

2023 LSBC 24
Hearing File No.: HE20210001
Decision Issued: June 26, 2023
Citation Issued: February 8, 2021

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

GERALD EDWARD PALMER

RESPONDENT

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

Hearing date: March 29, 2023

Panel: Catherine Chow, Chair
Kim Carter, Benchers
Paul Ruffell, Public representative

Discipline Counsel: Ilana Teicher

Appearing on his/her own behalf: Gerald Edward Palmer

Written reasons of the Panel by: Catherine Chow

OVERVIEW

- [1] The Respondent was an experienced senior lawyer who committed professional misconduct when he failed to give reasonable attention to a desk order divorce and failed to keep his client (the “Client”) properly informed over the course of almost three years. Despite the Client’s repeated attempts to follow-up, the Respondent failed to respond to the Client and failed to supervise the divorce application on a timely basis.
- [2] In our decision on facts and determination, *Law Society of BC v. Palmer*, 2022 LSBC 47 (“F&D Decision”), we found that the Respondent committed professional misconduct in relation to the Citation issued against him, when he failed to:
 - (a) keep the Client reasonably informed about the status of her matter, including providing progress updates as to the status of her divorce;
 - (b) answer reasonable requests from the Client for information, including numerous telephone calls and messages;
 - (c) take appropriate steps to finalize the Client’s divorce;
 - (d) ensure that the Client’s matter was attended to in a timely manner; and
 - (e) give reasonable attention to the review of documentation in the Client’s matter to avoid delay, including desk order divorce documents that were filed at and rejected by the Chilliwack registry of the BC Supreme Court in May 2016.
- [3] The Law Society seeks disciplinary action in respect of the misconduct of a one-month suspension, to commence on the first day of the first month following the issuance of the Hearing Panel’s decision in this matter.
- [4] The Law Society also seeks costs in the amount of \$6,956.25, payable within 30 days of the Hearing Panel’s issuance of a decision in this matter, or on such other date as the Hearing Panel may order. The Respondent submitted that a fine alone in the amount of \$5,000 is the appropriate sanction.
- [5] The Respondent made oral submissions at the Hearing on disciplinary action, but did not provide any written submissions. The Respondent entered two documents into evidence, Exhibit 8, a newspaper article and Exhibit 9, a list of recipients of the Order of Abbotsford.

- [6] The issue we must decide is what constitutes an appropriate disciplinary action in all the circumstances of this case.

PRINCIPLES OF APPROPRIATE DISCIPLINARY ACTION: SUMMARY OF THE LAW

- [7] The primary purpose of disciplinary proceedings is the fulfillment of the Law Society's mandate set out in section 3 of the *Legal Profession Act* (the "Act") to uphold and protect the public interest in the administration of justice. The sanction to be imposed at the disciplinary action phase of the Hearing should be determined with reference to this purpose.
- [8] The review board in *Law Society of BC v. Nguyen*, 2016 LSBC 21, at para. 36, succinctly set out the purpose and the goal of disciplinary proceedings as follows:

[36] Still, the disciplinary action chosen, whether a single option from s. 38(5) or a combination of more than one of the options listed, must fulfill the two main purposes of the discipline process. *The first and overriding purpose is to ensure the public is protected from acts of professional misconduct, and to maintain public confidence in the legal profession generally. The second purpose is to promote the rehabilitation of the respondent lawyer. If there is conflict between these two purposes, the protection of the public and the maintenance of public confidence in the profession must prevail*, but in many instances the same disciplinary action will further both purposes. See *Ogilvie*, paras. 9- 10; *Lessing*, paras. 57-61.

[emphasis added.]

- [9] We agree that the sanction imposed at the disciplinary action phase of this matter should be determined with reference to these purposes.

Principles and factors relevant to sanction

- [10] *Law Society of BC v. Ogilvie*, 1999 LSBC 17, sets out a list of non-exhaustive factors (the "Ogilvie factors") to be considered when determining sanction:
- (a) the nature and gravity of the conduct proven;
 - (b) the age and experience of the respondent;

- (c) the previous character of the respondent, including details of prior discipline;
- (d) the impact upon the victim;
- (e) the advantage gained, or to be gained, by the respondent;
- (f) the number of times the offending conduct occurred;
- (g) whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;
- (h) the possibility of remediating or rehabilitating the respondent;
- (i) the impact upon the respondent of criminal or other sanctions or penalties;
- (j) the impact of the proposed penalty on the respondent;
- (k) the need for specific and general deterrence;
- (l) the need to ensure the public's confidence in the integrity of the profession; and
- (m) the range of penalties imposed in similar cases.

[11] *Law Society of BC v. Lessing*, 2013 LSBC 29, affirmed the *Ogilvie* factors as a non-exhaustive list and observed that not all factors would be relevant in all cases and the weight to be given to these factors would vary from case to case. However, the protection of the public (including maintaining public confidence in the disciplinary process and public confidence in lawyers generally) and the rehabilitation of the lawyer, were two factors that, in most cases, would play an important role. The review panel stressed, however, that where there is a conflict between these two factors, the protection of the public, including protection of the public confidence in lawyers generally, will prevail.

[12] In *Law Society of BC v. Faminoff*, 2017 LSBC 04, the review panel confirmed that the proper approach in determining an appropriate sanction is to apply the *Ogilvie* factors that are relevant to the particular circumstances of the misconduct and to the particular respondent before the panel. A decision on sanction is an “individualized process that requires the hearing panel to weigh the relevant factors in the context of the particular circumstances of the lawyer and the conduct that has led to the

disciplinary proceedings.” The review panel in *Faminoff* also noted, at para. 87, that a consideration of aggravating and mitigating circumstances will assist in determining the range of appropriate sanctions.

- [13] In *Law Society of BC v. Gellert*, 2014 LSBC 05, the panel noted that the nature and gravity of the misconduct is of special importance when assessing how to best protect the public and preserve its confidence in the profession.
- [14] In *Law Society of BC v. Dent*, 2015 LSBC 05, the panel used a framework for assessing the proper disciplinary action which grouped the factors under four headings which we will refer to as the “consolidated *Ogilvie* factors”. The four groupings, which have been found to be a reasonable framework by other hearing panels, are:
- (a) the nature, gravity and consequences of the conduct;
 - (b) the character and professional conduct record of the respondent;
 - (c) acknowledgement of the misconduct and remedial action; and
 - (d) public confidence in the legal profession, including public confidence in the disciplinary process.
- [15] We accept the consolidated *Ogilvie* factors, and the principles in the cases of *Faminoff* and *Gellert* as setting out a framework and principles relevant to determining the appropriate sanction.

ANALYSIS

Nature, gravity and consequences of the misconduct

- [16] We now turn to the application of each of the four consolidated *Ogilvie* factors to this case.
- [17] The Law Society submits that the nature and gravity of the Respondent’s misconduct is serious, failing to provide a sufficient level of service strikes at the heart of the public interest in the administration of justice and the trust the public will have in lawyers generally.
- [18] The *Code of Professional Conduct for British Columbia* requires lawyers to perform all legal services undertaken on a client’s behalf to the standard of a competent lawyer. Lawyers have a duty to provide courteous, thorough and

prompt service to clients, to communicate effectively with clients and to ensure that matters are attended to within a reasonable time frame.

- [19] The Client's divorce proceedings were reasonably simple and straightforward. It was the Respondent's misconduct that was the sole cause of the delay. The Respondent left his Client "in the dark for almost three years, checking online herself, and finally attending at the courthouse to find out what was happening because her lawyer had failed to reply to her messages without reason" (F&D Decision").
- [20] The Respondent did not appear to consider the heavy emotional impact that ignoring the Client might have on her, including the embarrassment and stress to the Client. We find the injury suffered by the Client to be equally concerning when compared to an injury that is more readily calculated such as a loss of funds.
- [21] The Respondent's delay and inaction is egregious. Each instance of delay and inattention represents a significant departure from the standard of conduct expected of a lawyer in the circumstances. Each is a failure to do something quite elementary – to do necessary work carefully and to keep a client properly informed – not only in terms of the standard of practice but also from the point of view of the reasonable expectations of a client.
- [22] In our F&D Decision at para. 63, we found that the Respondent's "disregard for his practice management betrayed the trust placed in him by the Client to assist her with finalizing her divorce." This trust was broken by the Respondent, exposing the Client to emotional and psychological stress. Even after the Law Society became involved in 2019, the Respondent's handling of the Client's matter was still marked with errors and delays in promised communications. We find this to be an aggravating factor.

Character and professional conduct record of the respondent

- [23] We now turn to the second of the consolidated *Ogilvie* factors and will consider the Respondent's character and his professional conduct record ("PCR") spanning from 1986 to 2022, not including the professional misconduct finding made by this Panel in the F&D Decision pursuant to the Citation.
- [24] The Respondent submitted evidence consisting of two documents. Exhibit 8 is a newspaper article dated May 24, 2020, discussing the awarding of the University of Fraser Valley Faculty Service Excellence Award to the Respondent, and the Respondent's contributions to the university and his local community. Exhibit 9 is a list of recipients of the Order of Abbotsford which lists the Respondent as a

recipient in 2008 in recognition of his commitment and community involvement in the City of Abbotsford.

- [25] In further support of his character, the Respondent submitted that he had been an active volunteer in a broad array of non-profits in the Abbotsford community. So much so that in a Practice Review, the Respondent committed to focusing more on his legal practice (that at times had 1,000 open files a year) and to balance his teaching job and community commitments, including time he spent as a Town Councilor on the Harrison Hot Springs municipal council.
- [26] The Respondent also submitted that his legal practice was a form of community contribution as he charged very low legal fees, often did not require a retainer from clients, and did not instigate collections against unpaid accounts.
- [27] In this matter, the Respondent submitted that he refunded the Client's fees of \$500 at a time when he was not aware of this Citation. He argued his fees adjustment was a goodwill gesture for the benefit of the Client.
- [28] We accept the Respondent's evidence as to his extensive community involvement and find that the evidence established that he was well regarded in the community for his faculty and volunteer work.
- [29] We reviewed the Respondent's PCR which includes an admission of professional misconduct following a citation issued in 1985, conditions of practice since 1995 (subject to an undertaking), referrals to Practice Standards (1986 to 1996 and 2014 to 2016), five conduct reviews between 2002 and 2018, and two administrative suspensions between 2021 and 2022.
- [30] The Respondent's full PCR is summarized below in chronological order:
 - (a) Admission of Professional Misconduct: in relation to a citation issued against him in October 1985, the Respondent admitted that his conduct in failing unreasonably to respond promptly to the Law Society constituted professional misconduct. The Respondent's admission was accepted by the Discipline Committee in April 1986, while the remaining matters were referred to a Complaint Review Panel. The Panel dealt mainly with breaches of accounting rules by the Respondent and made a number of recommendations accepted by the Respondent including: periodic reviews of his practice, attendance at CLE courses, a monthly independent review of his accounts for four months, and that he undertake not to engage in business undertakings with his clients.

- (b) Recommendations of Competency Committee: Between 1986 and 1996, the Respondent's practice was under review by the Competency Committee, which resulted in the acceptance of numerous recommendations including to improve his competency and office systems.
- (c) Undertaking 1995 to Present: Limitation on Practice in place to not draft wills without supervision.
- (d) Conduct Review held April 2002: The Respondent attended a conduct review to discuss his conduct in a 1991 transaction in which he filed an appearance and consented to an Order Nisi on behalf of parties in foreclosure proceedings without receiving instructions from those parties or communicating with them. The Respondent advised the Subcommittee that he had revised his procedures and now had a practice of requiring retainer letters from each client as he opened the file. The Subcommittee recommended that no further action be taken.
- (e) Conduct Review held February 2008: The Respondent attended a conduct review to discuss his conduct in engaging in "unnecessary and petty wrangling" over accounts and payments with another lawyer, which put clients' interests at risk, and in failing to attend to practice debts in a timely fashion. The Subcommittee recommended that he carefully document financial arrangements entered into with the lawyers in his office.
- (f) Conduct Review held May 2010: The Respondent attended a conduct review to discuss his conduct in swearing a false and potentially misleading affidavit in support of former clients in a specific performance action. The Respondent advised that he did not realize that his recollection of events was incorrect at the time he swore the affidavit. The Subcommittee was satisfied that in the future, the Respondent would be scrupulous in verifying the accuracy of affidavits.
- (g) Conduct Review held January 2011: The Respondent attended a conduct review to discuss his conduct in breaching an undertaking and failing to reply reasonably promptly to communications from another lawyer that required a response. The Subcommittee noted that "there appears to be a pattern of communication issues with respect to [the Respondent]".

The Subcommittee discussed the principle of progressive discipline with the Respondent and "conveyed the Discipline Committee's concerns that

[the Respondent] appeared not to be changing his behavior as a result of previous Conduct Reviews”. The Subcommittee noted the Respondent’s explanation that he was “extremely busy and as well he was facing challenges related to staffing”, and observed that “[the Respondent’s] pattern of poor communication goes to the heart of the complaints. His delays and his poor communication practices end up resulting in small problems becoming big problems ...”

With respect to the Respondent’s apology, the Subcommittee stated: “[w]e believe that [the Respondent] is sincere and we appreciate his candor, however [the Respondent] has made similar statements before and so it will be incumbent on him to ensure that he carries through with his commitments and establishes systems within his office to ensure that he responds immediately to any requests from other members, and that he develops strategies for following up on undertakings.”

Ultimately, the Subcommittee recommended no further action, noting that the Respondent had taken “concrete steps to avoid the problems that led to the complaint”, including selling his practice and working as an employee to take advantage of office and other support systems in place at the firm, as well as reducing the volume of his practice and nature of his involvement in files. The Subcommittee stated: “[t]hese changes appear to us to be significant and, if properly followed through, should avoid these sorts of problems from continuing to arise in the future.”

- (h) Practice Standards Recommendations 2014 to 2016: The Respondent was referred to the Practice Standards Committee in 2014, his second Practice Standards file. In 2015, the Committee accepted various recommendations including that the Respondent prepare and use retainer agreements, implement and maintain a reminder system, improve his note taking and better document his files. The Respondent’s Practice Standards file was closed in 2016.
- (i) Conduct Review held January 2018: The Respondent attended a conduct review to discuss his conduct in: (a) acting in a conflict of interest when he failed to conduct a conflict check in a timely manner, and (b) providing poor quality of service to a client when he failed to file lien documents in a timely manner resulting in a loss to the client.

The client in question had retained the Respondent to place a *Land (Spouse Protection) Act* lien on title to the house she lived in, which was jointly owned by her husband and his father. When the Respondent’s

legal assistant eventually completed a conflict check, she discovered that the Respondent had previously acted for the client's husband in a related matter. Furthermore, she discovered that, due to an administrative error, the lien documents had never been filed and, in the intervening period, the client's husband had transferred his interest in the house to his father.

The Subcommittee noted that the Respondent had "an extensive disciplinary history" and that his client had been prejudiced as a result of his conduct in failing to provide an adequate quality of service to her. The Subcommittee also acknowledged that the Respondent advised that the time period in question was a time of transition between two offices and "was a busy time for his practice ... he found that this made his conveyancing practice unusually complicated and stressful". The Subcommittee ultimately recommended no further action on the basis that the Respondent had acknowledged his wrongdoing and had "taken steps to fix the 'structural problems' put efficient policies and systems in place [*sic*]" in addition to "setting firm boundaries professionally and personally."

- (j) Administrative Suspension October 18, 2021 to May 20, 2022: The Respondent was suspended pursuant to [Rule 3-86](#) for his failure to produce records requested in relation to a follow-up audit of his practice, which had been scheduled for June 2021. The suspension was lifted in May 2022 once the records were provided; however, this resulted in a delay in the completion of the audit.
- (k) Administrative Suspension October 26, 2021 to May 25, 2022: The Respondent was suspended pursuant to Rule [3-6\(1\)](#) for his failure to produce records requested in relation to a complaint investigation. The suspension was lifted in May 2022 once the Respondent provided his response to the requests.

[31] We find that the Respondent's PCR is a highly aggravating factor. It demonstrates the Respondent's repeated failures to meet his professional duties as expected, as well as a lack of positive response to prior remedial and disciplinary attempts to address his conduct. Thus far, progressive discipline has unfortunately had little deterrent effect on the Respondent.

[32] We adopt the reasoning in *Lessing*, which outlined the significance of the PCR as it relates to the concept of progressive discipline in determining the appropriate disciplinary action:

[71] In this Review Panel's opinion, *it would be a rare case for a hearing panel or a review panel not to consider the professional conduct record. These rare cases may be put into the categories of matters of the conduct record that relate to minor and distant events. In general, the conduct record should be considered.* However, its weight in assessing the specific disciplinary action will vary.

[72] Some of the non-exclusionary factors that a hearing panel may consider in assessing the weight given are as follows:

- (a) the dates of the matters contained in the conduct record;
- (b) the seriousness of the matters;
- (c) the similarity of the matters to the matters before the panel; and
- (d) any remedial actions taken by the Respondent.

[73] In regard to progressive discipline, this Review Panel does not consider that *Law Society of BC v. Batchelor*, [2013 LSBC 9](#) stands for the proposition that progressive discipline must be applied in all circumstances. At the same time, the Review Panel does not believe that progressive discipline can only be applied to similar matters.

[74] Progressive discipline should not be applied in all cases. A lawyer may steal money from a client. In such a case, we generally skip a reprimand, a fine or even a suspension and go directly to disbarment. Equally, a lawyer may have in the past engaged in professional misconduct requiring a suspension. Subsequently that lawyer may be cited for a minor infraction of the rules. In such a situation, progressive discipline may not apply, and a small fine may be more appropriate.

[emphasis added]

[33] We accept that the Respondent's significant and relevant PCR is an aggravating factor. We find that the Respondent's PCR demonstrates a pattern of delay and non-responsiveness.

[34] Despite repeated warnings and disciplinary action by the Law Society to put measures in place to prevent a repeat of non-responsiveness, the Respondent's misconduct, that is the subject of the Citation, occurred after the Practice Standards Committee accepted recommendations in June 2015 and his misconduct overlapped

with a Conduct Review for similar conduct in January 2018. We find that the persistence of problematic conduct in these circumstances is a significant aggravating factor that leads to the application of progressive discipline that calls for a disciplinary action that is of a sufficient deterrent effect for this Respondent.

Acknowledgement of the misconduct and remedial action

- [35] We now turn to the third of the *Ogilvie* factors, the Respondent's acknowledgement of the misconduct and remedial action. We find that the Respondent's failure to admit to central facts meant that the matter proceeded to a contested hearing. The Client was required to testify, give evidence and was cross-examined by the Respondent, at the risk of reliving the emotional distress the Client was exposed to during the time of the divorce. After that process, we ultimately found that the Client's evidence was more credible and preferred, and that the Respondent's evidence was vague and uncorroborated.
- [36] As a result, we find that the Respondent needlessly increased the length and complexity of this proceeding by disputing facts and leading evidence that was self-serving and had little or no merit. In making this finding, we recognize that the lack of an admission and the mounting of a robust defense does not justify the imposition of a more severe penalty; nevertheless, a failure to accept professional responsibility and a denial of the underlying misconduct in circumstances where the evidence proves that the misconduct occurred, is a relevant consideration in emphasizing the lack of extenuating factors that might justify a lesser penalty.
- [37] We are disappointed that, despite the benefit of hindsight and an opportunity to reflect, the Respondent did not explain why he failed to take the appropriate steps that were available to him, and he is unable to explain to the Client why she needlessly agonized for three years wondering about the state of her divorce and why all of her repeated phone messages were ignored.
- [38] While the Respondent refunded the Client all of her fees and only billed her for disbursements, we find that the Respondent's so-called goodwill gesture occurred only after the Law Society became involved in 2019 albeit before the existence of this Citation.
- [39] We accept the Law Society's submission that the Respondent continues to engage in the same type of behavior, and the remedial process of conduct reviews does not appear to have been successful. We do not find there to be remedial efforts made by the Respondent that would support a less serious sanction. In the circumstances, we find that a suspension is required to promote specific and general deterrence.

Public confidence in the legal profession and disciplinary process

- [40] For the fourth and final of the consolidated *Ogilvie* factors, we turn our analysis to the public's confidence in the ability of the Law Society to regulate and supervise the conduct of its members. We accept the Law Society's submission that it is only by the maintenance of such confidence in the integrity of the profession that the self-regulatory role of the Law Society can be justified and maintained.
- [41] We accept the cases submitted by the Law Society in support of this proposition of the need to instill public confidence. The hearing panel in *Law Society of BC v. McTavish*, 2018 LSBC 02, stated at para. 62:

The misconduct is serious. *Ensuring quality and appropriate legal services are provided to the public goes to the heart of the Law Society's mandate to regulate the profession and uphold and protect the public interest in the administration of justice.* One of the primary functions of a lawyer is to provide competent legal services to the members of the public who have hired a lawyer. *Accordingly, the sanction imposed for this type of misconduct should send a clear message to the profession to deter other lawyers from providing sub-standard services to clients, which will also demonstrate effective regulation of the profession to the public, thereby instilling confidence in the integrity of the profession.*

[emphasis added.]

- [42] Members of the public who engage lawyers to assist and advise them on legal matters are entitled to expect prompt and professional service. The need for repeated follow-up communications also increases the costs of legal services and undermines public confidence in the ability of the legal profession to operate in an expeditious and cost-effective manner.
- [43] The public must have confidence that a lawyer who agrees to act on their behalf has both the time and skill to progress the issue; that was not the case here. We note that had the Respondent spoken to the Client during the period from 2016 to 2019, the Respondent would have discovered that the Client's divorce was not finalized either by responding to her inquiry with a courthouse search, or by reviewing the status of the file.
- [44] It is expected that a lawyer will review their open files periodically. If the Respondent had done so, he would have discovered it was not billed, contained the rejection notice, and lacked a closing letter for over three years. The inexcusable delay in handling the file, the Respondent's lack of reasonable attention to the

Client's matter and lack of communication was a marked departure from the standard expected of lawyers and why this Panel found the Respondent committed professional misconduct.

- [45] We find that it is expected of lawyers to overcome issues such as office or staff shortage complications. If a lawyer expects that they cannot meet their professional obligations in a timely manner, they are to advise their client, seek assistance from other lawyers, refer the file to another lawyer or, at the very least, advise the client so that the client can make an informed choice on how to proceed. The Respondent did not take any of these steps, instead leaving the Client to struggle alone with anxiety and uncertainty about the status of her divorce.
- [46] We adopt the panel's observations in *Law Society of BC v. Kim*, 2019 LSBC 43, at para. 78, on maintaining the public's confidence in the legal profession:

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

[emphasis added.]

- [47] Public confidence in the integrity of the legal profession will be eroded if the sanction imposed in this case does not reflect the seriousness with which the Law Society views the Respondent's misconduct and its resolve to denounce such conduct.

Range of sanctions imposed in similar cases

- [48] The authorities submitted by the Law Society (none were submitted by the Respondent) indicate a range of sanctions that have been imposed for similar misconduct ranging from fines to a short suspension.
- [49] We accept the Law Society's submission that a suspension is appropriate in these circumstances. In the most recent and analogous case, *Law Society of BC v. Hossack*, 2021 LSBC 54, the lawyer was the executor and trustee for the estate of JB, a long-time client. He had entered into an agreement with the client during his lifetime to provide legal services to the estate and apply for probate. Between June 2018 and May 2020, following the client's death, the lawyer failed to administer

the estate and failed to respond to reasonable inquiries from the beneficiary, DS, in a timely manner. The lawyer in *Hossack* had a PCR – most notably he had already undergone a practice review arising from DS’s complaint in 2016. The lawyer was also subject to conduct reviews in 2012 and 2019 for breaches of undertakings given in real estate transactions. The hearing panel found that this “persistence of problematic conduct” was an aggravating factor and, applying the principle of progressive discipline, a suspension rather than a fine was appropriate. The lawyer was suspended for one month.

- [50] In *Hossack*, an additional aggravating factor was the fact that the lawyer was dishonest about the state of affairs when communicating with his client. However, unlike the present case, the lawyer in *Hossack* made admissions of misconduct under then Rule 4-30. This was a mitigating factor, with the panel stating that the lawyer’s admission and the joint submission on disciplinary action “preserved public resources and minimized inconvenience. Most importantly, the admission has avoided inconvenience to potential witnesses whose evidence may have been required in a contested hearing.” Both of these aggravating and mitigating factors are notably missing in the Respondent’s case. The Respondent has a worse PCR than the lawyer in *Hossack*. We note that the Respondent’s delay of almost three years is also double the length of the delay in *Hossack*.
- [51] We are further referred to the following cases by counsel for the Law Society where suspensions were imposed:
- (a) In *Law Society of BC v. Smiley*, 2006 LSBC 31, the lawyer failed to file certain tax forms but then told his client that he had done so. He also failed to respond to communications from the Law Society during the course of the investigation. The lawyer was suspended for one month.
 - (b) In *Law Society of BC v. Simons*, 2012 LSBC 23, the lawyer failed to take substantive steps in the client’s medical malpractice action for three and a half years. He then failed to respond substantively to communications from the client about the status of her action and in particular failed to inform his client about a want of prosecution application until after the action had been dismissed. The lawyer was found to have misled the client and to have failed to provide her with the expected quality of service. The lawyer was suspended for one month.
 - (c) In *Law Society of BC v. Buchan*, 2020 LSBC 24, the lawyer failed to provide quality of service in representing her client in a family law matter, among other misconduct. In particular, over a one year period, she failed to promptly sign an order granted by a Judge and take steps to

have the order entered in a timely manner. The lawyer admitted her misconduct. She had a significant related PCR and was suspended for one month. This case bears some similarity to the Respondent's, while *Buchan* involved other misconduct in addition to the quality of service concerns, the delay in the Respondent's case is nearly four times the delay in *Buchan*. Also, unlike *Buchan*, which proceeded by way of a conditional admission and consent to a specified disciplinary action by the lawyer, the Respondent did not admit to the misconduct.

- [52] The Respondent submitted that the appropriate sanction would be a fine in the amount of \$5,000 and did not provide any authorities or case law.
- [53] We were referred to the following cases by counsel for the Law Society where fines were imposed:
- (a) In *McTavish*, it took nearly four years for the lawyer to finalize probate for the client's mother's estate. After six years, the estate had still not been distributed. The lawyer admitted that he failed to take appropriate steps to probate or administer the estate, failed to keep his client reasonably informed, failed to respond to communications from his client, and failed to provide his client with complete and accurate relevant information about the status of her file. The lawyer in *McTavish* had a relevant and lengthy PCR. The panel held that it was an aggravating factor that during the time he had conduct of this matter, he was in Practice Standards addressing issues of delay and procrastination. The fact that the lawyer admitted his misconduct and gave a voluntary undertaking not to practice estate law were mitigating factors. The lawyer received a fine of \$6,000.
 - (b) In *Law Society of BC v. Hart*, 2014 LSBC 17, the lawyer admitted to professional misconduct regarding his representation of a client in a family law matter. In this relatively straightforward family matter, he delayed nearly three years when it was noted it could have been concluded within a year. The lawyer had an extensive disciplinary record. The Panel noted that the lawyer's misconduct impacted the client emotionally and financially. The lawyer made a conditional admission, wrote off the client's account, reimbursed them \$500, and compensated a partner in the firm for his time spent on the file. The lawyer was ordered to pay a fine of \$7,500.
 - (c) In *Law Society of BC v. Menkes*, 2016 LSBC 24, the lawyer delayed in taking steps to advance his client's action for a period of 4 years, failed

to respond to communications from his client and failed to ensure that he had taken the steps he believed, and told his client, he had taken. Upon realizing that he had not served the claim within the limitation period, he candidly admitted his misconduct to his client and advised them to obtain other counsel. He had a professional conduct record consisting of three unrelated conduct reviews and a referral to the Practice Standards Committee that addressed his struggles with procrastination. He was fined \$7,500.

- [54] Counsel for the Law Society urged that progressive discipline should be resolutely applied here given the fact that the Respondent's conduct commenced after the Practice Standards Committee accepted recommendations in June 2015 relating to similar conduct, and the Respondent also attended a Conduct Review in January 2018 overlapping with the conduct in issue in this case. Similarly, in *Hossack*, a one-month suspension was deemed appropriate in circumstances where the lawyer had Practice Standards recommendations prior to the misconduct.

Absence of significant mitigating factors

- [55] We accepted the Respondent's evidence of his community contributions, many non-profit engagements, and his employment as faculty at the University of the Fraser Valley. We find that the Respondent was heavily engaged over the course of his life in community and other endeavours outside his legal practice.

- [56] The panel in *Law Society of BC v. Gregory*, 2022 LSBC 17, addresses good character evidence noting that:

[45] The Panel may consider good character evidence in determining an appropriate sanction, but such evidence has limited weight in disciplinary matters. We agree with the perspective that “[v]irtually all lawyers are responsible for some good deeds, and virtually all are held in high esteem by some other lawyers and clients. The discipline hearing panel must ensure that the process is not transformed from a deliberative process into a referendum among members of the profession” (Gavin Mackenzie, *Lawyers and Ethics: Professional Responsibility and Discipline*, loose-leaf (consulted on June 2, 2022), Thomson, Reuters, at para. 26:18, p. 26-59).

- [57] With due respect to the Respondent's community awards and contributions, we give the documentary evidence little weight in our consideration of an appropriate sanction because the articles and awards are not directly relevant to the impugned conduct of the Respondent's legal career and in this matter.

- [58] We find that the overriding purpose in imposing disciplinary action is to ensure the public is protected from acts of professional misconduct, and to maintain public confidence in the legal profession. We agree with the Law Society that a significant sanction is necessary to further the Law Society's statutory mandate of protecting the public, and in the interests of both specific and general deterrence.
- [59] We find that the nature of the misconduct is serious, and the protection of the public is paramount. We have deeply considered the stress and impact on the Client because of the Respondent's misconduct. Accordingly, we find that the appropriate sanction is a suspension.
- [60] We are also mindful of the Respondent's other clients in his current practice and impose the suspension to commence three months after the issuance of this decision on disciplinary action to allow the Respondent time to organize his caseload and practice, to minimize the adverse impact this suspension will have on his clients.

COSTS

- [61] The Hearing Panel derives its authority to order costs from section 46 of the *Act* and Rule 5-11 of the Rules. The costs under the tariff are to be awarded under Rule 5-11 unless the panel determines that it is reasonable and appropriate to award no costs or costs in an amount other than that permitted by the tariff.
- [62] The Law Society seeks costs of \$6,956.25, payable within 30 days of the issuance of the decision in this matter, or on such other date as the Hearing Panel may order. As there is no evidence of the Respondent's financial situation, the Law Society submits that there is no reason to deviate from the application of the tariff in the circumstances of this case. This amount was calculated in accordance with Schedule 4 of the Law Society Tariff.
- [63] Accordingly, we order the Respondent to pay costs in the amount of \$6,956.25, payable within 30 days of the issuance of this decision.

CONCLUSION AND ORDERS

- [64] We considered the personal impact on the Client awaiting news of her divorce over three years, the inexcusable delay in the Respondent's handling of the file over a period of nearly four years, the simplicity and straightforwardness of the matter in question, and the lack of any significant mitigating circumstances. All the circumstances support a sanction of a one-month suspension.

[65] The Hearing Panel orders that:

- (a) pursuant to section 38(5)(d) of the *Act*, the Respondent be suspended for one month, to commence on the first day of the third month following the issuance of this decision; and
- (b) pursuant to Rule 5-11 of the Rules, the Respondent pay costs of \$6,956.25, payable within 30 days of the issuance of this decision.