

2016 LSBC 17
Decision issued: May 27, 2016
Citation issued: September 30, 2015

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

MELISSA ANN DANIELS

RESPONDENT

**DECISION OF THE HEARING PANEL ON
FACTS, DETERMINATION, DISCIPLINARY ACTION
AND COSTS**

Hearing date: January 27, 2016

Panel: Nancy Merrill, QC, Chair
Lance Ollenberger, Public representative
Donald Silversides, QC, Lawyer

Discipline Counsel: Kieron Grady
No one appearing on behalf of the Respondent

THE CITATION

- [1] The citation issued to Melissa Ann Daniels (“Ms. Daniels”) alleged that she failed to provide a full and substantive response promptly or at all to communications from the Law Society concerning its investigation related to a complaint made by Ms. A, a lawyer practising in Alberta, contrary to the Law Society Rules (the “Rules”) and the Code of Professional Conduct for British Columbia (the “Code”), and that such conduct constituted professional misconduct or was a breach of the *Legal Profession Act* (the “Act”) or the Rules.

- [2] The citation specified that, in particular, Ms. Daniels failed to respond fully, substantively and promptly to one or more letters dated April 10, May 27, June 24, July 3 and July 13, 2015 and a voice mail dated June 22, 2015 by not answering all of the requests for information set out in one or more of the letters and voice mail.

LEGISLATION AND RULES

- [3] The following provisions of the Act are relevant in this case:

Discipline hearings

- 38** (4) After a hearing, a panel must do one of the following:
- (a) dismiss the citation;
 - (b) determine that the respondent has committed one or more of the following:
 - (i) professional misconduct;
 - (ii) conduct unbecoming a lawyer;
 - (iii) a breach of this Act or the rules;
 - (iv) incompetent performance of duties undertaken in the capacity of a lawyer;
 - (v) if the respondent is not a member, conduct that would, if the respondent were a member, constitute professional misconduct, conduct unbecoming a lawyer, or a breach of this Act or the rules.
 - (5) If an adverse determination is made against a respondent other than an articled student, under subsection (4), the panel must do one or more of the following:
 - ...
 - (c) impose conditions or limitations on the respondent's practice;

Failure to attend

- 42** (1) This section applies if an applicant or respondent fails to attend or remain in attendance at
- (a) a hearing on an application for enrollment as an articled student, call and admission, or reinstatement,
 - (b) a hearing on a citation, or
 - (c) a review by a review board under section 47.

- (2) If satisfied that the applicant or respondent has been served with notice of the hearing or review, the panel or the review board may proceed with the hearing or review in the absence of the applicant or respondent and make any order that the panel or the review board could have made in the presence of the applicant or respondent.

Service

90 The benchers may make rules respecting service of documents under this Act.

[4] The following Rules are relevant in this case:

Investigation of complaints

3-5(7) A lawyer must co-operate fully in an investigation under this division by all available means including, but not limited to, responding fully and substantively, in the form specified by the Executive Director

- (a) to the complaint, and
- (b) to all requests made by the Executive Director in the course of an investigation.

...

- (11) A lawyer who is required to produce files, documents and other records, provide information or attend an interview under this rule must comply with the requirement
- (a) even if the information or files, documents and other records are privileged or confidential, and
 - (b) as soon as practicable and, in any event, by the time and date set by the Executive Director.

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,
- (b) electronic facsimile to his or her last known electronic facsimile number,
- (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.

[5] The following provisions of the Code are relevant:

Regulatory compliance

7.1-1 A lawyer must

- (a) reply promptly and completely to any communication from the Society;
- (b) provide documents as required to the Law Society;
- (c) not improperly obstruct or delay Law Society investigations, audits and inquiries;
- (d) cooperate with Law Society investigations, audits and inquiries involving the lawyer or a member of the lawyer's firm;
- (e) comply with orders made under the *Legal Profession Act* or Law Society Rules; and
- (f) otherwise comply with the Law Society's regulation of the lawyer's practice.

NOTICE OF HEARING

- [6] At the hearing, the Law Society filed an affidavit sworn by Chrysta Gejdos, assistant to discipline counsel, Kieron Grady, in the Discipline Department of the Law Society.
- [7] In her affidavit, Ms. Gejdos deposed that, on September 30, 2015 she sent a letter dated that day to Ms. Daniels from the Law Society, signed by Deborah Armour, Chief Legal Officer of the Law Society (the "Armour Letter"), by email to the most current email address the Law Society then had for Ms. Daniels (the "Current Email Address") and by courier and Canada Post to a street address care of a First Nation corporation in Fort McMurray, Alberta, that was the most current address the Law Society then had for Ms. Daniels (the "Current Alberta Address").
- [8] The Armour Letter stated that discipline counsel had proposed that the matter of the citation issued to Ms. Daniels be set for hearing on January 27, 2016 commencing at 9:30 a.m. at the Law Society's offices in Vancouver and if Ms. Daniels did not contact the Hearing Administrator by October 14, 2015 with an alternate date, the hearing would be set for that date.
- [9] Ms. Gejdos deposed that the courier company sent the Law Society a waybill certifying that the envelope containing the Armour Letter was delivered to the Current Alberta Address on October 2, 2015 and that the envelope containing the Armour Letter sent to the Current Alberta Address by Canada Post was returned to the Law Society on October 23, 2015 endorsed "Moved/Unknown."

- [10] Ms. Gejdos also deposed that the envelope delivered by the courier to the Current Alberta Address was returned to the Law Society by Canada Post on October 27, 2015 marked “Return to Sender” and endorsed “Moved/Unknown.”
- [11] Ms. Gejdos deposed that, on October 30, 2015, she sent Ms. Daniels by email to her Current Email Address a notice of hearing dated October 30, 2015 (the “Notice of Hearing”) that stated that the citation would be heard at a hearing held on January 27, 2016 at 9:30 a.m. at the offices of the Law Society in Vancouver and that, if Ms. Daniels failed to appear at the hearing, the hearing panel may proceed with the hearing in her absence and make any order that it could have made had she been present.
- [12] Ms. Gejdos deposed that an email was received through the Law Society email delivery system with respect to the email Ms. Gejdos sent to Ms. Daniels on October 30, 2015 that indicated the email was successfully delivered to Ms. Daniels. That delivery confirmation email, a printout of which was exhibited to Ms. Gejdos’s affidavit, showed the email to Ms. Daniels was sent to the Current Email Address at 12:25 p.m. on October 30, 2015 and stated “delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server.” We find that the email to Ms. Daniels with the Notice of Hearing was sent by the Law Society to the Current Email Address on October 30, 2015.
- [13] We therefore find that the Notice of Hearing was sent by electronic mail to Ms. Daniels’ last known electronic mail address on October 30, 2015 at 12:25 p.m. and that Ms. Daniels was served with the Notice of Hearing on that day pursuant to Rule 10-1(1)(c).

FAILURE TO ATTEND HEARING

- [14] The hearing of the citation commenced at 9:30 am on January 27, 2016 at the offices of the Law Society in Vancouver, at which time counsel for the Law Society was present but neither Ms. Daniels, nor anyone representing her was present. The hearing was adjourned for a brief period of time to determine whether Ms. Daniels was merely late or would not attend. The hearing was reconvened at 9:48 am, at which time neither Ms. Daniels nor anyone representing her was present.
- [15] The Law Society filed the affidavit of Ms. Gejdos that dealt with the delivery of the Armour Letter and Notice of Hearing. We then made a finding that we were

satisfied Ms. Daniels had been served with the Notice of Hearing and proceeded with the hearing in her absence.

STANDARD AND BURDEN OF PROOF

[16] A hearing of a citation by a Law Society hearing panel is a civil and not a criminal proceeding. There is only one civil standard of proof at common law, and that is proof on a balance of probabilities, and factual conclusions in a civil case must be made by deciding whether it is more likely than not that the event occurred (*FH v. McDougall*, 2008 SCC 53 at paras. 40 and 44). In this matter, the Law Society carries the burden of proof to establish on a balance of probabilities the facts that it alleges constitute professional misconduct or a breach of the Act or Rules.

EVIDENCE AND FACTS

[17] The evidence in this hearing, included testimony by Alexander Willms, a staff lawyer employed by the Law Society, an affidavit sworn by Mr. Willms and filed as an exhibit and an affidavit sworn by Ramona Treptow, an assistant in the Professional Conduct Department of the Law Society.

[18] In his affidavit, Mr. Willms deposed that, on January 26, 2015, the Law Society received a complaint from Ms. A about Ms. Daniels and that the allegations made by Ms. A and the potential issues that were being investigated by the Law Society included:

- (a) Ms. Daniels' alleged failure to satisfy a promissory note for insurance and practice fees made to Ms. A who was a lawyer practising in Alberta and a former employer of Ms. Daniels;
- (b) an allegation Ms. Daniels made inappropriate and false allegations about Ms. A in an email sent to Ms. A and the Indian Residential Schools Adjudication Secretariat; and
- (c) an allegation Ms. Daniels misled Ms. A with respect to her employment circumstances and ability to satisfy the promissory note.

[19] Beverly Gallagher, a Law Society staff lawyer, wrote a letter dated April 10, 2015 to Ms. Daniels, a copy of which was exhibited to Mr. Willms's affidavit, that showed that it was only sent by email and that it was sent to Ms. Daniels at her Current Email Address. In that letter, Ms. Gallagher stated:

Generally, the Law Society does not get involved in employment matters between lawyers or issues concerning their obligations under employment contracts. However, given the nature of the allegations I am seeking your written response to these issues so that I can properly assess this complaint. Without limiting any response you wish to make, please address the following:

1. Please explain why you copied your email of January 13, 2015 to [Ms. A's law firm] to various people within the IAP process;
2. Did [another law firm] purchase your practice permit from [Ms. A's law firm]? When?
3. In your email to [Ms. A] of June 5, 2014 you advise her that you had sent a cheque to her. In her July 7, 2014 email [Ms. A] advised that she had not received it. Please advise whether this issue ever got resolved.

Please respond by **May 1, 2015**. If you anticipate a problem meeting this deadline, please let me know so that we can arrange another date by which I may expect your response.

[Bold font in original]

[20] On May 1, 2015, Ms. Daniels responded to Ms. Gallagher's April 10, 2015 letter by way of an email she sent to the Law Society in which she said:

I am unable to make the deadline to respond to the attached deadline [sic]. Initially I thought I would be able to provide an adequate and comprehensive response prior to May 1st, 2015. However, I have been travelling for work much more than anticipated. I am currently travelling right now as well and expect to return to Victoria, BC on May 7th, 2015. If allowed, I anticipate being able to provide my response by May 9th, 2015.

Would you kindly advise at your earliest opportunity whether this would be acceptable?

Please feel free to contact me if you have any questions or concerns.

[21] On May 1, 2015, Ms. Gallagher responded to Ms. Daniels' request for permission to delay her response by sending her an email in which she extended the time for Ms. Daniels' response to May 22, 2015. On May 27, 2015, after no further

communication had been received from Ms. Daniels, Ms. Gallagher wrote another letter to her dated May 27, 2015 to follow up on the email she sent Ms. Daniels on May 1, 2015 requesting a reply to her original letter dated April 10, 2015.

[22] In her May 27, 2015 letter, Ms. Gallagher drew Ms. Daniels' attention to rule 7.1-1(a) of the Code and informed Ms. Daniels that the Law Society required her response and all of the requested material by June 10, 2015. A copy of that letter was exhibited to Mr. Willms's affidavit, and it shows it was only sent by email to Ms. Daniels' Current Email Address.

[23] The Law Society did not receive a response to Ms. Gallagher's letter to Ms. Daniels dated May 27, 2015, and on June 12, 2015, Ms. Gallagher sent an email to Ms. Daniels at her Current Email Address stating:

Your response to my letters of April 10 and May 27, 2015 was expected on June 10, 2015. Please contact me immediately to discuss.

[24] Ms. Daniels responded to the email sent to her by Ms. Gallagher on June 12 with an email sent the same day in which she stated:

I apologize for the delay in my response.

A few weeks ago I was involved a fairly serious motor vehicle accident in Fort McMurray, AB. I do not have administrative support and regrettably have fallen behind in my correspondence.

Additionally, [Ms. A] and I are in the middle of court proceedings that pertain in part to the subject of your letter. My response will include a submission with respect to the same as I believe my civil claim against [Ms. A] is possibly what may have motivated her to file a complaint against me to the Law Society.

On a side note, I am a new lawyer and have found myself to be extremely intimidated by the review process. I have drafted several responses to your letter however, my fear of being reprimanded by the Law Society is paralyzingly [sic] at times. Further, I am having difficulty coping with both the complaint to the Law Society and the legal proceedings in addition to my unforeseen personal circumstance.

Having that said, [sic] I am healing and do anticipate having my response to you shortly.

Again, I apologize for any inconvenience this has caused you and the Law Society.

Please feel free to contact me if you have any question or concerns.

- [25] On June 12, 2015, after receiving the email from Ms. Daniels, Ms. Gallagher sent another email to Ms. Daniels in which she informed her that the date for receipt of her response was extended to June 19, 2015.
- [26] By June 24, 2015, no further communication had been received by the Law Society from Ms. Daniels. On that date, Ms. Gallagher sent a letter to Ms. Daniels dated June 24, 2015, a copy of which was exhibited to Mr. Willms's affidavit. It shows it was sent by email to Ms. Daniel's Current Email Address and by mail to a street address in Victoria, British Columbia (the "Victoria Address"). This letter included the following:

I have attempted to contact you about your required response to my previous letters.

On June 12, 2015 you advised me that you were in a motor vehicle accident and required additional time to respond to my letters concerning the complaint filed by [Ms. A]. I wrote back to you on the same day providing an extension of time until June 19, 2015.

Please contact me to let me know about your intentions. As I did not hear back from you regarding the June 19, 2015 date I presumed you would be able to respond by this date.

I need to hear from you immediately. If your condition is such that you are unable to respond, please have someone else contact me on your behalf.

[Bold font in original]

- [27] The Law Society did not receive a response to the letter Ms. Gallagher wrote to Ms. Daniels on June 24, 2015 and Ms. Gallagher then wrote another letter to Ms. Daniels dated July 3, 2015 that was also exhibited to Mr. Willms's affidavit. It showed it was sent by email to Ms. Daniels' Current Email Address. In that letter Ms. Gallagher stated:

May I please have a reply to my letters of June 24, 2015, May 27, 2015, and April 10, 2015? I have attempted to leave phone messages at [phone

number] but your mailbox is full. My most recent letter of June 24, 2015 sent to [the Victoria Street Address] was returned as undeliverable.

The Law Society Rules state that, when a lawyer fails to reply to the Law Society, the matter may be referred to the Discipline Committee or its Chair pursuant to the summary hearing process. If your full response is not received by **Wednesday, July 8, 2015** this matter will be referred to the Discipline Committee or its Chair with a recommendation that the Chair issue a citation for your failure to respond to Law Society correspondence. Details about the summary hearing process are set out in Law Society Rules 4-5 and 4-32(2).

While you may wish to retain counsel to assist you in this matter, please note that Rule 3-5(9) requires you to personally respond and sign your responses to the Law Society.

[Bold font in original]

- [28] When Ms. Daniels did not respond to the July 3, 2015 letter, Ms. Gallagher sent a final letter to Ms. Daniels dated July 13, 2015 both by email to the Current Email Address and to the Current Alberta Address. In this letter she stated:

I write further to my previous communication. Please find enclosed my letter of June 24, 2015 which was returned as undeliverable.

Please contact me by July 20, 2015.

The Law Society Rules state that, when a lawyer fails to reply to the Law Society, the matter may be referred to the Discipline Committee or its Chair pursuant to the summary hearing process. If you do not contact me by July 20, 2015 the matter will be referred to the Discipline Committee or its Chair with a recommendation that the Chair issue a citation for your failure to respond to Law Society correspondence. Details about the summary hearing process are set out in Law Society Rule 4-4.1 and 4-24.1.

I strongly urge you to speak with counsel about your obligations. If there is some reason why you have been unable to respond to my request, please explain or have counsel contact me on your behalf.

[Bold font in original]

- [29] Ms. Treptow deposed that Ms. Gallagher asked her to contact Ms. Daniels to follow up with her about her outstanding response to Law Society inquiries and that she called a certain telephone number and received a recorded message identifying the number as belonging to Ms. Daniels. Ms. Treptow also deposed that she left a voice mail message identifying herself by name and advising that she was calling from the Law Society on behalf of Ms. Gallagher regarding the Ms. A matter and that she left her telephone number and asked Ms. Daniels to call her back but that she did not receive a call back from Ms. Daniels.
- [30] We find that, except for the emails that Ms. Daniels sent the Law Society on May 1 and June 12, 2015, Ms. Daniels did not, at any time between April 10, 2015 and January 27, 2016, the date of the hearing of this citation, provide any response to the Law Society regarding the complaint by Ms. A or the three issues she was asked to address in Ms. Gallagher's April 10, 2015 letter. We also find that the responses by Ms. Daniels to the complaint and these issues were neither full nor substantive and that she failed to respond to several requests for additional information made by the Law Society.

DETERMINATION

Breach of the Act or Rules

- [31] Although the citation contemplates that the conduct of Ms. Daniels may have constituted a breach of the Act, there was no evidence that Ms. Daniels breached the Act and the Law Society does not submit that she did so. We therefore find that Ms. Daniels did not breach the Act.
- [32] Rule 3-5(7)(b) requires a lawyer to cooperate fully in any investigation by all available means, including responding fully and substantively to the complaint and all requests made in the course of an investigation. Similarly, Rule 3-5(11) provides that a lawyer who is required to provide information must comply with the requirement. On April 10, 2015, the Law Society asked Ms. Daniels to explain why she sent a copy of her January 13, 2015 email to Ms. A's law firm to various other people. At the same time, the Law Society also asked for information by way of two simple and straightforward questions. One was whether another law firm had purchased Ms. Daniel's practice permit from Ms. A's law firm. The other related to a cheque that Ms. Daniels said she had sent to Ms. A and Ms. A said she had not received. The Law Society asked whether that issue had been resolved.
- [33] In response to this request for an explanation and for information, Ms. Daniels sent only two emails to the Law Society. The first was a request for an extension of the

time allowed for providing a response. The second was to inform the Law Society why she had not yet responded and to ensure the Law Society she would respond at a future date. Neither of the emails sent by Ms. Daniels provided any explanation for why she sent copies of her email to Ms. A's law firm to other persons, and neither email provided any information relating to the purchase of her practice permit or the delivery of her cheque to Ms. A. By failing to provide any explanation or the requested information, Ms. Daniels failed to cooperate fully with the investigation of Ms. A's complaint or to respond either fully or substantively to the Law Society's request for an explanation or to provide information as required by Rule 3-5(7)(b) and (11). By failing to do so, Ms. Daniels breached Rule 3-5(7)(b) and (11).

Professional misconduct

- [34] What constitutes professional misconduct is not defined in the Act or the Rules or described in the *Code of Professional Conduct*. Since the decision by the hearing panel in *Law Society of BC v. Martin*, 2005 LSBC 16, the vast majority of panels have adopted as a test for professional misconduct whether the conduct of the member in question exhibited a "marked departure" from the standard of conduct the Law Society expects of lawyers. We agree this is the appropriate criterion for determining if Ms. Daniels' failure to comply with the Rules constitutes professional misconduct.
- [35] Failure to comply with a Rule will not necessarily amount to professional misconduct, but it may do so if the breach or failure to comply is serious.
- [36] In *Law Society of B.C. v. Dobbin*, 1999 LSBC 27, [2000] LSDD No. 12, a lawyer failed to respond to Law Society communications respecting a complaint against him. A hearing panel found that, although his conduct breached the Law Society Rules that were then in effect, it did not amount to professional misconduct or conduct unbecoming a lawyer. On review, a majority of the Benchers overturned the panel decision and found that the lawyer's failure to respond was professional misconduct. When considering whether the failure to comply with the Law Society Rule required a lawyer to reply to communications from the Law Society, the majority of the Benchers stated the following at paras. 20, 23 and 25:

... the duty to reply ... is a cornerstone of our independent, self-governing profession. If the Law Society cannot count on prompt, candid, and complete replies by members to its communications it will be unable to uphold and protect the public interest, which is the Law Society's paramount duty. The duty to reply to communications from the Law

Society is at the heart of the Law Society's regulation of the practice of law and it is essential to the Law Society's mandate to uphold and protect the interests of its members. If members could ignore communications from the Law Society, the profession would not be governed but would be in a state of anarchy.

...

... the Benchers wish to ensure that members are under no illusions as to their duty to respond nor as to how the Benchers will deal with a failure to discharge that duty: we repeat, responding promptly, candidly and completely to Law Society communications is the cornerstone of our right to self-govern.

...

... unexplained persistent failure to respond to Law Society communications will also be prima facie evidence of professional misconduct which throws upon the respondent member a persuasive burden to excuse his or her conduct.

[37] In *Law Society of BC v. Cunningham*, 2007 LSBC 17, the Legal Services Society of British Columbia ("LSS") complained to the Law Society about a lawyer who had provided services to a client pursuant to an LSS retainer and who failed to respond to a quality of service complaint made by that client to LSS. The lawyer failed to respond to communications from the Law Society with respect to setting a date for a conduct review including four letters sent over a period of nine weeks and several telephone messages left over a period of ten weeks. The hearing panel found that the lawyer's conduct in failing to respond to communications from the Law Society was professional misconduct and stated the following at para. 22:

It is hardly necessary for us to repeat what many panels before us have said, which is that the LSBC cannot satisfactorily discharge its function of over-seeing the conduct of its members unless the members respond as required to LSBC investigations. The same must be said about inquiries concerning member conduct initiated by the LSS. The LSBC must remain vigilant. If members of the public were to come to think that the LSBC pursues its investigations casually, by not requiring those under investigation to respond promptly and comprehensively, it might be thought that someone other than lawyers should govern the legal profession. If self-governance were lost, lawyer independence, of which

self-governance is an essential element, would be lost as well, and that loss would be contrary to the public interest.

- [38] We agree with the comments made, and principles enunciated, by the majority of the Benchers in *Dobbin* and by the hearing panel in *Cunningham*. When a complaint about a lawyer's conduct is made to the Law Society, it is essential that the lawyer promptly respond candidly and fully to any requests by the Law Society for an explanation or for information relating to the complaint in order for the Law Society to achieve its objectives and perform its duties imposed by the Act. Unless the lawyer provides a valid and compelling reason for not doing so, such failure will in most cases constitute a marked departure from the standard of conduct the Law Society expects of lawyers.
- [39] In this case, after receiving the Law Society's April 10, 2015 letter requesting an explanation and additional information, Ms. Daniels only sent the Law Society two non-responsive emails on May 1, 2015 and June 12, 2015 and thereafter failed to respond to numerous letters and a telephone call that followed up on the Law Society's initial request. We find that neither of the emails sent by Ms. Daniels provided a valid reason for her failure to provide the explanation and information requested. We also find that Ms. Daniels was aware of the issues before the Law Society and was knowledgeable of the requirements for her response. We therefore find that, in these circumstances, Ms. Daniels' failure to respond and provide information as required by the Rules is a marked departure from the standard of conduct the Law Society expects of lawyers and it therefore constituted professional misconduct.

DISCIPLINARY ACTION

- [40] In the submissions it made with respect to disciplinary action, the Law Society informed us that Ms. Daniels was 34 years old, she was called to the bar and admitted as a member of the Law Society in May, 2014, she ceased to be a member of the Law Society on January 1, 2016 and at the time of the hearing she was a former member. The Law Society also informed us that Ms. Daniels had no professional conduct record. In the absence of any evidence provided or submissions made by Ms. Daniels or anyone on her behalf we accept that these statements made by the Law Society in its submissions are correct.
- [41] The Law Society submits that the appropriate disciplinary action in this case is a fine of \$5,000, payable by April 30, 2016, or such other reasonable date as we may order. The Law Society submits there are a number of Law Society decisions involving a failure to respond where the respondent had little, if any, other

disciplinary history where the disciplinary action consisted of a fine of between \$2,000 and \$3,000. The Law Society cited the following eight previous Law Society decisions.

- [42] In *Law Society of BC v. Buchan*, 2013 LSBC 08, the lawyer failed to provide a complete and substantive response to communications from the Law Society and failed to reply to two reminder letters. After the issuance of a citation, but before the hearing, the lawyer did provide a response. The lawyer had a history of not responding promptly, completely and substantively to Law Society inquiries and the hearing panel imposed a fine of \$3,000.
- [43] In *Law Society of BC v. Decore*, 2012 LSBC 17, the lawyer failed to respond to seven different communications from the Law Society over an eight-month period. The lawyer had a professional conduct record, including an administrative suspension for failing to complete and certify continuing professional development requirement and, at the time the hearing was held, was no longer a member of the Law Society. The panel imposed a fine of \$2,000.
- [44] In *Law Society of BC v. Niemela*, 2012 LSBC 09, the lawyer failed to respond to letters, including follow-up letters, from a lawyer at the Law Society investigating a complaint. Although the lawyer telephoned the Law Society lawyer and apologized for the delay, he did not respond to the complaint. The lawyer did send a response to the Law Society one week prior to the hearing. The lawyer had a professional conduct record that included a citation for failing to respond to another lawyer, and the hearing panel noted that his professional conduct record “reflects a pattern of delay and procrastination in ways in favour of disciplinary action at the higher end of the applicable range as a matter of specific deterrence of this individual.” A fine of \$5,000 was imposed.
- [45] In *Law Society of BC v. Malcolm*, 2012 LSBC 4, the lawyer failed to respond to queries from the Law Society regarding a complaint by one of his clients. By the time of the hearing, the lawyer had still not provided a substantive response and left the hearing before making any submissions regarding disciplinary action. The lawyer had no prior conduct record. He was fined \$2,000.
- [46] In *Law Society of BC v. Marcotte*, 2010 LSBC 18, the lawyer failed to respond to the Law Society with respect to three complaints relating to issues of delay and failure to communicate. By the time of the hearing, the lawyer had still not provided a substantive response to any of the complaints. The lawyer had a significant professional conduct record consisting of four conduct reviews and two referrals to practice standards and at least three of these matters related to issues of delay and procrastination. A fine of \$2,750 was imposed.

- [47] In *Law Society of BC v. Kruse*, 2002 LSBC 15, the lawyer had both failed to respond to the Law Society and had breached an undertaking. By the time of the hearing, the lawyer had still not provided a substantive response and had ceased to be a member of the Law Society. In taking disciplinary action, the panel stated that, if the lawyer had remained a member at the time of the hearing, they would have ordered a suspension. Instead, in respect of the failure to respond, the panel imposed a fine of \$3,000.
- [48] In *Law Society of BC v. Jessacher*, 2015 LSCB 43, although the lawyer provided an initial response to a complaint and attended an interview, she later took the position that she would no longer cooperate with the Law Society with respect to the investigation. The lawyer had a professional conduct record and failed to attend the hearing. The panel imposed a fine of \$5,000.
- [49] In *Law Society of BC v. Axworthy*, 2015 LSBC 46, the lawyer initially responded to the Law Society regarding two complaints but thereafter became less responsive and ultimately ceased to respond at all. The lawyer had no professional conduct record and did not attend the hearing. A fine of \$3,000 was imposed.
- [50] We know nothing about Ms. Daniels other than the information contained in the submissions of the Law Society, which was her age, her date of call and the fact that she is no longer a member of the Law Society. Other than for the statements in the two emails that she sent to the Law Society that are set out in this decision, we do not know what reasons Ms. Daniels may have had for failing to respond to the Law Society. The statements in the emails do show, however, that Ms. Daniels was capable of responding to the Law Society and she was aware of the issues that were before the Law Society.
- [51] After considering the range of penalties imposed by panels in previous disciplinary cases, the age and length of call of Ms. Daniels, the fact that Ms. Daniels had no prior conduct record and the fact that she is no longer a member of the society, we have concluded that an appropriate penalty would be a fine of \$2,500.
- [52] In its submissions the Law Society informed us that it seeks an order pursuant to section 38(5)(c) of the Act that Ms. Daniels provide a complete and substantive response to the enquiries made in the Law Society's letter to her dated April 10, 2015 within seven days of service of the order on her.
- [53] Section 38(5) of the Act authorizes a panel to take the disciplinary actions described in that section if the panel has made an adverse determination against a respondent under section 38(4). We have made such an adverse finding against

Ms. Daniels. Section 38(5)(c) of the Act provides that a panel may “impose conditions or limitations on the respondent’s practice.”

[54] We interpret the Law Society submission that it seeks an order pursuant to section 38(5)(c) of the Act that Ms. Daniels provide a complete and substantive response to mean that it believes the panel should impose this requirement as a condition of Ms. Daniels’ practice. Ms. Daniels is no longer a member of the Law Society and therefore no longer has a practice. We therefore think it would be inappropriate for us to purport to impose a condition on her practice that she be required to provide a complete and substantive response to the Law Society’s inquiries. The Law Society did not submit there was any other basis on which we could make the order sought.

[55] The Law Society chose to provide very few details about the nature of the complaint by Ms. A. We were provided with no evidence to support the need for such an order, such as whether there was any urgency or whether there were any outstanding issues involving third parties that needed to be resolved. We are therefore unable to determine whether it is necessary that the Law Society obtain that explanation and information at this time, bearing in mind Ms. Daniels is no longer a member. We are also mindful of the fact that, if Ms. Daniels applies for reinstatement, it will undoubtedly be necessary for her to deal with this issue as a condition of reinstatement.

[56] We therefore decline to make an order that Ms. Daniels provide a complete and substantive response to the inquiries made in the Law Society letter to her dated April 10, 2015.

COSTS

[57] The Law Society seeks cost of \$1,236.25 based on the following bill of costs:

Schedule 4 Tariff Items – At Unit Value of \$100 per unit

| Item | Description | Units Claimed | Amount Claimed |
|-----------------|---------------------|----------------------|-----------------------|
| 24. | Each day of hearing | \$2,000 per day | \$1,000.00 |
| Subtotal | | | \$1,000.00 |

Disbursements (Rule 5-11(5))

| Description | Actual Costs | Amount Claimed |
|--|---------------------|-----------------------|
| Court Reporter Fees – Attendance at hearing <ul style="list-style-type: none"> • Hearing: January 27, 2016 (1 day at \$450 = \$22.50 GST per day) | \$472.50 | \$236.25 |
| Subtotal | | \$236.25 |
| TOTAL CLAIMED: | | \$1,236.25 |

[58] These costs have been calculated in accordance with Rule 5-11 and the tariff of costs in Schedule 4 of the Rules. Rule 5-11(4) permits us to order that the Law Society recover costs in an amount other than that permitted by the tariff in Schedule 4 if, in our judgment, it is reasonable and appropriate to so order. We are not aware of any reason why the costs sought, which consist of costs set out in the tariff, and disbursements should not be awarded in their entirety.

ORDER

[59] We make the following orders:

- (a) that Ms. Daniels pay a fine of \$2,500 to the Law Society on or before July 31, 2016; and
- (b) that Ms. Daniels pay costs of \$1,236.25 to the Law Society on or before July 31, 2016.