

Hearing File No.: HE20200038  
2021 LSBC 46  
Decision Issued: November 17, 2021  
Citation Issued: June 8, 2020  
Citation amended: June 12, 2020

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL  
HEARING DIVISION

BETWEEN:

**THE LAW SOCIETY OF BRITISH COLUMBIA**

AND:

**AARON MURRAY LESSING**

RESPONDENT

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

Hearing date: September 22, 2021

Panel: Jacqueline G. McQueen, QC, Chair  
Eric V. Gottardi, QC, Lawyer  
Mark Rushton, Public Representative

Discipline Counsel: Mandana Namazi  
No one appearing on behalf of the Respondent

Written Reasons of the Panel by: Eric V. Gottardi, QC

**BACKGROUND**

[1] Pursuant to the direction of the Discipline Committee on June 8, 2020, a citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rule 4-13 of the Law Society Rules. The citation was amended on June 12, 2020 pursuant to Rule 4-21(1)(a).

- [2] The citation directs that this Panel inquire into the Respondent's conduct in relation to five allegations relating to the Respondent's alleged failure to provide full and substantive responses to communications from the Law Society, contrary to Rule 3-5(7) and (11) of the Law Society Rules and rule 7.1-1 of the *Code of Professional Conduct for British Columbia* (the "BC Code")
- [3] The conduct is alleged to constitute professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.
- [4] For the reasons set out below, we find that all five allegations have been proven to constitute professional misconduct on a balance of probabilities.

## **PROCEDURE**

- [5] This Panel received written submissions from the Law Society on September 17, 2021 and heard the citation by way of summary hearing on September 22, 2021 pursuant to Rule 4-33 of the Law Society Rules. Rule 4-33 allows for a citation to be heard by way of summary hearing only in respect of certain kinds of allegations. These include a failure to respond to a communication from the Law Society.
- [6] On June 9, 2021, the Law Society provided the Respondent with notice of the hearing date in this matter, in accordance with Rule 4-32. The notice was sent to the email address the Respondent placed on file with the Law Society on May 21, 2020. The Respondent filed no responding material and did not appear at the hearing. Given the surrounding circumstances, the Panel was satisfied that the Respondent had been properly served with the notice and had chosen not to appear. The Panel therefore decided to proceed (see s. 42(2) of the *Legal Profession Act*).

## **FACTS**

- [7] Each of the five allegations in the citation relates to a series of alleged failures to respond to communications from the Law Society in respect of distinct investigations that ran from late 2018 to early 2020.
- [8] Beginning in late 2019, the Respondent was suspended from the practice of law. As of January 2021, the Respondent has been a former member due to non-payment of fees.

**Allegation 1 – Complaint CO20181150**

- [9] The first allegation relates to a complaint made by PS on December 16, 2018. The allegation particularizes that the Respondent is alleged to have failed to respond to letters of May 13, 2019; December 17, 2019 and January 13, 2020.
- [10] On December 17, 2018 the Law Society opened an investigation relating to this complaint.
- [11] On May 13, 2019, the Law Society sent a letter to the Respondent seeking answers to a number of questions by June 3, 2019. At the time, Henry Wood, QC was counsel for the Respondent. Mr. Wood sought and received an extension of time to respond to the May 13 letter.
- [12] On July 2, 2019, the Respondent personally responded to the letter, answering most of the questions posed. For some questions, the Respondent indicated that he had taken steps to receive the information but did not yet have it in his possession.
- [13] On December 17, 2019, the Law Society sent a letter to Mr. Wood, seeking further information from the Respondent. The letter sought a response by January 7, 2020. The Respondent did not respond.
- [14] On January 13, 2020, the Law Society sent a letter to Mr. Wood requesting a response to the December 17, 2019 letter. The Respondent did not respond.

**Allegation 2 - Complaint CO20190261**

- [15] The second allegation relates to a complaint relating to extant criminal charges against the Respondent. The allegation particularizes that the Respondent is alleged to have failed to respond to letters of November 18, 2019, November 22, 2019 and December 2, 2019.
- [16] On April 2, 2019, the Law Society opened a file to investigate outstanding criminal charges against the Respondent.
- [17] The Respondent submitted an undertaking dated May 21, 2019, agreeing that if the investigation were held in abeyance, the Respondent would not raise delay as a defence, would advise the Law Society once the criminal proceedings had concluded, and would not prevent the Law Society from reviewing information relevant to the criminal proceedings or the investigation. The undertaking also said, “I understand the Law Society may, if it deems it reasonably necessary, choose to continue its investigation at any time prior to the determination of the above-noted matter and, if it does so, I will cooperate with the investigation.”

- [18] On June 6, 2019, the Discipline Committee agreed to hold the investigation in abeyance for one year or until the criminal proceedings were resolved.
- [19] On November 18, 2019, the Law Society wrote to Mr. Wood with 17 requests for information relating to the criminal complaint. The Law Society explained that the reason for these requests was that it believed the Respondent had recently been arrested on October 28, 2019 and November 14, 2019 and therefore was considering whether to make an extraordinary order to protect the public pursuant to Rule 3-10 of the Law Society Rules.
- [20] On November 22, 2019, the Law Society sent a letter to Mr. Wood informing him that the Respondent would be suspended on December 2, 2019 unless and until he complied with the requests made in the November 18, 2019 letter.
- [21] On December 2, 2019, the Law Society sent a letter to the Respondent, care of Mr. Wood, informing him that he had been suspended for failing to respond to the November 22, 2019 letter. The letter was emailed to Mr. Wood at 10:12 am and accepted by courier at Mr. Wood's office at 11:30 am.
- [22] On the same day, the Respondent personally sent a letter to the Law Society providing certain information about his criminal charges and recent arrests. The fax appears to have been sent at 11:43 am.
- [23] On the same day, at 2:56 pm, the Law Society sent a further letter to the Respondent, care of Mr. Wood, reiterating certain requests from the November 18, 2019 letter that it considered were not addressed in the Respondent's letter. The Respondent did not respond.

### **Allegation 3 - Complaint CO20190649**

- [24] The third allegation relates to a complaint made by MG on July 24, 2019. MG's complaint was that the Respondent was the executor of her deceased father's estate but had failed to administer the estate in a timely fashion and was not responsive to her communications. The allegation particularizes that the Respondent is alleged to have failed to respond to letters of December 18, 2019, January 13, 2020 and February 4, 2020.
- [25] On July 25, 2019, the Law Society opened an investigation into the complaint.
- [26] On August 27, 2019, the Law Society wrote to Mr. Wood seeking answers to a number of questions related to MG's complaint by September 17, 2019. The Respondent did not respond by September 17, 2019.

- [27] On September 23, 2019, the Law Society wrote to Mr. Wood to follow up on the response. Mr. Wood phoned the Law Society investigator and told her he had expected a response from the Respondent the previous week. Mr. Wood said he would follow up as soon as he could.
- [28] On October 1, 2019, the Law Society emailed Mr. Wood to follow up on the response once more, requesting a response by October 3, 2019. Mr. Wood indicated that he had not heard anything from the Respondent.
- [29] On October 3, 2019, Mr. Wood spoke with the Law Society investigator on the phone. He advised that the Respondent was in a major trial that had begun on September 9, 2019 and would continue until October 18, 2019. Mr. Wood asked for an extension to respond to October 8, 2019, but was denied the extension.
- [30] On October 7, 2019, the Respondent faxed a response to the inquiries made on August 27, 2019. He accepted that he should have attended to the matter sooner. He stated that he intended to transfer the matter to outside counsel.
- [31] On December 18, 2019, the Law Society wrote to Mr. Wood seeking further information from the Respondent by January 8, 2020. The letter asked for clarification as to the Respondent's role in the file about which MG complained, as well as documents relating to the file and confirmation that the matter had indeed been transferred to outside counsel. The Respondent did not respond.
- [32] On January 13, 2020, the Law Society sent a further letter to the Respondent, care of Mr. Wood, reiterating its requests from the December 18, 2019 letter. The Respondent did not respond.
- [33] On February 4, 2020, the Law Society wrote to Mr. Wood seeking an update on the status of the file and, particularly, whether the Respondent intended to renounce his position as executor. The Respondent did not respond.

#### **Allegation 4 - Complaint CO20190741**

- [34] The fourth allegation relates to one part of the complaint made by PS, specifically relating to concerns that the Respondent had failed to disclose debts relating to tax judgments. The allegation particularizes that the Respondent is alleged to have failed to respond to letters of May 13, 2019, October 30, 2019 and December 3, 2019.
- [35] This allegation was originally raised in the May 13, 2019 letter sent in relation to complaint CO20181150.

- [36] On October 11, 2019, the Law Society wrote to Mr. Wood to inform him that it had opened a separate file to investigate the judgment-debt concerns. The letter asked the Respondent to respond to five inquiries relating to five judgment debts.
- [37] On October 29, 2019, Mr. Wood left a voicemail message for the Law Society explaining that the Respondent was away and requesting an extension of time to respond. The next day, the Law Society agreed to an extension until November 25, 2019.
- [38] On October 30, 2019, the Law Society sent Mr. Wood authorization forms for the Respondent to fill out, which would authorize the Canada Revenue Agency to release information to the Law Society for the purpose of its investigation. The Law Society asked that the Respondent do so by November 15, 2019.
- [39] On December 2, 2019, the Respondent personally responded to the October 11, 2019 letter. The Respondent did not return completed authorization forms, but he did attach two letters addressed to the CRA dated September 5 and November 21, 2019 requesting information relating to his judgment debts. The Respondent stated that he had sent these letters to the CRA but had not received the information he sought.
- [40] On December 3, 2019, the Law Society sent a letter to Mr. Wood, informing him that the Respondent would be suspended on December 11, 2019 unless and until he complied with the request to return the completed authorization forms.
- [41] On December 11, 2019, the Law Society sent a letter to the Respondent, care of Mr. Wood, informing him that he had been suspended for failing to respond to the December 3, 2019 letter. That suspension remained in place at the time the Respondent became a former member of the Law Society due to non-payment of fees.

#### **Allegation 5 - Complaint CO20190797**

- [42] The fifth allegation relates to a complaint made by KM on September 4, 2019. The Respondent allegedly represented KM in a family law proceeding. The allegation particularizes that the Respondent is alleged to have failed to respond to letters of October 30, 2019 and December 9, 2019.
- [43] On September 5, 2019, the Law Society opened an investigation relating to this complaint.

- [44] On October 30, 2019, the Law Society wrote to the Respondent with 11 questions relating to this complaint, asking him to respond by December 4, 2019. The Respondent did not respond.
- [45] On December 9, 2019, the Law Society sent another letter to the Respondent, informing him that, effective December 17 2019, he would be suspended for failing to comply with the requests in the October 30, 2019 letter unless and until he complied with those requests.
- [46] On December 17, 2019, the Law Society sent a letter to the Respondent, care of Mr. Wood, informing him that he had been suspended for failing to respond to the December 9, 2019 letter. That suspension remained in place at the time the Respondent became a former member of the Law Society due to non-payment of fees.

### **Other communications**

- [47] On January 17, 2020, Mr. Wood sent the Law Society a letter stating that the Respondent had decided to leave the practice of law and that he understood that, should he decide to return, he would have to deal with the matters under investigation and satisfy the Law Society that he is fit to practice.
- [48] On January 20, 2020, Mr. Wood clarified that the Respondent's intention was to resign from membership in the Law Society.
- [49] On April 21, 2020, the Law Society again wrote to Mr. Wood, summarizing the Law Society's outstanding requests.
- [50] On April 27, 2020, Mr. Wood informed the Law Society that he was no longer representing the Respondent, was not aware of his whereabouts, and could no longer accept delivery of correspondence on his behalf.
- [51] On May 4, 2020, the Law Society sent the April 21, 2020 letter to the email address associated with the Respondent in Law Society records. In the April 21<sup>st</sup> letter, the Law Society enclosed an earlier letter sent on April 15, 2020.
- [52] On May 5, 2020, the Respondent replied using a different email address, stating:

About two months ago I mailed a letter to the [Law Society] wherein I sought consent from the Executive Director to my agreement that I terminate membership with the [Law Society] while under investigation. I have come to learn that the [Law Society] has either not received my letter or has yet to respond to my request. My status apparently remains "suspended" as

opposed to terminated from membership or withdrawal. As I set out in my letter, I agree to permanently agree to not seek reinstatement with the [Law Society] as a result of the allegations contained in the complaints from my former spouse. Could you please kindly confirm agreement to this via email.

- [53] The Law Society replied to this email, advising the Respondent that it had no knowledge of his request, requesting a copy of that correspondence, and providing information on how to terminate his membership.
- [54] The Respondent replied that he sent the earlier letter from the Fort St. John library and that he did not have a copy of the letter.
- [55] On May 11, 2020, the Respondent updated his email address with the Law Society to the one he used to send the May 5, 2020 email.

## **ANALYSIS**

### **Standard and burden of proof**

- [56] The Law Society accepts that it bears the burden of proving professional misconduct on a balance of probabilities (*Foo v. Law Society of British Columbia*, 2017 BCCA 151 at para. 63).

### **Former members**

- [57] Given that the Respondent is no longer a member of the Law Society due to his non-payment of fees, this Panel's authority to find that his conduct would constitute professional misconduct if he were a member stems from s. 38(4)(b)(v) of the *Legal Profession Act* (see *Dhillon v. The Law Society of British Columbia*, 2021 BCSC 806 at para. 46).

### **Professional misconduct and failure to respond**

- [58] After a hearing, a panel can either dismiss the citation or conclude that the respondent has committed one of the following: professional misconduct, conduct unbecoming the profession, a breach of the *Legal Profession Act* or Law Society Rules, or incompetent performance of duties undertaken in the capacity of a lawyer (*Legal Profession Act*, s. 38(4)). Not every breach of a lawyer's duty will constitute professional misconduct.



- [59] Conduct amounts to professional misconduct only when it discloses “a marked departure from that conduct the Law Society expects of its members” (*Law Society of BC v. Martin*, 2005 LSBC 16 at para. 171).
- [60] Determining whether conduct rises to this level is a multi-factored question. It is not enough that the conduct be a breach of the *Legal Profession Act* or Law Society Rules (*Law Society of BC v. Lyons*, 2008 LSBC 9 at para. 32) or, we would add, the *BC Code*. In *Lyons*, the panel provided a non-exhaustive list of the relevant factors in determining whether conduct goes beyond a mere breach of the *Act* or Rules and constitutes professional misconduct (para. 35):
- ... the gravity of the misconduct, its duration, the number of breaches, the presence or absence of *mala fides*, and the harm caused by the respondent’s conduct.
- [61] It is important to bear this elevated standard in mind because the Law Society Rules and *BC Code* impose unforgiving standards for responses to Law Society communications. Rule 7.1-1(a) of the *BC Code* requires a lawyer to “reply promptly and completely to any communication from the [Law] Society”. Rule 3-5(7) of the Law Society Rules requires a lawyer to “co-operate fully in an investigation ... by all available means including, but not limited to, responding fully and substantively, in the form specified by the Executive Director (a) to the complaint, and (b) to all requests made by the Executive Director in the course of an investigation.” Rule 3-5(11) of the Rules requires a lawyer to comply with a requirement to produce records, provide information, or attend an interview as soon as practicable, even if the information is confidential or privileged.
- [62] In *Law Society of BC v. Dobbin*, [1999] LSBC 27, a quorum of 11 Benchers recognized that a breach of the rules will not necessarily rise to the level of professional misconduct, but decided that “*unexplained persistent failure to respond* to Law Society communications will always be prima facie evidence of professional misconduct which throws upon the respondent member a persuasive burden to excuse his or her conduct” (para. 25). The Benchers also noted that, in general, “one letter and one reminder from the Law Society should be sufficient in the absence of some explanation” (para. 28).
- [63] It is worthwhile to clarify the conceptual links between *Dobbin*, *Martin*, and *Lyons*. Although the cases all have their own factual and legal underpinnings, they stand in a certain relationship with one another. The “persistent and unexplained” rule in *Dobbin* can be conceptualized as an expression of the definition of a marked departure, which *Martin* held is the standard that must be met for professional misconduct. The *Lyons* factors are another, more general, expression of the factors

that assist in determining whether a breach of the *Legal Profession Act* or Law Society Rules rises to the level of professional misconduct. Ultimately, the rule this tribunal follows is this: in general, whether under the Law Society Rules or *BC Code*, a failure to respond to the Law Society, provided it is persistent and unexplained, will, standing alone, satisfy the Law Society's burden to demonstrate professional misconduct, because such a persistent and unexplained failure is a marked departure from the behaviour expected from a practicing lawyer in British Columbia.

- [64] To be clear, to establish a *prima facie* case of professional misconduct, as described in *Dobbin*, the failure to respond must be “persistent”. The Law Society submitted in this proceeding that *any* failure to respond will be *prima facie* evidence of professional misconduct. Although some isolated passages in previous decisions of this tribunal may suggest such a standard (see *Law Society of BC v. Niemela*, 2012 LSBC 9 at para. 10; *Law Society of BC v. McLean*, 2015 LSBC 9 at para. 120, but see also paras. 124, 131 and 136), the vast majority of decisions include a requirement of persistence (see *Law Society of BC v. Cunningham*, 2007 LSBC 17 at para. 6; *Law Society of BC v. Decore*, 2012 LSBC 17 at para. 17; *Law Society of BC v. Malcolm*, 2012 LSBC 4 at para. 40; *Law Society of BC v. Marcotte*, 2010 LSBC 18 at paras. 43, 45, 50; *Law Society of BC v. Welder*, 2012 LSBC 18 at para. 10; *Law Society of BC v. Buchan*, 2013 LSBC 8 at para. 10; *Law Society of BC v. Straith*, 2016 LSBC 13 at paras. 94 to 101; *Law Society of BC v. Ben-Oliel*, 2016 LSBC 40 at paras. 23 to 29, see especially para. 27).
- [65] This does not mean that a non-persistent failure to respond *cannot* qualify as professional misconduct, only that such failures must be assessed on a case-by-case basis, applying the *Lyons* factors to determine whether the failure to respond is so grave that, notwithstanding that it was not persistent, it nevertheless qualifies as a marked departure from the standard expected from a member of the Law Society.
- [66] To clarify further, we have not focused on whether the conduct impugned in the current citation amounts to a breach of the Rules or the Act, as we have found that the conduct rises to the level of professional misconduct. A non-persistent failure to respond would almost certainly amount to a breach of the Rules and the *Act*.

## **APPLICATION**

- [67] In the citation, the Discipline Committee distinguishes between five allegations, each relating to a different investigation. The Panel finds that these allegations are made out.

**Allegation 1**

- [68] For Allegation 1, the Law Society alleges that the Respondent failed to respond to three letters.
- [69] The first letter, dated May 13, 2019, asked 16 questions, one of which was broken down into six sub-questions. On July 2, 2019, the Respondent substantially responded to these requests for information. He answered ten of those questions in their entirety. For three questions and three sub-questions, he answered that he did not yet have the information but would later provide it. For one question, relating to contact information for his former clients, he said that he would provide their last-known contact information if that would be of assistance. For the final question, asking for any other context or information that would be relevant to the investigation, the Respondent said he would like to consider the matter further.
- [70] The Respondent's response to this letter did not meet the high standard of prompt and complete compliance required by the Law Society Rules and *BC Code*. Even so, were we asked to consider this letter alone, we would be inclined to decide that this isolated instance did not constitute professional misconduct, as the Respondent substantially responded to the requests in the letter to the extent of the Respondent's ability.
- [71] However, the Law Society then asked follow-up questions in an additional two letters, which included requests that the Respondent provide the information he previously promised in his letter. He did not respond. The Law Society reiterated its request and the Respondent still did not respond.
- [72] On the whole, the Respondent's failure to respond to the Law Society about this investigation was persistent and unexplained and therefore constituted professional misconduct.

**Allegation 2**

- [73] For Allegation 2, the Law Society alleges that the Respondent failed to respond to three letters.
- [74] We begin by noting that these three letters were all sent after the Law Society had agreed to hold its investigation of the criminal complaints in abeyance. Nevertheless, the inquiries were appropriate and the Respondent's failure to respond was persistent and unexplained.

- [75] The inquiries were appropriate because the Law Society was not simply proceeding with its initial investigation, but instead determining whether extraordinary action was necessary pursuant to Rule 3-10 of the Law Society Rules — i.e., whether the Respondent should be suspended from the practice of law in order to protect the public.
- [76] On November 18, 2019, the Law Society explained that further information was required because it had received information that the Respondent had recently been arrested. Four days later, on November 22, 2019, the Law Society informed the Respondent that he would be suspended on December 2, 2019 at 9:00 am if he did not comply with the requests in the November 18, 2019 letter. On December 2, 2019, the Law Society sent another letter informing the Respondent that he was now suspended.
- [77] The Respondent did not respond until later that morning. He provided information about his criminal charges in that letter. However, he did not respond to each of the requests posed in the November 18, 2019 letter in turn. The result was that only five of the 17 requests in the November 18, 2019 letter were fulfilled.
- [78] The Law Society sent another letter that same day, informing the Respondent of which requests had not been fulfilled and asking that he fulfill them. The Respondent did not respond.
- [79] Although the Respondent belatedly complied with some of the Law Society's requests, he left them substantially unfulfilled, even after he was specifically reminded of those requests. We recognize that the Respondent was going through a difficult time in his life at the time these requests were made. He had been arrested multiple times and was defending criminal charges. However, almost two years have passed since these requests were made and the Respondent has not made any attempt to follow up on them, nor has he led evidence explaining why this was not possible.
- [80] In the circumstances, we have no choice but to find that these failures to respond were persistent and unexplained and therefore constitute professional misconduct.

### **Allegation 3**

- [81] For Allegation 3, the Law Society alleges that the Respondent failed to respond to three letters.
- [82] Initially, although his response was late, the Respondent answered most of the questions asked by the Law Society. However, the Law Society then sought

clarification on December 18, 2019, and the Respondent failed to respond. The Law Society reiterated its requests on January 13, 2020, and the Respondent again failed to respond. The Law Society inquired with the Respondent as to whether he would renounce his position as executor — a vital question in the circumstances — and he, again, failed to respond.

- [83] In the absence of any information excusing his conduct, the Respondent's failure to respond was persistent and therefore constituted professional misconduct.

#### **Allegation 4**

- [84] For Allegation 4, the Law Society alleges that the Respondent failed to respond to three letters. This investigation was initially part of the investigation underlying Allegation 1 but was separated into its own investigation relating to judgment debts.
- [85] On October 30, 2019, the Respondent was asked to fill out forms that would authorize the CRA to release information to the Law Society regarding his judgment debts. The Respondent did not do so, although he claimed on December 2, 2019 that he had requested the information from the CRA on two occasions.
- [86] If the Respondent ultimately provided this information to the Law Society, we would conclude that this was responsive to the Law Society's request. Although it would not have complied with the letter of the request, it would have been close enough to avoid a finding of professional misconduct.
- [87] But the Respondent did not do so. He was reminded again on December 3, 2019 to return the completed forms and he never responded. Again, this persistent failure to respond constitutes professional misconduct.

#### **Allegation 5**

- [88] For Allegation 5, the Law Society made two requests for information. The Respondent did not respond.
- [89] To be fair to the Respondent, the first request was made on October 30, 2019, which was a tumultuous time for him. According to his December 2, 2019 letter, he had been arrested on October 29, 2019 and was released on October 30, 2019. He then left the country for a vacation for two weeks.

[90] Despite the difficulties in the Respondent's life, legitimate inquiries were made into the Respondent's practice and he did not assist in those inquiries. He has had two years to respond and has neither done so nor explained why he could not.

## **CONCLUSION**

[91] For the above reasons, all five allegations in the citation have been proven. By failing to respond to communications from the Law Society, the Respondent engaged in conduct that would constitute professional misconduct if he were a member of the Law Society.