

lawyer of a firm, David Massao Saito:

- submitted medical and other expense claims and received payment from the firm for reimbursement, when he ought to have known he was not entitled to reimbursement of the full amount;
- caused the firm to pay for disbursements incurred on files relating to the estates of his family members when the firm was not obligated to pay the disbursements; and
- deposited personal funds into the firm's pooled trust account and maintained those funds in the pooled trust account, contrary to the Law Society Rules.

## ADMISSION

Saito admitted that his conduct constituted professional misconduct and gave an undertaking. His admission was made to the Discipline Committee under Law Society Rule 4-29. This rule provides for a process whereby a respondent can admit misconduct and the citation is resolved without a hearing.

The Discipline Committee accepted Saito's admission and his undertaking for a period of five years, commencing on September 25, 2015:

1. not to apply for reinstatement to the Law Society;
2. not to apply for membership in any other law society (or like governing body regulating the practice of law) without first advising the Law Society in writing; and
3. not to permit his name to appear on the letterhead of, or otherwise work in any capacity whatsoever for, any lawyer or law firm in BC, without obtaining the prior written consent of the Discipline Committee.

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## RICHARD CRAIG NIELSEN

Vancouver, BC

Called to the bar: September 5, 2001

Discipline hearing: April 16, 2015

Panel: W. Martin Finch, QC, Chair, Ralston S. Alexander, QC and Jory C. Faibish

Decision issued: September 3, 2015 ([2015 LSBC 41](#))

Counsel: Carolyn Gulabsingh for the Law Society; Richard Craig Nielsen on his own behalf

## FACTS

In December 2009, Richard Craig Nielsen was appointed by the Legal Services Society to serve as counsel for a mother in a family matter. Nielsen was only on retainer by the client for a few days

before the client terminated the retainer. In the course of representing his client, Nielsen had been interviewed by a detective of the Vancouver Police Department and expressed concern about the client's actions to a sergeant at the police department.

The question for the panel was whether Nielsen disclosed confidential information about his client in his conversations with the police and, if so, whether that disclosure was contrary to the *Professional Conduct Handbook* then in force.

## DETERMINATION

The hearing panel found that Nielsen was entitled to use his professional judgment in determining the best method to achieve the goals of his client. Nielsen had determined that an important step in the criminal investigation was the interview scheduled between the VPD and his client. He felt, properly in the view of the panel, that in order for the interview to produce the best possible result, some preparation of the investigating police officer was appropriate. Consequently, the comments made were within the implied consent provided by Nielsen's client to do all that was necessary to advance her cause.

The hearing panel determined that Nielsen had not committed any act of professional misconduct. The Law Society had the burden of demonstrating, on the balance of probabilities, that Nielsen had professionally misconducted himself, but the Society did not meet the standard required.

## DECISION

The panel dismissed the citation with costs payable to Nielsen.

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## RONALD WAYNE PERRICK

North Vancouver, BC

Called to the bar: May 17, 1971

Discipline hearing: June 16 to 18, 2014 and April 28 and July 6, 2015

Panel: David Mossop, QC, Chair, John M. Hogg, QC and Linda Michaluk

Decisions issued: September 3, 2014 ([2014 LSBC 39](#)) and September 8, 2015 ([2015 LSBC 42](#))

Counsel: Kieron Grady for the Law Society; Ronald W. Perrick on his own behalf

## FACTS

In 2002 and in 2004, Ronald Wayne Perrick represented a client in matters arising from two motor vehicle accidents.

Perrick failed to keep the client reasonably informed by failing to provide her with copies of material correspondence sent to him about the accidents or inform her of the contents of that correspondence. He failed to disclose to the client the service of a Demand for Discovery of Documents dated December 14, 2004 and her obligations pursuant to that demand. Also, Perrick did not disclose that a mediation had been scheduled for September 19, 2008 until after the date was cancelled.

Perrick did not promptly disclose to his client that opposing counsel was seeking to have the claims dismissed and adequately explain to her the chances of that occurring. He also failed to provide the client with copies of application materials from opposing counsel in February 2009 and July 2009 seeking to dismiss her claims.

Further, he failed to promptly file statements of claim in respect of both accidents as required by the Supreme Court Rules. Nor did he take substantive steps, promptly or at all, to advance his client's claims to settlement or trial.

Finally, Perrick failed between 2004 and 2009 to reply with reasonable promptness to some or all of the letters from opposing counsel that required a response, contrary to the *Professional Conduct Handbook*, then in force.

### ADMISSION AND DISCIPLINARY ACTION

Perrick admitted to professional misconduct for failing to serve his client in a conscientious, diligent and efficient manner and for failing to reply reasonably promptly to correspondence from opposing counsel.

The panel found that Perrick showed, not only a marked departure from the quality of service expected, but also a fundamental failure to provide any meaningful service to his client. It was significant that a master reduced Perrick's fee from \$3,866.96 to \$500 and that the client was required to launch a negligence suit against him.

The hearing panel took into consideration a prior record of professional misconduct and noted, in particular, the serious findings of improper use of powers of attorney and the backdating of assignment of shares (see *Discipline digest*, Fall 2014 *Benchers' Bulletin*). Perrick has applied for a review of that decision.

The hearing panel accepted Perrick's admission of misconduct and ordered that he:

1. be suspended for 30 days; and
2. pay costs of \$19,315.81.

*Perrick has applied for a review of the panel's decision.*

### KRISTA MARGRET JESSACHER

Kelowna, BC (formerly of Vancouver, BC)

Called to the bar: May 21, 1999

Discipline hearing: September 2, 2015

Panel: Philip Riddell, Ralston S. Alexander, QC, and Glenys Blackadder

Oral reasons: September 2, 2015

Decision issued: September 28, 2015 ([2015 LSBC 43](#))

Counsel: Kieron Grady for the Law Society; no one on behalf of Krista Margret Jessacher

### FACTS

In July 2010, as a non-practising member of the Law Society, Krista Margret Jessacher signed an undertaking with the Law Society not to practise law. In December 2014 the Law Society received a complaint about Jessacher's conduct in relation to a family law matter.

The Law Society wrote to Jessacher in February 2015 seeking her response to the complaint, and interviewed her in March. During the course of the interview, Jessacher refused to answer several questions and was directed to supply copies of certain documents. In a subsequent letter, Jessacher was given until April 8 to respond to the unanswered questions and provide the documents.

On April 9 Jessacher sent the Law Society her affidavit sworn April 2, 2015, which had been filed in the family matter involving the complainant. In the affidavit, in reference to the interview, she stated that she would not answer questions that would not benefit the client and that she would not participate any further in the investigation process, asserting that the Law Society had all the information needed to resolve the complaint.

The Law Society sent a second letter requesting the same information and extending the deadline to respond to May 8, 2015. Jessacher replied with another letter, but did not respond to the specific requests of the Law Society.

In June, the Law Society issued a citation against Jessacher for failing to provide a full and substantive response concerning the investigation, contrary to both the Law Society Rules and the *Code of Professional Conduct for British Columbia*.

### DETERMINATION

As of the date of the hearing, Jessacher had not provided a substantive response to the Law Society's requests. She also failed to appear before the hearing panel. The panel found that Jessacher demonstrated a persistent failure to respond to the Law Society, and did not provide any explanation for her failure to respond.

The panel determined that Jessacher's failure to respond shows a marked departure from the conduct expected of a lawyer and constitutes professional misconduct.

### DISCIPLINARY ACTION

When considering the range of fines for failure to respond, the panel noted that Jessacher's failure to respond frustrated the ability of the Law Society to investigate allegations that she is engaged in the unauthorized practice of law and is in breach of her undertaking to the Society, her continued refusal to respond, the need for general and specific deterrence and the requirement to ensure public confidence.

The panel ordered that Jessacher pay:

1. a fine of \$5,000; and
2. \$1,335.68 in costs.

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## DAVID JACOB SIEBENGA

Surrey, BC

Called to the bar: June 12, 1987

Discipline hearing: July 23, 2015

Panel: David Mossop, QC, Chair, David Layton and Carol J. Gibson

Oral decision (facts and determination): July 23, 2015

Decision issued: September 30, 2015 ([2015 LSBC 44](#))

Counsel: Kieron Grady for the Law Society; Robyn Jarvis for David Jacob Siebenga

### FACTS

Between March and June 2012, David Jacob Siebenga acted for a client in two court actions. The first was a debt action in which Siebenga filed affidavits attesting that his client had no legal or beneficial interest in a piece of property. In the second action, Siebenga filed an amended notice of civil claim asserting that his

client had an equitable interest in the same piece of property. The court held that this was an abuse of the court process and awarded special costs against Siebenga in the amount of \$6,000.

The court ruled that, in the face of the affidavit, which Siebenga acknowledges he took on instructions from his client, Siebenga ought not to have filed the notice of civil claim. The sworn affidavit evidence of his client, and the allegations in the notice of claim, are in stark contrast. He filed this notice of claim just six weeks after the affidavit was sworn. The claim being advanced was untenable, the filing of the claim was an abuse of process, and in filing such a claim, Siebenga was in breach of his duty to the court. The client may have had views of his entitlement to the property, but those were views that were not capable of being legitimately asserted. Siebenga ought not to have taken his client's instructions to commence the action.

### ADMISSION AND DISCIPLINARY ACTION

Siebenga recognized that the position he asserted on behalf of his client in the second action was untenable given the position he asserted on behalf of his client in the first action and that doing so constituted an abuse of court process. The Law Society accepted Siebenga's assertion that he did not intend to abuse the court process.

Siebenga admitted, and the panel agreed, that his conduct amounted to professional misconduct.

Given the seriousness of the misconduct, Siebenga's previous conduct record and the need for specific and general deterrence, the panel found that a 30-day suspension was the appropriate disciplinary action.

The panel ordered that Siebenga:

1. be suspended for 30 days; and
2. pay costs of \$6,172.50. ❖

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