

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

CRYSTAL IRENE BUCHAN

RESPONDENT

**DECISION OF THE HEARING PANEL
ON DISCIPLINARY ACTION**

Hearing date: December 4, 2019

Panel: Jennifer Chow, QC, Chair
John Lane, Public representative
Bruce LeRose, QC, Lawyer

Discipline Counsel: Tara McPhail
Counsel for the Respondent: Peter Firestone

BACKGROUND

- [1] On May 22, 2019, the Panel determined that Crystal Buchan committed professional misconduct by: (a) failing to sign an appropriately drafted consent order; (b) failing to sign an appropriately drafted court order; and (c) failing to answer with reasonable promptness communications from opposing counsel over a five-month period in 2017. That decision is indexed as 2019 LSBC 18 (the “Facts and Determination Decision”).

POSITION OF THE PARTIES

- [2] The Law Society submits that the appropriate disciplinary action is: (a) a two-month suspension; and (b) a condition that the Respondent be referred to the Practice Standards Committee and abide by its directions and orders and remain under its jurisdiction until released by that Committee. Additionally, the Law

Society seeks costs and disbursements in the amount of \$6,347.05 calculated in accordance with Rule 5-11 and the Schedule 4 Tariff of the Law Society Rules, with two months to pay.

- [3] In regard to the request for a referral to the Practice Standards Committee, the Law Society submits that the public interest requires the Respondent's practice to be reviewed to ensure that she is practising law at the appropriate standard. The Law Society submits that without the involvement of the Practice Standards Committee, the Respondent will likely not address her conduct of delay and non-responsiveness.
- [4] The Respondent submits that, due to her personal circumstances, a suspension is not an appropriate disciplinary action. Rather, the appropriate disciplinary action is a \$5,000 fine. Additionally, she submits that a referral to the Practice Standards Committee is unnecessary. Finally, she submits that any order made regarding costs and disbursements be lowered to reflect the global impact of any fine.

DECISION

General principles regarding disciplinary action

- [5] The primary and overriding purpose of disciplinary proceedings is to uphold and protect the public interest in the administration of justice to ensure that public confidence in the legal profession is maintained generally: *Legal Profession Act*, s. 3 (the "Act"); *Law Society of BC v. Nguyen*, 2016 LSBC 21. The public interest is protected by ensuring the independence, integrity, honour and competence of lawyers.
- [6] The second purpose of disciplinary proceedings is to promote the rehabilitation of lawyers. In many instances, disciplinary action will promote both purposes of protection of the public and rehabilitation of lawyers: *Nguyen*, para. 36.
- [7] Section 38(5) of the *Act* provides the Panel with a number of options regarding disciplinary action. Those options include a reprimand, a fine, conditions or limitations on the respondent's practice, a suspension and disbarment. In addition, s. 38(7) of the *Act* provides the Panel with the power to make any further orders and declarations and impose any conditions or limitations as appropriate.
- [8] The leading decision on the factors to be considered in determining the appropriate disciplinary action is *Law Society of BC v. Ogilvie*, 1999 LSBC 17. That decision

sets out a non-exhaustive list of factors to be considered in assessing disciplinary action as follows:

- (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 upon 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.

[9] Recently, the trend has been to focus on select *Ogilvie* factors rather than attempt to apply the factors equally in all cases: *Law Society of BC v. Dent*, 2016 LSBC 05.

[10] Given the unique facts and circumstances of this case, the Panel has focused on five particularly relevant *Ogilvie* factors:

- (a) the nature, gravity and consequences of the Respondent's conduct;
- (b) the Respondent's character and professional conduct record;

- (c) the Respondent's acknowledgement of the misconduct and remedial action;
- (d) overall public confidence in the legal profession, including public confidence in the disciplinary process; and
- (e) the range of sanctions imposed in prior similar relevant cases.

Principles regarding a global approach to penalty

- [11] The Panel based the Facts and Determination Decision on three distinct findings of professional misconduct. Accordingly, the issue arises whether a penalty should be imposed on an individual allegation-by-allegation basis or on a global basis by examining the cumulative nature of the Respondent's misconduct.
- [12] The Law Society submits that this is an appropriate case for the Panel to impose disciplinary action globally, with a focus on the totality of the Respondent's misconduct.
- [13] The Law Society has drawn the Panel's attention to several decisions where a global approach was applied to address multiple allegations arising from a single citation: *Law Society of BC v. Gellert*, 2014 LSBC 05, at para. 37; *Law Society of BC v. Chaudhry*, 2018 LSBC 31, at para. 103; or where multiple allegations were intertwined significantly: *Law Society of BC v. Harding*, 2015 LSBC 25, at paras. 48 and 49; *Law Society of BC v. Lowe*, 2019 LSBC 37, at paras. 8 and 9.
- [14] The Respondent did not directly address this issue. However, the Respondent suggests that the misconduct be viewed globally since the Panel was asked to apply an overall compassionate lens in determining any sanction. The Respondent also submits that her misconduct in this case did not form part of any long-standing pattern of delay or unresponsiveness as alleged.
- [15] Based on the above discussion, the Panel finds that this is an appropriate case to apply a global approach. We note that the three events giving rise to the findings of misconduct arise from the Respondent's representation of one family law client.

The nature, gravity and consequences of the Respondent's conduct

- [16] As discussed in the Facts and Determination Decision, the Respondent failed her client in three key ways. She: (a) failed to sign an appropriately drafted consent order; (b) failed to sign an appropriately drafted court order; and (c) failed to

answer with reasonable promptness communications from opposing counsel over a five-month period in 2017.

- [17] The Law Society submits that the Respondent's overall misconduct is serious. In particular, as a result of the Respondent's delay and non-responsiveness, the parties could not resolve their matter for over a year. Additionally, opposing counsel was required to bring a court application to address whether the parties were bound by an enforceable settlement. After the Honourable Justice Voith ruled against the Respondent's client, the Respondent failed to sign the Voith order. That failure required the parties to attend court again. They had to appear before a Registrar to settle the terms of the Voith order. The Law Society submits that these court appearances were an unnecessary burden on judicial resources.
- [18] The Respondent submits that she made mistakes but that they were made in the context of her vigorously defending a family law client. The Respondent's view is that her "failure" to sign the court orders was in fact not "failures" as she was deliberately though mistakenly following her client's instructions not to sign the court orders. The Respondent explained that she was caught between a rock and a hard place. She now admits that she should have signed the Voith order and the parties should not have been required to attend before the Registrar.
- [19] Viewed globally, the Panel views the Respondent's misconduct as serious. As discussed in the Facts and Determination Decision, the Panel confirmed that lawyers have a duty to promptly sign appropriately drafted court orders that have been granted or agreed to, and that this duty continues notwithstanding subsequent instructions of the client. The Panel also agreed with the Law Society that, where parties have agreed to resolve proceedings by way of a consent order, lawyers are similarly obligated to sign appropriately drafted consent orders promptly. Finally, the Panel also confirmed that lawyers are obligated to reply reasonably promptly to any communication from another lawyer that requires a response.

The Respondent's professional conduct record and character

Professional conduct record

- [20] The Respondent was admitted as a member of the Law Society of British Columbia on May 15, 1992. At the time of the misconduct, the Respondent had practised family law for 25 years.

- [21] The Law Society submits that, based on her length of practice, the Respondent should have known that her conduct was wrong. Accordingly, the Law Society asks the Panel to treat her length of practice as an aggravating factor in this case.
- [22] The Law Society also submits that the Panel should apply the principle of progressive discipline. That principle requires the Panel to consider whether the Respondent's professional conduct record with previous similar misconduct requires the imposition of a greater penalty to be effective: *Law Society of BC v. Lessing*, 2013 LSBC 29.
- [23] The Respondent's professional conduct record ("PCR") is as follows:
- (a) 2007: The Practice Standards Committee made several recommendations to help the Respondent improve her client management and file delay issues. The minutes of the Practice Standards Committee noted on September 4, 2008 show that the Respondent was told of the Committee's concerns about her failure to provide progress reports and action plans on their due dates and failure to respond promptly to communications from the Practice Standards Department.
 - (b) 2011: A conduct review was held regarding concerns over delay and quality of service in a client matter and the Respondent's failure to respond in a substantive and prompt manner to communications from the Law Society. The Respondent was advised to consistently follow the recommendations previously provided by the Practice Standards Committee.
 - 1. In its report dated August 18, 2011, the Conduct Review Subcommittee noted that the Respondent recognized that a family illness and a personal tragedy impacted her in such a way that she sought and underwent counselling. The Subcommittee accepted that the Respondent appeared recently to recognize the impact personal issues were having on her practice. The Subcommittee accepted that she was taking appropriate measures to deal with those issues.
 - (c) 2012 to 2013: A citation was issued in December 2012 regarding the Respondent's failure to respond substantively to communications from the Law Society. The Respondent was fined \$3,000 and ordered to pay \$1,000 in costs.
 - 2. In their reasons of 2013 LSBC 08, the panel also accepted that the Respondent's personal circumstances were, and to some extent continued

to be, a source of great stress. While the panel members empathized with her, they were not persuaded that the pressures were relevant to the issues before them. They noted that she was still able to deal with correspondence and other matters in the ordinary course of practice and thus did not provide any specific, meaningful explanation for why she failed to respond to the Law Society.

- (d) 2013: A conduct review was held regarding the Respondent's delay and poor quality of service provided to a client. Significantly, the Subcommittee's report stated that, in the opinion of the Subcommittee, the Respondent had failed to respond to prior remedial and disciplinary actions by the Law Society.

3. In its report dated October 23, 2013 regarding client SM, the Conduct Review Subcommittee expressed similar sympathy for the Respondent's personal circumstances. The Subcommittee explained that the Respondent's primary obligation was to serve her clients and that she must manage her personal life in order to fulfill that responsibility. The Respondent advised the Subcommittee that she was committed to being more selective in accepting files and that her husband's health was better such that she was able to practise on a day-to-day basis. The Subcommittee specifically asked the Respondent to consider getting counselling for her "clear pattern of delay and failure to meet obligations" that predated her spouse's health issues.

- (e) 2013: A second conduct review was held before the same Subcommittee as above regarding the Respondent's delay and poor quality of service provided to a different client. The Subcommittee repeated their concerns that the Respondent had failed to respond to prior remedial and disciplinary actions by the Law Society.

4. In its report dated October 23, 2013 regarding client HM, the same Subcommittee repeated the above comments. The Subcommittee also explained that the Respondent faced significant challenges in dealing with her spouse's health issues; however, she was advised that, if she could not meet her primary obligation to serve her clients, then she had a duty to resign.

[24] The Law Society submits that the Respondent's PCR is a highly aggravating factor. In particular, her PCR: (a) displays a pattern of delay and non-responsiveness over a ten-year period; and (b) demonstrates the Respondent's failure to respond to remedial and disciplinary attempts. The Law Society says the Respondent's PCR

underscores the need for a sufficient deterrent given concerns over whether she can be rehabilitated. The specific concern is that the Respondent continues to rely inappropriately on avoidance as a strategy for dealing with difficult or unpleasant matters.

- [25] The Law Society submits further that the Respondent's PCR requires an increase in the sanction to be imposed beyond the range of sanctions imposed for similar misconduct by lawyers without a significant disciplinary history. This increased sanction accords with the principle of progressive discipline, the need for specific deterrence and the need to ensure public confidence in the legal profession. The Law Society submits that an increased sanction sends a clear message to the Respondent, the public and the legal profession that lawyers who repeatedly ignore their professional responsibilities and fail to take adequate steps to reach the minimum standards of practice will not be tolerated.
- [26] The Respondent submits that her misconduct does not form or fall into any pattern of delay. In this instance, the Respondent was not causing any delay because of inaction, but was vigorously defending her client by not signing the court orders. She did not have instructions to sign them. As the Respondent explains, this important distinction means that her current predicament is not an extension of any pattern of delay or failures to respond to communications. Thus, the Respondent suggests that progressive discipline is not required.
- [27] The Panel notes that the Respondent's PCR reflects recurring themes of delay and non-responsiveness with other parties. Additionally, the Respondent's PCR reflects her repeated reassurances that she had gained insight and would take appropriate steps to address her work issues and ongoing personal stresses.

Character evidence

- [28] The Respondent has provided the Panel with six letters of reference from her spouse, fellow family law lawyers and a lawyer at her firm. The Respondent's letters of reference are briefly set out as follows:
- (a) DL: DL, the Respondent's spouse, explained in his letter that he has been unwell for about 18 years and recently had a heart transplant. He explained the uncertainty and anxiety his health has caused the Respondent. He also stated that the Respondent has gained insight into her misconduct and will have less strain now that his health is improving since his heart transplant;

- (b) KB: KB's letter generally supports the Respondent's rehabilitation. KB's letter sets out a suggested action plan to improve the Respondent's standard of practice in law. Her letter indicates that she is aware of the Respondent's citation and past disciplinary history;
- (c) AF: AF's letter describes the Respondent as a mentor. She expresses support and good impressions of the Respondent as a family law lawyer. Her letter does not indicate any awareness of the Respondent's current citation or past disciplinary history;
- (d) RK: RK's letter expresses support for the Respondent's judgment and wisdom in family law cases. He has worked on cases with the Respondent. His letter does not indicate whether he is aware of the Respondent's current citation or past disciplinary history;
- (e) DI: DI's letter describes the Respondent as an excellent lawyer on several difficult family law cases. His letter however does not indicate awareness of the Respondent's current citation or past disciplinary history; and
- (f) DB: DB's letter describes the Respondent as a valued member of the firm. His letter indicates awareness of the Respondent's current citation and past disciplinary matters. He expresses support for the action plan developed by KB to deal with the Respondent's misconduct.

[29] In addition to the letters of reference, the Respondent also invites the Panel to treat her personal circumstances as an overriding "compassionate" factor. As we understand the Respondent's submissions, she is not relying on her personal circumstances to explain any misconduct. Rather, the Respondent urges the Panel to apply compassion in considering the impact of any suspension in her circumstances. In particular, the Respondent suggests that a suspension is not the "compassionate" sanction to impose on a lawyer who is taking care of a seriously ill spouse and trying to cope with the pressures of being the sole income provider to her family.

[30] The Law Society does not dispute the Respondent's difficult personal circumstances over the past several years. Counsel for the Law Society says she empathizes with the Respondent regarding her difficult personal circumstances and accepts that the medical evidence before the Panel shows that the Respondent's husband suffers from a serious heart condition.

[31] The Law Society submits, however, that the issue is not whether the Respondent's personal circumstances warrant compassion. Rather, the issue is whether, given

her difficult circumstances, the Respondent has taken the appropriate steps to protect her clients and her practice from adverse impacts.

- [32] Specifically, the Law Society submits that, over many years, the Respondent has: (a) known about the impact of her husband's medical condition on her and her legal practice; (b) made commitments to the Law Society to implement measures to minimize the impact of her husband's medical condition on her and her legal practice; and (c) failed to implement those measures or has implemented ineffective measures.
- [33] The Law Society submits that the Respondent's PCR demonstrates that the Respondent either has not followed through on measures to help her cope with her difficult circumstances or has implemented measures that have been ineffective in helping her cope.
- [34] In *Law Society of BC v. Goddard*, 2006 LSBC 12, the respondent admitted professional misconduct regarding four breaches of undertakings in conveyance matters. Despite considering the respondent's difficult circumstances, including a car accident and his spouse's long history of cancer treatment, the panel nevertheless suspended him for two months. The panel explained at para. 9 that:
- Lawyers generally have a very high confidence in their ability to handle pressure. They must have this confidence because, as professionals, they are the ones to whom members of the general public turn for help in stressful situations. It seems that the longer a lawyer practises, the more likely it is that he or she will be unable to accept that they need assistance to handle the share of trauma that happens in their own lives. Such was the case with this Respondent.
- [35] The Law Society submits that the Respondent's conduct in this matter is not the product of incompetence or laziness. The Law Society submits, however, that difficult personal circumstances do not preclude a significant disciplinary sanction.
- [36] The Law Society submits that the Respondent's PCR demonstrates a ten-year pattern of delay and non-responsiveness that has continued with the present professional misconduct. The Law Society also submits that the letters of reference cannot be considered reliable evidence as the letters do not demonstrate that the writers had full disclosure of the Respondent's past disciplinary issues. The Law Society submits further that the Respondent has had ten years, following repeated warnings and disciplinary action by the Law Society, to take appropriate steps to break any pattern of delay and non-responsiveness.

- [37] To the Respondent's credit, she has admitted professional misconduct and cooperated with the Law Society in making comprehensive admissions through a Notice to Admit. We share the Law Society's concerns, however, that the Respondent's ten-year pattern of delay suggests that previous remedial action has not been successful. While KB's letter suggests an action plan, the Panel has not been provided any evidence that the Respondent is following the action plan or that the action plan is working.
- [38] The Panel places little weight on the letters of reference. Character evidence may have little impact if the Respondent has a significant professional conduct record: *Dent*, para. 29. In *Dent*, the hearing panel held that letters of reference may be given significant weight only where the respondent has an unblemished or near unblemished professional conduct record. In the event we are wrong, we also note that the majority of the authors of the letters did not indicate whether they were aware of the Respondent's citation or past disciplinary history.
- [39] Accordingly, the Panel finds that the Respondent's PCR is a significant factor demonstrating a ten-year pattern of delay and non-responsiveness. We find that the current misconduct does fit within the ten-year pattern of delay and non-responsiveness to communications. While we sympathize with the Respondent, the Panel's primary purpose of protecting the public must take priority over reducing any sanction on the basis of the Respondent's personal circumstances. Since the Respondent's personal circumstances continue to negatively affect her ability to practise law, a lesser penalty from the Panel based solely on "compassion" for the Respondent rather than overall protection of the public would send the wrong message.

Overall public confidence in the legal profession including public confidence in the disciplinary process

- [40] It is trite to say that the public must have confidence in the ability of the Law Society to regulate and supervise the conduct of lawyers: *Ogilvie*, para. 19.
- [41] The Law Society submits that lawyers must sign and enter court orders promptly to ensure an effective and efficient justice system. Members of the public and participants in the justice system are entitled to expect lawyers to be diligent in signing and entering court orders. Further, we agree with the Law Society that a lawyer who fails to promptly sign appropriately drafted court orders not only fails to provide her own client with the quality of service expected, but detracts from the quality of service being provided by opposing counsel by thwarting the timely resolution of the matter.

- [42] The Panel also agrees with the Law Society that lawyers are obliged to respond promptly to professional communications. We agree that members of the public who engage lawyers to assist and advise them on legal matters are entitled to expect prompt and professional service. Otherwise, lawyers who fail to respond promptly may increase the costs of legal services and undermine public confidence in the ability of the legal profession to provide effective legal services in an efficient manner.
- [43] The Respondent submits that her misconduct, based on vigorous representation of a client, does not shake overall public confidence in the legal profession.
- [44] The Panel does not agree that vigorous representation of a client precluded the Respondent from signing the court orders or responding promptly to communications. The protection of the public requires lawyers, as lawyers and officers of the court, to sign appropriate court orders promptly and respond to communications promptly.

Range of sanctions imposed in similar cases

Failure to sign court orders promptly

- [45] In two relevant disciplinary decisions dealing with a lawyer's failure to sign court orders promptly, the sanctions ranged from a short suspension to a fine.
- [46] In *Law Society of BC v. Dunnaway*, 2000 LSBC 02, [2000] LSDD No. 29, the respondent delayed the entry of an order for six and one-half months. She explained that the delay was the result of her client not giving her instructions to sign a consent order or the court order. The panel found that the respondent had an obligation to take steps to have the order entered or, if she had legitimate concerns with the form of the order, to raise them and take the matter back to court. Similar to this case, opposing counsel finally took out an appointment to settle the terms of the order. No hearing to settle the terms of the order was required as the respondent signed the order. In those circumstances, the panel found that the respondent had unreasonably delayed the entry of an order by eight months. The respondent had a prior disciplinary history regarding the requirement to enter orders promptly. She received a one-week suspension.
- [47] In *Law Society of BC v. Wesley*, 2016 LSBC 07, the respondent failed to enter a family law interim order for about 20 months and failed to advise her client about the risks of not entering the order. The respondent's prior disciplinary record was not significant. She received a \$3,000 fine.

Failure to respond promptly to communications

- [48] In cases dealing with a lawyer's failure to respond promptly to communications, the sanctions range from a reprimand to a fine and to a suspension.
- [49] In *Law Society of BC v. Perrick*, 2015 LSBC 42, the respondent, among other allegations, failed to respond to eight letters from opposing counsel over a 26-month period. The respondent had a significant past disciplinary record. In submissions, he suggested that the appropriate sanction would be a \$15,000 fine. The panel rejected a fine as an appropriate sanction. The panel explained that a suspension, even a short suspension, sends a stronger message than a fine. The respondent was suspended for 30 days.
- [50] In *Law Society of BC v. Braker*, 2007 LSBC 42, the panel found that the respondent failed to respond to repeated requests from Law Society staff and to communications from another lawyer concerning the status of a client's file. He failed to transfer that file to the lawyer. The respondent had a previous disciplinary record, including a previous citation and three conduct reviews for failures to respond to other lawyers and the Law Society. The respondent was suspended for one month with specific practice conditions.
- [51] In *Law Society of BC v. Williamson*, 2005 LSBC 19, the panel found that the respondent failed to serve his client appropriately, failed to respond to correspondence from the Law Society and other counsel and failed to deliver a completed accountant's report to the Law Society. The panel found that these failures amounted to a "serious and consistent pattern of failure ... attributable to a short period of depressive episodes plus procrastination ..." The panel ordered a 45-day suspension plus practice supervision on the respondent's return to practice. The respondent's professional conduct record consisted of two conduct reviews and a referral to Practice Standards, all relating to failures to respond to the Law Society and other delays.

Effect of suspension on sole practitioners and their clients

- [52] The Law Society submits that the fact that a respondent is a sole practitioner or practising in a small or remote community is not an appropriate consideration in determining the appropriate sanction. Further, the type of sanction imposed must reflect the seriousness of the misconduct, despite the adverse effect on the respondent.
- [53] In *Law Society of BC v. Bauder*, 2013 LSBC 07, para. 19, the panel accepted that a suspension is not, by definition, a more serious sanction for a sole practitioner than

a lawyer practising in a large law firm. The panel noted that other panels have given some weight to the impact a suspension may have on a sole practitioner, but suspensions were still imposed where warranted.

- [54] In *Law Society of BC v. Siebenga*, 2015 LSBC 44, the panel endorsed *Bauder* and explained at para. 67 that “firm size is not enough to avoid a suspension. Otherwise, size would immunize a class of lawyers from suspension.”
- [55] In *Law Society of BC v. McCandless*, 2003 LSBC 44, the single Benchers hearing panel accepted a conditional admission and imposed a one-month suspension. The panel explained at para. 11 that “we cannot have members thinking that they will be treated differently just because they happen to choose a particular practice arrangement.”
- [56] The Law Society also submits that, when determining an appropriate sanction, the Panel may appropriately consider the prejudice to clients arising from a suspension. Further, the Law Society submits that the protection of clients is properly addressed by either adjusting the timing of the suspension or taking other available steps such as locum or custodianship arrangements.
- [57] In *Law Society of BC v. Hill*, 2011 LSBC 16, para. 16, the panel delayed the start of a suspension by two months because of the respondent’s scheduled trial commitments. The panel accepted that the respondent’s clients would be prejudiced if they were forced to find replacement counsel on short notice.
- [58] In *Law Society of BC v. Dhindsa*, 2019 LSBC 36, the panel discussed the differences in disciplinary proceedings and criminal sentencing. It adopted the following passage from *Law Society of Upper Canada v. Kazman*, 2008 ONLSAP 7, quoted by the Saskatchewan Court of Appeal in *Merchant v. Law Society of Saskatchewan*, 2014 SKCA 56, at para. 119:
- A criminal court judge ... is rarely concerned with the collective reputation of an accused’s peer group but is free to focus instead on the individual accused to the exclusion of most other considerations. On the other hand, law society discipline panelists must always take into account the collective reputation of the accused licensee’s peer group -- the legal profession. ... This is a major difference between the criminal court process and a law society’s discipline process.
- [59] The Respondent submits that, in criminal matters, sentencing judges often take into account the accused’s personal circumstances in tailoring specific sentences. The

Respondent asks the Panel to consider incorporating “compassion” when determining the appropriate “sentence”.

- [60] The Panel adopts the reasoning in *Dhindsa* and *Merchant* in distinguishing between disciplinary proceedings and criminal sentencing. We are not focused solely on crafting an appropriate sanction to fit the Respondent’s particular circumstances. Primarily, we focus on ensuring an appropriate sanction that promotes high ethical standards within the legal profession. As the *Act* provides, the goal of rehabilitating lawyers is secondary to the goal of protecting the public interest.
- [61] We agree that the public interest requires appropriate disciplinary action to reflect the seriousness of the misconduct and the particular circumstances of the allegations. The facts that the Respondent is a sole practitioner and is facing particularly difficult personal circumstances are not overriding factors that determine the appropriate sanction.
- [62] The Panel also agrees that, if a suspension is to be ordered, we should consider the prejudice to any clients resulting from imposing a suspension. We understand from counsel that the Respondent recently took time off from practising law to attend to her personal circumstances, including caring for her spouse. While we were advised that she took approximately two months off, which reduced the Respondent’s income, we were not otherwise advised of any prejudice to clients from the Respondent being absent from practice for two months.
- [63] The Law Society also requests that, if the Panel is to order a suspension, any suspension start on the first of the month immediately following the month in which the decision is issued unless it is so late in the month that the Respondent’s clients cannot be properly protected.
- [64] The Respondent submits that a suspension is not an appropriate order given her personal circumstances. However, if the Panel is to order a suspension, the Respondent asks for 60 days before the start of any suspension.

Conclusion

- [65] In all of the circumstances of this case, we conclude that a suspension is required. We order that the Respondent is suspended from the practice of law for 45 days beginning May 1, 2020. Further, we find that the protection of the public and the Respondent’s clients requires that the Practice Standards Committee is engaged with her in establishing better practices in her delivery of legal services.

COSTS

- [66] The Law Society seeks costs in the amount of \$6,347.05 inclusive of disbursements, as set out in the draft bill of costs provided to the Panel, with two months to pay.
- [67] The Respondent submits that the amount of costs be reduced at the Panel's discretion to reflect a much lower amount, particularly if a fine is ordered. The Respondent asks for two months to pay.
- [68] Rule 5-11 of the Law Society Rules grants the hearing panel discretion to make an order of costs against the respondent, including time to pay. Rule 5-11(3) requires the panel to have regard to the Tariff of Costs in Schedule 4. If it is reasonable and appropriate to do so, Rule 5-11(4) provides the panel with discretion to order costs in an amount different from that set out in the Tariff of Costs.
- [69] The Law Society has submitted a draft bill of costs based on the Tariff of Costs. The general purpose of an award of costs is to partially indemnify the Law Society for costs incurred in conducting a proceeding. The Law Society explained that the Tariff of Costs does not provide a full indemnity for its actual expenses. Rather, it provides predictability and consistency across similar cases and ensures that costs awards will be reasonable.
- [70] The Panel agrees that the Law Society is entitled to its costs. The Law Society was successful in proving the elements of the citation against the Respondent. We see no reason to depart from the usual rule in litigation that the successful party is entitled to costs of the proceeding.

NON-DISCLOSURE ORDER

- [71] The Law Society seeks an order under Rule 5-8(2) that portions of the transcript and the exhibits that contain confidential client information or privileged information not be disclosed to members of the public. The Respondent raised no objections.
- [72] Rule 5-8(5) requires a hearing panel to give written reasons for its decision to make an order, or decline to make an order.
- [73] In order to prevent the disclosure of confidential or privileged information to the public, the Law Society seeks an order under Rule 5-8(2) excluding all confidential or privileged information from disclosure to the public. If a member of the public requests copies of the exhibits or transcripts in these proceedings, those exhibits

and transcripts should be redacted for confidential or privileged information before being provided to the public.

[74] It is well-known that the Law Society has the right to override a lawyer's duty to keep client confidentiality and to maintain solicitor-client privilege by compelling lawyers to produce confidential and privileged information to the Law Society during its investigation and hearing processes. Sections 87 and 88 of the *Act* protect confidential and privileged information from disclosure beyond what is necessary for investigations and hearings.

[75] The Panel agrees that client confidentiality and solicitor-client privilege are important consideration principles that should be respected.

DISCIPLINARY AND COST ORDERS

[76] Based on our reasons above, the Panel makes the following orders:

- (a) The Respondent is suspended from the practice of law for a period of 45 days, commencing on May 1, 2020 or as otherwise agreed to between the parties;
- (b) The Respondent is referred to the Practice Standards Committee and is to abide by its directions and orders and remain under its jurisdiction until released by that Committee;
- (c) If any person other than a party seeks to obtain a copy of a transcript of these proceedings or any exhibits filed in these proceedings, any client names or identifying information and any information protected by solicitor-client privilege are to be redacted from the transcript or exhibit before being disclosed to that person; and
- (d) The Respondent must pay costs of \$6,347.05 to the Law Society on or before May 1, 2020 or as otherwise agreed to between the parties.