

2015 LSBC 47

Decision issued: November 3, 2015

Citation issued: November 19, 2013

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

KEVIN ALEXANDER MCLEAN

RESPONDENT

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

Hearing dates: March 6 and June 5, 2015

Panel: Elizabeth J. Rowbotham, Chair
Paula Cayley, Public representative
Carol Hickman, QC, Lawyer

Discipline Counsel: Alison Kirby
No on appearing on behalf of the Respondent

BACKGROUND

[1] Mr. McLean (the “Respondent”) was called and admitted to the Law Society of British Columbia (the “Law Society”) in 2010.

[2] On November 19, 2013 a citation was issued that alleged that:

1. In the course of representing your client, Mr. A, in a matter arising from a motor vehicle accident, you failed to respond promptly to some or all of the following communications, that required a response, from your client’s former counsel, Lawyer B regarding imposed trust conditions and the client file contrary to Chapter 11, Rule 6 of the *Professional Conduct Handbook* then in force:

- (a) letters dated August 8, 2012, August 29, 2012, October 3, 2012, and November 19, 2012; and
- (b) telephone messages left on December 6, 2012, December 7, 2012 and December 10, 2012.

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

- [3] On January 12, 2015, this Panel issued its decision on Facts and Determination (the “F & D Decision”), 2015 LSBC 01. We found that the conduct of the Respondent constituted professional misconduct.
- [4] As mentioned below, the Respondent is involved in civil litigation with the Law Society and has raised a constitutional question that has the potential to engage the Attorney General of British Columbia in the civil proceedings. Some of the letters referred to below include the Attorney General of British Columbia as an addressee.
- [5] The Chair of this Panel is a lawyer with the Ministry of Justice and Attorney General. At both the March 6 hearing and the June 5 hearing, the Chair disclosed this fact, which is a matter of public knowledge, and advised that she has no involvement or access to any file the Ministry of Justice and Attorney General may have regarding the litigation between the Respondent and the Law Society and any constitutional question that may be raised. Counsel for the Law Society had no objections. The Respondent did not attend the hearing.

DECISION TO PROCEED IN THE ABSENCE OF THE RESPONDENT

March 6, 2015 hearing on Disciplinary action

- [6] As set out in the F & D Decision, on July 28, 2014 and via email, the Respondent advised the Law Society that he had been hit by a cyclist and would be kept overnight in the hospital. In that email, the Respondent stated that he would “send the supporting documentation as to why I will not be able to attend tomorrow.”
- [7] The Respondent failed to attend the July 29, 2014 hearing on facts and determination.
- [8] On July 29, 2014, the Panel decided to adjourn the hearing of this matter to September 24, 2014. The September 24, 2014 date was made preemptory on the Respondent. The Panel also ordered the Respondent to deliver to the Law Society,

by August 22, 2014, supporting documentation as to why he was unable to attend the hearing on July 29, 2014, including confirmation of his medical condition and admission to the hospital on July 28, 2014.

- [9] This Panel reconvened on September 24, 2014. The Respondent did not appear. The Respondent had not complied with the Panel's July 29, 2014 order to provide documentation regarding his medical condition and admission to the hospital on July 28, 2014. This Panel proceeded with the hearing on Facts and Determination on September 24, 2014 and issued its written decision on January 12, 2015.
- [10] On January 2, 2015, and in the context of litigation the Respondent has commenced against the Law Society, the Respondent wrote to, among others, the Minister of Justice and Attorney General of British Columbia and the Deputy Attorney General, Ministry of Justice. In that letter the Respondent stated that his father was ill and that he will not be available to attend any hearing or discovery if it is set over the next month.
- [11] On January 20, 2015, as the Respondent had not paid his annual fees, the Executive Director directed under Rule 4-4.2(4)¹ that the Respondent was to continue as a member not in good standing and not permitted to practise law.
- [12] On January 23, 2015, and in the context of litigation the Respondent has commenced against the Law Society, the Respondent wrote a further letter to, among others, the Minister of Justice and Attorney General of British Columbia and the Deputy Attorney General, Ministry of Justice. In that letter the Respondent stated that his father was ill and that he "will not be available for any discoveries, hearings, LSBC correspondence et al but for the hearing of the constitutional question [in the civil action between the Respondent and the Law Society]."
- [13] By fax transmittal dated February 10, 2015, the Respondent sent a document entitled "Notice of Review for Decision 2015 LSBC 01 (The "Impugned Decision")."² 2015 LSBC 01 is the F & D Decision of this Panel. This Panel has no knowledge or information of the status of Notice to Review and makes no further comments on the Notice to Review.
- [14] By fax and hand delivery on February 13, 2015, the Respondent delivered a letter to the Law Society advising that he will be continuing to attend his father "for the next several months (or more)" and that he would inform the Law Society when he was in a position to tender submissions for the Notice of Review.

¹ The Law Society Rules in effect at the time; the current rule is 4-6(4).

² Exhibit 12, Affidavit #4, K. Shaben.

- [15] Also on February 13, 2015 the Hearing Administrator advised the Respondent of the hearing date and time of the hearing on disciplinary action by mailing the Notice of Hearing to him at his last known business, residential and electronic addresses.³
- [16] On February 21, 2015, the Respondent wrote to the Law Society regarding correspondence he had received from the Law Society about the Notice of Review. The Respondent stated that he had made it “quite clear” to the Law Society that he was taking substantial time away to assist his father and “there is no need to mail me while I am away.”
- [17] On February 25, 2015, discipline counsel wrote to the Respondent reminding the Respondent of the hearing date for the hearing on disciplinary action and the possibility that the Hearing Panel may proceed with the hearing in the Respondent’s absence; she also advised the Respondent that the Law Society would be recommending a fine of \$10,000 and costs in the amount of \$15,860. In addition, in that letter discipline counsel acknowledged the Respondent’s letters of February 13, 2015 and advised the Respondent that, if he wished to apply for an adjournment of the March 6, 2015 hearing on disciplinary action he could do so.⁴
- [18] On March 4, 2015, the Respondent wrote the Law Society in relation to the civil litigation between the Respondent and the Law Society. The purpose of that letter was to demand that certain particulars relating to the litigation between the Respondent and the Law Society be provided to the Respondent by March 14, 2015.
- [19] The Respondent did not appear at the hearing on disciplinary action on March 6, 2015.
- [20] The Panel allowed additional time for the Respondent to appear. He did not do so.
- [21] Rule 10-1 in effect at the time provided in part as follows regarding service:

Service and notice

- 10-1(1)** A lawyer, former lawyer, articled student or applicant may be served with a notice or other document personally, by leaving it at his or her place of business or by sending it by
- (a) registered mail, ordinary mail or courier to his or her last known business or residential address,
- ...

³ Exhibit 11, Affidavit of Service of M. Robertson.

⁴ Exhibit 12, Affidavit # 4, K. Shaben.

- (c) electronic mail to his or her last known electronic mail address, or
- (d) any of the means referred to in paragraphs (a) to (c) to the place of business of his or her counsel or personal representative or to an address given to discipline counsel by a respondent for delivery of documents relating to a citation.

...

- (3) A document sent by ordinary mail is deemed to be served 7 days after it is sent.

...

- (3.2) A document sent by electronic facsimile or electronic mail is deemed to be served on the next business day after it is sent.
- (4) Any person may be notified of any matter by ordinary mail, electronic facsimile or electronic mail to the person's last known address.

[22] Section 42(2) of the *Legal Profession Act* ("the Act") states that a panel may proceed, in the absence of a respondent, if the panel is satisfied that the respondent has been served with notice of the hearing.

[23] The Panel exercised its discretion under section 42(2) of the Act and decided to proceed in the Respondent's absence. The Panel found that the Respondent had been properly served, had notice of this hearing on disciplinary action, and had been advised of the rules governing adjournment.

[24] As mentioned, discipline counsel was seeking a fine and costs for the Respondent's professional misconduct as found by this Panel in the F & D Decision.

[25] However, in the course of hearing submissions from discipline counsel, this Panel asked if counsel had considered disciplinary action based on ungovernability pursuant to Rule 4-35(5) and (6)⁵. The Panel adjourned the hearing to provide counsel with an opportunity to consider whether it wished to make submissions on that issue.

June 5 2015 hearing continuation on disciplinary action

[26] On March 19, 20, 2015, the Law Society sent a letter to the Respondent advising him that the hearing on disciplinary action would continue on June 5, 2015. The letter was sent to the Respondent at his last known physical addresses.⁶ The letter

⁵ The current rule is 4-44(6) and (7).

⁶ Exhibit 16, Affidavit #4, M. Robertson.

also advised the Respondent that he could apply under Rule 4-29(5)⁷ for an adjournment.

- [27] On March 20, 2015, discipline counsel wrote to the Respondent at his last known addresses and facsimile number. Discipline counsel confirmed June 5, 2015 as the date set for continuation of the hearing on disciplinary action, informed the Respondent that ungovernability may be raised as an issue, and reminded the Respondent that, if he failed to appear at the hearing, the Hearing Panel may proceed in the Respondent's absence.⁸
- [28] On April 10, 2015 and pursuant to Rule 4-4.2(7),⁹ the Executive Director of the Law Society rescinded his direction of January 20, 2015. The effect of that direction had been that the Respondent continued to be a member of the Law Society but one not in good standing and not permitted to engage in the practice of law. As a result of the rescission of the direction, the Respondent ceased to be a member of the Law Society on April 10, 2015.
- [29] On May 15, 2015 discipline counsel wrote to the Respondent enclosing her further submissions and authorities. She also reminded the Respondent that the disciplinary action hearing was scheduled to continue on Friday, June 5, 2015 and that, if the Respondent failed to appear, the Hearing Panel may proceed in his absence. This letter was couriered to the Respondent's last known home address and mailed to his last known business address.¹⁰
- [30] On May 28, 2015, during the lunch recess of a hearing in the civil litigation between the Respondent and the Law Society, a similar letter was hand delivered to the Respondent.¹¹
- [31] By letter dated June 3, 2015, (which appears to have been received by the Law Society by facsimile the morning of June 4, 2015) the Respondent wrote to the Law Society advising that he had been served with a volume of materials regarding a citation. The Respondent advised that he intended to appear to speak to the matter but that his father's illness had taken a turn for the worse and that he intended to spend time with him.¹²

⁷ The current rule is 4-40(5).

⁸ Exhibit 19, Affidavit #3, C. Gejdos.

⁹ The current rule is 4-6(7).

¹⁰ Exhibit 19, Affidavit #3, C. Gejdos.

¹¹ Exhibit 18, Affidavit of Service, May 28, 2015.

¹² Exhibit 19, Affidavit #3, C. Gejdos.

- [32] Also by letter dated June 3, 2015 (and received by the Law Society the morning of June 4, 2015 by facsimile), the Respondent wrote to the Law Society requesting hearing dates in relation to conditions on practice imposed by a previous Panel.
- [33] On June 5, 2015 the Panel delayed the commencement of hearing by about 15 minutes in order to give the Respondent time to attend. The Respondent did not attend. As of June 5, 2015, the Respondent had not complied with the July 29, 2014 order of the Panel to produce documentation regarding his medical condition and admission to hospital on July 28, 2014.
- [34] The Panel decided to exercise its discretion under section 42(2) of the Act to proceed with the hearing in the Respondent's absence. The Respondent had notice of the hearing and had been advised of the process for an adjournment. Further, the Respondent had shown a pattern of non-attendance.

The Respondent's personal circumstances

- [35] The Respondent has not provided any corroborating evidence of his father's illness or the demands his father's illness places on his time.
- [36] Assuming (without deciding) that the Respondent's father is seriously ill and that the Respondent is responsible for his care, this Panel is not unaware of, or unsympathetic to, the stress and pressures life can bring, whether it is caring for an aging or ailing parent, spouse or child or some other difficult life event. In appropriate circumstances, reasonable accommodation can, and ought, to be made. As mentioned above, a party can apply for an adjournment of a disciplinary hearing. The Respondent made no such application.
- [37] In his correspondence, the Respondent seems to suggest that the Law Society hold all disciplinary matters in abeyance until a time acceptable to the Respondent. With respect, this approach suggests a misunderstanding of one of the fundamental roles of the Law Society.
- [38] One of the primary objects of the Law Society is to regulate the conduct of lawyers in the practice of law. The Law Society does so to uphold the public interest in the administration of justice. The Law Society does not regulate in the individual lawyer's interest. The primary purpose of disciplinary proceedings is set out in *Law Society of BC v. Hordal*, 2004 LSBC 36 and *Law Society of BC v. Hill*, 2011 LSBC 16. The panel in *Hill* stated at paragraph 3:

It is neither our function nor our purpose to punish anyone. The primary object of proceedings such as these is to discharge the Law Society's

statutory obligation, set out in section 3 of the *Legal Profession Act*, to uphold and protect the public interest in the administration of justice. Our task is to decide upon a sanction or sanctions that, in our opinion, is best calculated to protect the public, maintain high professional standards and preserve public confidence in the legal profession.

- [39] It is for the reasons expressed in *Hill* that hearings on disciplinary matters need to proceed in a timely manner.

The Respondent is no longer a member of the Law Society

- [40] A person admitted to the Law Society is legally sanctioned to practise law. However, with the admission to the Law Society, and again in the public interest, come certain obligations and responsibilities. Those responsibilities include the obligation to comply with the Law Society Rules and ethical *Code of Conduct*.
- [41] As mentioned earlier, on April 10, 2015 the Respondent ceased to be a member of the Law Society. Also, on June 29, 2015 a separate hearing panel ordered that the Respondent be disbarred on the basis of ungovernability. Pursuant to ss. 1 and 38 of the *Legal Profession Act*, this Hearing Panel retains the jurisdiction to discipline a former member of the Law Society for misconduct that occurred when the person was a member of the Law Society.
- [42] While a lawyer may shed his or her privilege to practise law by voluntarily (e.g. resigning, not paying annual practising and insurance fees), or involuntarily (e.g. disbarment) withdrawing from membership, the lawyer remains accountable for any breach of any obligation or responsibility imposed by the Law Society Rules or *Code of Conduct* when the lawyer was a member of the Law Society. In short, when a person accepts the benefit of membership in the Law Society (to practise law), they also accept the responsibilities (to practise law competently and ethically) imposed by the Law Society. Non-membership in the Law Society does not relieve a person from that person's obligation to comply with the Law Society Rules or ethical *Code of Conduct* during the time a person was a member.

DISCIPLINARY ACTION

Issues

- [43] The issue to be determined is the appropriate sanction for the Respondent's failure to respond promptly to his client's former counsel regarding trust conditions imposed and the client file.

[44] The Law Society submits that the appropriate disciplinary action in respect of the misconduct is a fine of \$10,000. The Law Society did not seek a finding of ungovernability at this hearing.

[45] The Law Society also seeks costs of \$15,912.50 calculated in accordance with the tariff in Schedule 4 to the Law Society Rules.

General Principles of Appropriate Discipline

[46] As mentioned earlier, the primary purpose of disciplinary proceedings is to fulfill the Law Society's mandate set out in section 3 of the *Legal Profession Act* to uphold and protect the public interest in the administration of justice by ensuring the independence, integrity, honour and competence of lawyers.

[47] In *Law Society of BC v. Ogilvie*, 1999 LSBC 17, the panel set out some appropriate factors to consider in determining the appropriate disciplinary action. In *Law Society of BC v. Lessing*, 2013 LSBC 29, the panel indicated that not all of the factors set out in *Ogilvie* would be considered in all cases.

[48] The *Ogilvie* factors are:

- (a) the nature and gravity of the conduct proven;
- (b) the age and experience of the respondent;
- (c) the previous character of the respondent, including details or 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.

[49] We find that the *Ogilvie* factors most relevant to this matter are: (a) the nature and gravity of the conduct; (c) the Respondent's disciplinary record; (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 for similar misconduct.

[50] This Panel considers the Respondent's misconduct in this matter serious. As this Panel stated in the F & D Decision, at paragraphs 50 to 52 and 57:

[50] This matter dealt with the transfer of a client's file and a letter of undertaking from one lawyer to another. These are significant matters and must be dealt with in a timely fashion.

[51] Clients provide lawyers with important and valuable documents. These must be treated with utmost respect and importance. When a client file is transferred, it is important that this is done in a timely fashion to ensure that no documents are lost or misplaced in that process.

[52] Undertakings and trust conditions from one lawyer to another are one of the hallmarks of the legal profession. Letters that include an undertaking must be given priority and responded to in a timely fashion.

...

[57] As indicated above, given the serious nature of the subject matter: client files, undertakings and trust conditions, this matter should have been treated seriously and diligently, which the Respondent did not do.

[51] Given the importance of preserving client files and honouring undertakings and trust conditions, there is a need for both specific and general deterrence of conduct that does not treat these matters seriously. Ensuring lawyers keep their promises and preserve client documents entrusted to them is necessary to preserve the public's confidence in the integrity of the profession.

[52] With respect to the Respondent’s professional conduct record (“PCR”), as of March 6, 2015 the Respondent’s PCR consisted of one prior conduct review, a referral to the Practice Standards Department, two administrative suspensions, conditions or limitations imposed on his practice pursuant to Rule 3-7.1¹³, and one other citation. Details of the Respondent’s PCR, as it stood on March 6, 2015, are summarized in a recent hearing panel decision regarding the Respondent, *Law Society of BC v. McLean*, 2015 LSBC 30 at paragraph 26(a) through (g):

[26] Details of the Respondent’s PCR, not including the professional misconduct detailed in this Panel’s decision on Facts and Determination are as follows:

(a) February 21, 2013 Conduct Review

The Conduct Review Subcommittee (“Subcommittee”) examined three separate but, as the Subcommittee stated, “thematically related complaints,” all regarding the Respondent’s failure to comply with rules of the *Professional Conduct Handbook*. The Respondent attended the Conduct Review with counsel.

The first complaint concerned: (a) the Respondent contacting the complainant (opposing party) directly after the complainant had retained counsel, (b) the Respondent’s rude communication with opposing counsel, and (c) the Respondent filing an affidavit that contained inflammatory and insulting remarks about the complainant.

The second complaint concerned sharp practice on the part of the Respondent in a landlord and tenant dispute. He sought a penalty of double the damage deposit on behalf of a tenant for the landlord’s alleged failure to pay the damage deposit by a statutory deadline, in circumstances where the Subcommittee found that the Respondent knew that the facts did not support a penalty claim.

The third complaint concerned the Respondent’s failure to respond to his former law firm and to attend to law firm matters appropriately prior to and after leaving the firm.

¹³ The current rule is 3-10.

The Subcommittee, in its Report, pointed out to the Respondent that three referrals to the Discipline Committee “was egregious for even the longest serving member of the Law Society, let alone one who has only been practising for two years.” The Subcommittee Report further found:

24. There are strong threads of arrogance, hubris and self-involvement in this young lawyer’s early career. The Subcommittee is hopeful, but not overly confident, that this can be overcome through a process of compassionate mentorship by his peers, a natural maturing process and through an effort toward greater self-awareness on the part of the Member.

...

27. Although progress was made during the meeting, the Subcommittee is not entirely confident that the Member has “a good road ahead” of him. The Subcommittee explained, in great detail with much emphasis, the policy of Progressive Discipline. The Subcommittee feels that that message was heard by the Member and by his counsel.

(b) Referral to the Practice Standards Committee

On December 6, 2012 the Law Society’s Practice Standards Committee ordered a review of the Respondent’s practice pursuant to Rule 3-12(3)(d), which provides in part that the Committee may make such an order upon finding that there are reasonable grounds to believe that a lawyer is practising law in an incompetent manner.

On May 9, 2013 the Committee agreed to accept, with a minor amendment, the 30 recommendations contained in the 2013 Report reviewing the Respondent’s practice. The 2013 Report included the following recommendations:

- i) that the Respondent address deficiencies in his office procedures and systems;

- ii) that the Respondent take two online courses on the Law Society's Learning Centre website and complete a total of at least 24 hours of CPD credits for each of 2013 and 2014, all to address shortcomings in the Respondent's knowledge base;
- iii) an undertaking by the Respondent to restrict his practice to civil litigation, motor vehicle and corporate matters, because the Respondent's knowledge of the law did not appear to be very broad; and
- iv) that the Respondent enter into a practice supervision agreement with a lawyer approved by the Practice Standards Department that would specifically require the Respondent's pleadings and court application documents to be reviewed and approved by the Practice Supervisor prior to filing.

The Respondent entered into a Practice Supervision Agreement dated February 3, 2014 ("PSA") with RK as his Practice Supervisor.

On April 10, 2014 most of the Committee's recommendations were converted into an Order of the Practice Standards Committee.

(c) Citation issued November 19, 2013

On January 12, 2015, a hearing panel found the Respondent's conduct in failing to respond to several letters and telephone calls in 2012 from his former clients' counsel, regarding imposed trust conditions and the client file, constituted professional misconduct. The hearing panel has not yet rendered its decision on disciplinary action.

(d) Administrative suspension of membership

The Respondent was suspended from membership in the Law Society on November 20, 2013 for failing to provide information requested in connection with a Law Society compliance audit. The Respondent provided the requested

information in January 2014 and his right to practise was reinstated effective January 29, 2014.

- (e) Law Society order imposing conditions and limitations on Respondent's practice

On January 29, 2014, an order of three Benchers imposed conditions and limitations on the Respondent's practice ("PSA Order") including, among other things, the requirement that he enter into the PSA, that he only operate his trust accounts with a second signatory approved by the Law Society and that he cooperate with all Law Society investigations. The PSA Order was amended on August 25, 2014 to include, among other things, orders that the Respondent not take on any new clients after August 25, 2014, nor any new matters without the permission of the Executive Director, and that he only operate his trust account(s) with a second signatory until August 31, 2014 and thereafter not operate a trust account at all.

- (f) Citations issued July 18, 2014

On July 18, 2014, two citations were issued against the Respondent. The first citation alleged that the Respondent failed to respond properly to letters from the Law Society concerning its investigation of a complaint arising from his representation of a client. The second citation alleged that the Respondent failed to comply with an Order made by the Chair of the Discipline Committee on May 27, 2014 requiring the Respondent to provide the Law Society with login and password information and access to email transmissions and to his laptop, desktop computers and mobile devices for imaging.

The two citations were heard together on December 4, 2014 in a summary hearing. The Respondent, although duly served, did not appear. The hearing panel found the Respondent to have committed professional misconduct in respect of each citation and fined the Respondent \$2,500 in respect of the first citation and \$4,000 in respect of the second citation.

- (g) Administrative suspension of membership

The Respondent's membership in the Law Society was suspended on September 18, 2014 for failing to submit his completed trust report to the Law Society. ...

[53] The underlying misconduct giving rise to the citation in this matter is the Respondent's failure to respond to another lawyer. At the date of the March 6, 2015 hearing, the issue of failing to respond to communications had: (i) been discussed with the Respondent during a conduct review in connection with a different fact situation; and (ii) been considered by a hearing panel in connection with another fact situation. That hearing panel determined that that a fine of \$2,500 was appropriate for the Respondent's failure to respond completely and substantively to requests made by the Law Society and that a fine of \$4,000 was appropriate for the Respondent's failure to comply with an Order of the Chair of the Discipline Committee (*Law Society of BC v. McLean*, 2015 LSBC 6).

[54] As stated in *Law Society of BC v. Batchelor*, 2013 LSBC 09 at paragraph 49:

The principle of progressive discipline stipulates that a lawyer who has had prior discipline, whether for the same or different conduct and whether that conduct has been joined in one proceeding or dealt with by way of successive proceedings, will be subject to a more significant disciplinary sanction than someone who has had no prior discipline.

[55] We believe it is appropriate to apply the principle of progressive discipline in this matter. Also, as stated in *Batchelor*, at paragraph 50:

The principle [of progressive discipline] is in accordance with the Law Society's obligation to protect the public and the reputation of the legal profession. It sends a clear message to the public and the legal profession that the Law Society will not tolerate lawyers who repeatedly ignore their professional responsibilities.

[56] Consequently, while the conduct underlying this matter arose before the conduct review of February 2103 and before the facts giving rise to the citation underlying the decision in 2015 LSBC 6, we find that it is appropriate in the present matter to consider the Respondent's existing disciplinary record. To do otherwise would be to treat this as the Respondent's first infraction of professional ethics, which it is not.

[57] We have reviewed previous decisions of the Law Society involving lawyers and their failure to respond to communications from another professional. The

disciplinary sanctions in those decisions range from a fine of \$1,500 to one of \$15,000 or a suspension ranging from one month to 45 days.¹⁴

- [58] In *Law Society of BC v. Niemela*, 2013 LSBC 15, the lawyer had failed to respond to correspondence from opposing counsel for approximately one year. He had previously been cited for failing to respond to another lawyer (2008) and for failing to respond to the Law Society (2011). The lawyer was fined \$15,000 and ordered to enter into a practice supervision agreement.
- [59] In *Law Society of BC v. Clendening*, 2007 LSBC 10, the lawyer breached an undertaking and had failed to respond to communications from another lawyer regarding the undertaking. He had a prior conduct review for a breach of undertaking. The lawyer was fined \$7,500.
- [60] In *Law Society of BC v. Braker*, 2007 LSBC 15, the lawyer failed to respond to communications from another lawyer concerning the status of a client's file and subsequently failed to transfer that file. The lawyer failed to respond substantively to requests from the Law Society. At the date of the hearing of that matter, the file still had not been transferred to the client's new counsel. The lawyer had a previous citation and a conduct review, both for failing to respond to another lawyer. The lawyer was suspended for one month.
- [61] We determine that a fine of \$10,000 is appropriate in the circumstances.

COSTS

- [62] Pursuant to Rule 5-9,¹⁵ the Law Society sought costs in the amount of \$17,622.50, inclusive of disbursements. At the end of the hearing on June 5, 2015, this amount was reduced to \$15,912.50. The costs claimed include four and a half hearing days, one full hearing day, the preparation of numerous affidavits largely in relation to service issues, and court reporter fees. The Panel finds the costs claimed to be reasonable. The Panel orders that the Respondent pay costs of \$15,912.50 by December 31, 2015.

¹⁴ *Law Society of BC v. Niemela*, 2008 LSBC 35; *Law Society of BC v. Smith*, 2005 LSBC 27; *Law Society of BC v. Clendening*, 2007 LSBC 10; *Law Society of BC v. Niemela*, 2013 LSBC 15; *Law Society of BC v. Braker*, 2007 LSBC 42; *Law Society of BC v. Williamson*, 2005 LSBC 19.

¹⁵ The current rule is 5-11.

SUMMARY

[63] We impose a fine of \$10,000 and costs of \$15,912.50 on the Respondent and order that the Respondent pay the fine and costs to the Law Society by December 31, 2015.