9 of the *Code of Professional Conduct for British Columbia*. In particular, you failed to do one or more of the following as soon as practicable:

a. notify the Client in writing and state:

(i) the fact that you were no longer acting; and

(ii) the reasons for the withdrawal;

b. deliver to the Client all papers and property to which the Client was entitled;

c. give the Client all relevant information in connection with the matter; and

d. cooperate with the successor lawyer in the transfer of the file so as to minimize expense and avoid prejudice to the Client.

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

[3] During the course of the Hearing, the Law Society advised the Panel that it would amend Citation No. 2 to include only the following:

> Between approximately September 8, 2017 and May 2018, the Respondent did not provide the quality of service expected of a lawyer in a like situation, contrary to Rule 3.2-1 of the *Code of Professional Conduct for British Columbia*, by failing to:
>
> a. ensure that work was done in a timely manner;
>
> b. communicate effectively with DA and answer her requests for information;
>
> c. respond to DA's emails, text messages, and telephone calls within a reasonable time or at all;
>
> d. take appropriate steps to pursue the tasks he was retained to perform; and
>
> e. keep DA reasonably informed.

[4] The Respondent admits that he was properly served with Citation No. 1 and Citation No. 2.

[5] The parties filed an Agreed Statement of Facts with respect to Citation No. 1 and Citation No. 2, which the Panel has considered.

[6] The Respondent admits that his conduct with respect to the circumstances alleged in Citation No. 1 and Citation No. 2 constitutes professional misconduct.

[7] At the Hearing, the Panel acknowledged the Respondent's admission, found that the Respondent had committed professional misconduct, and advised the parties

that these reasons would follow. No decision was made on disciplinary action at the Hearing.

FACTUAL OVERVIEW / CITATION NO. 1

[8] In 2014, the Respondent was referred to the Law Society's Practice Standards Department as a result of four complaints in the practice area of estate administration relating to delay in activity, failure to respond and failure to communicate. The Respondent underwent a practice review in August 2014, resulting in detailed recommendations that were set out in a letter dated October 9, 2014. The recommendations were aimed at improved office and file organization systems and more timely communication with clients' counsel and others. With one exception and one alteration, the recommendations were accepted by the Practice Standards Committee at its December 4, 2014 meeting.

[9] The Practice Standards Committee considered the Respondent again on June 11, 2015. The Committee at that time noted a "repetitive pattern of delay in failing to communicate, as a serious problem." The Practice Standards Committee considered the Respondent again after receiving an additional complaint. A follow-up practice review took place on November 21, 2016. The reviewers noted that, at that time, the Respondent had over 270 active files. Recommendations were made to the Respondent, including a reduction in the number of files and attendance to those files in a timely manner. On November 22, 2016, the Respondent provided a response to the Law Society that included an undertaking. The undertaking is as follows:

> I undertake not to take on any new matters. This includes new matters from existing clients unless I am the only remaining executor for the estate. If I am unsure that a new matter has arisen, I will contact the Law Society for clarification.
>
> I further agree that this Undertaking will remain in full force and effect until I am released from it by the Practice Standards Committee of the Law Society.

[10] In 2017, the Respondent opened 33 new files, contrary to the undertaking that he had provided to the Law Society. These new files were not listed in the audit documents submitted by the Respondent to the Law Society.

[11] At the time of opening the new files, the Respondent had not been relieved of his undertaking to the Law Society.

[12] In June 2017, the Respondent applied to the Practice Standards Committee to be relieved of his undertaking to the Law Society. The Practice Standards Committee considered the Respondent's application in July 2017 and responded to him on July 24, 2017 advising that the Respondent was relieved of his undertaking. The Practice Standards Committee closed its file on July 24, 2017, which was before it became known to the Law Society that the Respondent had opened new files while the undertaking had been in effect.

[13] Following a complaint to the Law Society, an investigation was opened concerning a possible breach of the Respondent's undertaking. Within the course of the investigation, the Respondent replied to the Law Society by letter dated March 9, 2018 and admitted that a prior letter delivered by the Respondent's legal counsel attached a file list that did not include files newly opened in breach of his undertaking. In an interview conducted on May 29, 2018 by the Law Society, the Respondent confirmed that he had breached his undertaking not to take on any new matters on between 13 and 26 occasions.

FACTUAL OVERVIEW / CITATION NO. 2

[14] On or about September 8, 2017, the Respondent was retained by DA to pursue a committeeship for DA's ailing mother, SB (the "Committeeship").

[15] At the time the Respondent was retained, DA lived in the United States, while SB was in a hospital in Duncan, on Vancouver Island, and the Respondent was practising at Jawl Bundon LLP in Victoria.

[16] DA spoke with the Respondent by telephone on July 27, 2017. In the course of that conversation, DA told the Respondent that, among other things:

a. the reason for the Committeeship was that DA's mother, SB, had suffered a stroke in April 2017, which left her unable to look after her own affairs;

b. at the time of the stroke, SB was living separate and apart from her estranged husband, RB, who had left her about three years prior;

c. there was no power of attorney in place, RB was still on title to the couple's house and there was a joint bank account;

d. RB had removed and sold many of SB's personal belongs and had taken funds belonging to her from the joint bank account; and

e. DA was anxious that RB would take advantage of the situation and of her mother and urgently desired the Committeeship.

[17] The Respondent wrote a detailed email to DA on July 28, 2017 summarizing their telephone conversation of the prior day and setting out background facts, concerns, requests for information and documents, and asking for confirmation of the retainer. The email was detailed and was of the nature that can be expected of lawyers practising in this area. Following this email, the level of services provided to DA by the Respondent was not to the level that can be expected of lawyers practising in the area of wills and estates as summarized below.

[18] The July 28, 2017 email requested an initial retainer of $3,000 and stated as follows:

> These funds will be used to open a file, conduct a land title search of the Residence, obtain copies of any mortgages or other financial charges on title, carry out searches about [RB] in various public registries etc. I will also use the retainer to make long distance telephone calls to Duncan, to you, to fax to the doctors, etc. I will need to travel to Duncan to complete the affidavits of the two medical doctors and a second time to serve your Mom with the court documents.

DA sent additional information to the Respondent in August 2017.

[19] On September 4, 2017, DA and the Respondent met at the Respondent's office. On September 8, 2017, DA provided the Respondent's office with additional information to move the file forward.

[20] On September 9, 2017, DA met with the Respondent to sign a credit card authorization for a $2,500 retainer.

[21] On September 22, 2017, DA emailed the Respondent asking "how things went with meeting mom's doctors." The Respondent emailed back saying he "look[ed] forward to screen shots of all of the various text messages with your step-father," but provided no response to DA's query. DA followed-up the next day by email inquiring "Is everything in [sic] track with mom's committee?" DA emailed the Respondent again on October 11, 2017 inquiring as to the status of the Committeeship. The Respondent did not reply.

[22] On October 13, 2017, DA made a phone call to the Respondent but they did not speak.

[23] On October 19, 2017, DA emailed the Respondent requesting that the Committeeship application be expedited, confirming her concerns with respect to RB's intention and providing full contact information for Dr. W.

[24] On October 20, 2017, the Respondent replied to DA saying that he was helping his brother with a medical procedure and would get back to her the next week.

[25] Having not received a response from the Respondent following the October 20, 2017 email, DA emailed the Respondent on November 2, 2017 requesting an update and received an auto reply that the Respondent would be away until November 6.

[26] On November 9, 2017, DA emailed the Respondent asking if he had sent the affidavits to the doctors. The Respondent replied saying that he was "trying to deal with [DA's] requests and write to the two doctors" and would report back the following week. As of November 9, 2017, the Respondent had not communicated with any doctor regarding the Committeeship.

[27] On November 27, 2017, DA emailed the Respondent seeking an update. The Respondent did not reply.

[28] On November 29, 2017, DA telephoned the Respondent, but they did not speak.

[29] On December 1, 2017, Dr. W contacted the Respondent to indicate that nothing had been received from the Respondent. The Respondent advised Dr. W that he wished to communicate with Dr. W by email and not fax, to which Dr. W responded by providing an email address for the office manager. Following the Respondent's discussion with Dr. W on December 1, 2017, DA emailed the Respondent asking him to "get moving on this and get it to a judge so I'll be able to take care of mother once she's moved into long term care." DA did not get a response to this email.

[30] On December 6, 2017, DA emailed the Respondent seeking an update and received an auto reply indicating the Respondent was away December 6 and December 7, 2017 and would reply after his return on December 8, 2017.

[31] On December 15, 2017, DA telephoned the Respondent's mobile phone twice and his office twice. DA also emailed the Respondent requesting that the Respondent move the Committeeship along as soon as possible and the Respondent get ahold of DA.

[32] On December 20, 2017, DA telephoned the Respondent and left a message. Also on December 20, 2017, the Respondent texted DA stating that he was ill and could

not talk to her and would call when he was better. DA texted back advising that DA was "desperate to get things going" for SB and "super worried about what her estranged husband had been up to."

[33] On December 29, 2017, DA left a voice mail message on the Respondent's cell phone. In response, the Respondent texted DA that he was moving his office that day and the next and would write to her next week. He did not contact DA the following week.

[34] As of December 31, 2017, the Respondent was no longer practising at the law firm he had been at. The Respondent did not contact DA prior to moving his office to inform DA of the move and did not offer DA a choice of remaining with the Respondent's prior firm.

[35] On January 8, 2018, DA texted the Respondent stating that DA felt disappointed and disrespected, noting that four months had elapsed and that DA and the doctor had tried numerous times to reach him but nothing had been done. DA stated that the Committeeship matter was now at "a crucial point of time that things MUST be started" and that she "could not wait any longer." DA said that she would be in Canada later that month and asked the Respondent to make room in his schedule to meet.

[36] The Respondent replied to DA's text on January 8, 2018 suggesting a meeting date and time, which DA agreed to.

[37] DA and the Respondent met at his new office on January 20, 2018. At that meeting, DA signed another credit card authorization for a $2,500 retainer deposit to Fort Street Lawyers and provided copies of two letters from social workers regarding SB in support of the Committeeship.

[38] On January 26, 2018, DA texted the Respondent stating:

> …Wanted to touch base and find out what's in progress, did you send the email for affidavits to mom's doctor?
>
> Also was wondering if letter went out to Post Office … worried about [RB] getting mom's 2017 tax assessment … .

[39] On February 1 and 2, 2018, DA left messages at the Respondent's mobile number asking for an update.

[40] On February 9, 2018, DA texted the Respondent stating that he had told her at their last meeting that he would be starting the process the following Monday but she

still had not heard from him. DA asked him to let her know if he was unable or unwilling to help so that counsel could be sought elsewhere, as soon as possible. The text states "Please notify me today if possible or asap … I still need your new email."

[41] On three subsequent occasions, February 26, March 6 and March 21, 2018, DA left further telephone messages at the Respondent's mobile or office phone numbers.

[42] Since the beginning of the retainer, DA had been an engaged client and continued to follow-up to ensure that the file was progressing.

[43] On March 28, 2018, DA reached the Respondent by telephone. He stated that he was indeed too busy to help and that DA should seek other counsel. He offered to help find alternate counsel in Nanaimo.

[44] Following the March 28, 2018 telephone conversation between DA and the Respondent, the Respondent failed to forward contact information to DA regarding other counsel and failed to confirm that he had been dismissed and was no longer acting.

[45] After his conversation with DA on March 28, 2018, the Respondent took no steps at that time to transfer the file despite DA telephoning the Respondent three times on April 20, 2018 to try to obtain DA's file but received no response.

[46] On April 24, 2018, DA texted the Respondent requesting that the file be made available for pick up and stating that DA would be calling later that day to find out when to pick up the file.

[47] SK, a lawyer, telephoned the Respondent on April 25, 2018 and telephoned and emailed the Respondent on April 27, 2018. No response was received from the Respondent until May 10, 2018.

[48] DA made a complaint to the Law Society on May 3, 2018.

[49] After the Law Society telephoned the Respondent and subsequently followed-up, the contents of DA's file was delivered to SK on May 22, 2018.

ONUS AND STANDARD OF PROOF

[50] The onus of proof is on the Law Society, which must prove the allegations on a balance of probabilities. The Panel notes the cautions expressed in *F.H. v. McDougall*, 2008 SCC 53, and *Law Society of BC v. Schauble*, 2009 LSBC 11, that

the evidence must be scrutinized with care and must be sufficiently clear, convincing and cogent.

PROFESSIONAL MISCONDUCT

[51] The current test for professional misconduct has been clearly developed in *Law Society of BC v. Martin*, 2005 LSBC 16, *Re: Lawyer 12*, 2011 LSBC 35 and subsequent decisions providing further clarifications.

[52] In *Law Society of BC v. King*, 2019 LSBC 07 at para. 36, the hearing panel cited with approval an excerpt from *Law Society of BC v. Kaminski*:

> In *Law Society of BC v. Kaminski*, 2018 LSBC 14, the panel considered the meaning of 'professional misconduct' and stated, at para. 43:
>
> > What constitutes professional misconduct is not defined in the Act or the Rules or described in the *Code of Professional Conduct*. Since the decision by the hearing panel *in Law Society of BC v. Martin*, 2005 LSBC 16, the vast majority of panels have adopted as a test for professional misconduct whether the conduct of the lawyer in question exhibited a "marked departure" from the standard of conduct the Law Society expects of lawyers. This is a subjective test that must be applied after taking into account decisions of other hearing panels, publications by the Law Society, the accepted standards for practice currently accepted by the members of the legal profession in British Columbia and what, at the relevant time, is required for protection of the public interest.

DETERMINATION

[53] Applying the test for professional misconduct as stated in *Martin, King* and *Kaminski* and noting the admissions of the Respondent, the Panel finds that the allegations of professional misconduct in Citation No. 1 and Citation No. 2 are properly founded.

[54] The conduct of the Respondent constitutes a marked departure from conduct that the Law Society expects of lawyers.

[55] We accept the admissions of the Respondent and confirm a determination that, on Citation No. 1 and on Citation No. 2, the Respondent has committed professional misconduct.

DISCIPLINARY ACTION

[56] The Law Society and the Respondent jointly submit that a suspension of two months in respect of both Citation No. 1 and Citation No. 2 is appropriate.

[57] As stated by the panel in *Law Society of BC v. Lim*, 2019 LSBC 19, in considering the appropriate penalty to be imposed, this Panel must consider whether the proposal is fair and reasonable in all the circumstances. In that case, the panel was considering a recommendation from the Discipline Committee of the Law Society with the consent of the respondent. Although the manner in which the recommendation comes before this Panel varies slightly, we find that the considerations are the same. In *Lim*, the panel found that some deference should be given to the recommendation of the Discipline Committee as being within the range of a "fair and reasonable disciplinary action in all of the circumstances."

[58] Section 38 of the *Legal Profession Act* states that, where a hearing panel finds, as this Panel has, that a respondent's actions constitute professional misconduct, the panel must do one or more of the following:

a. reprimand the respondent;

b. fine the respondent;

c. impose conditions or limitations on the respondent's practice;

d. suspend the respondent for a period of time or till any conditions or requirements imposed by the panel are met;

e. disbar the respondent; or

f. require the respondent to do one or more remedial actions or make submissions respecting their competence to practise law.

[59] The purpose of disciplinary proceedings is the fulfillment of the Law Society's mandate to uphold and protect the public interest in the administration of justice and to ensure the general integrity and competence of lawyers.

[60] In *Law Society of BC v. Lessing*, 2013 LSBC 29, the benchers confirmed that the "… objects and duties set out in section 3 of the Act are reflected in the following factors set out in *Law Society of BC v. Ogilvie*, 1999 LSBC 17 …":

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.

[61] In *Ogilvie*, the panel set out 13 factors that, while not exhaustive, might be said to be worthy of general consideration in disciplinary dispositions.

[62] In *Law Society of BC v. Dent*, 2016 LSBC 05 at para. 16, the panel stated:

> It is not necessary for a hearing panel to go over each and every *Ogilvie* factor. Instead, all that is necessary for the hearing panel to do is to go over those factors that it considers relevant to or determinative of the final outcome of the disciplinary action (primary factors). This approach flows from *Lessing*, which talks about different factors having different weight.

[63] The Law Society submits that emphasis ought to be placed on the following factors:

a. the nature and gravity of the conduct proven;

b. the advantage gained, or to be gained, by the respondent;

c. the need to ensure the public's confidence in the integrity of the profession; and

d. the range of penalties imposed in similar cases.

[64] The Respondent submits that emphasis ought to be placed on the following factors:

a. the nature and gravity of the conduct proven;

b. the previous character of the respondent, including details of prior discipline;

c. 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; and

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

[65] This Panel also considers the "impact upon the victim" to be an operative factor in our consideration of disciplinary action.

The nature and gravity of the conduct proven

[66] In *Law Society of BC v. Gellert*, 2014 LSBC 05 at para. 39, the panel stated that:

> … [T]he nature and gravity of the misconduct will usually be of special importance, not only because this factor in a sense encompasses several of the others, but also because it represents a principal benchmark against which to gauge how best to achieve the key objective of protecting the public and preserving confidence in the legal profession. Indeed, this key objective is the prism through which all of the *Ogilvie* factors must be applied, a message that shines through clearly in the discussion in *Ogilvie* itself at paras. 9 and 10, and has since been affirmed in other decisions such as *Lessing*.
>
> [authorities omitted]

[67] The Respondent acknowledges that the breach of undertaking to the Law Society and subsequent providing of false and misleading information to the Law Society is serious.

[68] Undertakings are of fundamental importance to legal practice. The Court of Appeal in *Law Society of BC v. Heringa*, 2004 BCCA 97, affirmed, at para. 10, comments made by a Law Society hearing panel:

> Undertakings are not a matter of convenience to be fulfilled when the time or circumstances suit the person providing the undertaking; on the contrary, undertakings are the most solemn of promises provided by one lawyer to another and must be accorded the most urgent and diligent attention possible in all of the circumstances.
>
> The trust and confidence vested in lawyer's undertakings will be eroded in circumstances where a cavalier approach to the fulfillment of undertaking obligations is permitted to endure. Reliance on undertakings is fundamental to the practice of law and it follows that serious and diligent efforts to meet all undertakings will be an essential ingredient in maintaining the public credibility and trust in lawyers.

[69] The sanctity of undertakings and the essential requirement of strict compliance were affirmed in the recent decision of *Law Society of BC v. Dhindsa*, 2019 LSBC 05.

[70] As it concerns undertakings to the Law Society, the panel in *Law Society of BC v. Dobbin,* 2006 LSBC 28, stated as follows, at para. 14:

> Breaches of undertakings relating to practice supervision and to reporting to the Law Society were held to be professional misconduct both in *Law Society of BC v. Barton,* 2004 LSBC 20, and in *Law Society of BC v. Davies*, 2003 LSBC 41. It is manifestly in the public interest that a lawyer's undertakings to the Law Society must be performed.

[71] The nature and gravity of conduct in this case is of a serious nature and the disciplinary action must reflect the same.

The previous character of the respondent, including details of prior discipline

[72] The Respondent is 65 years old and was admitted as a member of the Law Society on September 10, 1980. The Respondent practised with Jawl Bundon LLP for 19 years before opening a sole practice on January 2, 2018.

[73] The Respondent's professional conduct record consists of a conduct review on September 4, 2008 and practice reviews between June 2014 and July 2017, with a limitation on practice arising from the practice standards referral. A summary of

the practice reviews is contained in paras. 8 and 9 of these reasons. The practice reviews and subsequent limitations relate to Citation No. 2 and have been considered by the Panel as an aggravating factor in determining the appropriate disciplinary action.

[74] The Respondent has an extensive resume of professional service, which the Panel has considered. The Respondent's past and present service includes:

(i) Board Member of the British Columbia Law Institute;

(ii) Chair and Member of the Estate Planning Council of Victoria;

(iii) President, Executive Member and Member of the Victoria Bar Association;

(iv) Treasurer, Vice-Chair and Chair of the BC Branch of the CBA;

(v) Past Chair and Executive Committee Member of the British Columbia Law Institute;

(vi) Member of the Probate Rules Reform Committee;

(vii) Member of the B.C. Law Institute Common-Law Test of Capacity Committee;

(viii) Member of the Uniform Law Commissioners of Canada, British Columbia Delegate,

(ix) Chair of the Legislation and Law Reform Committee;

(x) Chair, Legislative Liaison and Member of the CBA, Victoria Wills, Trusts & Fiduciary Relations Subsection; and

(xi) Chair and Member of the CBA Member Services Committee.

[75] In addition, the Respondent has acted as a guest lecturer to: University of Victoria, Faculties of Law and Business; Continuing Legal Education Society of BC; Law Society of British Columbia, Professional Legal Training Program; Greater Victoria Real Estate Board; People's Law School; Landlord BC; Rental Owners and Managers Society of BC; and Vancouver Island Strata Owners Association. The Respondent provided evidence on his past community contributions that were also considered by the Panel but are not listed here.

[76] Letters from Monica Kingsbury, Registered Clinical Counsellor, Wayne L. George, Lawyer, Michael J. Hargreaves, Lawyer and Brian R. McCutcheon, retired lawyer, were provided to the Panel by the Respondent. The Law Society and the Respondent submit that the letters should be considered only to the extent that they provide the Panel with confidence that a two-month suspension is appropriate.

The impact upon the victim

[77] The conduct described in Citation No. 2 had a direct impact on the Respondent's client. DA retained the Respondent with an expectation that her matter would be dealt with in a timely manner. It was not.

[78] A review of the email and text exchanges between DA and the Respondent demonstrates that the lack of response and inactivity by the Respondent created an unnecessary situation of uncertainty for DA.

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

[79] The Law Society submits that the taking on of new files, in breach of the Respondent's undertaking to the Law Society, was motivated by concerns for overall revenue. There is no evidence before this Panel to make this finding.

[80] The Panel rejects the Law Society's submission and finds that this factor does not assist in the consideration of appropriate disciplinary action.

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

[81] The Respondent has admitted his professional misconduct and agrees with the Law Society that a two-month suspension is appropriate. The Respondent submits that a suspension sends a strong message of disapprobation and he references a prior decision of *Law Society of BC v. Nguyen,* 2016 LSBC 21 at para. 21.

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

[82] In *Dent*, the panel found that the specific item at issue with respect to public confidence is whether the public will have confidence in the proposed disciplinary action when comparing it to similar cases.

[83] The admitted conduct of the Respondent, consisting of a breach of undertaking to the Law Society and failing to provide the quality of service expected of a lawyer

in a like situation, is serious, and the disciplinary action must reflect that seriousness.

[84] Undertakings underpin legal practice in British Columbia and are the essential ingredient in maintaining the public credibility and trust in lawyers, and the disciplinary action imposed must reflect the importance placed on the value of undertakings.

[85] The Law Society and the Respondent submit that, of the range of available outcomes under s. 38 of the *Legal Profession Act*, a suspension of two months would provide the public with confidence that it is fulfilling its regulatory role.

The range of penalties imposed in similar cases

[86] The Law Society directed this Panel to seven prior cases where the range of disciplinary action for similar conduct spanned between six months and six weeks.

[87] With consideration of those prior cases, the joint submission for a two-month suspension falls within the acceptable range and is a fair and reasonable disciplinary action in these circumstances.

DECISION OF DISCIPLINARY ACTION

[88] As the Respondent's conduct did include a breach of undertaking, and elements of dishonesty combined with a separate breach of Rule 3.2-1 where the Respondent failed to provide the quality of service expected of a lawyer, a suspension is the appropriate disciplinary action.

[89] The Panel has considered the *Ogilvie* factors referenced above and the joint submissions of the Law Society and the Respondent and agrees that a two-month suspension is within the range of acceptable disciplinary action and appropriate.

COSTS

[90] The Law Society seeks costs pursuant to s. 46 of the *Legal Profession Act* and Rule 5-11 in the amount of $9,000, inclusive of fees and disbursements, payable by October 31, 2019. These costs are calculated in accordance with the tariff.

[91] The Panel agrees with both counsel that the amount sought is reasonable and appropriate and that a payment date of November 30, 2019 is reasonable.

NON-DISCLOSURE ORDER

[92] The Law Society requested an order under Rule 5-8(2) of the Rules to the effect that exhibits that contain confidential client information or privileged information not be disclosed to members of the public. The Respondent consents to the order.

[93] In order to prevent the disclosure of confidential or privileged information to the public, we order under Rule 5-8(2) that, if a member of the public requests copies of the exhibits in these proceedings, those exhibits must be redacted for confidential or privileged information before being provided.

SUMMARY OF ORDERS MADE

[94] The Panel makes the following orders:

a. Under Citation No. 1 and Citation No. 2, the Law Society has met the onus of demonstrating that the Respondent's conduct constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act;*

b. The Respondent be suspended from the practice of law for a period of two months to commence October 1, 2019;

c. The Respondent is to pay costs of $9,000 to the Law Society on or before November 30, 2019;

d. Pursuant to Rule 5-8(2)(a) of the Rules, if any person, other than a party, seeks to obtain a copy of a transcript or any exhibit filed in these proceedings, client names and identifying information and any confidential or privileged information must be redacted before it is disclosed to that person; and

e. Pursuant to Rule 4-30(5)(a), the Executive Director is instructed to record the Respondent's admission on his professional conduct record.