

2020 LSBC 24
Decision issued: June 4, 2020
Citation issued: July 19, 2019

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

Written materials: April 3, 2020 (Respondent)
April 23, 2020 (Law Society)

Panel: Craig A.B. Ferris, QC, Chair
Lindsay R. LeBlanc, Lawyer
Laura Nashman, Public representative

Discipline Counsel: Tara McPhail
Counsel for the Respondent: J.M. Peter Firestone

BACKGROUND

[1] On July 19, 2019, a citation was issued against the Respondent (the “Citation”) directing that this Panel inquire into the Respondent’s conduct as follows:

1. Between approximately December 14, 2017 and December 12, 2018, in the course of representing CC in a family law matter, you failed to provide your client with the quality of service at least equal to that which is generally expected of a competent lawyer in a like situation. In particular, you failed to do one or both of the following in respect of an order granted by the

Honourable Judge Brooks on June 23, 2017, in BC Provincial Court Action No. [number] (the “Brooks Order”):

- (a) promptly sign the Brooks Order; and
- (b) take steps to have the Brooks Order entered in a timely manner;

contrary to one or both of rule 3.2-1 and commentary [5] of rule 5.1-2 of the *Code of Professional Conduct for British Columbia*.

2. Between approximately December 14, 2017 and December 12, 2018, in the course of representing CC in a family law matter, you failed to act courteously and in good faith when dealing with opposing counsel in respect of an order granted by the Honourable Judge Mrozinski on July 20, 2017, in BC Provincial Court Action No. [number], when you did not take steps to have the order entered in a timely manner, contrary to rule 7.2-1 of the *Code of Professional Conduct for British Columbia*.
 3. Between approximately February 1, 2018 and December 12, 2018, in the course of representing CC in a family law matter, you failed to answer with reasonable promptness some or all of communications dated February 1, 2018, February 21, 2018, March 23, 2018, April 15, 2018, May 15, 2018 and September 3, 2018, from the opposing party that required a response, contrary to rule 7.2-5 of the *Code of Professional Conduct for British Columbia*.
- [2] It was alleged that the conduct set out in each of the allegations constituted professional misconduct pursuant to section 38(4) of the *Legal Profession Act*.
- [3] Pursuant to a Practice Direction issued April 6, 2018, the Respondent and the Law Society have requested to conduct the hearing on the written record rather than have an oral hearing. That Order was granted on May 5, 2020.
- [4] This matter comes before the Panel pursuant to Rule 4-30, which provides that the Respondent can make a conditional admission of professional misconduct and consent to proposed disciplinary action. Rule 4-30 requires that a hearing panel consider the conditional admission and proposal and, if the panel finds them acceptable, impose the proposed disciplinary action.
- [5] The Respondent admits that her conduct as set out in the Citation is a marked departure from the standard the Law Society expects of lawyers and constitutes professional misconduct.

- [6] The Respondent proposed disciplinary action comprising a one-month suspension and costs of \$1,000.
- [7] The Discipline Committee of the Law Society has considered and accepted the Respondent's Rule 4-30 proposal and, pursuant to Rule 4-30(4), instructed discipline counsel to recommend the acceptance of the proposal to the Panel.
- [8] For the reasons that follow, the Panel finds that the Respondent's conduct constitutes professional misconduct and accepts the proposed disciplinary action as being appropriate.

FACTS

- [9] The Citation was authorized on July 11, 2019 and issued on July 19, 2019.
- [10] The Respondent admits being served with the Citation.
- [11] The Respondent is 62 years old and was called and admitted as a member of the Law Society of British Columbia on May 15, 1992. She practises primarily in the areas of family law, and wills and estates.

The Brook Order

- [12] In or about April 2014, the Respondent was retained to represent CC (the "Client") in Provincial Court family proceedings involving the Client's former spouse, MF.
- [13] Following a June 3, 2017 appearance, the Honourable Judge Brooks made orders regarding child support, parenting time, the sharing of financial information and extraordinary expenses (the "Brooks Order"). The Respondent was responsible for preparing and entering the Brooks Order.
- [14] On August 4, 2017, the Respondent sent a lawyer, MK, a draft of the Brooks Order.
- [15] On September 8, 2017, MK emailed the Respondent and requested changes to the draft Brooks Order. On November 22, 2017, the Respondent redrafted the Brooks Order in accordance with the clerk's notes. On November 27, 2017, the Respondent sent her redrafted and unsigned form of the Brooks Order to MK.
- [16] On December 14, 2017, MK sent the Respondent the endorsed Brooks Order and requested a copy once entered.
- [17] The Respondent subsequently received six separate emails from MK and MF, inquiring as to whether the Respondent had entered the Brooks Order, between

February, 2018 and September 3, 2018. The Respondent did not respond to any of them.

- [18] On November 1, 2018, the parties appeared before the Honourable Judge Lowe, who varied the Brooks Order. Because the Brooks Order had not been entered, the Honourable Judge Lowe relied on the clerk's notes from the hearing before the Honourable Judge Brooks in order to pronounce his order.
- [19] Despite having received the above-noted communications from MK and MF, the Respondent says that she did not realize the Brooks Order had not been entered until the parties appeared before the Honourable Judge Lowe.
- [20] In order to enter the Brooks Order, the Respondent required that MK re-endorse the order. On or about December 19, 2018, MK did so, and sent the Brooks Order to the Respondent for filing. The Respondent filed the Brooks Order on January 21, 2019 and emailed a copy of the entered order to MK, MF and the Client on January 23, 2019.

The Mrozinski Order

- [21] On July 20, 2017, the parties appeared before the Honourable Judge Mrozinski, who made orders regarding holiday parenting time for MF for August 2017 (the "Mrozinski Order"). MK was responsible for preparing the Mrozinski Order.
- [22] The same day, MK emailed the Respondent a copy of the draft Mrozinski Order. On August 4, 2017, the Respondent returned the draft Mrozinski Order with her endorsement.
- [23] On September 8, 2017, MK's paralegal advised the Respondent that the Mrozinski Order had been prepared on the incorrect form and that the Respondent would receive a corrected version for her signature. On September 12, 2017, MK's paralegal sent the Respondent a copy of the corrected Mrozinski Order and requested that she sign and return it to her.
- [24] On November 27, 2017, the Respondent sent MK an endorsed copy of the corrected Mrozinski Order along with the Respondent's redrafted and unsigned form of the Brooks Order.
- [25] On December 14, 2017, MK returned endorsed copies of the Brooks Order and the Mrozinski Order to the Respondent and added that she looked forward to receiving entered copies of the orders in due course.

[26] The Respondent did not respond to MK’s letter of December 14, 2017 or take steps to sign the Brooks Order or to have the Brooks Order and the Mrozinski Order entered.

[27] The Respondent entered the Mrozinski Order on January 17, 2019.

ONUS AND STANDARD OF PROOF

[28] The Law Society has the onus of proving the allegations in the Citation, and the standard of proof is the balance of probabilities: *Foo v. Law Society of BC*, 2017 BCCA 151, at para. 63 and *Law Society of BC v. Schauble*, 2009 LSBC 11, at para. 43.

PROFESSIONAL MISCONDUCT

[29] The test for what constitutes professional misconduct is “whether the facts as made out disclose a marked departure from that conduct the Law Society expects of its members”: *Law Society of BC v. Martin*, 2005 LSBC 16, at para. 171.

[30] The Citation engages rules 3.1-2 (Competence), 5.1-2 (Advocacy – Duty to Sign Orders) and 7.2-5 (Responsibilities to Lawyers – Responding with Promptness) of the *Code*.

[31] “Competent lawyer” is defined in rule 3.1-1 of the *Code*, and includes:

a lawyer who has and applies relevant knowledge, skills, and attributes in a manner appropriate to each matter undertaken on behalf of a client and the nature and terms of the lawyer’s engagement, including: ...

- (d) communicating at all relevant stages of a matter in a timely and effective manner; ...
- (g) complying in letter and spirit with all rules pertaining to the appropriate professional conduct of lawyers;
- (h) recognizing limitations in one’s ability to handle a matter or some aspect of it and taking steps accordingly to ensure the client is appropriately served;
- (i) managing one’s practice effectively; ...

- [32] Rule 3.1-2 of the *Code* states, “A lawyer must perform all legal services undertaken on a client’s behalf to the standard of a competent lawyer.”
- [33] Rule 3.2-1 adds, “The quality of service required of a lawyer is service that is competent, timely, conscientious, diligent, efficient and civil.” Further commentary on this is provided in the *Code*.
- [34] The Respondent failed to have the Brooks Order and the Mrozinski Order entered in a timely manner. This is compounded by the Respondent’s failure to answer with reasonable promptness the numerous inquiries regarding the status of the two orders.
- [35] The lack of response and failure to have the two orders entered is inexcusable.
- [36] Commentary 5 of Rule 5.1-2 requires, in the absence of reasonable objection, that a lawyer promptly sign appropriately drafted orders that have been granted. The prompt entering of orders when reasonable to do so is expected and required to properly advance a file.
- [37] Rule 7.2-5 requires a lawyer to answer with reasonable promptness all professional letters and communication from another lawyer that requires an answer and to be punctual in fulfilling all commitments.
- [38] The Respondent’s conduct in respect of the allegations contained in the Citation does amount to a marked departure from the standard of conduct that the Law Society expects of lawyers, and as such, does constitute professional misconduct.

APPROPRIATENESS OF PROPOSED DISCIPLINARY ACTION

- [39] The role of this Panel is to accept or reject the proposed disciplinary action. The proposal is a one-month suspension and costs payable of \$1,000.
- [40] 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 *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”.
- [41] Section 38 of the *Legal Profession Act* states that, where a hearing panel finds, as this Panel has, that a lawyer’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 until 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.

[42] 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 fulfill its regulatory role in ensuring the general integrity and competence of lawyers.

[43] 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 13 non-exhaustive factors set out in *Law Society of BC v. Ogilvie*, 1999 LSBC 17."

[44] 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.

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

- (a) the nature and gravity of the conduct proven;
- (b) character and professional conduct record of the Respondent;
- (c) acknowledgement of the misconduct;
- (d) the need to ensure the public's confidence in the integrity of the profession;
- (e) the range of penalties imposed in similar cases; and

(f) the Respondent's personal circumstances.

[46] The Respondent agrees with the Law Society; however, adds that consideration should also be given to whether the Citation ought to have been considered with a separate citation that was the subject of a disciplinary decision issued February 13, 2020 and indexed as *Law Society of BC v. Buchan*, 2020 LSBC 07 (“*Buchan #1*”). The Respondent also places an emphasis on her personal circumstances and asks that the Panel consider the same.

Principles regarding global penalties

[47] In *Buchan #1*, the Respondent was suspended for 45 days, referred to the Practice Standards Committee and ordered to pay costs of \$6,347.05.

[48] The *Buchan #1* decision followed a Facts and Determination decision indexed as 2019 LSBC 18, where the panel determined that the Respondent committed professional misconduct by:

- (a) failing to sign an appropriately drafted consent order on two separate occasions; and
- (b) failing to answer with reasonable promptness communication from opposing counsel over a five-month period in 2017.

[49] In the *Buchan #1* decision, the panel applied a global approach to the penalty and suspended the Respondent for 45 days.

[50] This Panel has considered the incidents in the Citation globally, following the approach in *Law Society of BC v. Gellert*, 2014 LSBC 05 at para. 37:

In cases involving multiple allegations of professional misconduct and/or rule breaches, the usual approach is to arrive at a disciplinary action that is suitable for all of the incidents viewed globally (*Gellert*, 2005 LSBC 15, para. 22; *Law Society of BC v. Basi*, 2005 LSBC 01, para. 2; *Law Society of BC v. Markovitz*, 2012 LSBC 25, para. 13; *Law Society of BC v. Lessing*, 2013 LSBC 29, paras. 75-78). A global approach tends to carry with it the benefit of simplicity and will, in most cases, be particularly well-suited to arriving at a result that furthers the objective of protecting the public. After all, the extent to which the public needs protection, and the manner by which such protection is best provided, must ultimately relate to the entire scope of the misconduct in issue and not to each particular wrongdoing viewed piecemeal.

- [51] The Respondent has exhibited a serious pattern of misconduct. The Respondent failed in her duty to enter two court orders. The Respondent compounded this wrongdoing by failing to respond to the numerous requests for a response on the status of the orders. This unnecessarily delayed and increased the cost of the litigation for MF and wasted valuable court resources.
- [52] The Respondent submits that the joint proposal of a 30-day suspension combined with the 45-day suspension from the prior citation is supportable as the incidents are similar in that they involve failures to sign and enter properly drafted orders and a general failure to respond and communicate with counsel.
- [53] The Panel has given weight to a global penalty, taking into account the *Buchan #1* penalty. In the two citations, the timing of the incidents are relatively similar and the misconduct relates to similar acts. The combined penalty will be a 75-day suspension, which is supportable after consideration of the *Ogilvie* factors described below. This is an unusual case with the nature of the two citations being so closely linked. The Panel notes that, had the citations not been so closely linked in time and manner of misconduct and had this matter not come by way of Rule 4-30, the principles of progressive discipline would have favoured a longer suspension.
- [54] Further support for the global penalty is that the penalty in *Buchan #1* was released after the misconduct in this Citation, so the Respondent did not have an opportunity to learn and adjust from the prior penalty.

The nature and gravity of the conduct proven

- [55] The Respondent's misconduct was serious. Without reasonable excuse, the Respondent failed to take steps to enter two court orders for approximately 12 months and failed to respond to six communications over approximately ten months regarding the status of these orders.
- [56] The legal profession is obligated to reply reasonably promptly to communications from other lawyers. Without such an obligation the administration of justice becomes more expensive and unnecessarily delayed and the public suffers.
- [57] Similarly, it is the responsibility of lawyers to ensure that orders, once properly drafted and the form consented to, are promptly entered. This assists the courts and ensures a proper record in the court file.

Acknowledgement of the misconduct

[58] The Respondent has acknowledged the misconduct and cooperated with the investigation and this is a mitigating factor.

Character and professional conduct record of the Respondent

[59] The Respondent was admitted as a member of the Law Society of British Columbia on May 15, 1992 and at the time of the misconduct was a 26-year call.

[60] The Respondent's conduct record is significant and evidences a serious pattern of poor file management, poor client service and failures to respond to communications from other lawyers.

[61] The Respondent's professional conduct record is as follows:

1. Recommendations made by the Practice Standards Committee in 2007 aimed at improving the Respondent's standard of practice as concerns client management and file delay issues. The Recommendations included the following:
 - (a) Every open file must be diarized with a task, either to send a letter or make a phone call saying that you are still around or sending an invoice.
 - (b) Monthly file reviews - meet with your office staff and juniors once a month to review every file. At the end of the meeting, each open file must have had some activity in the last month.
 - (c) Every third monthly meeting, review your open file list and terminate the retainer for the most difficult client on the list. In the past, we found this recommendation to be [sic] those most effective to lawyers.

The Practice Standards Committee closed the Respondent's file at its meeting on September 4, 2008. Notably, the Minutes state:

The Committee noted with concern that Ms. Buchan had failed to provide the Progress Reports/Action Plans on their due dates, and failed to respond to communications from the Practice Standards Department promptly.

The Committee directed, in part, that its concerns about the Respondent's failure to provide Progress Reports/Action Plans to the Law Society as required, and her failure to respond to communications from the Law Society promptly, be expressed to the Respondent.

2. Conduct Review ordered in May 2011 with respect to delay and quality of service issues related to the handling of a client's matter and the Respondent's failure to respond in a substantive and timely manner to communications from the Law Society. The Subcommittee advised the Respondent, in part, to consistently follow the Recommendations that she had previously received from the Practice Standards Committee.
3. Citation issued December 4, 2012 with respect to the Respondent's failure to respond substantively to communications from the Law Society. The Citation proceeded by way of a summary hearing under what was then Rule 4-24.1, now Rule 4-33. The Respondent was fined \$3,000 and ordered to pay \$1,000 in costs. In the decision released March 6, 2013, the panel noted that this was not the first time that issues had arisen about the Respondent's responsiveness to letters from the Law Society.
4. Conduct Review ordered July 11, 2013 with respect to the Respondent's delay and poor quality of service related to the handling of a client's matter. The Subcommittee's report noted that the Respondent had a disciplinary history relating to concerns of quality of service and stated that, in the opinion of the Subcommittee, the Respondent had failed to respond to prior remedial and disciplinary actions by the Law Society.
5. Also on July 11, 2013, the Respondent was directed to attend another Conduct Review regarding her delay and poor quality of service related to the handling of another client's matter. The Subcommittee, which was the same as the Subcommittee for the conduct review identified above, repeated the comments noted above.
6. *Buchan #1* - Citation issued August 29, 2018 with respect to the Respondent's failure to promptly sign two court orders and to respond to communications from opposing counsel about same that required a response. In the decision issued May 22, 2019, the hearing panel determined that the Respondent's conduct amounted to professional misconduct. In the sanction decision issued February 13, 2020, the Respondent was suspended for 45 days (which suspension was set to begin May 1, 2020) and referred to Practice Standards.

[62] The Respondent has provided the Panel with two letters of reference. The first is from a family law lawyer and the second from a social worker and cardiologist at Providence Health Care. These letters of reference are briefly summarized as follows:

- (a) KB: is aware of the subject matter of the Citation and is supportive of the Respondent's rehabilitation. KB has been working with the Respondent on an action plan to implement best practices for her practice;
- (b) PHC: explains the nature of the Respondent's spouse's health condition, including the need for a heart transplant, which he received on September 19, 2019. Indicates that the Respondent fulfilled a caregiver role for her husband which necessitated a leave of absence from work.

[63] The Respondent submits that she has admitted to her conduct and has cooperated in the investigation, which the Panel recognizes.

[64] The professional conduct record is an aggravating factor and the Panel has stated above its findings with respect to the considerations given to progressive discipline.

Public confidence in the profession and the disciplinary process

[65] The panel in *Law Society of B.C. v. Kim*, 2019 LSBC 43, at para. 78, discussed what is required to maintain the public's confidence in the legal profession:

To maintain public confidence in the trustworthiness of lawyers, the Law Society must respond firmly — and be perceived to respond firmly — to instances where lawyers fail to fulfill their duties to clients for reasons of expediency and convenience. The public will have greater confidence in Law Society disciplinary processes when the sanctions are proportionate, fair and reasonable in all of the circumstances, including the range of sanctions levied in prior similar cases.

[66] The public must have confidence in lawyers and the protection of the public requires lawyers to sign appropriately drafted court orders promptly and respond to communication promptly. This is a cornerstone of an effective justice system.

Respondent's personal circumstances

[67] The Respondent cites the medical condition of her husband as being a contributing factor to the misconduct. The Law Society submits that the medical condition of the Respondent's husband was canvassed in *Buchan #1* and that those issues have

been addressed. As this hearing is proceeding in writing, we agree with the Law Society. The Respondent's personal circumstances are neither a mitigating nor aggravating factor in this decision.

Range of penalties imposed in similar cases

- [68] The Law Society has submitted that, apart from *Buchan #1*, there is limited case law relating to similar cases.
- [69] The Law Society has directed our attention to a number of cases; however, we do not find them overly helpful in the determination we must make. Considering all of the factors listed above, the need to protect the public and applying a global approach to the misconduct in this Citation, along with the citation contained in *Buchan #1*, we have found that a 30-day suspension combined with the prior 45-day suspension is a proportionate penalty.

NON-DISCLOSURE ORDER

- [70] The Law Society requested an order under Rule 5-8(2) of the Rules that exhibits containing confidential client information or privileged information not be disclosed to members of the public. The Respondent consents to the order.
- [71] 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 makes a request for copies of the exhibits in these proceedings, those exhibits must be redacted for confidential or privileged information before being provided.

COSTS

- [72] Costs in the amount of \$1,000 are proposed.
- [73] The range presented in the tariff applicable to hearings under Rule 4-30 is \$1,000 to \$3,500.
- [74] While at the low end of the tariff, it is within the range of acceptable awards, and the Panel accepts the proposed costs award of \$1,000. The Panel thanks the parties for adapting during the pandemic and proceeding by way of written submission.

SUMMARY OF ORDERS MADE

[75] The Law Society has proven the Respondent committed professional misconduct with respect to the Citation. The Panel has concluded that the proposed disciplinary action is fair and reasonable in all of the circumstances, and the proposed penalty is accepted.

[76] The Panel makes the following orders:

- (a) The Respondent has committed conduct that constitutes professional misconduct in relation to the allegations in the Citation;
- (b) The Executive Director is instructed to record the Respondent's admission on her professional conduct record;
- (c) The Respondent is suspended from the practice of law for 30 days beginning on June 16, 2020;
- (d) The Respondent is to pay to the Law Society costs in the amount of \$1,000 on or before December 31, 2020; and
- (e) if a member of the public makes a request for copies of the exhibits in these proceedings, those exhibits must be redacted for confidential or privileged information before being provided.