

saying that, if the landlord did not pay the bill of costs, McLean would execute against his assets;

- unilaterally set a date for assessment of the bill of costs when McLean knew the landlord was not available; and
- advised the landlord that his cheque had bounced and that McLean would execute against the landlord's assets, when he knew or ought to have known the cheque had not bounced.

2) McLean failed to respond to communications from the landlord regarding scheduling a mutually convenient date for an appointment to tax the clients' bill of costs.

3) McLean told a master of the Supreme Court of BC at the assessment hearing of the bill of costs that he had not responded to the landlord's scheduling requests because the landlord was represented by counsel, when McLean knew or ought to have known that this was untrue.

### The defamation action

4) McLean commenced a defamation suit against the landlord and, representing himself, failed to respond to multiple communications from opposing counsel.

5) In the course of representing himself in the defamation action, McLean:

- unilaterally filed a notice of trial for two days without confirming opposing counsel's availability after failing to respond to opposing counsel's requests to set a mutually convenient trial date;
- entered a settlement agreement and said he would file a notice of discontinuance by a specified date, but failed to do so;
- filed the notice of discontinuance only after opposing counsel said he considered McLean to have repudiated the settlement and withdrew his consent for McLean to file the notice of discontinuance;
- failed to attend a Supreme Court hearing; and
- failed to attend a scheduled examination for discovery.

6) In the course of representing himself in the defamation action, McLean failed to attend Supreme Court hearings and comply with the directions of the court by:

- failing to comply with directions to file a doctor's letter relating to his missed appearances;
- failing to attend a scheduled hearing that was peremptory on him; and
- failing to comply with a direction to provide information to support his email to the Supreme Court trial coordinator that he had a scheduling conflict.

### Conduct in relation to the Law Society

7) McLean told the Supreme Court he would be unable to attend a

hearing because he was "currently in trial on the Island," when he knew this was not true or he had created the conflict after the hearing had been scheduled.

8) McLean failed to notify the Law Society that he had failed to satisfy monetary judgments against him and to explain how he proposed to satisfy the judgments.

9) McLean offered to settle the defamation case against the landlord if the landlord withdrew his complaint to the Law Society.

10) McLean failed to reply to communications from the Law Society regarding the complaint made against him by the landlord.

### DISCIPLINARY ACTION

McLean did not attend the disciplinary action hearing, nor did anyone appear on his behalf. He did not file materials or respond to the Notice of Hearing. The panel determined that McLean had been served with notice of the hearing date in accordance with the Rules.

The Law Society sought a finding of ungovernability against McLean and submitted that, if such a finding is made, disbarment is the appropriate disciplinary action.

On June 29, 2015, a separate discipline hearing panel, ruling on a matter pertaining to an unrelated citation, had ordered that McLean be disbarred on the basis of ungovernability. A review of that decision is pending.

The panel considered McLean's professional conduct record, and found him to be ungovernable for the following reasons:

- consistent and repetitive failure to respond to the Law Society's inquiries;
- neglect of duties with respect to trust account reporting and records;
- misleading behaviour directed to a client or the Law Society;
- failure or refusal to attend at discipline hearings convened to consider the offending behaviours;
- history of allegations of professional misconduct over time, in different circumstances;
- breaches of undertaking without apparent regard for the consequences;
- engaging in practice while under suspension;
- the number of citations and conduct reviews McLean has acquired.

The panel ordered that McLean:

1. be disbarred; and
2. pay costs of \$12,165.78.

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

## KRISTA MARGRET JESSACHER

Vancouver, BC

Called to the bar: May 21, 1999

Discipline hearing: February 4, 2016

Panel: Pinder K. Cheema, chair, Gavin Hume, QC and Graeme Roberts

Decision issued: March 18, 2016 ([2016 LSBC 11](#))

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

### FACTS

Krista Margret Jessacher has been a non-practising member since July 2010 and, as such, she gave an undertaking not to practise law. In December 2014, the Law Society received a complaint about Jessacher's conduct and, as part of the investigation, wrote to her with questions and requests for documents. She did not fully respond to the requests.

The Law Society issued a citation in June 2015 for her failure to respond and scheduled a discipline hearing in September 2015. Jessacher did not attend the discipline hearing. The panel in that hearing determined that Jessacher's failure to respond showed a marked departure from the conduct expected of a lawyer and constituted professional misconduct ([2015 LSBC 43](#); Discipline digest: [Winter 2015](#)). As part of its disciplinary action, the panel ordered Jessacher to provide a complete and substantive response to the enquiries made in the Law Society's letters by September 16, 2015. Jessacher did not comply with the order.

The Law Society issued a second citation for her lack of compliance. She did not attend the discipline hearing on February 4, 2016, or provide an explanation for her absence.

### DETERMINATION

The panel determined that Jessacher's consistent pattern of failure to respond to inquiries and failure to comply with a hearing panel's order reflects a gross culpable neglect of her duties as a lawyer and constitutes professional misconduct.

### DISCIPLINARY ACTION

The panel ordered that Jessacher:

1. provide a substantive response to Law Society letters dated February 2 and March 19, 2015;
2. be suspended until she fully complies with the order to respond; and
3. pay costs of \$1,236.25.

## JAMES LESLIE STRAITH

North Vancouver

Called to the bar: August 1, 1985

Discipline hearing: February 1, 2016

Panel: Herman Van Ommen, QC, chair, Jasmin Z. Ahmad and John Lane

Decision issued: April 1, 2016 ([2016 LSBC 13](#))

Counsel: Kieron Grady for the Law Society; James Leslie Straith on his own behalf

### FACTS

In February 2014, two former clients made a complaint to the Law Society about James Leslie Straith's handling of certain aspects of their file. On May 28, 2014, the Law Society sent a letter to Straith and AB, his co-counsel at the time of the complaint, asking them to respond separately and to provide documents and information to assist in the investigation of the complaint.

After several delays and deadline extensions, on May 13, 2015, the Law Society reviewed the information provided to date and concluded that documents important to the investigation were still missing. It requested delivery of specific documents by May 28.

By May 28, 2015, neither Straith nor AB had provided the requested information.

The Law Society gave two unsolicited extensions of time to Straith, moving the deadline to June 29, 2015. Straith advised that he anticipated being able to respond by July 30, 2015, but he never did.

On September 30, 2015, the Law Society issued a citation against Straith alleging that he "failed to provide a full and substantive response promptly or at all to communications from the Law Society concerning its investigation."

### DETERMINATION

At the hearing, Straith did not deny that he had not fully responded to the Law Society's request to produce documents including, in particular, email correspondence to and from and within his firm. He argued that he took steps to respond to that request by delegating the obligation to AB and, based on what AB told him, believed that a response had been provided. Straith claimed that those steps should be sufficient to vitiate a finding of professional misconduct.

The Law Society maintained that Straith's response to its initial request was limited and that none of those responses resulted in the production of the requested documents.

The hearing panel found that Straith's failure to provide the requested documents was exacerbated by the persistence of that failure, despite being given ample opportunity to respond. By the date of the hearing, approximately eight and one-half months after the initial request for

information, Straith had still not produced the requested documents. The panel determined that Straith had committed professional misconduct.

### DISCIPLINARY ACTION

The hearing panel ordered that Straith:

1. pay a fine of \$3,500;
2. pay costs of \$2,472.50; and
3. produce all emails as requested in the May 13, 2015 letter within two weeks of the order.

## GAVIN CLARK CRICKMORE

Vancouver, BC

Called to the bar: September 1, 1995

Discipline hearing: December 18, 2015

Panel: Elizabeth Rowbotham, chair, Donald Amos and Shona A. Moore, QC

Decision issued: May 20, 2016 ([2016 LSBC 16](#))

Counsel: Kieron Grady for the Law Society; Henry C. Wood, QC for Gavin Clark Crickmore

### FACTS AND DETERMINATION

In or about 2014, a client of Gavin Clark Crickmore filed a complaint with the Law Society regarding Crickmore's representation of her infant child in 1995. At the time of the 1995 matter, Crickmore was a junior litigation associate with a law firm that ceased to practise as a firm in 2003. After corresponding with Crickmore and receiving his explanation of his handling of the 1995 matter, a Law Society investigator interviewed Crickmore on February 15, 2015. After that interview the investigator asked Crickmore to provide electronic files relating to the claim and his notes of any conversations or meetings with the complainant or her child.

Crickmore failed to produce his electronic files and notes and, on June 22, 2015, the investigator wrote Crickmore advising that, if she did not receive the electronic files and any relevant notes before June 26, 2015, the matter would be referred to the Discipline Committee with the recommendation that a citation be issued.

Crickmore admitted that he engaged in professional misconduct when he failed to respond promptly and fully to a Law Society request for documentation and information.

### DISCIPLINARY ACTION

The Law Society sought a fine of \$4,000. The panel considered several factors, including that this was Crickmore's first citation and that he

did not gain any advantage from his misconduct, and ordered that Crickmore pay:

1. a fine of \$2,500; and
2. costs of \$1,772.50.

## MELISSA ANN DANIELS

Victoria, BC

Called to the bar: May 29, 2014

Ceased membership for non-payment of fees: January 1, 2016

Hearing date: January 27, 2016

Panel: Nancy Merrill, QC, chair, Lance Ollenberger and Donald Silversides, QC

Decision issued: May 27, 2016 ([2016 LSBC 17](#))

Counsel: Kieron Grady for the Law Society; no one on behalf of Melissa Ann Daniels

### FACTS

On April 10, 2015, the Law Society sent a letter to Melissa Ann Daniels, by email, asking for a written response to three questions relating to a complaint made against her.

Despite repeated requests from the Law Society and multiple deadline extensions, by the date of the hearing Daniels had only responded with two emails, neither of which provided any response to the Law Society regarding the complaint or the three issues she was asked to address in the letter of April 10, 2015.

### DETERMINATION

Daniels did not attend the hearing; the hearing panel determined that she had been properly served and proceeded in her absence.

The panel found that Daniels failed to cooperate fully with the investigation of the complaint or to respond fully or substantively to the Law Society's request for an explanation or to provide information and that, by failing to do so, Daniels breached the Rules. This failure to respond and provide information was a marked departure from the standard of conduct the Law Society expects of lawyers, and it therefore constituted professional misconduct.

### DISCIPLINARY ACTION

The panel ordered that Daniels pay:

1. a fine of \$2,500; and
2. costs of \$1,236.25. ❖

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