

2021 LSBC 27
Decision issued: June 17, 2021
Citation issued: January 7, 2020

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

ROSARIO CATENO DI BELLA

RESPONDENT

**DECISION OF THE HEARING PANEL
ON FACTS AND DETERMINATION**

Hearing Date: May 10, 2021

Panel: Steven McKoen, QC, Chair
Catherine W. Chow, Lawyer
Laura Nashman, Public representative

Discipline Counsel: Barbara Lohmann
Counsel for the Respondent: Richard Margetts, QC

INTRODUCTION AND OVERVIEW

- [1] The Citation in this matter was authorized by the Discipline Committee on December 5, 2019 and issued on January 7, 2020 (“Citation”).
- [2] Pursuant to the Citation, the allegations against the Respondent, Rosario Cateno Di Bella, are as follows:
1. Between approximately March 2015 and April 2018, in the course of acting for your client AR in an estate matter, you failed to provide the quality of service required of a competent lawyer, contrary to one or both of rules 3.1-2 and 3.2-1 of the *Code of Professional Conduct for British Columbia*, by failing to do one or more of the following:

- (a) attend to matters within a reasonable time frame, or inform AR about the potential for undue delay so that she could make an informed decision about her options;
 - (b) ensure, where appropriate, that all instructions were in writing or confirmed in writing, including a settlement that you agreed to on her behalf with a term that the plaintiff receive costs of \$2,000 payable from the estate;
 - (c) keep AR reasonably informed, including failing to provide her with a copy of the entered court order dated July 19, 2017;
 - (d) meet the deadlines set out in the court order dated July 19, 2017 on AR's behalf; and
 - (e) answer reasonable requests by AR for information and respond to her telephone calls and other communications.
2. On or around July 13, 2017, in the course of acting for your client AR in an estate matter, you acted without AR's instructions when you agreed to settle the matter on her behalf with a term that the plaintiff receive costs of \$2,000 payable from the estate.
3. On or around October 19, 2017, in the course of acting for your client AR in an estate matter, you represented in email correspondence with AR that you had ordered a wills search when you knew or ought to have known that your representations were false or misleading, contrary to one or both of rules 2.1-4(a) and 2.2-1 of the *Code of Professional Conduct for British Columbia*.
4. Between approximately November 2015 and February 2018, in the course of acting for your client AR in an estate matter, you failed to answer with reasonable promptness one or more of 31 communications that required a response from opposing counsel as set out in Schedule "A", contrary to rule 7.2-5 of the *Code of Professional Conduct for British Columbia*.
5. In or around April 2018 and continuing thereafter, after you were discharged by your client AR, you failed to do all that could be reasonably be done to facilitate the orderly transfer of the matter to AR's successor lawyer, contrary to one or both of rules 3.7-8 and 3.7-9 of the *Code of Professional Conduct for British Columbia*, by failing to do one or more of the following:
 - (a) deliver to the successor lawyer all papers and property to which AR was entitled;

- (b) render an account for outstanding fees and disbursements, promptly or at all; and
- (c) co-operate with the successor lawyer in the transfer of the file, including failing to respond to one or more communications from the successor lawyer on May 8, 15, 25, 30 and June 15, 2018.

Each allegation is stated to constitute professional misconduct pursuant to section 38(4) of the *Legal Profession Act* (the “*Act*”).

ISSUES

- [3] The issue before the Panel with respect to each allegation is whether the conduct admitted to by the Respondent amounts to professional misconduct or a breach of the *Act* or Law Society Rules (“Rules”), pursuant to s. 38(4) of the *Act*.

FACTS

Notice to Admit and Response

- [4] The Respondent was served with a Notice to Admit. The Respondent provided a reply admitting the facts set out in the Notice to Admit, except for paragraphs 3, 5, 19, 27, 104 and 151 as identified in his Response to Notice to Admit, and accepting the authenticity of the documents attached thereto.
- [5] The Law Society accepted the Respondent’s corrections to paragraphs 3, 5, 19, 27 and 151, but did not accept the Respondent’s response to paragraph 104.
- [6] In accordance with Rule 5-6(6), the Panel accepts the evidence in the form of the admissions accepted by the Respondent through the Notice to Admit, the Respondent’s Response to Notice to Admit, and the Comparison of Notice to Admit and Response to Notice to Admit, excepting paragraph 104. We take these undisputed facts together and refer to them collectively as “NTA”.

The Respondent’s background

- [7] The Respondent was called and admitted as a member of the Law Society of British Columbia on September 10, 1980.
- [8] The Respondent practises as a sole practitioner in Victoria, British Columbia. His practice is primarily in the area of wills, estates and trusts.

- [9] On February 19, 2021, the Respondent's right to practise was suspended for failure to provide sufficient records for a compliance audit, and at the time of this Hearing, his practice was under custodianship.

Factual overview

- [10] The Respondent admits a detailed chronology of events. The admissions are clear and unambiguous. The Panel summarizes pertinent highlights that support our findings.
- [11] The client AR retained the Respondent to represent her to assist with the estate of her late father (the "Deceased") who died July 18, 2014, including to assist with obtaining a grant of probate.
- [12] Pursuant to the Deceased's Last Will and Testament dated July 19, 2002, the Deceased appointed the Deceased's daughter, AR, and the Deceased's common law spouse, SE, to be co-executors of the Deceased's estate. AR and her brother, NT, were the beneficiaries of the Deceased's estate.
- [13] SE hired Brad Chudiak of Chudiak, Schmidt & Co. to represent SE in respect of the Deceased's estate.
- [14] In April 2015, AR retained the Respondent. The Respondent took AR's matter on as a *pro bono* file as the Respondent expected it could be resolved quickly based upon his expectation that the seniority of the Respondent and Mr. Chudiak would lead to a reasonable resolution of any disputes.
- [15] Between April and August 2015, the Respondent spoke with AR and Mr. Chudiak to resolve the Deceased's estate, yet the Respondent took no material steps to that end. As a result of this prolonged discussion, Mr. Chudiak filed a citation with Supreme Court of British Columbia on September 29, 2015, to require AR to apply for a grant of probate of the Deceased's estate and set out a 14-day response deadline.
- [16] Between October 2015 and July 2016, the Respondent did not follow up as promised during several telephone conversations with Mr. Chudiak (who consented to extensions of the response citation deadline), and did not respond to written correspondences of Mr. Chudiak dated November 19, 2015, March 10 and May 24, 2016.
- [17] On July 20, 2016, Mr. Chudiak filed a notice of civil claim in the Supreme Court of British Columbia ("Notice of Claim") in respect of the Deceased's estate. The Notice of Claim was served on AR, who then faxed it to the Respondent on July 22, 2016.
- [18] The Respondent took no steps following receipt of the Notice of Claim from AR on July 22, 2016. In fact, the Respondent did not respond to AR's email of September 1, 2016

advising that her brother, NT, had also been served with the Notice of Claim on September 1, 2016.

- [19] On December 28, 2016, AR contacted the Respondent because she was served with court documents advising of a court application set down for January 23, 2017 in respect of the Deceased's estate.
- [20] Between January and March 2017, the Respondent corresponded with Mr. Chudiak multiple times to adjourn the court application twice, explaining that the Respondent had not received instructions, though AR had been in contact with the Respondent asking for updates throughout that period.
- [21] On April 24 and May 16, 17, 23, 24, 25 and 30, 2017, Mr. Chudiak left voicemail messages requesting a response from the Respondent. The Respondent did not reply to any of these voicemail messages, nor to Mr. Chudiak's letter of May 31, 2017 itemizing same.
- [22] Later, on June 7, 2017, Mr. Chudiak sent the Respondent a copy of the filed requisition adjourning the matter to July 12, 2017, by consent of counsel. It was at that time, on July 13, 2017, that the Respondent emailed Mr. Chudiak advising that the Respondent, with authority to bind his client AR and NT, accepted settlement of the estate whereby the Plaintiff would receive \$2,000 in costs, to be paid from the Deceased's estate after sale of the Deceased's property (the "\$2,000 Settlement").
- [23] On July 13, 2017 (entered on July 19), the Supreme Court of British Columbia granted an order that, by consent, AR shall file for an estate grant by September 1, 2017 ("July 19 Order"). The Respondent received a copy of this Order, but did not send a copy to AR.
- [24] The Respondent did not respond to AR's email of August 16, 2017 advising of a potential buyer of the Deceased's home and asking the Respondent to call AR.
- [25] The Respondent did not respond to Mr. Chudiak's email of August 18, 2017 advising that AR had attended at Mr. Chudiak's office requesting documents, and that Mr. Chudiak's office would provide AR with original documentation and a box of other personal items belonging to the Deceased.
- [26] Despite a promise in an email of August 30, 2017 to AR, the Respondent did not proceed with an application for probate of the Deceased's estate by September 1, 2017 as required in paragraph 27 of the July 19 Order.
- [27] Despite a promise in his reply on the same date, the Respondent did not respond to AR's email of September 17, 2017. Also, despite a promise in his reply on the same date, the

Respondent did not respond to AR's email of September 20, 2017. The Respondent also did not respond to AR's emails on September 21, 2017 asking for a teleconference.

- [28] The Respondent did not respond to Mr. Chudiak's email of September 26, 2017 attaching a copy of a Contract of Purchase and Sale for the Deceased's property. The Respondent also did not respond to a follow-up email from Mr. Chudiak, nor to Mr. Chudiak's telephone calls of September 29 and October 2, 2017. The Respondent also did not respond to Mr. Chudiak's emails of October 3, 6, 10 and 27, 2017.
- [29] On October 19, 2017, the Respondent specifically advised AR in an email that the Respondent had ordered the wills search, which was mandatory for the grant of probate. However, the Respondent never ordered a wills search.
- [30] In the Respondent's interview with the Law Society on June 17, 2019, when asked about his lack of response in this matter to AR and Mr. Chudiak between mid-July and November 20, 2017, and the reasons for it, the Respondent stated it was essentially a lack of staff.
- [31] The Respondent did not respond to Mr. Chudiak's email of December 6, 2017. When Mr. Chudiak's office emailed on January 18, 2018 to follow up from a voicemail of January 9, they received an automatic reply that the Respondent had changed firms.
- [32] From mid-January to the end of February 2018, the Respondent did not respond to Mr. Chudiak's voicemail of January 19, email of January 19, letter of January 22 and letter of February 27, 2018.
- [33] The Respondent did not respond to AR's text messages on March 14 and 16, 2018, which advised in part that:
- (a) AR wanted to speak with the Respondent as it had been over a month since the Respondent last called and he had not delivered what he promised, and that she had attempted to contact him on numerous occasions;
 - (b) SE was going to be 80 years old and was going blind. AR wanted the matter settled before SE endured more health problems;
 - (c) it had been more than four years since her father passed away, and probate was not even started; and
 - (d) AR was extremely upset and disappointed, and she would wait one more week for his call, failing which she would seek other counsel.

- [34] Because the Respondent had not filed an application for grant of probate by then, on April 18, 2018, Mr. Chudiak filed a notice of application with the Supreme Court of British Columbia to compel AR to file for probate. The Respondent did not respond to the notice.
- [35] On April 27, 2018, the Respondent and AR spoke, following which the Respondent confirmed their conversation in an email, stating that AR had retained new counsel, Tommy Chan and that the Respondent would prepare an account for payment, and once that payment was received, he would prepare the file for delivery to Mr. Chan.
- [36] Mr. Chan wrote to the Respondent on May 8 and 15 and June 15, 2018, and the Respondent did not respond to any of these communications. The Respondent did not cooperate by providing Mr. Chan with the original notice of renunciation. The Respondent did not provide an account. The Respondent did not prepare the file for delivery to Mr. Chan.
- [37] Mr. Chan obtained a grant of probate for the Deceased's estate on July 5, 2018.
- [38] This ended AR's three-year long ordeal to obtain a grant of probate for the Deceased's estate, which, given the Respondent's seniority and experience, should have taken mere months.

THE APPLICABLE LAW

Onus and standard of proof

- [39] The onus of proof in Law Society discipline hearings is well-known and consistently applied. The standard was articulated by the Supreme Court of Canada in *F.H. v. McDougall*, 2008 SCC 53, which held that the onus of proof is on the Law Society to prove the allegations of misconduct on a balance of probabilities, whereby the evidence must be sufficiently clear, convincing and cogent.

Test for professional misconduct

- [40] Because the term "professional misconduct" is not defined in the *Act*, the Rules or the *Code of Professional Conduct for British Columbia* ("*Code*"), we must look to the leading case, *Law Society of BC v. Martin*, 2005 LSBC 16. In *Martin* at paragraph 171, the panel defined professional misconduct to mean "whether the facts as made out disclose a marked departure from that conduct the Law Society expects of its members."
- [41] In *Martin* at paragraphs 151 to 154, the panel observed that a finding of professional misconduct did not require behaviour that was disgraceful or dishonourable. This Panel

accepts the test being “whether the Respondent’s behaviour displays culpability which is grounded in a fundamental degree of fault, that is whether it displays gross culpable neglect of his duties as a lawyer.”

- [42] More recently, the hearing panel in *Law Society of BC v. Kim*, 2019 LSBC 43 at paragraph 45, found that the test for professional misconduct is not subjective:

The *Martin* test is not a subjective test. A panel must consider the appropriate standard of conduct expected of a lawyer, and then determine if the lawyer falls markedly below that standard. In determining the appropriate standard, a panel must bear in mind the requirements of the *Act*, the Rules and the *Code*, and then consider the duties and obligations that a lawyer owes to a client, to the court, to other lawyers and to the public in the administration of justice. Each case will turn on its particular facts.

- [43] As set out in *Law Society of BC v. Harding*, 2014 LSBC 52, the presence of *bona fides* will not excuse conduct that is otherwise professional misconduct, and advertence or *mala fides* is not required to prove professional misconduct. The recent case of *Law Society of BC v. Hittrich*, 2019 LSBC 24 upheld the approach in *Martin*.

Codified standards expected of lawyers

- [44] In addition to case law, numerous provisions in the *Code* provide further guidance on the behaviours expected of a lawyer, failing which constitutes professional misconduct. These include:

Rule 2.2-1 – A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity.

Rule 3.1-2 – A lawyer must perform all legal services undertaken on a client’s behalf to the standard of a competent lawyer.

Rule 3.2-1 – A lawyer has a duty to provide courteous, thorough and prompt service to clients. The quality of service required of a lawyer is service that is competent, timely, conscientious, diligent, efficient and civil.

- [45] Commentary to Rule 3.2-1, provides in part:

- [3] A lawyer has a duty to communicate effectively with the client. What is effective will vary depending on the nature of the retainer, the needs and sophistication of the client and the need for the client to make fully informed decisions and provide instructions.

- [4] A lawyer should ensure that matters are attended to within a reasonable time frame. If the lawyer can reasonably foresee undue delay in providing advice or services, the lawyer has a duty to so inform the client, so that the client can make an informed choice about his or her options, such as whether to retain new counsel.
- [5] The quality of service to a client may be measured by the extent to which a lawyer maintains certain standards in practice. The following list, which is illustrative and not exhaustive, provides key examples of expected practices in this area:
- (a) keeping a client reasonably informed;
 - (b) answering reasonable requests from a client for information;
 - (c) responding to a client's telephone calls;
 - (d) keeping appointments with a client, or providing a timely explanation or apology when unable to keep such an appointment;
 - (e) taking appropriate steps to do something promised to a client, or informing or explaining to the client when it is not possible to do so; ensuring, where appropriate, that all instructions are in writing or confirmed in writing;
 - (f) answering, within a reasonable time, any communication that requires a reply;
 - (g) ensuring that work is done in a timely manner so that its value to the client is maintained;
 - (h) providing quality work and giving reasonable attention to the review of documentation to avoid delay and unnecessary costs to correct errors or omissions;
 - (i) maintaining office staff, facilities and equipment adequate to the lawyer's practice;
 - (j) informing a client of a proposal of settlement, and explaining the proposal properly;
 - (k) providing a client with complete and accurate relevant information about a matter;
- ..."

- [46] With respect to the manner of withdrawal of a lawyer, rule 3.7-9 of the *Code* provides that, on discharge or withdrawal, a lawyer must, as soon as practicable, cooperate with the successor lawyer in the transfer of the file so as to minimize expense and avoid prejudice to the client.
- [47] Rule 7.2-5 of *Code* provides guidance on communications that “[a] lawyer must answer with reasonable promptness all professional letters and communications from other lawyers that require an answer, and a lawyer must be punctual in fulfilling all commitments.”

LEGAL ANALYSIS

- [48] The Panel adopts the legal framework presented by the Law Society (which was uncontroverted by the Respondent), as summarized above, as the appropriate framework for our analysis.
- [49] Any one of the five allegations in the Citation, if established to constitute a marked departure from the conduct the Law Society expects of lawyers, would constitute professional misconduct. Accordingly, we review each allegation below.

Allegation 1: failure to deliver quality of service

Sub-allegation (a): attend to matters within a reasonable time frame, or inform AR about the potential for undue delay so that she could make an informed decision about her options

- [50] Based upon the Respondent’s own admission in the NTA at paragraph 21, the Respondent did not inform AR about the potential for undue delay in applying for probate so that she could make an informed choice about her options, such as retaining different counsel, to move the matter forward in a timely way. We note that the Respondent did not respond to AR’s text messages where she queried the Respondent about the delay and retaining new counsel to help her.
- [51] In the Respondent’s interview with the Law Society in the NTA at paragraph 199, the Respondent agreed that he did not do the work on this file in a timely manner or in a reasonable time frame.
- [52] Given the extraordinary delay in the handling of the file and the Respondent’s own admissions, we find that the Respondent’s delays and lack of communication were a marked departure from the standard the Law Society expects of lawyers and constitutes professional misconduct in relation to sub-allegation (a).

Sub-allegation (b): ensure, where appropriate, that all instructions were in writing or confirmed in writing, including a settlement that you agreed to on her behalf with a term that the plaintiff receive costs of \$2,000 payable from the estate

- [53] The Law Society alleges that the Respondent needed to have written instructions or instructions confirmed in writing with respect to the \$2,000 Settlement, which the Respondent failed to do, which constitutes professional misconduct.
- [54] Counsel for the Respondent argues that the Respondent had ostensible authority, where such authority can be implied to exist from the circumstances whether or not such authority was in fact given. From the Respondent's perspective, counsel for the Respondent argued that the Respondent acted with the understanding and belief that he had the authority to make the \$2,000 Settlement. In his Law Society interview, the Respondent stated that he considered the settlement to be a relatively nominal amount compared to the \$190,000 sale proceeds from the sale of the Deceased's property.
- [55] The Panel finds that the Respondent believed he had authority to enter into the \$2,000 Settlement, as he confirmed such to Mr. Chudiak in writing. The Respondent further stated in his Law Society interview that, if he was wrong about having such authority, it would be a matter to be discussed at the time the property was sold.
- [56] We agree that entering into the \$2,000 Settlement was not conduct amounting to professional misconduct, but might have attracted personal liability for the Respondent as an agent acting without proper authority for which the Respondent would have been financially liable. Indeed, the Respondent said as much in his interview with the Law Society: *"If it still became an impasse, then I think it's a matter that I would have had to pay myself, because I bound them to it."*
- [57] The Panel disagrees with the Law Society that the Respondent needed to have written instructions or confirmation to enter into the \$2,000 Settlement, and accordingly, we find professional misconduct is not established in respect of sub-allegation (b).

Sub-allegation (c): keep AR reasonably informed, including failing to provide her with a copy of the entered court order dated July 19, 2017

- [58] The Respondent admitted that he did not provide AR with a copy of the July 19 Order, that he did not keep AR informed about receipt of the notice of claim and renunciation, and that he did not tell AR about important conversations he had with Mr. Chudiak.
- [59] These court documents and proceedings are important items of which a lawyer must keep a client informed as soon as practicable. Coupled with the Respondent's failing to advise AR of the \$2,000 Settlement and keep AR informed, despite AR's requests for telephone

calls and updates, the Respondent's conduct amounts to professional misconduct. Sub-allegation (c) is established.

Sub-allegation (d): meet the deadlines set out in the court order dated July 19, 2017 on AR's behalf

- [60] The July 19 Order required AR, as executor of the Deceased's estate, to file all the documents necessary to obtain probate on or before September 1, 2017. The Respondent did not file for probate on behalf of his client, despite saying he was working on the probate application the weekend before the due date.
- [61] In his interview with the Law Society conducted June 17, 2019, the Respondent admitted that he did not meet deadlines in this case. There is no apparent reason offered by the Respondent as to why the Respondent did not file the probate claim by September 1, 2017, or at all.
- [62] We find that the Respondent's failure to meet the deadline set out in the July 19 Order and his failure to file the probate claim at all, as set out in sub-allegation (d), constitute professional misconduct.

Sub-allegation (e): answer reasonable requests by AR for information and respond to her telephone calls and other communications

- [63] We accept the guidance presented in the case of *Law Society of BC v. Epstein*, 2011 LSBC 12 at paragraphs 15 and 16, as authority and guidance for the standard of "quality of service" required of lawyers and accept that the cumulative effect of multiple occurrences in totality can amount to a marked departure from the quality of service required of lawyers, and that such conduct displays gross culpable neglect of a lawyer's duties, where individual occurrences may not.
- [64] It is without question that the Respondent failed to reply to reasonable requests and communications from AR on at least ten occasions (see NTA paragraphs 52, 53, 59, 60, 67, 68, 113, 114, 120, 121, 126, 129, 130, 172 and 173).
- [65] We find that the Respondent's repeated failure on multiple occasions to reply to reasonable requests and communications from AR without any excuse or mitigating circumstances to explain the failures is a marked departure from that conduct the Law Society expects of lawyers and constitutes professional misconduct.
- [66] In totality, we find sub-allegations (a), (c), (d) and (e) to be established, and therefore find allegation 1 of the Citation to be proven.

Allegation 2: acting without instructions from AR when agreeing to the \$2,000 Settlement

[67] Referring to our analysis in paragraphs 55 to 59 of this decision, the Panel disagrees with the Law Society that the Respondent needed to have written instructions or confirmation to enter into the \$2,000 Settlement, and accordingly, we find professional misconduct is not established in respect of allegation 2.

Allegation 3: misrepresentation to AR that you had ordered a wills search when you knew or ought to have known your representations were false or misleading

[68] The Law Society alleges, and the Respondent admits in paragraphs 149 to 151 of the NTA and paragraph 151 of the Reply, that the Respondent represented in email correspondence dated October 19, 2017 to AR that he had ordered a wills search when he knew or ought to have known that his representation was false.

[69] We accept the guidance in two cases presented by the Law Society: *Law Society of BC v. Andison*, [1995] LSDD No. 160, and *Law Society of BC v. Wynne*, [1995] LSDD No. 269. The hearing panels in these cases found that the lawyers had committed professional misconduct in misleading their respective clients.

[70] The hearing panel in *Andison* stated “that it was serious matter for a lawyer to lie to a client about having taken steps on a file” which we accept as guidance on the standard expected of lawyers with respect to rule 3.2-2 of the *Code*, where a lawyer, when advising a client, must be honest and candid.

[71] The Respondent undoubtedly did not order a wills search and thereby misrepresented and misled AR when he stated that he did. We find the Respondent’s behaviour to constitute professional misconduct with respect to allegation 3.

Allegation 4: failure to answer with reasonable promptness one or more of 31 communications that required a response from opposing counsel

[72] The Law Society alleges, and the Respondent admits in paragraphs 41, 49, 159 and 199 of the NTA, that the Respondent failed to respond with reasonable promptness, or at all, to communications from Mr. Chudiak or his office.

[73] In addition to breaching rule 7.2-5 of the *Code*, which provides that a lawyer must answer with all reasonable promptness all professional letters and communications from other lawyers that require an answer, we accept the finding by the hearing panel in *Law Society of BC v. Goddard*, 2007 LSBC 47 that a breach of such as rule 7.2-5, in failing to respond to another lawyer, constitutes professional misconduct.

[74] The Respondent did not respond to Mr. Chudiak on at least 31 occasions, which forced Mr. Chudiak to file the Notice of Claim and a citation, in order to compel, albeit unsuccessfully, the Respondent to respond on behalf of AR and to file an application for probate. The Respondent's failure to respond also detracted from Mr. Chudiak's ability to provide quality service to his client by thwarting the timely resolution of the estate matter and hereby undermined public confidence in the ability of the legal professional to operate in an expeditious and cost-effective manner. We find the Respondent's failure to respond with reasonable promptness to communications that required a response from opposing counsel to be professional misconduct.

[75] Accordingly, we find that allegation 4 of the Citation is established.

Allegation (5): failure to do all that could reasonably be done to facilitate the orderly transfer of AR's matter to a successor lawyer

[76] Indeed, it was the Respondent's successor counsel, Mr. Chan, who ultimately applied successfully for probate in AR's estate matter. We find that Mr. Chan did so without the due cooperation expected and required of the Respondent.

[77] Rule 3.7-9 of the *Code* requires that, on discharge or withdrawal, a lawyer must, as soon as practicable, cooperate with the successor lawyer in the transfer of the file to minimize expense and avoid prejudice to the client.

[78] Even after the Respondent was discharged by AR on April 27, 2018 and was contacted by Mr. Chan on several occasions (May 1, 8, 15 and June 15, 2018), the Respondent did not respond and did nothing to help transfer the file to Mr. Chan. When requested for the mandatory original notice of renunciation, the Respondent's office provided only a copy.

[79] Accordingly, the Panel finds that the evidence establishes professional misconduct in relation to allegation (5).

AGGRAVATING FACTORS

[80] The Law Society highlighted several aggravating factors in the Respondent's conduct and that, while no *mala fides* was alleged or established, the harm to AR is incontestable and his conduct in this matter represents a serious departure from the conduct the Law Society expects of lawyers.

[81] We find the presence or absence of *bona* or *mala fides* to be unnecessary in determining whether the Respondent's conduct with respect to the five allegations constitutes professional misconduct. We acknowledge that the Respondent's professional misconduct had far-reaching adverse impacts beyond AR, including on AR's spouse, the Deceased's

son, NT, Mr. Chudiak, the elderly SE and SE's family, because this probate was unreasonably delayed.

CONCLUSION

[82] For the reasons set out in this decision, the Panel finds that each of allegations 1(a), (c), (d) and (e), 3, 4 and 5 in the Citation, and as admitted to by the Respondent, is a marked departure from the standard that the Law Society expects of lawyers. Accordingly, we find that the Respondent's conduct set out in relation to those allegations constitutes professional misconduct.