

2016 LSBC 40
Decision issued: November 23, 2016
Oral decision on Facts and Determination: October 21, 2016
Citation issued: August 18, 2016

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

SUSAN MARGARET BEN-OLIEL

RESPONDENT

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

Hearing date: October 21, 2016

Panel: Thomas Fellhauer, Chair
Paula Cayley, Public representative
David Layton, Lawyer

Discipline Counsel: Carolyn Gulabsingh
No on appearing on behalf of the Respondent

INTRODUCTION

- [1] On August 18, 2016 the Law Society issued a citation alleging that the Respondent had committed professional misconduct by failing to respond to communications from the Law Society concerning its investigation into a complaint made by one of the Respondent's clients.
- [2] Since the citation comprised only allegations that the Respondent failed to respond to a communication by the Law Society, the hearing of the citation proceeded by summary hearing pursuant to Rule 4-33 of the Law Society Rules.

- [3] The Respondent did not appear at the hearing, and the Panel proceeded in her absence. Pursuant to the Rules for a summary hearing, evidence at the hearing was adduced by affidavit pursuant to Rule 4-33(2)(a).
- [4] After considering the affidavit evidence and receiving submissions from counsel for the Law Society regarding the facts and determination, the Panel provided brief oral reasons concluding that the Respondent had committed professional misconduct as alleged in the citation. We advised that written reasons would follow.
- [5] As permitted by Rule 4-33(3), the Panel then received further affidavit evidence and submissions from the Law Society on the issue of disciplinary action. We reserved our decision on this issue.
- [6] These are our reasons for proceeding in the absence of the Respondent and for concluding that she committed professional conduct as alleged in the citation. These reasons also set out our decision regarding the appropriate disciplinary action and costs.

DECISION TO PROCEED IN THE ABSENCE OF THE RESPONDENT

- [7] When the hearing convened at 9:30 am, the Respondent had not appeared, nor had anyone appeared on her behalf. The Panel adjourned the proceeding for approximately 20 minutes in case the Respondent was simply running late. However, on the hearing reconvening the Respondent had still not appeared.
- [8] The Panel adjourned again to permit a representative of the Law Society to attempt to reach the Respondent at the two contact numbers she had provided to the Law Society. When the hearing reconvened, the Law Society representative testified that:
- (a) recorded messages received at both numbers indicated that they were out of service; and
 - (b) a fax number provided to the Law Society by the Respondent rang through without engaging.
- [9] By this point it was approximately 10:45 am, and the Respondent had still not appeared.
- [10] Section 42(2) of the *Legal Profession Act* provides that, where a respondent fails to attend a hearing on a citation and the panel is satisfied that the respondent has been

served with a notice of the hearing, the panel may proceed in the respondent's absence.

- [11] In deciding how to exercise our discretion under s. 42(2), we considered the following communications between the Law Society and the Respondent regarding the hearing date:
- (a) A copy of the citation was sent to the Respondent by email and courier in accordance with Rule 10-1(1) on August 18, 2016, thereby satisfying the service requirements of Rule 4-19. The citation included a caution in boldface type that, if the Respondent failed to appear at the hearing, the panel may proceed in her absence.
 - (b) The cover letter accompanying the citation included a similar caution. It also stated that October 21, 2016 at 9:30 am was proposed for the hearing and asked the Respondent to contact the Law Society to indicate whether she was agreeable to this date or to provide an alternate date. The cover letter stated that, if the Respondent did not suggest an alternate date by September 1, 2016, the hearing would be set for October 21, 2016.
 - (c) A "Facts and Questions" document accompanying the citation stated that, where a respondent does not attend the hearing, "the hearing may proceed in his or her absence (see s. 42 of the *Legal Profession Act*)."
 - (d) The Respondent did not contact the Law Society to provide an alternate date for the hearing by September 1, 2016.
 - (e) On September 7, 2016 the hearing administrator sent the Respondent an email attached to which was a memo from discipline counsel for the Law Society requesting that the hearing be set for October 21, 2016.
 - (f) On September 8, 2016 the Respondent sent an email to the Law Society in which the Respondent stated that she wished to address her "outstanding matters with the Law Society" and was "currently seeking legal assistance." She did not suggest that the proposed October 21, 2016 hearing date was in any way problematic.
 - (g) In her September 8, 2016 email, the Respondent used the same email address that the Law Society had used when emailing her the above-mentioned materials. Clearly, this email address was working and being used by the Respondent. We thus conclude that the Respondent received

the documents emailed by the Law Society in connection with this matter.

- (h) The Law Society replied to the Respondent's email later the same day, reminding her that it was proposing that the hearing be held on October 21, 2016 and indicating that, unless she suggested another date by the close of business on September 12, 2016, this date would be set for the hearing.
- (i) On September 13, 2016 the hearing administrator sent a Notice of Hearing to the Respondent by courier and email, hence satisfying the service requirements of Rule 4-32. The Notice of Hearing indicated that the hearing was set for October 21, 2016 at 9:30 am at the offices of the Law Society. It also stated that, if the Respondent failed to attend, the Panel could proceed in her absence.
- (j) On September 20, 2016 the Law Society sent the Respondent by email and ordinary mail the affidavit evidence and other materials it would be relying upon at the hearing. The cover letter accompanying these materials confirmed that the hearing was set for October 21, 2016 at 9:30 am, and stated that the hearing could proceed in her absence if she did not attend.
- (k) On October 12, 2016 the Law Society sent to the Respondent by email and ordinary mail a letter that, among other things, confirmed that the hearing was set for October 21, 2016.
- (l) Other than her email of September 8, 2016, the Respondent did not reply to any of these communications from the Law Society.

[12] The communications outlined in paragraph 11 demonstrate that the Respondent has received ample notice of the hearing date and has repeatedly been advised that a failure to attend may result in the Panel proceeding in her absence. She at no point suggested that the proposed hearing date was inconvenient. In these circumstances, we concluded that exercising our discretion under s. 42(2) would cause the Respondent no unfairness, and we therefore proceeded with the hearing in her absence.

RELEVANT FACTUAL BACKGROUND

[13] The Respondent was born in 1964 and was called to the bar and admitted as a member of the Law Society on September 2, 1994.

- [14] On April 12, 2016 one of the Respondent's clients, AF, lodged a complaint with the Law Society. A key feature of AF's complaint was that the Respondent had repeatedly failed to respond to AF's inquiries to take a particular action regarding his legal matter and for information regarding its status.
- [15] In response to a request for further details regarding the complaint, on June 13, 2016 AF provided the Law Society with additional information.
- [16] In order to properly investigate AF's complaint, the Law Society required the Respondent to attend for an interview to discuss her handling of the matter and to provide a copy of AF's client file. Accordingly, on July 6, 2016 the Law Society sent a letter to the Respondent by email and ordinary mail requiring her to attend for an interview regarding AF's complaint and also asking her for the client file. The letter suggested that the interview be conducted sometime between August 15 and September 15, 2016, and asked her to provide her available dates in writing and a copy of the entire client file by July 21, 2016.
- [17] The Respondent did not respond to the Law Society's request on or before the July 21, 2016 deadline.
- [18] On July 22, 2016 the Law Society sent a further letter to the Respondent by email and courier asking for a response by July 27, 2016. This letter stated that, if a response was not forthcoming by July 27, 2016, the matter would be referred to the Chair of the Discipline Committee with a recommendation for a citation.
- [19] The Law Society received no response to this letter on or before the July 27, 2016 deadline.
- [20] On August 18, 2016 a citation was issued alleging that the Respondent had committed professional misconduct by failing to provide a substantive response promptly or at all to communications from the Law Society concerning its investigation of the complaint by AF, contrary to Rule 7.1-1 of the *Code of Professional Conduct for British Columbia* ("the Code"), and in particular failed to respond to the letters dated July 7 and 22, 2016.
- [21] The Law Society received no reply from the Respondent subsequent to the citation being issued and served upon her other than her September 8, 2016 email referred to in paragraph 11 above. As at the date of the hearing, she had still not responded to the Law Society's request for an interview and a copy of the client file.

LEGAL PRINCIPLES RELEVANT TO FACTS AND DETERMINATION

- [22] The onus is on the Law Society to establish professional misconduct, and the standard of proof is a balance of probabilities. The evidence “must be scrutinized with care” and “must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test.” *FH v. McDougall*, 2008 SCC 53, at paras. 45-46; *Law Society of BC v. Albas*, 2016 LSBC 18, at paras. 33-36; *Law Society of BC v. Pyper*, 2016 LSBC 1, at paras. 33-34.
- [23] Professional misconduct is proven where the facts as made out disclose conduct falling markedly below the standard the Law Society expects of lawyers: *Law Society of BC v. Martin*, 2005 LSBC 16, at para. 17; *Re: Lawyer 12*, 2011 LSBC 35, at para. 8. Such conduct displays culpability that is grounded in a fundamental degree of fault, but need not constitute intentional malfeasance – gross culpable neglect of the respondent’s duties as a lawyer also satisfies the test: *Martin*, at para. 154; *Law Society of BC v. Gellert*, 2013 LSBC 22, at para. 67.
- [24] Rule 7.1-1 of the *Code* requires lawyers, among other things, to reply promptly and completely to any communication from the Law Society, provide documents as required by the Law Society, and cooperate with Law Society investigations involving the lawyer.
- [25] In addition, the Law Society Rules set out the obligations of the lawyer in an investigation of a complaint by the Law Society. These obligations are set out in Rule 3-5(7), 3-5(8)(a) and 3-5(8)(b), which provide that the lawyer must cooperate fully in the form indicated by Law Society, including by attending an interview and producing files. Rule 3-5(11)(b) states that a lawyer must comply with a request to produce files or attend at an interview “as soon as practicable and, in any event, by the time and date set by the Executive Director.”
- [26] The fact that the information or documents requested by the Law Society are privileged or confidential does not provide a proper basis for refusing to cooperate, for the reasons explained in *Gellert*, at paras. 150-151. See also Rule 3-5(11)(a).
- [27] A breach of Rule 7.1-1 of the *Code* does not always amount to professional misconduct, but it is generally a serious matter because, unless lawyers promptly respond to requests for information and documents, the Law Society cannot carry out its investigatory duties in a timely and effective manner so as to promote public confidence in the regulation of the profession, the integrity of the bar and the administration of justice: *Gellert*, at para. 145; *Law Society of BC v. Marcotte*, 2012 LSBC 18, at para. 48; *Law Society of BC v. Chu*, 2016 LSBC 30, at para. 41; *Law Society of BC v. Dobbin*, 1999 LSBC 27, at paras. 20-25.

- [28] The overriding importance of complying with the obligation to respond promptly to communications from the Law Society, in particular where the regulator is requesting information in response to a client complaint, explains why the leading case of *Dobbin* states at para. 25 that an “unexplained persistent failure” to respond will always constitute *prima facie* evidence of professional misconduct, so as to shift the persuasive burden to the respondent to excuse his or her conduct. See also *Chu*, at paras. 42-43 and the cases cited therein.
- [29] *Dobbin* also states, at para. 28, that one letter and a reminder from the Law Society should be sufficient to obtain a response in the absence of an explanation from the lawyer. If the lawyer requires additional time to respond, the onus is on him or her to ask the Law society and provide a satisfactory reason for the request. See also *Gellert*, at para. 147; *Law Society of BC v. Welder*, 2011 LSBC 6, at para. 29; *Marcotte*, at para. 18.

DETERMINATION

- [30] On the facts as established by the affidavit evidence, we conclude that the unexplained failure of the Respondent to reply to the Law Society’s letters dated July 7 and 22, 2016 constitutes a marked departure from the standards expected of lawyers in this province and thus amounts to professional misconduct. We come to this conclusion based on a number of considerations.
- [31] First, each letter was sent in two different ways, both of which complied with the service requirements set out in Rule 10-1. Specifically, the Respondent failed to reply to requests made twice by email at her last known email address, which the evidence showed she was using during the same time frame, and once each by ordinary mail and courier at her last known business address. Under Rule 2-10 a lawyer has an obligation to advise the Law Society of all of the lawyer’s places of business and to inform the Law Society immediately of a change of any of the lawyer’s places of business.
- [32] Second, the provisions in the *Code* and Rules referenced at paragraphs 24 and 25 above emphasize the importance of responding promptly to requests for information from the Law Society. The Respondent failed to reply to the Law Society’s requests despite these provisions being expressly drawn to her attention in the letter of July 7, 2016 and despite being expressly cautioned in the July 22, 2016 letter that a failure to meet the July 27, 2016 deadline would result in the matter being referred to the Discipline Committee Chair with a recommendation that a citation be issued for failure to respond to Law Society correspondence.

- [33] Third, the Respondent's failure to respond operated to obstruct the Law Society's investigation into a complaint made by her client. She must have known that her inaction would inexorably lead to this result.
- [34] Fourth, the Respondent did not contact the Law Society to ask for an extension of time. In fact, she had still not responded to the Law Society's letters by the date the citation was issued, August 18, 2016.
- [35] Fifth, there is no basis on the evidence to conclude that the Respondent was for some valid reason unable to reply to the letters during the period in question. It is true that the Law Society's requests were made during the summer months, and that lawyers are more likely than usual to be out of the office on vacation during this period. A lawyer may also become seriously ill and be unable to attend to matters arising in relation to his or her practice, no matter how important. Yet it would be grossly negligent for any lawyer to allow his or her office to "go dark" for a period of almost six weeks, whether due to vacation or illness, and to take no steps to have someone check and deal with emails, ordinary mail or couriered items received during that period of time, including from the Law Society.
- [36] It is worth adding that an inability to respond to an inquiry regarding a particular client matter due to anxiety or fear does not excuse a failure to respond to the Law Society. In order to avoid a finding of professional conduct by reason of mental or physical illness, a respondent must lead evidence to show that he or she was afflicted with an illness so incapacitating that he or she was unable to answer any correspondence. Only in rare cases will this standard be met on the evidence. See *Law Society of BC v. Cunningham*, 2007 LSBC 17, at paras. 18-20; *Law Society of BC v. Goddard*, 2007 LSBC 46, at para. 26; *Marcotte*, at para. 47; *Law Society of BC v. Lebeau*, 2010 LSBC 12, at para. 18; *Law Society of BC v. Straith*, 2016 LSBC 13, at paras. 103-104.
- [37] In this respect, as already noted at paragraph 11 above, on September 8, 2016 the Respondent sent an email to the Law Society. The subject line read "Law Society", and the main body of the email stated:

Dear Sirs/Mesdames:

I would like to address my outstanding matters with the Law Society.
However, I am currently seeking legal assistance.

I am deeply sorry for not addressing these matters in a timely fashion. I want to move forward and deal with these in a full professional manner.

While I have had a number of personal challenges, nothing excuses this continued inaction on my part.

Regards,

Susan

- [38] This letter refers to the Respondent being subject to “personal challenges,” but no specifics are provided. This letter, standing alone, does not constitute evidence that the Respondent was incapacitated from answering all correspondence.
- [39] Sixth, in her email of September 8, 2016 the Respondent expressly admitted that nothing excused the continued inaction with respect to her “outstanding matters with the Law Society.”
- [40] It is true that the September 8, 2016 email does not expressly reference the communications that are the subject of the citation issued on August 18, 2016. At the hearing, we asked counsel for the Law Society whether this email might refer to more than one Law Society matter, given the use of the plural “outstanding matters.” Counsel for the Law Society very fairly stated that she was unable to provide further information on this point for fear of prejudicing the facts and determination phase of the hearing.
- [41] Given the legitimate concern expressed by counsel for the Law Society, we wish to emphasize the basic rule that evidence of *other* proven or alleged professional misconduct against a respondent is usually inadmissible to help establish the professional misconduct alleged in the citation. An exception may apply where the similar fact rule is triggered: see *Gellert*, at para. 88. However, the Law Society did not seek to lead similar fact evidence in this case. Accordingly, while the September 8, 2016 email suggests that the Respondent may be subject to more than one Law Society investigation or citation, we have not used it to engage in prohibited propensity reasoning.
- [42] Rather, we have used the September 8, 2016 email solely for three discrete and limited purposes. First, this email helps support our finding that the Respondent did in fact receive the Law Society’s letters dated July 7 and 16, 2016 (see paragraph 11(g) above). Second, it bolsters our conclusion that the Respondent had no satisfactory excuse for failing to respond to these letters, given that she proffered none in the email (see paragraph 38 above). And third, the email contains an admission that the Respondent had no excuse for failing to respond to her outstanding Law Society matters, which we conclude included the outstanding

requests for information contained in the Law Society's letters of July 7 and 22, 2016 (see paragraph 39 above).

DISCIPLINARY ACTION

- [43] The Law Society is seeking a suspension of four to six months, in particular given the seriousness of the misconduct and the Respondent's extensive and recent record of failing to comply with Law Society requests for information in similar circumstances.
- [44] The primary aim of the discipline process is to carry out the Law Society's mandate of protecting the public and maintaining public confidence in the administration of justice, including confidence in the legal profession: *Law Society of BC v. Wesley*, 2016 LSBC 7, at paras. 20-12; *Law Society of BC v. Hill*, 2011 LSBC 16, at para. 3. Other principles come into play as well, especially the need for rehabilitation, but where there is a conflict between protecting the public and rehabilitation, the former interest must prevail: *Law Society of BC v. Lessing*, 2013 LSBC 29, at paras. 13, 57-60.
- [45] A non-exhaustive list of the factors often considered in assessing penalty is set out in the well-known decision of *Law Society of BC v. Ogilvie*, 1999 LSBC 17, at para. 10. Not all of these factors will be relevant in every case, and a number of the factors overlap: *Lessing*, at para. 56; *Law Society of BC v. Mussio*, 2015 LSBC 15, at para. 54; *Law Society of BC v. Gellert*, 2014 LSBC 5, at paras. 39-41. We agree with the observation in *Law Society of BC v. Dent*, 2016 LSBC 5, at paras. 15-16, that it is therefore often unnecessary for a panel to review every one of the *Ogilvie* factors in explaining why it has reached a particular decision regarding penalty. It may also make sense to consolidate the *Ogilvie* factors into more general categories covering those considerations pertinent to the proper determination of penalty in the given case: *Dent*, at paras. 18-23; *Law Society of BC v. Albas*, 2016 LSBC 36, at paras. 7-9; *Law Society of BC v. Jackson*, 2016 LSBC 27, at para. 27; *Mussio*, at para. 54. It is for this reason that we have adopted the useful categorization scheme suggested in *Dent*.

Nature, Gravity and Consequences of the Conduct

- [46] A failure to respond to Law Society requests for information regarding a client complaint is usually a serious matter: *Law Society of BC v. Tak*, 2011 LSBC 5, at para. 13; *Law Society of BC v. Buchan*, 2013 LSBC 8, at para. 13. Here, the Respondent's failure has prevented the Law Society from carrying out its

investigatory duties in a timely and effective manner and has stymied the Law Society's ability to investigate the client's complaint.

- [47] The substantial harm caused by a failure to respond to Law Society requests for information, including information needed to investigate a client complaint, is obvious when one considers the vital importance of prompt and complete responses to the effective regulation of the profession in the public interest. As stated in *Dobbin*, at para. 20:

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.

- [48] Similarly, in *Law Society of BC v. Hall*, 2003 LSBC 11, at para. 2, the panel stated:

... it is essential for lawyers to respond to Law Society communications. Otherwise the Society cannot effectively discharge its responsibility of protecting the public interest in the administration of justice. It is simple: lawyers neither have the freedom not to respond nor the freedom to respond according to a schedule that suits them. They certainly cannot put their heads in the sand, as the Respondent said he did.

- [49] The same point is made in many other panel decisions, including those mentioned at paragraph 27 above.

Acknowledgement of the Misconduct and Remedial Action

- [50] While the Respondent's September 8, 2016 email suggests that she is sorry for her failure to respond, she has not taken any remedial action. To the contrary, the Law Society's request for an interview and a copy of AF's client file remains unfulfilled.

Character of the Respondent and Her Professional Conduct Record

- [51] The Respondent has been a lawyer for over 20 years and ought to be familiar with the importance of responding promptly and fully to requests from the Law Society for information pertaining to a client complaint.
- [52] There is no evidence to explain the Respondent's misconduct other than the reference in her September 8, 2016 email to "personal challenges." This comment

is insufficient for us to conclude that her personal challenges constitute a mitigating circumstance.

- [53] There is also no evidence to suggest that the Respondent has taken any steps to ensure that misconduct of a similar nature does not recur in the future. This lack of evidence is especially concerning given the Respondent's lengthy professional conduct record, which includes numerous recent incidents of similar misconduct.

Professional Conduct Record

- [54] The Respondent's professional conduct record discloses the following:

- (a) *Conduct review held on May 26, 2010.* A conduct review was held to address an incident where the Respondent misled a client and the Respondent's employer regarding the status of the client's matter. Her conduct included creating a false email to cover her actions and failing to acknowledge her conduct when confronted. The Conduct Review Subcommittee believed that a recurrence was unlikely and so recommended no further action provided the Respondent completed the Small Firm Practice course.
- (b) *Administrative suspension between April 1 and May 5, 2016.* The Respondent was suspended during this period for failing to report completion of the requisite number of continuing professional development credits for 2015.
- (c) *Citation issued January 19, 2016.* On June 9, 2016 a panel found that the Respondent had committed professional misconduct by failing to provide a response to the Law Society during the investigation of a client complaint. The client had alleged that the Respondent failed to respond to or communicate with her. The Respondent did not attend at this hearing. She had retained counsel who attended on her behalf, but he had lost contact with her and did not have instructions. The Respondent was fined \$3,500 and ordered to pay costs of \$1,272.93. She was also ordered to provide a complete response to the Law Society by June 30, 2016. The Respondent has yet to comply with this latter order.
- (d) *Two citations issued June 24, 2016.* On September 1, 2016 a panel found that the Respondent had committed professional misconduct regarding two citations. Both citations alleged that the Respondent had failed to respond to letters from the Law Society regarding investigations involving client complaints. Both clients had alleged that the

Respondent had failed to respond to or communicate with them. The Respondent did not attend at the hearing nor did anyone attend on her behalf. She was suspended for four months commencing on October 1, 2016 and ordered to pay costs of \$1,296.91. She was also ordered to provide a complete response to the Law Society regarding both investigations by September 16, 2016. The Respondent has yet to comply with this latter order.

- (e) *Citation issued July 20, 2016.* On September 23, 2016 a panel found that the Respondent had committed professional misconduct by failing to reply to the Law Society as required by the order made on June 9, 2016 (see subparagraph (c) above). She was suspended for two months or until she provided a complete and substantial response as required by the June 9, 2016 order, whichever was later. The panel ordered that this suspension be served after completion of the four-month suspension that was to commence on October 1, 2016 (see subparagraph (d) above). The Respondent was also ordered to pay costs of \$1,250.09.

[55] By way of summary:

- (a) This is the fourth time since June 9, 2016 that a panel has concluded that the Respondent has committed professional misconduct by failing to respond to a Law Society request for information regarding a client complaint.
- (b) In all four matters, the client complained that the Respondent failed to respond to or communicate with the client.
- (c) In all four matters, the Respondent has yet to provide the requested information, and in three of them she is currently in breach of a panel order that she do so by a specified date. One of these breaches has resulted in a fifth finding of professional misconduct, for failing to comply with the order of a panel.
- (d) The Respondent was suspended for four months starting on October 1, 2016, and was subsequently suspended for a further two months or until she provided a complete and substantial response as required by the June 9, 2016 order, whichever is later. This means that the earliest the Respondent will complete her current suspensions is March 31, 2017.

[56] The Respondent's professional conduct record is a significant aggravating factor. This is the fifth citation in a period of less than five months that has resulted in a

finding of professional misconduct. As with the previous four matters, this one involves a failure to respond to the Law Society. In these circumstances, the need for specific and general deterrence in order to protect the public interest is manifest.

- [57] This extensive professional conduct record, viewed together with the absence of any tangible explanation for the Respondent's conduct, and the absence of evidence suggesting remorse or remedial steps, prevents us from discerning one way or the other whether there is any possibility of rehabilitating the Respondent.

Public Confidence in the Profession and the Disciplinary Process

- [58] The public's confidence in the legal profession and the disciplinary process is seriously threatened where a lawyer repeatedly ignores attempts by the Law Society to investigate client complaints: *Law Society of BC v. Tak*, 2010 LSBC 13, at paras 12-13.

Range of Sanctions in Similar Cases

- [59] There appear to be no cases in this jurisdiction where a lawyer has been sanctioned a fourth time for failing to respond to the Law Society's request for information regarding a client complaint. In those few cases where there has been a second or third proven allegation of failure to respond, a suspension has generally been ordered. See, for example, *Tak* (2010) (45-day suspension for second incident of failing to respond within a six-month period); *Law Society of BC v. Tak* (2011) (four-month suspension for third incident of failing to respond); *Law Society of BC v. Ashton*, 2004 LSBC 11 (three-month suspension for second incident of failing to respond).

CONCLUSION

- [60] The factors considered above favour a significant suspension in addition to the suspensions to which the Respondent is already subject, as a means of promoting general and specific deterrence, protecting the public and maintaining public confidence in the legal profession and the disciplinary process. We therefore order that the Respondent be suspended from the practice of law, to commence consecutive to the suspensions currently ordered, and to terminate on the later of:

- (a) the Respondent providing a complete and substantive response to the enquires made in the Law Society's letters to her dated July 7 and 22, 2016; or

(b) four months from commencement.

[61] This means that the earliest the Respondent will complete her current suspensions is July 31, 2017.

[62] Were it not for the fact that the Respondent is currently subject to two suspension orders totalling at least six months, we would have been inclined to order a longer period of suspension. We thus agree with similar comments made by the panel regarding the matter discussed at paragraph 54(e) above: *Law Society of BC v. Ben-Oliel*, 2016 LSBC 35, at para. 32.

COSTS

[63] The Law Society seeks costs of \$2,494.34. This amount is composed of \$2,000 for a full day hearing, pursuant to tariff, and \$494.34 in disbursements.

[64] Rule 5-11 provides that costs under the tariff are to be awarded unless the panel determines it is reasonable and appropriate to award no costs or costs in an amount other than that provided by the tariff. We see no reason for departing from the costs as calculated pursuant to the tariff, in particular in light of the considerations mentioned in *Law Society of BC v. Racette*, 2006 LSBC 29, at paras. 13-14. We thus award costs to the Law Society in the amount of \$2,494.34.

[65] Given the lack of information regarding the Respondent's financial circumstances, she will have until December 30, 2016 to pay the award of costs.