

2026 LSBC 07
Hearing File No.: HE20240008
Decision Issued: March 25, 2026
Citation Issued: May 30, 2024

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

ROHITA PANNU

RESPONDENT

DECISION ON SUMMARY HEARING

Hearing date: April 15, 2025

Panel: Catherine Chow, Chair
Karen Kesteloo, Public representative
James Struthers, Bencher

Discipline Counsel: Ilana Teicher
Counsel for the Respondent: Jenny Musyj

OVERVIEW

[1] The Law Society issued a citation against the Respondent on May 30, 2024 (“Citation”) alleging the Respondent failed to cooperate in the Law Society’s investigation (“Investigation”) of complaint CO20240142 in breach of Rules 3-5(7) and 3-5(11) of the Law Society Rules (“Rules”) and rule 7.1-1 of the *Code of Professional Conduct for British Columbia* (“Code”), and that such failure to respond constitutes professional misconduct pursuant to section 38(4) of the *Legal Profession Act*, SBC 1998, c 9 (“Act”).

[2] The Citation hearing which was originally scheduled to occur September 10 to 11, 2024, was adjourned five times, and the Citation summary hearing was eventually

scheduled for April 15, 2025, which was made peremptory on the Respondent (“Summary Hearing”).

[3] By Short Notice Motion filed April 14, 2025, the Respondent sought to adjourn the Summary Hearing (“Adjournment Application”).

[4] The Panel heard the Adjournment Application. The Panel denied the Adjournment Application and provided oral reasons during the Summary Hearing, with written reasons to follow. The Respondent applied during the Summary Hearing for an order dividing the hearing into two phases, seeking that the disciplinary action phase be heard at a later time, or that the disciplinary action phase proceed by way of a hearing in writing. The Panel denied those applications, provided oral reasons on the same basis as the Adjournment Application.

[5] The Panel proceeded with the Summary Hearing and heard arguments of the Law Society and Respondent on proceeding in the absence of the Respondent, facts and determination, disciplinary action, and costs. The Panel inquired with the Respondent for further written submissions on costs after the Summary Hearing ended. The Panel delivered an oral decision to proceed in the absence of the Respondent.

[6] The Panel also delivered oral reasons, with written reasons to follow, on the facts and determination stage of the Summary Hearing, finding that the Respondent committed professional misconduct as set out in the Citation.

[7] By Notice of Motion dated April 25, 2025, the Respondent applied to reopen the Summary Hearing (“Reopening Hearing”). The Panel heard the Reopening Hearing on November 26, 2025 and issued its decision on the Reopening Hearing on March 23, 2026. The Panel did not grant the Respondent’s application to reopen the Summary Hearing.

[8] The Panel provides its written reasons below with respect to the Respondent’s applications and for its findings on facts and determination and disciplinary action in respect of the Summary Hearing.

[9] The Panel has found that the Respondent has committed professional misconduct as set out in the Citation, and the appropriate disciplinary sanction is disbarment.

CITATION

[10] On April 22, 2024, the Chair of the Discipline Committee authorized the issuance of the Citation and that the hearing of the Citation proceed by way of a summary hearing.

The Law Society provided the Respondent with a copy of the Chair's order on April 24, 2024.

[11] The Law Society alleges in the Citation that the Respondent failed to cooperate in the Investigation of complaint file number CO20240142 contrary to one or more of Rule 3-5(7) and 3-5(11) of the Rules and rule 7.1-1 of the *Code* by failing to respond promptly, fully, and substantively to correspondence from the Law Society dated February 22, 2024, and that these acts or omissions constitute professional misconduct pursuant to section 38(4) of the *Act*.

[12] By letter dated May 30, 2024, the Respondent was served with the Citation in accordance with the requirements of Rule 4-19 of the Rules. Service was not in dispute in the Summary Hearing.

PROCEDURAL BACKGROUND

[13] Before proceeding on April 15, 2025, the hearing of the Citation was previously scheduled for the following dates:

- (a) September 10 to 11, 2024;
- (b) November 6 to 7, 2024;
- (c) December 4 to 5, 2024; and
- (d) April 4, 2025.

[14] The hearing of the Citation was adjourned four times, prior to the Citation hearing being made peremptory on the Respondent, on the following dates:

- (a) on August 29, 2024, at the Respondent's request and with the Law Society's consent;
- (b) on October 30, 2024, at the Respondent's request and with the Law Society's consent with conditions;
- (c) on November 25, 2024, at the Respondent's request and with the Law Society's consent with conditions; and
- (d) on April 1, 2024, at the Respondent's request and with the Law Society's consent.

[15] There have been eight pre-hearing conferences in this matter since the Citation was issued. The first pre-hearing conference was on June 20, 2024, and the most recent pre-hearing conference was on March 10, 2025.

[16] At the March 10, 2025 pre-hearing conference, the motions adjudicator ordered as follows:

- (a) The Respondent is to provide a responding affidavit by March 21, 2025.
- (b) The hearing is set for April 4, 2025, with cross-examination if required at that time.
- (c) The hearing date is peremptory on the Respondent.
- (d) The pre-hearing conference set for March 24, 2025 is cancelled.

[17] The Respondent did not provide a responding affidavit by March 21, 2025 as ordered, or at all.

[18] On April 1, 2025, three days before the hearing was scheduled to proceed, counsel for the Respondent contacted Law Society counsel and requested an adjournment of the hearing by consent on the basis of an imminent resolution of the matter under Rule 4-29 of the Rules.

[19] Counsel for the Law Society agreed to the adjournment on the condition that, if the parties were unable to finalize the terms of a Rule 4-29 proposal by April 11, 2025, the hearing would proceed on a new date scheduled for the week of April 14 to 18, 2025.

[20] The Respondent and Law Society did not reach agreement on the terms of a Rule 4-29 proposal by Friday, April 11, 2025 or at all. Instead, counsel for the Respondent wrote to counsel for the Law Society at the end of the day on April 11, advising that they would be seeking an adjournment as the Respondent was not well and was being checked in at Mount St. Joseph's Hospital. No evidence was provided.

[21] Subsequently on April 11, 2025, the Tribunal Registry emailed the parties advising that the Summary Hearing was scheduled to proceed on April 15, 2025, at 9:30 a.m. by Zoom.

[22] On April 14, 2025, counsel for the Respondent filed a Short Notice Motion seeking the following orders:

- (a) The Summary Hearing scheduled for April 15, 2025 be adjourned to a date and time to be set.

- (b) Such further and other relief as counsel may seek and this Tribunal deems just.

[23] On April 14, 2025, the Tribunal Registry wrote to the parties advising that the Tribunal Chair had directed that the Adjournment Application be heard by the Hearing Panel the following day at 9:30 a.m., the same day that the Summary Hearing was scheduled to proceed.

[24] Between June 2024 and March 2025, the Respondent was subject to a number of pre-hearing orders, adjournment conditions, and associated deadlines respecting submission of response materials and evidence, including a full medical report and file from Dr. L. The Respondent did not meet the conditions on time or in full.

[25] The Law Society submitted a response to the Adjournment Application on April 14, 2025.

[26] The Summary Hearing commenced on April 15, 2025.

[27] The Panel first heard the Adjournment Application at the Summary Hearing. The Panel denied the Adjournment Application and provided oral reasons, with written reasons to follow respecting the Adjournment Application.

[28] The Panel then heard submissions as to facts and determination and delivered oral reasons, with written reasons to follow. The Panel found that the Respondent had failed to respond to the Investigation correspondence and that failing to do so constituted professional misconduct.

[29] The Panel then heard submissions as to disciplinary action and costs. The Respondent's submissions on costs were limited.

[30] The Summary Hearing concluded on April 15, 2025, with the Panel reserving its decision on disciplinary action and costs.

[31] On April 17, 2025, the Panel delivered a memorandum to both the Law Society and Respondent seeking the Respondent's further written submissions on the issue of costs, and an opportunity for the Law Society to provide reply to any written submissions so provided by the Respondent.

[32] Before the Panel issued its written reasons on the Summary Hearing, on April 25, 2025, the Respondent submitted a Notice of Motion seeking the following orders ("Reopening Motion"):

- (a) the Summary Hearing be reopened and reset to a date and time to be determined;
- (b) the Respondent be at liberty to call her own evidence and that of such other witnesses as she may advise;
- (c) the Respondent be at liberty to call further evidence from Dr. L, forensic psychologist;
- (d) costs submissions are to be made orally after the issue of reopening is addressed; and
- (e) such further and other relief as counsel may seek and this Tribunal deems just.

[33] In support of the Application, counsel for the Respondent provided Affidavit #1 of Rohita Pannu dated April 25, 2025 (“New Evidence”), which was new evidence not submitted at the April 15, 2025 Summary Hearing.

[34] The Respondent also applied for the right to adduce additional new evidence at a reopened hearing, including an updated assessment from Dr. L and such other witnesses and evidence as the Respondent wishes to call, if the Summary Hearing is reopened.

[35] On April 29, 2025, the Law Society provided its response to the Reopening Motion (“Response”), opposing the granting of the substantive orders or directions sought by the Respondent.

[36] The Panel heard the Reopening Motion on November 26, 2025 (“Reopening Hearing”), and issued its written reasons in respect of the Reopening Motion on March 23, 2026 separately from these reasons. The Panel rejected the Respondent’s applications in the Reopening Motion.

[37] The Respondent had not, as of the Summary Hearing, fulfilled the terms of any pre-hearing orders or adjournment conditions on the specified timelines.

[38] The Respondent had not, as of the date of the Summary Hearing, responded to the Investigation.

[39] The Respondent had not, prior to the Summary Hearing, responded to the Investigation.

[40] Service and adequacy of notice of the Summary Hearing was not disputed. As such, the Panel proceeded in the Respondent’s absence.

THE PANEL'S DECISION ON THE ADJOURNMENT APPLICATION

Evidence of the Parties

Prior Medical Evidence

[41] The Respondent relied on the following documents in the Adjournment Application (“Prior Medical Evidence”):

- (a) a note of Dr. T dated October 29, 2024, which was first provided on October 30, 2024 (“Dr. T Letter”);
- (b) a letter of Dr. L dated November 4, 2024, which was first provided in support of an adjournment application brought by the Respondent on November 19, 2024 in respect of a hearing for another citation issued on July 28, 2023 and subsequently relied upon at a pre-hearing conference on November 25, 2025 for an adjournment of the hearing of the Citation (“Dr. L Letter #1”); and
- (c) a report of Dr. L dated February 21, 2025, which was first provided on February 25, 2025 and was relied upon by the Respondent at the pre-hearing conference of March 10, 2025 (“Dr. L Letter #2”).

[42] Subsequently on April 14, 2025, counsel for the Respondent provided one additional document in support of the within motion, being the print-out of a prescription for medication, issued by Mount Saint Joseph Hospital on April 11, 2025 (“ER Note”).

Law Society's Evidence

[43] The Law Society relied on the following evidence in relation to the Adjournment Application.

- (a) affidavit of Ms. Julie Erskine dated April 14, 2025 (“Erskine Affidavit”), which contained a number of exhibits; and
- (b) as an exhibit to the Erskine Affidavit, an independent medical report of Dr. S (“Dr. S Report”).

Mental Health Condition at Time of Summary Hearing

[44] Respondent's counsel attempted repeatedly to submit oral evidence directly respecting the Respondent's present mental-health condition during and leading up to the Summary Hearing, including that the Respondent was unable to consider or provide instructions to counsel.

[45] The Panel did not admit or consider the direct evidence of counsel.

Summary of Law Society's Evidence

[46] The Law Society's evidence suggests that the Respondent was not experiencing any mental health conditions prior to the facts underlying the Citation.

[47] The Dr. S Report did not indicate the Respondent was experiencing any mental or physical health condition which would adversely affect their ability to engage in the Investigation at the time, being early October 2023. The assessment methodology was robust and included a wide range of tests for a wide range of cognitive capabilities and conditions.

Summary of Respondent's Evidence

[48] The Respondent submitted that the Respondent has experienced significant adverse mental health consequences due to traumatic and stressful life events, and that the Respondent's mental health condition was such that the Respondent could not participate in the Investigation or the Citation hearing, or prepare for the hearing, over an extended period of time.

[49] Dr. T is a family physician. The Dr. T Letter indicated the Respondent was experiencing both physical and psychological health conditions which would adversely impact their ability to participate in the Investigation, hearings, or daily tasks at the relevant time, being late October 2024, and proposed a treatment plan. The Dr. T Letter did not specify the methodology used to identify these conditions or recommendations.

[50] Dr. L is a clinical and forensic psychologist. The Dr. L Letter #1 indicated that the Respondent was experiencing both physical and psychological health conditions which adversely impacted the Respondent's ability to engage in daily tasks, as well as the Investigation and hearing, at the relevant time being early November, 2024. Dr. L also made recommendations for treatment. The assessments and recommendations were based on a 3-hour interview with the Respondent.

[51] The Dr. L Letter #2, dated February 21, 2025, indicated that the Respondent was experiencing physical and psychological health conditions which adversely impacted the Respondent's ability to engage in daily tasks, the Investigation and disciplinary proceedings, made recommendations for further treatment, and indicated the Respondent was well enough to return to work. Dr. L also made retroactive assessments respecting the Respondent's condition prior to the date of the assessments. The assessments and recommendations were based on multiple hour or longer interviews between the Respondent and Dr. L.

Weight and Relevance of Evidence

[52] The Panel admitted the Prior Medical Evidence, ER Note and Law Society's evidence. The parties did not dispute admissibility.

[53] None of the Respondent's or Law Society's evidence was submitted as expert opinion evidence.

[54] The Panel did not find any of the Prior Medical Evidence relevant, as it was dated well prior to the Summary Hearing.

[55] The ER Note contained only a prescription for medication without additional information about the hospital visit. The Panel did not accept direct evidence submitted by the Respondent's counsel. The Panel found the ER Note relevant, however, no material findings of fact could be made based on the ER Note to support the Respondent's position that she was unable to prepare for or participate in the Citation hearing.

Misrepresentation and Practice While Suspended

[56] The Erskine Affidavit included as an exhibit an affidavit of Mr. Hoon Lee, a paralegal in the Investigations, Monitoring and Enforcement Department at the Law Society of British Columbia, dated October 31, 2024 ("Hoon Affidavit"). Mr. Lee asserted that the Respondent attended court on October 3, 2024, just two days after an alleged motor vehicle accident. According to Mr. Lee, the Respondent's counsel made submissions on an application. At one point the Respondent rose to speak directly to the court, but was directed to sit back down. The Respondent in a few instances left and returned to the courtroom to make or receive phone calls, and rolled a bag full of binders into the courtroom.

[57] The Respondent sought an adjournment of the Citation hearing on August 29, 2024, and again on October 30, 2024, on the basis she was unable to engage in basic

tasks such as sitting, standing, laying down, and walking due to a motor vehicle accident on October 1, 2024.

[58] The Erskine Affidavit also includes submissions of the Law Society in respect of an adjournment application made on October 30, 2024, and an affidavit of Ms. Gurprit Bains, acting Chief Legal Officer of the Law Society of British Columbia at the time (“Bains Affidavit”). The Bains Affidavit includes a complaint of a notary (the “Notary”), which indicates that the Respondent had called the Notary back regarding a Form A sent from the Respondent’s office. The Form A contained an issue with the consideration and market value which needed to be corrected. The Respondent said “she understood the issue and they would get the document over to [the Notary]”.

[59] The Respondent did not dispute admissibility, or the facts alleged, in the Hoon Affidavit or Bains Affidavit. At the Summary Hearing, the Law Society seemed to suggest that this evidence indicates a lack of good faith by the Respondent when she failed to respond to the Law Society. However, there is nothing in the wording of the allegation in the Citation, in the Law Society’s written submissions, or in the Law Society’s affidavit evidence that gives notice of an allegation of a lack of good faith (See Law Society Rule 4-18; *Gregory v. Law Society of British Columbia*, 2024 BCCA 350). Accordingly, the Panel gave this evidence no weight.

Applicable Law

The Law Society’s Governance Framework

[60] It is the object and duty of the Law Society to uphold and protect the public interest in the administration of justice by:¹

- (a) preserving and protecting the rights and freedoms of all persons;
- (b) ensuring the independence, integrity, honour and competence of lawyers;
- (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission;
- (d) regulating the practice of law; and

¹ The *Act*, s 3.

- (e) supporting and assisting lawyers, articulated students and lawyers of other jurisdictions who are permitted to practice law in British Columbia in fulfilling their duties in the practice of law.

Legal Test for Adjournment Applications

[61] Rule 5-5.2 deals with adjournments:

- (1) Before a hearing begins, a party may apply for an order that the hearing be adjourned by filing with the Tribunal and delivering to the other party written notice setting out the reasons for the application.
- (2) Before a hearing begins, a motions adjudicator must decide whether to grant the adjournment, with or without conditions, and advise the parties accordingly.
- (3) After a hearing has begun, the chair of the panel may adjourn the hearing, with or without conditions, generally or to a specified date, time and place.

[62] Other than indicating that such a decision is a discretionary matter, the Rules do not provide direction as to the basis on which an application to adjourn may or may not be granted.

[63] The LSBC Tribunal’s Practice Directions (“Practice Directions”) also deal with adjournments. Practice Direction 5.4 states, in part:

Adjournments are not automatic, even if the parties consent. Once an appearance before the assigned hearing panel or a review board is scheduled, that date is firm and adjournments will be granted only in exceptional circumstances. Parties must be ready to proceed on the dates scheduled.

- (2) Exceptional circumstances *may* include matters such as the illness of a party, witness or representative. Late retention of counsel, the unavailability of counsel or the parties’ wishes to engage in last-minute settlement discussions will generally not be considered exceptional circumstances.

...

- (6) If there is a seized hearing panel or review board, an adjournment request will normally be dealt with by the panel or board or the chair of the panel or board. An adjournment request where there is a seized panel or board should be made to the panel or board or chair of the panel or board by filing a Notice of Motion (Form 5), setting out complete submissions in support of the adjournment and indicating

whether the request is on consent, opposed or unopposed. *The adjournment request must also provide a selection of alternative proposed dates for the hearing.* The panel, board or its chair may deal with the matter through a case conference in writing or direct that an oral case conference be scheduled.

[emphasis added]

[64] The granting of an adjournment is a discretionary matter. The exercise of this discretion requires a balancing of the Respondent’s right to a fair hearing against the public interest in having the administration of justice move forward in a timely and expeditious matter.²

[65] The following non-exhaustive factors should be considered on an application for adjournment (“Factors”):³

- (a) the purpose of the adjournment (relevance to the proceedings, necessary for a fair hearing);
- (b) has the participant seeking the adjournment acted in good faith and reasonably in attempting to avoid the necessity of adjourning;
- (c) the position of other participants and the reasonableness of their actions;
- (d) the seriousness of the harm resulting if the adjournment is not granted;
- (e) the seriousness of the harm resulting if the adjournment is granted (to the other participants, etc., including the length of adjournment required);
- (f) is there any way to compensate for any harm identified;
- (g) how many adjournments has the party requesting the adjournment been granted in the past; and
- (h) was the hearing to be peremptory, and if so, were the parties consulted in selecting the date and were they advised of its peremptory nature.

Onus and Standard of Proof in Adjournment Applications

[66] The onus is on the applicant to support an adjournment application.⁴

² *Law Society of BC v. Hart*, 2019 LSBC 39 at para. 12. The *Hart* decision has been subsequently applied in many LSBC Tribunal decisions regarding adjournments, e.g. recently in *Law Society of BC v. Marriott*, 2024 LSBC 32 at para. 10.

³ *Hart* at para. 13.

⁴ *Law Society of BC v. Sahota*, 2023 LSBC 8, at para. 35.

[67] The general standard of proof in an administrative law context is a balance of probabilities, subject to any express statutory provision to the contrary.⁵ The Panel is not aware of any statutory provision providing a respondent such relief in an adjournment application.

[68] The Law Society's public protection mandate requires that hearings into allegations of professional misconduct proceed in a timely and expeditious manner. This is particularly true in the case of summary hearings.

[69] Summary hearing proceedings under Rule 5-4.5 are intended to be especially expeditious. The Rule provides that certain matters can proceed by summary hearing; evidence is to be adduced by affidavit, agreed facts, or admissions, and the panel is permitted to issue a decision respecting all aspects of the proceeding, including facts and determination, disciplinary action, and costs.

[70] One of the purposes of making a hearing date peremptory is to further the public interest in the administration of justice by preventing delay and wasted costs.⁶

[71] The Practice Directions are clear that adjournments are not automatic, even where adjournments are sought by consent, and that parties must be ready to proceed on the hearing date. This includes the preparation, collection, and submission of evidence.

Does the Respondent's Mental Health Condition at the Time of the Summary Hearing Constitute an Exceptional Circumstance?

[72] Though the Practice Directions are not binding on the Panel, both the Respondent and Law Society made submissions respecting whether the Respondent's circumstances were exceptional so as to warrant an adjournment pursuant to Practice Direction 5.4.

[73] The Panel found that exceptionality is a factor the Panel may consider in determining whether to grant an adjournment, however, the factors in *Hart* govern over Practice Direction 5.4.

Position of the Parties

[74] The Respondent argued:

⁵ *Stetler v. Ontario Flue-Cured Tobacco Growers' Marketing Board*, 2005 CanLII 24217 (ONCA), at para. 79.

⁶ *Sahota* at para. 46.

- (a) the Citation, and other Law Society disciplinary processes, have significantly exacerbated the Respondent's underlying adverse mental health conditions;
- (b) they were experiencing a mental health condition at the time of the Summary Hearing which exposed the Respondent to material risk of harm;
- (c) that their mental health condition leading up to the Summary Hearing prevented them from providing instructions to counsel;
- (d) they require time to improve their health condition before being able to provide instructions to counsel or participate in the hearing;
- (e) there is risk of irreparable harm to the Respondent were the Summary Hearing to proceed; and
- (f) a respondent raising mental health issues should never be considered as making an excuse, as this would trivialize and stigmatize persons experiencing adverse mental health conditions.

[75] The Law Society argued:

- (a) The Law Society's public protection mandate requires that hearings into allegations of professional misconduct proceed in a timely and expeditious manner, and that this is particularly true in the case of summary hearings.
- (b) Summary hearing proceedings under Rule 5-4.5 are intended to be especially expeditious. The Rule provides that only certain kinds of relatively straightforward allegations can proceed by summary hearing, evidence is to be adduced by affidavit, agreed facts, or admissions, and the panel is permitted to issue a decision respecting all aspects of the proceeding, including facts and determination, disciplinary action, and costs.
- (c) Adjournments of peremptory hearing dates should not be granted absent the most extraordinary circumstances, such as the unexpected serious illness or death of a party or material witness or representative.
- (d) The ER Note is a bare prescription note for medication. It has no entries of tests undertaken or objective findings made by medical staff at the

hospital nor an actual time the Respondent was admitted to and discharged from the hospital; and

- (e) the Prior Medical Evidence is insufficient to justify a further adjournment of this matter.

Mental Health Conditions as Exceptional Circumstances

[76] Fundamentally, adjournment applications are about balancing an individual's right to procedural fairness with the public interest in the administration of justice. The importance of the latter is heightened in the context of peremptory hearings.

[77] A respondent's mental health condition leading up to, and at the time of, a hearing may adversely impact their ability to participate in a Tribunal proceeding. Where a mental health condition does adversely impact their ability to participate, the respondent's right to procedural fairness may require delay of proceedings, however, a respondent's circumstances must be balanced against the need for expediency in the administration of justice, and the applicant bears the onus to establish the grounds of an adjournment application.

The Panel's Determination

[78] The Panel accepts the Respondent's argument that raising of health issues should never be considered an excuse, and that persons doing so should not be stigmatized.

[79] That said, the Respondent bears the onus of establishing the grounds of the Adjournment Application. The Panel could not, based on the evidence before it, make a finding that the Respondent was experiencing any health condition which materially and adversely impacted their ability to prepare for, consider and provide instructions respecting, the Summary Hearing. The Panel found the Respondent was well enough to work in February, 2025.

[80] In the Panel's view, a lawyer whom is well enough to work would be well enough to participate in the disciplinary process. Doing so is a requirement for all members.

[81] While the Respondent was entitled to attend the Summary Hearing, the Summary Hearing was to proceed on the basis of affidavit evidence.

[82] The Respondent also had an extended opportunity to prepare and submit affidavit evidence for the Summary Hearing.

[83] The Panel finds that the Respondent has not established that the Respondent's circumstances are exceptional so as to warrant adjournment of the Summary Hearing pursuant to Practice Direction 5.4.

Should the Panel Grant the Adjournment Application?

[84] The Panel will now consider relevant factors to the Adjournment Application.

Purpose of Adjournment

[85] The Respondent submitted their mental health condition at the time of, and leading up to, the Summary Hearing rendered them unable to carefully consider and provide instructions in relation to the Summary Hearing, and that they require time to address their mental health. The Respondent submits it would be unfair to proceed with a hearing when the Respondent is unwell and an adjournment ought to be granted in light of the foregoing in order to protect the Respondent's right to a fair hearing.

[86] The Law Society submitted the evidence is insufficient to establish the Respondent's mental health condition leading up to, and at the time, of the Summary Hearing or that they were unable to provide informed instructions to counsel. The Law Society argues the Prior Medical Evidence is outdated, the ER Note does not support the Respondent's counsel's directly submitted evidence that the Respondent was suicidal, and that the Law Society's evidence calls into question the findings in the Prior Medical Evidence, and that the Respondent has submitted no meaningful new evidence since the Prior Medical Evidence.

[87] The Panel could not find, based on the evidence, that the Respondent was unable to provide instructions to counsel in relation to the Summary Hearing, nor that the Respondent's life or safety were at risk.

[88] The Panel's findings in relation to this factor militate against granting the Adjournment Application.

Reasonableness of the Parties

[89] The Respondent argued that mental health conditions are fluid, that they have been overwhelmed with the discipline process which has exacerbated their adverse mental health condition, and that they require time to focus on their health.

[90] The Law Society argues the Respondent has not acted reasonably in attempting to avoid the necessity of an adjournment. Adjournment applications brought at the eleventh hour should not be encouraged and do not indicate a respect for Law Society proceedings or the public interest.

[91] A respondent's mental health condition must be balanced with the administration of justice. Both lawyers, and the Law Society, have a role to play in this balancing.

[92] The Respondent did not comply with pre-hearing orders, or submit evidence, during this extended period of time.

[93] The Respondent has also not provided any alternative proposed dates for the Citation hearing.

[94] The Respondent was afforded many opportunities over an extended period of time to prepare and submit evidence, and consider and provide instructions to her counsel, in advance of the Summary Hearing, as well as to seek and obtain care.

[95] The Law Society granted each adjournment request by consent except for the Adjournment Application, including adjournment of the Summary Hearing by consent on the basis that an agreement by consent was close at hand, and after it was made peremptory on the Respondent.

[96] The Law Society was exceedingly flexible in granting adjournments by consent. The Respondent was afforded every opportunity to prepare and submit evidence, and consider and provide instructions in relation to the Citation hearing, as well as the opportunity to seek and obtain adequate care for any alleged adverse mental health condition.

[97] The Panel finds that the Respondent did not act reasonably or in good faith in relation to the Adjournment Application.

[98] The Panel's finding on this factor militates against granting the Adjournment Application.

Seriousness of Harm if Adjournment Not Granted

[99] The Respondent argues that not allowing the Respondent to focus on her mental health at this time could have profound adverse consequences on the Respondent, including potentially irreversible outcomes.

[100] The Respondent's counsel argued repeatedly that the Respondent has not been afforded adequate opportunity to prepare for, and provide informed instructions respecting, the Summary Hearing.

[101] The Law Society argues there is no evidence that the Respondent's life or safety are at risk.

[102] The Panel has found that, while the Respondent's condition may have been exacerbated between the date of the Dr. L Letter #2 and the Summary Hearing, there was no evidence to support the suggestion that proceeding with the Summary Hearing would negatively impact the Respondent's mental health.

[103] It is true that, the Respondent's counsel was not prepared and was not in receipt of instructions from her client. As such, proceeding with the Summary Hearing would adversely affect the Respondent's interests.

[104] The Panel rejects the Respondent's argument that the Respondent was not afforded an opportunity to prepare for, and provide informed instructions respecting, the Summary Hearing.

[105] The Respondent was given five opportunities over the course of more than eight months prior to the Summary Hearing. No evidence was submitted to support the Respondent's condition at the time of the Summary Hearing, or to demonstrate steps taken to seek and obtain adequate care. It appears to the Panel that the Respondent did not take advantage of these opportunities. As such, the harm to the Respondent's interests from lack of preparation and instructions to counsel cannot be characterized as flowing from the decision of whether to grant the adjournment.

[106] The Respondent should have taken advantage of the opportunities afforded prior to the Summary Hearing to engage in the disciplinary process as required. The Respondent did not do so, and was not able to establish a justification for not having done so.

Seriousness of Harm If Adjournment Granted

[107] The Respondent argues that, as she is suspended, there is no harm to the public if the Adjournment Application is granted.

[108] The Law Society argues that complainants are awaiting justice, and it is in the public interest for expeditious proceedings.

[109] The Respondent is currently suspended and a former member. As such, the risk to the public arising from the Respondent's continued practice of law while the Investigation is pending is limited.

[110] However, public confidence in the Law Society and the Tribunal may be adversely affected if citation hearings do not proceed in a timely manner.

[111] The Citation was issued in April, 2024. The Citation hearing was initially scheduled for September, 2024 and was made peremptory on the Respondent on April 1, 2025. The hearing was made peremptory on the Respondent, and adjourned again to mid-April. The Summary Hearing is a summary hearing and such hearings are intended to be particularly expeditious.

[112] The harm to the public interest in extended delay of tribunal proceedings is significant.

[113] This factor militates against granting the Adjournment Application.

Compensation of Harm

[114] While there is potential harm to the Respondent's due to lack of preparation for the Summary Hearing, the Panel cannot find that such harm is the result of the Summary Hearing proceeding as scheduled. The evidence does not indicate that an adjournment would be likely to compensate for that potential harm, even an adjournment on terms.

[115] Between June 2024 and March 2025, the Respondent was subject to a number of pre-hearing orders, adjournment conditions, and associated deadlines respecting submission of response materials and evidence, including a full medical file from Dr. L. The Respondent did not meet these conditions, or submit evidence, during this extended period of time.

[116] When seeking the adjournment, the Respondent's counsel did not have instructions and did not provide alternate dates for the Summary Hearing or the filing of evidence. Consequently, adjourning the Summary Hearing would have involved a further delay of an indeterminate period, or required the Panel to set dates where there was no evidence the Respondent would be available to attend on those new dates. The Panel is unable to conclude on the evidence that the Respondent was more likely to attend and be prepared for a hearing set at a future date.

[117] This factor militates against granting an adjournment.

Number of Adjournments

[118] The Respondent was granted five adjournments, all with the Law Society's consent, including one adjournment once the hearing was made peremptory on the Respondent.

[119] This factor militates against granting an adjournment.

Summary Hearing

[120] The Summary Hearing was made peremptory on the Respondent. The Respondent was consulted respecting the date of the Summary Hearing, and informed that the hearing was peremptory.

[121] This factor militates against granting an adjournment.

Decision of the Panel

[122] The Adjournment Application is denied.

THE PANEL'S DECISION ON FACTS AND DETERMINATION

Law Society's Evidence

[123] The Law Society relied on an affidavit of Mr. Vodsedalek, the Law Society staff lawyer whom investigated the relevant complaint against the Respondent, dated May 29, 2024 ("Vodsedalek Affidavit").

[124] The Vodsedalek Affidavit sets out the factual basis of the Law Society's allegations in the Citation, summarized below.

Respondent's experience and practice history

[125] The Respondent was called to the Bar and admitted as a member of the Law Society on December 2, 2014.

[126] Since January 21, 2015, the Respondent has practised through her law firm, Rohita Pannu Law Corporation.

[127] On October 19, 2023, the Respondent added a new place of practice named PB Law Corporation, which operates out of the same address as Rohita Pannu Law Corporation. PB Law Corporation initially consisted of the Respondent and another lawyer. The other lawyer has since left PB Law Corporation, leaving the Respondent as the only lawyer associated with PB Law Corporation.

Failure to respond to the Investigation

[128] The Citation allegation concerns the Respondent's failure to respond fully and substantively to the letter from the Law Society dated February 22, 2024, during the course of the Investigation.

[129] The Investigation arose as a result of a complaint received by the Law Society on February 7, 2024, from a complainant ("MB") concerning the Respondent ("MB Complaint").

[130] The MB Complaint outlined concerns about the Respondent's conduct in relation to MB's father SK, her brother RK, and SK's company, which we'll refer to as KI Co.

[131] The MB Complaint alleged that despite SK's deteriorating health and lack of capacity, the Respondent drafted a new power of attorney that revoked an existing power of attorney to MB's sister, and appointed RK as SK's new attorney.

[132] MB alleged that the Respondent had SK execute other documents that had the effect of gratuitously transferring the family home owned by SK to RK and SK as joint tenants. In the litigation, MB also alleges that RK was made a director of KI Co. around the same time, which may have resulted in the gratuitous transfer of the properties and assets held by KI Co. to RK.

[133] MB claimed these actions were not consistent with SK's wishes and that the Respondent had SK execute documents at a time when he did not have the capacity to do so, that the Respondent worked with RK to exert undue influence on SK, and that the Respondent placed RK's interests above SK's interests.

[134] On February 8, 2024, the Law Society's Investigations, Monitoring & Enforcement department opened the Investigation.

[135] On February 22, 2024, the Investigator sent a letter to the Respondent that concerned the MB Complaint which made various requests for records and information by no later than 4 p.m. on March 15, 2024 ("February 22 Letter").

[136] The Respondent did not provide any response to the February 22 Letter.

[137] On March 18, 2024, the Investigator wrote to the Respondent advising that she would be administratively suspended effective 9 a.m. on March 27, 2024, pursuant to Rule 3-6(1), if she failed to respond to the requests in the February 22 Letter by that date.

[138] On March 25, 2024, the Investigator wrote to the Respondent to advise that she would no longer be administratively suspended under Rule 3-6(3) on March 27, 2024 if

she failed to respond by that date. Instead, the matter would be referred to the Discipline Committee or to its Chair pursuant to the summary hearing process, with a recommendation that the Chair issue a citation to the Respondent for her failure to respond to Law Society correspondence (“March 25 Letter”).

[139] The Respondent did not respond to the March 25, 2024 letter. On March 27, 2024, the Investigator wrote to the Respondent to advise that she had a final opportunity to respond to the February 22 Letter by 9:00 a.m. on April 11, 2024. A failure to respond by that date would result in a new complaint being referred to the Chair of the Discipline Committee, with a recommendation for a citation that would be heard on a summary basis (“March 27 Letter”).

[140] The Respondent did not respond to the March 25 Letter or to the March 27 Letter. In each of those letters, and in the February 22 Letter, the Investigator requested that the Respondent advise the Investigator as soon as possible whether there was an issue, medical or otherwise, preventing her from responding to Law Society correspondence.

[141] The requests set out in the February 22 Letter remain outstanding as of the date of the Summary Hearing.

[142] The Law Society cannot conclude the Investigation without the Respondent’s response.

Independent medical examination

[143] In August and September 2023, in relation to a separate investigation, file number CO20221120, the Respondent attended at an independent medical examination that was conducted by Dr. S, psychologist.

[144] Dr. S’s findings were summarized above, which were set out in the Dr. S Report. The Law Society specifically references the following findings:

- (a) “Nevertheless, there was no convincing evidence during interview or on assessment of a clinically diagnosable mental health condition.”
- (b) “Based on her examination, there is no neuropsychological condition present and no evidence that Ms. Pannu suffers any injury-related cognitive impairments.”
- (c) “Ms. Pannu’s neuropsychological examination does not suggest the need for additional psychological or cognitive treatments or interventions.”

- (d) “Her examination did not suggest any particular etiology for her pain experience.”
- (e) “Ms. Pannu’s exam findings do not indicate any definitive risks or contraindications to practicing law related to a neuropsychological condition.”
- (f) “Based on this exam, it is not possible to determine in retrospect whether or not she suffered a concussion secondary to her accident. However, no lingering concussion symptoms appear to be present, either based on her self-report or based on her exam findings.”
- (g) “In addition, any actual pain present, some degree of language barrier, resentment and frustration about the proceedings, and personality characteristics (perfectionism, rigidity, resistance to admitting flaws or shortcomings, lack of awareness) may have contributed to her difficulty responding to questions during the interview and her somatic reaction. Certainly, this disorganization of thinking related to the above factors may make it more challenging for her to deal with some circumstances that could arise in a law practice; however, they cannot be considered as clinical barriers to practice or as sequelae of her injury.”

Respondent’s Evidence

[145] The Respondent did not submit any affidavits in respect of the Citation.

[146] The Respondent’s counsel relied on the same evidence submitted in respect of the Adjournment Application, being the ER Note and Prior Medical Evidence.

The Panel’s Findings of Fact

[147] The Panel’s focus is on the time period between opening of the Investigation and issuance of the Citation, from February, 2024 to May, 2024.

[148] The Panel considered all of the evidence submitted by the parties, however, the Panel preferred the Dr. S Report over the Prior Medical Evidence, as:

- (a) it was dated closest and prior to the date of the Citation;
- (b) Dr. S is a clinical psychologist;
- (c) it included the most robust assessment and substantiated findings out of all medical evidence submitted;

- (d) Dr. S acknowledged the limitations of the methodology employed, and her inability to confirm retroactive or prospective matters; and
- (e) it did not contain contradictory findings.

[149] The Prior Medical Evidence was admitted and considered, however given little weight or relevance, as it was dated months after the date of the Citation and the conduct underlying the same, contained retrospective and prospective conclusions which were not verifiable, contained contradictory recommendations respecting the Respondent's ability to return to work but not the Investigation or Citation proceeding, did not contain detail respecting methodology, and, in respect of the Dr. T Letter, had no methodology of assessment provided.

[150] The Panel finds, based on the evidence before the Panel, the Respondent failed to respond to the Investigation.

[151] Based on the evidence before the Panel, the Panel does not find that the Respondent was experiencing a mental health condition which adversely impacted their ability to participate in the Investigation. Members must respond promptly to investigations. The Dr. S Report indicates that the Respondent was, to the contrary, able to participate at the relevant time.

[152] It was not until after October 2024 that the Prior Medical Evidence indicates that the Respondent was experiencing an adverse mental health condition, being seven months from the date the Law Society sent the Investigation correspondence to the Respondent.

[153] The Prior Medical Evidence also indicates that the Respondent was well enough to return to work just a few months prior to the Summary Hearing.

[154] The Panel also finds that, based on the evidence, the Respondent took no steps to communicate their alleged adverse mental health concerns to the Mr. Vodsedalek, or seek care for the same, until well after the Law Society attempted to reach the Respondent.

Applicable Law

Summary Hearings

[155] Rule 5-4.5 states:

5-4.5 (1) This rule may be applied in respect of the hearing of a citation comprising only allegations that the respondent has done one or more of the following:

- (a) breached a rule;
- (b) breached an undertaking given to the Society;
- (c) failed to respond to a communication from the Society;
- (d) breached an order made by under the Act or these rules.

(2) Unless the panel orders otherwise, the parties counsel may adduce evidence by

- (a) affidavit, or
- (b) an agreed statement of facts, or
- (c) an admission made or deemed to be made under Rule 5-4.8 [*Notice to admit*]

(3) Despite Rules 5-6.3 [*Submissions and determination*] and 5-6.4 [*Disciplinary action*], the panel may consider facts, determination, disciplinary action and costs and issue a decision respecting all aspects of the proceeding.

[156] In this case, since the Citation contains only an allegation of failure to respond to correspondence from the Law Society, the hearing may proceed by way of a summary hearing based on affidavit evidence.

Rule 7.1-1 of the Code and Rules 3-5(7) and (11) of the Law Society Rules

[157] Rule 7.1-1 of the *Code* requires lawyers to, amongst other things, 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.

[158] Rule 3-5(7) provides that:

(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.

[159] Rule 3-5(11) provides that:

(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.

Caselaw re Failure to Respond

[160] In *Law Society of Ontario v. Diamond*, 2021 ONCA 255, at para. 50, the Court of Appeal for Ontario stated that the following must be considered in determining whether there was a failure to cooperate:

- (a) all of the circumstances must be taken into account in determining whether a licensee has acted responsibly and in good faith to respond promptly and completely to the Law Society's inquiries;
- (b) good faith requires the licensee to be honest, open and helpful to the Law Society;
- (c) good faith is more than an absence of bad faith; and
- (d) a licensee's uninformed ignorance of their record-keeping cannot constitute a "good faith explanation" of the basis for the delay.

[161] The Court in *Diamond*, at para. 57, stated that "[q]uite simply, ignorance of one's professional obligations cannot subsist as a demonstration of good faith. They do not go hand in hand." The Court stated further in para. 58 that "[w]ith the privilege of being admitted to a self-regulated profession comes the responsibility to know one's obligation."

[162] The Court of Appeal for Ontario went on to state in *Diamond*, at para. 61:

...The key is that the failure to cooperate with the Law Society, once found, in fact constitutes "a significant departure from acceptable professional standards."

As the Hearing Division observed in *Ghobrial*, at para. 10, failing to cooperate is “properly stigmatized as professional misconduct if the licensee failed to act responsibly and in good faith to promptly provide the necessary information.” In other words, the label of professional misconduct is only given to a failure to cooperate – the failure to act responsibly and in good faith in responding to the Law Society’s requests – because *this type of conduct constitutes a significant departure from the acceptable standards of the profession.*

[Emphasis added]

[163] In respect of whether a clear refusal to cooperate is necessary, the Court in *Diamond*, at paras. 64 to 67, stated:

[64] *In any event, to inject a “clear refusal to cooperate” test into the framework of r. 7.1-1, of the Rules of Professional Conduct – one that demands proof of an outright refusal to cooperate – would far overshoot the mark. While there must be clear, convincing, and cogent evidence of professional misconduct, to suggest that a finding of professional misconduct under r. 7.1-1 of the Rules of Professional Conduct must turn on a “clear refusal to cooperate” – something akin to the licensee outright refusing to cooperate with the Law Society – would set the standard too high, rendering it susceptible to a purely subjective test. Any such approach would stand in opposition to the laudable goals underlying the self-regulated legal profession.*

[65] It is critical to keep the nature of this self-regulated environment in mind when considering the legal issue in this case. The core of the work of self-regulated law societies is the need to protect the interests of the public...

[66] *The reputation of the legal profession rests on the public’s confidence that self-regulation is taken seriously by the legal profession. This can only occur where the legal profession has at hand effective and efficient tools by which to achieve accountability among its members. This is fundamental to the health and vibrancy of the legal profession.*

[67] Returning to the duty to cooperate, r. 7.1-1 of the *Rules of Professional Conduct* is designed to ensure that there is a *complete response* and no inordinate delays in investigations by the self-regulated authority. It requires nothing more than *prompt and complete responses* when requested, which are essential to moving investigations forward. Delays in doing so can only serve to share the public’s confidence in the Law Society’s self-regulatory authority... the “reputation of the ability of the profession to self-regulate would be quickly

diminished if the obligation to cooperate could be subverted by a ‘cat and mouse game’ (as described by the Hearing Panel), that fell short of a clear refusal.”

[emphasis added]

[164] In British Columbia, there is also well-established case authority for the importance of a lawyer’s duty to cooperate and respond to the Law Society. In the review decision in *Law Society of BC v. Dobbin*, 1999 LSBC 27, at para. 20, the majority of the Benchers stated that:

...the duty to reply ... is a *cornerstone of our independent, self-governing profession*. If the Law Society can not 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.*

[emphasis added]

[165] For this reason, the majority in *Dobbin*, held that a failure to respond to the Law Society will always be *prima facie* evidence of professional misconduct. As the panel stated, at para 25:

... *unexplained persistent failure to respond to Law Society communications will always be prima facie evidence of professional misconduct* which throws upon the respondent member a persuasive burden to excuse his or her conduct. The circumstances which led the member to fail to respond are peculiarly within his or her means of knowledge. It can not be a part of the evidentiary burden of the Law Society to show both that the member persistently failed to respond and the reasons for that failure.

[emphasis added]

[166] The fact that a lawyer may be an overworked professional and that responding to the Law Society is a burdensome, time-consuming task does not excuse the lawyer from their obligation to provide a prompt response. As stated in *Dobbin* at para 23:

The Benchers are well aware that responding to Law Society communications may be irksome or burdensome. For overworked and highly stressed professionals, the task of picking up a file, often a closed or neglected file, and

responding to the Law Society is a thankless, unpaid, and, often, time-consuming task. Many times the burden will be compounded by the knowledge that the letter which must be sent will reveal that the lawyer has behaved in a sub-standard or unprofessional way. For many lawyers, the duty to respond clashes with values they apply every day in their practices: the privilege against self-crimination and the right to remain silent. That clash sometimes produces resentment and a temptation to stick one's head in the sand. While the Benchers understand that those sorts of equivocations or rationalizations sometimes paralyze practitioners who are under a duty to respond to the Law Society, *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.*

[emphasis added]

[167] The decision in *Dobbin*, has been followed subsequently in many cases.⁷

[168] In *Marcotte*, the hearing panel quoted from the hearing panel's decision in *Cunningham*, at para. 48:

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 [Legal Services Society]. 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.*

[emphasis added]

⁷ *Law Society of BC v. Cunningham*, 2007 LSBC 17; *Law Society of BC v. Decore*, 2012 LSBC 17; *Law Society of BC v. Malcolm*, 2012 LSBC 4; *Law Society of BC v. Marcotte*, 2010 LSBC 18; *Law Society of BC v. Niemela*, 2012 LSBC 9; *Law Society of BC v. Welder*, 2012 LSBC 18; *Law Society of BC v. Buchan*, 2013 LSBC 8; *Law Society of BC v. McLean*, 2015 LSBC 9; *Law Society of BC v. Straith*, 2016 LSBC 13; *Law Society of BC v. Ben-Oliel*, 2016 LSBC 40.

[169] In *Buchan*, the hearing panel shared these concerns and stated the following regarding the nature of this type of misconduct, at para. 13:

Failure to respond to the Law Society has consistently been regarded by hearing panels as a *serious breach* of a lawyer’s professional obligations. *The duty to reply to communications from the Law Society goes to the heart of its ability to perform its statutory responsibility to regulate the profession and failure to comply therefore places the profession’s self-governing status at risk.*

[emphasis added]

[170] In *McLean*, the hearing panel aptly stated the following in determining that the respondent had committed professional misconduct, at para. 124:

The facts, as set out above, regarding allegations 1 - 3 demonstrate *a consistent and unexplained failure on the part of the Respondent to provide prompt and substantive responses to the Law Society regarding its investigation of three separate complaints. The failure to do so persisted over several months and demonstrates the Respondent’s failure to treat such important issues seriously and diligently.*

[emphasis added]

[171] In *Ben-Oliel*, the hearing panel reiterated the importance of complying with the relevant professional obligations, at paras 28 to 29:

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.

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.

[emphasis added]

[172] In *Law Society of BC v. Di Bella*, 2021 LSBC 52, at paras 35 to 37 and 46 the hearing panel referred to *Dobbin* and stated:

[35] Unexplained, persistent failure to respond to Law Society communications will always be *prima facie* evidence of professional misconduct: *Law Society of BC v. Dobbin*, 1999 LSBC 27 at para. 25.

[36] In *Dobbin*, the review panel stated “responding promptly, candidly and completely to Law Society communications is the cornerstone of our right to self-govern”: *Dobbin* at para. 23.

[37] The Law Society’s very ability to regulate lawyers and protect the public requires that lawyers cooperate with investigations and provide complete, accurate and timely information.

...

[46] Lawyers are expected to respond completely, accurately and promptly to all correspondence from the Law Society. ...

[173] More recently in *Law Society of BC v. Weiser*, 2022 LSBC 50 at paras 69 to 70 the panel also cited *Dobbin* and stated, at paras 69 to 70:

Failure to respond is a serious breach of professional obligations; in the absence of substantive responses, the Law Society is unable to meet its regulatory function.

These authorities [*Diamond* and *Dobbin*], together with a plain reading of Rules 3-5(7) and 3-5(11) and rule 7.1-1 of the *BC Code*, impose on lawyers subject to investigation the unambiguous obligation to make a timely and comprehensive response to all Law Society questions and requests. *No aspect of this obligation is left to the lawyer’s interpretation or discretion.*

[emphasis added]

Onus and Standard of Proof

[174] The burden and onus of proof is on the Law Society. In *Foo v. Law Society of British Columbia*, 2017 BCCA 151, at para. 63, the British Columbia Court of Appeal confirmed that the Law Society carries the burden of proof to establish on a balance of probabilities the facts that it alleges constitute professional misconduct.

Test for Professional Misconduct

[175] Professional misconduct is not a defined term in the *Act*, *Rules*, or *Code*.

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

[177] The *Martin* “marked departure” test is an objective one; a hearing panel must consider the appropriate standard of conduct expected of a lawyer and then determine if the lawyer falls markedly below that standard (*Law Society of BC v. Sangha*, 2020 LSBC 3, at para. 67).

[178] A finding of professional misconduct does not require bad faith intentions, or *mala fides* (*Law Society of BC v. Guo*, 2023 LSBC 28, at para. 36). The question is whether the lawyer’s conduct is aggravated enough to meet the “marked departure” test. Culpability is only required in the sense that the lawyer must be responsible for the conduct that is the marked departure.

[179] The *Code* is a general outline of the standards of conduct the Law Society expects of its members, but “not every breach of the rules of professional conduct will necessarily amount to professional misconduct” and “not every act of professional misconduct will be specifically prohibited by the rules” (*Law Society of BC v. Harding*, 2021 LSBC 2, at para. 20).

[180] Ultimately, it is up to this Panel to analyze the facts before it and determine whether they amount to professional misconduct (*Martin* at para 147).

Analysis

Respondent’s Submissions

[181] The Respondent did not provide written submissions.

[182] The Respondent’s counsel made oral submissions at the Summary Hearing, which were primarily that the Respondent’s adverse mental health condition prevented her from responding to the Investigation and should excuse the Respondent’s conduct, and that the Respondent had not been given adequate opportunity to prepare for, or consider and provide informed instructions respecting, the Summary Hearing.

Law Society's Submissions

[183] The Law Society submits that:

- (a) the Respondent plainly did not comply with the requirements of either the *Code* or the Rules;
- (b) Rules 3-5(7) and 3-5(11) and rule 7.1-1 of the *Code* provide no “wiggle room” for a lawyer who is the subject of a Law Society investigation. Thus, when there is a request for information from the Law Society, lawyers must provide that information promptly and completely;
- (c) the Respondent has offered no evidence that meets the persuasive burden to excuse her conduct, as mentioned in *Dobbin*, nor has she tendered any evidence to prove she was afflicted with an illness or condition that incapacitated her to the extent that she was unable to answer correspondence, as mentioned in *Cunningham*;
- (d) the Respondent has not fulfilled her obligations to the Law Society as a regulated professional. The evidence clearly establishes the Respondent did not provide a written response to the MB Complaint, as requested in the Law Society's February 22 Letter; and
- (e) this is an obvious case where an adverse determination of professional misconduct should be made by the Hearing Panel with respect to the Citation allegation, pursuant to section 38(4) of the *Legal Profession Act*.

Decision of the Panel

[184] The evidence accords with the Law Society's position. The Respondent was required to respond to the Law Society, and did not. The Respondent had no discretion not to respond.

[185] Were the Respondent suffering from an adverse mental health condition at the time of the Investigation that adversely impacted her ability to participate in the same, the Respondent should have communicated this to the Law Society and sought an accommodation. The Respondent did not do so.

[186] Raising an adverse mental health condition after the pertinent time does not excuse a lawyer's failure to respond to Law Society correspondence at the time it was sent.

[187] While the Panel acknowledges that experiencing an adverse mental health condition may make it difficult to engage in these processes, as members of the legal

profession lawyers do not have the luxury of ignoring the Law Society's communications or an underlying adverse mental health condition adversely impacting their ability to do so.

[188] Public confidence in the Law Society's ability to regulate lawyers is a paramount concern. The public interest is not served, and public confidence in the regulator would erode, were lawyers not held to a strict standard respecting responding to Law Society correspondence, and participating in investigations.

[189] The Panel finds that the Respondent failed to participate in the Investigation as set out in the Citation.

[190] The Panel must then determine whether the Respondent's conduct, in all the circumstances, amounts to a marked departure. Weighing the relevant circumstances, and applying factors as set out in *Law Society of BC v. Lyons*, 2008 LSBC 9 at para. 35, the Panel finds that:

- (a) the gravity of the Respondent's failure to cooperate in the Investigation is significant;
- (b) the Respondent's failure to respond to the Investigation promptly involved a failure over a period of months and is also significant;
- (c) the Panel need not find the presence of *mala fides* in order to make a finding of professional misconduct, and did not make such a finding in this case; and
- (d) the Respondent failed to respond to the Investigation repeatedly as the Respondent provided no response to four letters from the Law Society during the Investigation and prior to the Citation being authorized, and, as of the date of the Summary Hearing, had not yet responded.

[191] The Panel finds the Respondent's conduct amounts to a marked departure from the standard expected of a lawyer and constitutes professional misconduct.

THE PANEL'S DECISION ON DISCIPLINARY ACTION

Issues

[192] The issues before the Panel are:

- (a) whether the Respondent's conduct amounts to a finding of ungovernability; and
- (b) the appropriate sanction.

Professional Conduct Record

[193] The Respondent was called to the Bar and admitted as a member of the Law Society of British Columbia on December 2, 2014. Since November 7, 2023, the Respondent has been administratively suspended and is currently serving nine concurrent suspensions.

[194] The Respondent's professional conduct record ("PCR") consists of, practice standards recommendations; two failures to pay costs; three practice supervision agreements; two undertakings; and nine administrative suspensions. The details of the Respondent's PCR are set out below:

Practice Standards Recommendations (September 2017 to December 2019):

- (a) On September 28, 2017, the Practice Standards Committee ("PSC") ordered a Practice Review. On December 7, 2017, the PSC considered the Practice Review Report and approved all recommendations in the Report and directed that the Respondent provide four quarterly Compliance Reports. On December 5, 2019, the PSC closed their file and ordered costs.
- (b) Details of the recommendations set out in the Practice Review Report related to concerns regarding the Respondent's practice include:
 - (1) Real estate practice – enter into a practice supervision agreement to “improve the quality of your real estate work”.
 - (2) Scope of practice – restrict practice to three areas of law.
 - (3) Client and file management – address inadequate task management and reminder system by introducing a bring forward system, ensure better tracking of essential file information, address lack of a proper conflict checking system by maintaining a conflicts database, address deficiencies in client communications by confirmation discussions in writing, and record communications for every file.

- (4) Accounting – consolidate accounting records and review Part 3, Division 7 of the Rules.
- (c) The Respondent signed a practice supervision agreement on February 26, 2018 requiring the lawyer to practice real estate law only under the supervision of an approved lawyer.
 - (d) A late payment of Practice Review costs of \$3,150.00 due June 1, 2018. The Respondent paid on June 6, 2018.
 - (e) A late payment of Practice Review costs of \$2,100.00 due April 1, 2020. The Respondent paid on July 17, 2020.
 - (f) The Respondent signed an undertaking and a practice supervision agreement on March 28, 2023 requiring her to practice law only under the supervision of an approved lawyer.
 - (g) The Respondent signed an undertaking and a practice supervision agreement on September 26, 2023 requiring her to practice law only under the supervision of an approved lawyer.

Administrative Suspensions

[195] The Respondent was suspended administratively pursuant to Rule 3-6 for failure to respond to Law Society correspondence effective from November 7, 9, 14, 16, 20, December 8, 17, 2023, and May 17 and July 24, 2024, in relation to nine separate investigations.

Respondent's Evidence

[196] While not submitted as evidence, the Respondent has requested the Panel take adjudicatory notice of the Mental Health Task Force Recommendations, reports, underlying research, and other materials referred earlier. The Law Society did not dispute this. The Panel has taken notice of such materials.

Applicable Law

Ungovernability

[197] The disciplinary actions available to a hearing panel are governed by subsections 38(5) and (7) of the *Act* and range from reprimand to disbarment.

[198] A hearing panel’s ability to impose disciplinary action on the basis of ungovernability is set out in Rule 5-6.4 of the Rules:

5-6.4 (1) Following a determination under Rule 5-6.3 [*Submissions and determination*] adverse to the respondent, the panel must

- (a) invite the parties to make submissions as to disciplinary action,
- (b) take one or more of the actions referred to in section 38(5) to (7) [*Discipline hearings*],

...

...

(5) The panel may consider the professional conduct record of the respondent in determining a disciplinary action under this rule.

(6) Regardless of the nature of the allegation in the citation, the panel may take disciplinary action based on the ungovernability of the respondent by the Society.

(7) The panel must not take disciplinary action under subrule (6) unless the respondent has been given at least 30 days’ notice that ungovernability may be raised as an issue at the hearing on disciplinary action.

...

[199] Although the term “ungovernability” is not defined in the Rules, it has been interpreted in several Law Society decisions and the underlying principles are well-established.⁸

[200] A finding of ungovernability is made where there is evidence of a consistent unwillingness to comply with the Law Society as regulator, or a wanton disregard and disrespect for the regulatory processes that govern the lawyer’s conduct.⁹ Put differently, if a lawyer consistently conducts themselves in a manner that obstructs the Law Society’s ability to govern that lawyer, the lawyer is ungovernable.

⁸ *Law Society of BC v. Welder*, 2015 LSBC 35 (“*Welder 2015*”); *Law Society of BC v. Spears*, 2009 LSBC 28; *Law Society of BC v. Hall*, 2007 LSBC 26, *Law Society of BC v. McLean*, 2015 LSBC 30 (“*McLean 2015*”); *Law Society of BC v. McLean*, 2016 LSBC 06 (“*McLean 2016*”), *Law Society of BC v. Pyper*, 2019 LSBC 21, *Law Society of BC v. Fogarty*, 2021 LSBC 25 (“*Fogarty 2021*”), *Law Society of BC v. Lessing*, 2022 LSBC 7.

⁹ *Lessing* at para. 11; see also *Pyper* at para. 66.

[201] Ungovernability was discussed in *Hall*, the leading case on ungovernability. It involved misconduct described as “pervasive, extremely serious”¹⁰ including failure to maintain proper books and records (over a period of years), providing false and misleading information to the Law Society, to a client, and to another member of the Law Society, breach of undertakings, practicing while suspended, and quality of service issues. The hearing panel found that the evidence showed a pattern of conduct so fundamentally dishonest that no remedy short of disbarment could properly protect the public.¹¹

[202] While it was therefore not necessary to address ungovernability, the hearing panel in *Hall* identified some “indicia of ungovernability” which may lead to a finding of ungovernability, depending on factors relevant to the particular case and relevant circumstances. It reviewed disciplinary cases in which lawyers were found to be ungovernable from other provinces and set out the following factors:¹²

1. A consistent and repetitive failure to respond to the Law Society's inquiries.
2. An element of neglect of duties and obligations to the Law Society with respect to trust account reporting and records.
3. Some element of misleading behavior directed to a client and/or the Law Society.
4. A failure or refusal to attend at the discipline hearing convened to consider the offending behaviors.
5. A discipline history involving allegations of professional misconduct over a period of time and involving a series of different circumstances.
6. A history of breaches of undertaking without apparent regard for the consequences of such behavior.
7. A record or history of practising law while under suspension.

[203] The hearing panel in *Hall* noted that it would not be necessary for future hearing panels to find all of these factors to make a finding of ungovernability, and further, expressly did not foreclose the possibility that a finding of ungovernability could be made even just on the basis of a repeated failure to respond to the Law Society, if that failure

¹⁰ *Hall* at para. 2.

¹¹ *Hall* at para. 17.

¹² *Hall* at para. 27.

illustrates a “wanton disregard and disrespect of the lawyer for the regulatory processes that govern his or her conduct”.¹³

[204] The following comments in *Hall* are particularly germane to this case:¹⁴

The basis for a finding of ungovernability is that the public interest can only be served if members of the profession respect and respond to the Law Society as a regulating authority. In order for the Law Society to fulfill its mandate of protecting the public interest in the administration of justice, (as required by Section 3 of the *Legal Profession Act*), it is necessary for members of the Law Society to respond to and respect the authority of the Law Society as a regulating body. That respect will be evidenced by lawyers responding promptly to communications, by lawyers observing directives (for example, dealing with suspensions and the entitlement to practise) and by lawyers appearing at discipline hearings when required to do so by the citation process.

[205] In *Spears*, a hearing panel considered five admitted allegations of professional misconduct arising from a lawyer’s attempt to avoid a practice restriction by concealing his non-compliance with the restriction. The hearing panel accepted the lawyer’s conditional admission and proposed disciplinary action of an eight-month suspension and practice conditions, but stated:¹⁵

The Panel is very concerned that the Respondent has in the past demonstrated an unwillingness to comply with conditions imposed upon him by the Law Society. *It is a fundamental requirement of anyone who wishes to have the privilege of practising law that that person accept that their conduct will be governed by the Law Society and that they must respect and abide by the rules that govern their conduct.* If a lawyer demonstrates that he or she is consistently unwilling or unable to fulfill these basic requirements of the privilege to practise, that lawyer can be characterized as "ungovernable" and cannot be permitted to continue to practise.

The Law Society's mandate to regulate lawyers in the best interests of the public cannot be fulfilled if it permits lawyers who have demonstrated ungovernability to continue to practise.

All lawyers are expected to deal with the Law Society in an honest, open and forthright manner at all times. The Respondent has failed to do that. He has thereby put at serious risk his opportunity to have the privilege of practising.

¹³ *Hall* at para. 28.

¹⁴ *Hall* at para. 20.

¹⁵ *Spears* at paras. 7-10.

[emphasis added]

[206] In *Welder 2015*, a hearing panel determined that the lawyer was ungovernable and that the lawyer’s responses to the Law Society had escalated and showed an unwillingness to comply with basic requirements of the Law Society. This was the second attempt by the Law Society to obtain a finding of ungovernability – in an earlier decision,¹⁶ the panel with “great hesitation” declined to make a finding of ungovernability, primarily on the basis that the lawyer was not consistently unwilling to be governed by the Law Society in that he attended conduct reviews, cooperated with the citation hearing processes and showed some willingness to address underlying psychological issues that impinged on his ability to practice in a reasonable and professional manner. The respondent had been suspended for one year with conditions on that prior occasion.

[207] In *McLean 2015* and *McLean 2016*, the respondent, a former member at the time, was also found to be ungovernable and was subsequently disbarred by two separate panels. The hearing panel declined to add a ninth factor to the *Hall* factors—whether the respondent has a history of failing to comply with Law Society orders—finding that this factor was already subsumed by the existing factors.¹⁷

[208] By the time of the hearing in *McLean 2016*, the hearing panel noted that the respondent had “demonstrated both a consistent unwillingness to be regulated and a disregard, disrespect and disdain of the governing process.”¹⁸

[209] Lastly, in *Law Society of BC v. Pyper*, the hearing panel adopted and applied the *Hall* factors and concluded that the respondent had been shown to be ungovernable. The respondent’s failures to adhere to his professional obligations extended over a range of matters and over a period of years. His principal response was not a “recognition of his wrongdoing”, but were “attempts to deny wrongdoing coupled with repeated arguments that the disciplinary proceedings were unfair and that the Law Society acted without jurisdiction and was biased against him.” The hearing panel concluded that there was no realistic hope that the respondent could or would effectively come to terms with his professional obligations.

[210] The policy underlying a finding of ungovernability is similarly well-established in the authorities: that the Law Society can only fulfill its object and duty to protect and uphold the public interest in the administration of justice if members of the profession

¹⁶ *Law Society of BC v. Welder*, 2014 LSBC 20 (“*Welder 2014*”).

¹⁷ *McLean 2016* at para. 31.

¹⁸ *McLean 2016* at para. 32.

abide by the rules governing their conduct, and respect and respond to the Law Society as a regulating authority.¹⁹

[211] As observed by the hearing panel in *Law Society of BC v. Tak*, 2014 LSBC 57 at para. 42, the Law Society’s ability to regulate the profession is “significantly compromised if lawyers are permitted to ignore the accounting rules and requirements of communicating with clients, colleagues and the Law Society.”²⁰

[212] The practice of law is a privilege, not a right. It carries with it an obligation to abide by the Law Society’s governance.²¹

[213] Where a respondent is found to be ungovernable, disbarment must follow as it is the only disciplinary action that will effectively protect the public.²²

Application of Ungovernability Factors

[214] Although *Hall* sets out a number of factors to be considered in an ungovernability analysis, hearing panels do not need to establish that all of the factors have been met. The hearing panel in *Hall* emphasized that “a finding of ungovernability can be made if all that was present was a repeated failure of the lawyer to respond to inquiries from the Law Society, if that failure is illustrative of a wanton disregard and disrespect of the lawyer for the regulatory processes that govern his or her conduct”.²³

Appropriate Sanction

[215] The panel in *Weiser* noted it would be illogical to make any sanction order other than disbarment upon a finding of ungovernability, relying on *Spears*, at para 8:

The Law Society’s mandate to regulate lawyers in the best interests of the public cannot be fulfilled if it permits lawyers who have demonstrated ungovernability to continue to practise.

[216] Other panels have found that once a finding of ungovernability is made, disbarment must follow as it is the only disciplinary action that will effectively protect the public.²⁴

¹⁹ *Hall* at para. 20.

²⁰ See also *Spears* at paras. 7-8.

²¹ *McLean 2015* at para. 41.

²² *McLean 2015* at paras. 49 and 52. See also *Lessing* at para. 14 and *Spears* at para. 8.

²³ *Hall* at para. 20.

²⁴ *McLean 2015* at para. 52. See also *Hall* at para. 29 and *Guo* at para. 215.

Treatment of Mental Health in Disciplinary Proceedings

[217] The Law Society and Respondent only referred to one case addressing the issue of mental health.

[218] In *Law Society of BC v. Cunningham*, 2017 LSBC 9 (“*Cunningham disciplinary action*”), the respondent failed to provide a substantive response to Law Society communications concerning its investigation of a complaint. The respondent admitted to ignoring the communications while in a self-described state of anxious immobilization, but did not present any evidence of her mental state. The panel found that the respondent’s acceptance of full responsibility, acknowledgement of the negative impact her misconduct had on the complainant and apology to Law Society counsel were mitigating factors. The respondent’s PCR consisted of a prior citation for failure to respond. The respondent was ordered by the panel to provide a complete and substantive response to the communications. The respondent failed to comply with this, and was subsequently suspended for one month, or until she provided a response.

[219] Ungovernability was not sought in *Cunningham disciplinary action*.

Analysis on Ungovernability

Respondent’s Submissions

[220] The Respondent argues that the Respondent was experiencing an adverse mental health condition which excuses the Respondent’s conduct.

[221] The Respondent argues that they simply require more time to address their adverse mental health condition.

[222] The Respondent submits that the ER Note is indicative of the Respondent’s attempts to address her mental health condition, and the Prior Medical Evidence indicates she has seen Dr. L twice, and had been taking medication. The Respondent submits that they had only just learned, at the time of the Summary Hearing, that the medication was not ameliorating the Respondent’s adverse mental health condition.

Law Society’s Submissions

[223] The Law Society submits that the Respondent’s PCR is highly aggravating and demonstrates a clear pattern of disregard for her professional obligations to the public and the profession.

[224] The Law Society submits that there is a need for both specific and general deterrence with respect to a lawyer's failure to respond to the Law Society. The Respondent's misconduct impacts the public's perception of the Law Society's ability to self-regulate and obstructs the Law Society's ability to execute its statutory mandate. It has also meant that the complainant has had very little progress towards a resolution of their concerns, despite raising very serious issues in a complaint submitted more than a year ago.

[225] The Law Society submits that the Respondent was given the required notice that ungovernability would be raised as an issue under Rule 5-6.4(7). In fact, she was given notice of this on May 30, 2024, almost a year ago.

[226] In this case, unlike in *Welder 2014*, the Respondent has shown little cooperation with the hearing processes and is currently suspended for lack of responsiveness to Law Society correspondence on nine separate complaint files.

[227] The following *Hall* factors apply in this case: a consistent and repetitive failure to respond to the Law Society's inquiries; an element of neglect of duties and obligations to the Law Society with respect to trust account reporting and records; a discipline history involving various allegations over a period of time. The Respondent also has a history of failing to comply with directions of the Practice Standards Committee.

[228] The Law Society submits that the Panel ought to consider a record or history of failing to comply with Law Society orders, directions, or recommendations as an additional factor.

A Consistent and Repetitive Failure to Respond to Law Society Inquiries

[229] It is plain from the evidence presented at the hearing that the Respondent failed to respond to the Law Society correspondence and in addition, her PCR demonstrates a consistent and repetitive failure to respond to Law Society inquiries.

An Element of Neglect of Duties and Obligations to the Law Society with Respect to Trust Account Reporting and Records

[230] One of the Respondent's administrative suspensions concerns the Respondent's conduct in failing to provide records and explanations for the purpose of a Law Society compliance audit as required under Rule 3-85(2)(b).

[231] It is clear that the Respondent is neglecting her duties regarding the production of records and explanations, and thereby her obligations to the Law Society with respect to compliance audits.

Discipline History over a Period of Time and Involving a Series of Different Circumstances

[232] As noted above, the Respondent is currently serving nine concurrent administrative suspensions, the first of which commenced in November 2023.

[233] Since 2017, the Respondent has steadily accrued a concerning PCR consisting of practice standards recommendations; failures to pay costs; practice supervision agreements; undertakings; and administrative suspensions.

[234] The Respondent has been given multiple opportunities and additional time to respond to Law Society correspondence, but has continued to breach her professional obligation to respond to Law Society communications and provide records, thereby damaging the reputation of the profession.

Record or History of Failing to Comply with Law Society Orders, Directions, or Recommendations

[235] Whether a respondent has a record or history of failing to comply with orders or directions issued by the Law Society is not a factor specified in the *Hall* decision. However, the *Hall* factors are not exhaustive. In considering the issue of ungovernability in this case, it makes sense to consider this issue.

[236] The Respondent was directed by the Practice Standards Committee to pay the costs of two practice reviews. The Respondent, on both occasions, failed to pay costs on time.

Some element of misleading behavior directed to a client and/or the Law Society

[237] The Law Society did not make submissions on this factor of the *Hall* test.

Conclusion on Application of Ungovernability Factors

[238] For all the foregoing reasons, the Law Society submits that a finding of ungovernability is appropriate in the circumstances.

[239] The Law Society submits the Respondent has demonstrated both a consistent unwillingness to fulfil the basic requirements of the privilege to practise, and a manifest disregard for the regulatory processes that govern her.

[240] The Law Society further submits there is no evidence that the Respondent's circumstances will change and improve such that she will cooperate with the Law Society's investigations in the future. The Respondent has been consistently unable or

unwilling to cooperate with the Law Society since at least November 2023, approximately a year and a half ago, when she was first suspended.

Decision of the Panel

[241] While the Panel accepts that a respondent should not be punished for experiencing an adverse mental health condition, the Law Society's public interest mandate obligates it to ensure that lawyers are able to fulfill their duties.

[242] The Panel did not find that the Respondent was experiencing a mental health condition at any time after commencement of the Investigation adversely impacting her ability to participate.

[243] In the instant case, the Respondent did not suffer from a mental health condition that vitiates or excuses a finding of ungovernability at the time of the conduct underlying the Citation.

[244] The underlying elements of ungovernability are:

- (a) a consistent unwillingness to comply with the Law Society as regulator;
or
- (b) a wanton disregard and disrespect for the regulatory processes that govern the lawyer's conduct.

[245] Put differently, if a lawyer consistently conducts themselves in a manner that obstructs the Law Society's ability to govern that lawyer, the lawyer is ungovernable.

[246] Ethical duties are a *bona fide* occupational requirement. Lawyers are not afforded an option to practice without being subject to the Law Society's regulatory and disciplinary functions. This is the fundamental bargain in a self-regulated profession.

[247] The Law Society cannot provide accommodations if they are not informed of the need. Lawyers should communicate with the Law Society regarding their accommodative needs.

[248] The Respondent repeatedly refused to follow Law Society requirements, agreements, conditions, deadlines and respond to Law Society correspondence. The Respondent repeatedly failed to comply with adjournment conditions.

[249] The Law Society was reasonable in affording the Respondent opportunities to correct the underlying conduct, and to seek adequate care for her adverse mental health condition.

[250] The Respondent has demonstrated a consistent pattern of inability or unwillingness to comply with regulatory requirements, including:

- (a) a consistent and repetitive failure to respond to Law Society inquiries;
- (b) neglect of duties and obligations to the Law Society respecting trust account reporting and records;
- (c) a lengthy discipline history including multiple allegations over an expended period of time, including failure to cooperate in progressive discipline processes; and
- (d) failure to comply with Law Society and Tribunal orders, directions and recommendations.

[251] The Panel finds that the Respondent's conduct amounts to ungovernability.

Analysis on Sanction

Respondent's Submissions

[252] The Respondent's submissions were limited, as the Respondent's counsel was not able to withdraw from the Summary Hearing, and did not have instructions respecting argument regarding sanction.

[253] The Respondent submitted that her circumstances accord with those in *Cunningham disciplinary action*.

[254] The Respondent's arguments focussed primarily on the Respondent's adverse mental health condition as a mitigating factor, and rehabilitation as a principle in criminal sentencing.

[255] The Respondent also argued, relying on *Law Society of BC v. Gellert*, 2014 LSBC 5, that disciplinary sanctions should be determined with a view to sanctions addressing the totality of all incidents, and that sanctions should be proportionate to culpability so as to avoid an unduly long or severe sanction.

[256] The Respondent's view is that the Respondent should be given an opportunity to seek treatment for her adverse mental health condition, and that a suspension is all that is required to protect the public interest.

[257] The Respondent also noted that the Respondent's adverse mental health condition, beginning in approximately mid to late 2023, has hindered her ability to participate in the

Law Society investigation and these proceedings, and that she has responded in other regulatory processes and disciplinary proceedings.

[258] The Respondent also argued that the Mental Health Task Force Recommendations and reports indicate the benchers' intention to move away from punishing lawyers for experiencing adverse mental health conditions.

[259] In sum, the Respondent argues a suspension is adequate in the circumstances until the Respondent is able to improve her adverse mental health condition such that she can participate in the Law Society investigations, and obtain further medical evidence respecting her adverse mental health condition.

[260] The Respondent did not challenge the Law Society's position that, if the Panel finds the Respondent is ungovernable, the appropriate sanction is disbarment.

Law Society's Submissions

[261] The Law Society submits that the Law Society's role as a self-regulator will be undermined if it permits ungovernable lawyers to remain in practice.

[262] The Law Society submits that the Respondent ought to be disbarred in order to preserve public confidence in the Law Society's ability to self-regulate, and to deter other lawyers from disregarding the regulatory processes.

[263] When asked by the Panel respecting the components of cited cases in the Law Society's submissions addressing mental health, the Law Society submitted only *Cunningham disciplinary action* included allegations of mental health. The Law Society also noted the facts and circumstances in this case are very different than those in *Cunningham*, where the respondent took full responsibility, provided an explanation of their adverse mental health condition without evidence. The panel in *Cunningham* focused on the respondent's admission of guilt, rather than the alleged adverse mental health condition, in applying a suspension only. There was also no allegation or finding of ungovernability. Further, the respondent had only one prior citation for failure to respond, and no other prior conduct record.

[264] The Law Society, in essence, submits that, if the Panel finds the Respondent is ungovernable, disbarment is the only appropriate sanction.

[265] The Law Society also provided alternative submissions applying the *Ogilvie* factors²⁵ where the Panel were not to make a finding of ungovernability.

²⁵ *Law Society of BC v. Ogilvie*, 1999 LSBC 17.

Decision of the Panel

[266] The evidence does not support the Respondent's position that, during the Investigations, the Respondent's mental health impaired her ability to respond.

[267] As the Panel has made a finding of ungovernability, the Panel will dispense with application of the *Ogilvie* factors and orders disbarment.

ORDERS

[268] This Panel denies the Adjournment Application.

[269] This Panel finds the Respondent engaged in professional misconduct by failing to respond to the Law Society's investigation as set out in the Citation.

[270] This Panel finds that the Respondent is ungovernable.

[271] This Panel orders that the Respondent be disbarred.

COSTS

[272] Under section 46 of the *Act* and Rule 5-11 of the Rules, the hearing panel may order that a respondent pay the costs of the hearing of a citation.

[273] The Law Society seeks its costs in the amount of \$6,156.25, payable within 30 days of the hearing panel's decision.

[274] The Respondent did not make submissions on costs.

[275] Costs are not ordered as punitive measures for professional misconduct, but are ordered separately and independently from any sanction imposed. They are not intended to address the conduct that is the subject of the citation, but rather the costs resulting in the hearing of the matter.

[276] Under Rule 5-11(3), the panel must have regard to the Tariff when calculating costs. It is submitted that the costs under the Tariff should be awarded unless under Rule 5-11(4), the panel determines it is reasonable and appropriate to award no costs or costs in an amount other than that permitted by the Tariff.

[277] There is no reason to deviate from the application of the Tariff in the circumstances of this case.

[278] The Panel orders costs to the Law Society in the amount of \$6,156.25 payable within 30 days from the date this decision is issued.