2021 LSBC 51
Hearing File No.: HE20190081
Decision Issued: December 13, 2021
Citation Issued: December 12, 2019

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL

HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

MARC ANDRE SCHEIRER

RESPONDENT

DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION

Hearing dates:	October 21, 2020 March 31, 2021 April 1, 6 and 13, 2021 June 15, 2021
Panel:	Dean P.J. Lawton, QC, Chair Clarence Bolt, Public representative Gavin Hume, QC, Lawyer
Discipline Counsel:	Mandana Namazi
Counsel for the Respondent:	David J. Taylor October 21, 2020
Appearing on his own behalf:	Marc Andre Scheirer March 31, 2021 April 1, 6 and 13, 2021 June 15, 2021

DM3405968

INTRODUCTION

[1] The citation in this matter was authorized by the Discipline Committee on December 5, 2019 and was issued on December 12, 2019.

[2] The allegations against the Respondent, Marc Andre Scheirer, in the citation are as follows:

1. Between approximately April 2018 and January 2019, in relation to your family law client [name removed by Panel to preserve privacy of client], you failed to provide the quality of service required of a competent lawyer, contrary to rule 3.2-1 of the *Code of Professional Conduct for British Columbia (*the "*BC Code*"*)*, including by failing to do one or more of the following:

    (a) keep your client reasonably informed about her family law matter;

    (b) answer reasonable requests from your client for information;

    (c) respond to your client's telephone calls;

    (d) take appropriate steps to do what was promised to your client, or inform or explain to her that it was not possible to do so;

    (e) take substantive steps to advance your client's file;

    (f) make all reasonable efforts to provide prompt service to your client; and

    (g) maintain appropriate filing and office organization systems to ensure that you were able to locate and review your client's file as and when necessary.

    This conduct constitutes professional misconduct or incompetent performance of duties, pursuant to section 38(4) of the *Legal Profession Act* (the "*Act*").

2. On or about November 22, 2018, in relation to your family law client [name removed by Panel to preserve privacy of client], you failed to act honourably and with integrity, contrary to rule 2.2-1 of the *Code of Professional Conduct for British Columbia*, when meeting alone with your client at your home in circumstances where you did some or all of the following:

    (a) consumed alcohol prior to the meeting;

(b) changed into inappropriate attire;

(c) offered your client an alcoholic beverage;

(d) poured yourself one or more alcoholic beverages while meeting with your client;

(e) sat in close proximity with your client in a manner that you knew or ought to have known would make her feel uncomfortable; and

(f) put your arm around your client.

This conduct constitutes professional misconduct or incompetent performance of duties, pursuant to section 38(4) of the *Legal Profession Act*.

[3] The Respondent admitted that he was served with the citation through his then counsel and he waived the requirements of Rule 4-19 of the Law Society Rules.

[4] The Facts and Determination Hearing was scheduled to proceed on October 21, 22 and 23, 2020.

[5] Prior to the Hearing, the Panel received from the Respondent's then counsel two applications with respect to two issues. The applications sought orders permitting in-person evidence of two witnesses and withdrawing the deemed admissions of the Respondent in respect of the Notice to Admit delivered by the Law Society. In this context, the Respondent had not complied with Rule 4-28(7) and was, hence, deemed to have admitted the truth of the facts in the Notice to Admit.

[6] The Panel initially granted the application to hear in-person evidence of two witnesses. Due to the progression of the COVID-19 pandemic and resultant public health orders and recommendations, the Panel made a subsequent direction that all testimony would occur by audio-visual means on the Zoom platform. With respect to the Respondent's application to withdraw deemed admissions, the Panel issued a memorandum to the parties on October 13, 2020 stating that they found the application by the Respondent's then counsel inconsistent and procedurally and factually confusing. As a result, the Panel informed the parties that they wished to have it confirmed what was being admitted by the Respondent, what was not and if not, the reasons accordingly. The Panel directed that their questions concerning the Notice to Admit were to be answered at the commencement of the Hearing on October 21, 2020.

[7] Counsel for the Respondent provided the Law Society with an Amended Reply to Notice to Admit (the "First Amended Reply") on October 20, 2020. The Law

Society objected to the First Amended Reply at the Hearing on October 21, 2020. The Panel overruled the objection, accepted the First Amended Reply and, pursuant to Rule 4-28(9)(b), granted the application to withdraw the deemed admissions. This resulted in an adjournment of the Hearing with the direction that the Law Society provide detailed comments to counsel for the Respondent regarding some concerns it had with the First Amended Reply. The Law Society did so on October 22, 2020. At the same time, counsel for the Respondent was directed by the Panel to respond in a timely way to the Law Society's concerns about the First Amended Reply. Despite several requests from discipline counsel to counsel for the Respondent, there never was a response by or on behalf of the Respondent to the Law Society's concerns.

[8] The Hearing resumed on March 31, 2021 and continued on several days thereafter. The Respondent was self-represented throughout the Hearing. Prior to the resumption, further issues arose with respect to the Notice to Admit. The Respondent provided to the Law Society a Second Amended Reply to Notice to Admit (the "Second Amended Reply"), presumably in response to the Law Society's concerns raised on October 22, 2020. The Law Society objected to the Second Amended Reply based on a concern that the Respondent was attempting to resile from some of the admissions made in the First Amended Reply. This issue was discussed during the Hearing on April 1 and 6, 2021. In an attempt to clarify the status of the response to the Notice to admit, the Panel provided a memorandum before the Hearing on April 13, 2021 setting out what it understood were the admissions made by the Respondent to the Notice to Admit. Again, the Respondent did not clarify with any certainty what in fact was admitted. Finally, discipline counsel provided a helpful table setting out the status of the several responses to the Notice to Admit.

[9] Rule 4-28 is the rule dealing with the notice to admit process and reads, in part, as follows:

> **4-28** (1) At any time, but not less than 45 days before a date set for the hearing of a citation, the respondent or discipline counsel may request the other party to admit, for the purposes of the hearing only, the truth of a fact or the authenticity of a document.
>
> (2) A request made under subrule (1) must
>
> (a) be made in writing in a document clearly marked "Notice to Admit" and served in accordance with Rule 10-1 *[Service and notice]*, and

> (b) include a complete description of the fact, the truth of which is to be admitted, or attach a copy of the document, the authenticity of which is to be admitted.
>
> …
>
> (4) A respondent or discipline counsel who receives a request made under subrule (1) must respond within 21 days by serving a response on the other party in accordance with Rule 10-1 *[Service and notice]*.
>
> …
>
> (6) A response under subrule (4) must contain one of the following in respect of each fact described in the request and each document attached to the request:
>
> (a) an admission of the truth of the fact or the authenticity of the document attached to the request;
>
> (b) a statement that the party making the response does not admit the truth of the fact or the authenticity of the document, along with the reasons for not doing so.

[10] The failure by the Respondent to follow the Rules with respect to the process of admitting or denying the facts sought to be admitted in the Notice to Admit unduly delayed and complicated the Hearing in this matter. The Panel observes that an appropriate response to a notice to admit in compliance with Rule 4-28 helps to define the factual and legal issues in dispute, ensuring that the hearing focuses on the material issues and does not waste time on matters that are not in dispute or need not be disputed because they can easily be proven. It provides both the Law Society and the respondent with a clear understanding of the issues and is important to ensure both a fair and efficient hearing.

[11] In his responses to the Notice to Admit, his evidence, and his submissions, the Respondent denied the allegations made in the citation. As a result, the Panel is required to assess credibility of interested witnesses. In doing so, the Panel reviewed the often referred to comments by the BC Court of Appeal in *Faryna v. Chorny*, [1952] 2 DLR 354 at 357. The Court said the following:

> The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with

> the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Only thus can a Court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skilful [sic] exaggeration with partial suppression of the truth. Again a witness may testify what he sincerely believes to be true, but he may be quite honestly mistaken. For a trial Judge to say 'I believe him because I judge him to be telling the truth', is to come to a conclusion on consideration of only half the problem. In truth it may easily be self-direction of a dangerous kind.
>
> The trial Judge ought to go further and say that evidence of the witness he believes is in accordance with the preponderance of probabilities in the case and, if his view is to command confidence, also state his reasons for that conclusion. The law does not clothe the trial Judge with a divine insight into the hearts and minds of the witnesses. And a Court of Appeal must be satisfied that the trial Judge's finding of credibility is based not on one element only to the exclusion of others, but is based on all the elements by which it can be tested in the particular case.

[12] The principles in *Faryna* were adopted by the hearing panel in *Law Society of BC v. Schauble*, 2009 LSBC 11 at para 57. The Respondent also referred the Panel to *Siever v. Interior Health Authority*, 2021 BCSC 880, where the Court stated:

> [52] In *Bartch v. Bartch*, 2019 BCSC 1643, Madam Justice Young provided this statement regarding assessing credibility at para. 79:
>
> > [79] In *Gichuru v. Smith*, 2013 BCSC 895 at para. 129, aff'd 2014 BCCA 414, Justice Adair explained that the art of assessing credibility involves an examination of many factors including, 'the witness's ability and opportunity to observe events; the firmness of the witness's memory; the witness's ability to resist the influence of interest to modify his or her recollection; whether the witness's evidence harmonizes with independent evidence that has been accepted; whether the witness changes his or her testimony during direct and cross-examination; whether the witness's testimony seems unreasonable, impossible, or unlikely; whether a witness has a motive to lie; and the demeanour of a witness generally'. Relying on *Faryna v. Chorny*, 1951

> CanLII 252 (BC CA), [1952] 2 D.L.R. 354 (B.C.C.A.), Justice Adair stated at para. 130, '[t]he real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances'.
>
> [53] Reliability refers to the accuracy of a witness's testimony separate from conclusions about their effort to be honest. Accuracy engages consideration of the witness's ability to observe, recall, and recount: *R. v. H.C.*, 2009 ONCA 56 at paras. 41–42. The concepts of reliability and credibility are not mutually exclusive. It is not uncommon for a witness to see and recall things through a biased or partisan lens. Without specifically setting out to deceive or be dishonest, that lens colours their perceptions of what they see and/or their recall of events. Those same factors can also lead witnesses to deliberately manipulate or colour their testimony as to the facts in an effort to achieve a favourable outcome.

[13] As a result, the Panel has considered the oral evidence of the complainant client (the "Client") and the Respondent, as well as the documented evidence provided during the course of the Hearing.

[14] For the reasons set out below, we have concluded that, on a balance of probabilities, the Client's evidence is to be preferred on the matters material to the citation.

STATEMENT OF FACTS

[15] The following is a summary of what was admitted by the Respondent either in the responses to the Notice to Admit or orally during the Hearing. In addition, we have reviewed disagreements in the evidence between the Respondent and the Client about what occurred during the meeting between the Client and the Respondent on November 22, 2018 (the "Meeting"), as those disagreements relate to the allegations of professional misconduct in the citation on the part of the Respondent during the Meeting. We set out our findings of fact in the following sub-paragraphs, bearing in mind the guidance found in *Faryna* and *Siever* concerning the manner in which credibility is to be assessed:

(a) After being called to the Bars in California and Washington states, the Respondent was called to the Bar and admitted as a member of the Law Society of British Columbia on January 5, 2015;

(b) The Law Society received a complaint from the Client in January 2019. She was a family law client of the Respondent, having retained him in April 2018. The Client was seeking spousal support and a portion of the equity in the matrimonial home. There was ongoing litigation in relation to the Client's family law issues when she retained the Respondent;

(c) The Respondent's retainer agreement dated April 10, 2018 specifically refers to the litigation and requests a money retainer of $1,000. The Client wanted the Respondent to assist her with putting together a proposal to her former husband addressing the issues of spousal support and the division of assets;

(d) In her testimony, the Client said that at the time she gave the Respondent the historical "paperwork" making up her file, she had informed the Respondent that her former lawyer had kept some of her file materials. The Respondent took two pages of notes at their initial meeting. There were no other notes from the Respondent's file provided to the Panel;

(e) At the Hearing, there was a disagreement between the Client and the Respondent about the extent of documents he received from her at their initial meeting. The Respondent testified that he did not receive all of the Client's documents until five months after their first meeting. While we are inclined to accept the Client's evidence, as it is more consistent as to what likely occurred, the exact timing of the receipt of the paperwork by the Respondent is not material to the conclusion we have reached with respect to the first allegation in the citation. There was no evidence before us that the Respondent, at any time, requested further documentation from the Client after their first meeting;

(f) There was also disagreement between the Client and the Respondent about when and how the Respondent received his retainer. Again, we find it unnecessary to resolve that disagreement in order to reach our conclusion with respect to the first allegation in the citation as it is acknowledged by both parties that the Respondent was paid a $1,000 retainer;

(g) The Client's former lawyer withdrew as counsel in the fall of 2017;

(h) The Respondent did not, at any time, obtain the Client's file materials from her former lawyer, although he did write a letter dated May 10, 2018 informing her former lawyer that he had been retained and requesting the Client's file. The Client's former lawyer declined to send the Client's file materials to the Respondent, stating that the Client had not paid an outstanding bill;

(i) The Respondent did not communicate in any fashion with counsel for the Client's former husband and, when retained, the Respondent did not file and serve a notice of change of lawyer in the existing litigation;

(j) The Client testified that she attempted several times between April and November 2018 to arrange a meeting with the Respondent. She also testified that she spoke to the Respondent by telephone on several occasions and was told "not to worry" and that he was going to work on her file;

(k) The Respondent submitted a bill to the Client in August 2018 listing particulars of legal services, including that in early July 2018, he had reviewed the materials provided by the Client and had reviewed the pleadings and taken copies of them through BC Online. A further bill rendered in September 2018 indicates that the Respondent reviewed notes that he had received from the Client;

(l) Other than rendering the two bills to the Client, there is no evidence of communication with her dealing with the substantive issues related to her file. While the Respondent does not admit it, we have concluded that there was no further work done on the file other than that reflected in the two bills;

(m) While there is some disagreement about how it was arranged, the Meeting was set up, for 3:15 pm, at the Respondent's then office in Abbotsford, BC. The Client's intention at the Meeting was to receive an update from the Respondent on her family law matter;

(n) The Respondent was not in the office when the Client arrived at the appointed time for the Meeting; he arrived approximately 15 minutes later. The Client testified that when the Meeting began, she could smell alcohol on the Respondent's breath and he appeared "messy" in his dress. While not prepared to admit those allegations, the Respondent did agree that he may have consumed alcohol prior to the Meeting and that his attire was messier than normal. We have concluded that the Respondent had consumed some alcohol before meeting the Client;

(o) The Respondent could not find the Client's file at his office and suggested that they go to his home office as he was in the process of moving and he had file materials at his home office. He asked the Client if she could follow him home in her vehicle. She agreed to do so. When the Client arrived at the Respondent's home, he invited her in and asked her to have a seat. She sat on a couch. The Client asked the Respondent where his wife was and he informed her that they had separated. In this context, the undisputed evidence

was that the Respondent and his wife had practised law together until their recent separation;

(p) The Client testified that she observed a massage table near where she was seated. While initially denying it, the Respondent ultimately admitted that there was a massage table in the location described by the Client and that he had used it as a working surface;

(q) The Respondent told the Client that he had forgotten something in his car. The Client sat on the couch in the living room while the Respondent returned to his car;

(r) The Client testified that when the Respondent returned from his car, he was carrying a number of large bottles of vodka in a liquor store bag. The Respondent testified that he was carrying a bag of supplies and groceries which included one or two bottles of vodka. We find it unnecessary to determine who accurately described the number and size of the bottles of vodka. It is undisputed that the Respondent returned from his car with bottles of vodka. The Respondent acknowledged in cross-examination that he did not return from his car with any materials related to legal work and, in particular, none relating to the Client's file;

(s) The Respondent asked the Client if she would like a martini - an invitation that she declined. The Respondent then prepared a martini for himself. The Respondent admitted in cross-examination that in the circumstances, it was not appropriate to have poured himself a drink containing alcohol;

(t) The Respondent told the Client that he wished to change his clothes and he left the room to do so. The Client testified that when the Respondent returned to the room, he was wearing shorts and an unbuttoned shirt. Her evidence on the Respondent having changed his clothes and the style and manner of his dress in this context was consistent both with her written complaint to the Law Society and her description in her interview with the Law Society. The Respondent did not deny that he changed into shorts and a shirt with buttons, nor did he directly deny that his shirt was unbuttoned. In his interview with the Law Society, a portion of which was admitted for the truth of its contents, the Respondent stated that he hoped that his shirt was not unbuttoned. In addition, he admitted that he had changed into inappropriate attire during the Meeting. We accept the Client's evidence that the shirt was unbuttoned;

(u) The Respondent then looked for the Client's file but he could not find it. He subsequently admitted that he found the Client's file buried among some of

his other files and that there were bits and pieces found in his Abbotsford office, as well as at his home;

(v) The Respondent had not reviewed the Client's file in preparation for the Meeting;

(w) The Client was sitting on the couch when the Respondent returned after he changed his clothes. The Client and the Respondent disagreed about where the Respondent sat upon his return. Although there were chairs available, the Respondent sat on the couch with the Client. In their testimony, the Client and the Respondent also disagreed about where on the couch the Respondent sat. The Client's evidence was that the Respondent was so proximate, he practically sat on her. He then put his arm around her. The Respondent denied that he sat on the couch in the manner described by the Client. However, he agreed that he sat in close proximity to her and that he recognized that this had made the Client feel uncomfortable. In addition, the Respondent testified that he placed his arm on the back of the couch directly behind the Client. His evidence was that he did this because he had sustained a rib injury and that it was more comfortable to place his arm as he did. During cross-examination, the Respondent stated "I put my arm up on the backrest and maybe my hand extended behind her physical body, initially." The Client's evidence was that when the Respondent put his arm around her, she pushed him away, stood up and left. The Respondent said that they spoke for a few more minutes before the Client left the residence;

(x) We conclude that the Client was uncomfortable with and offended by the actions of the Respondent, which included changing his clothes, pouring himself a martini, sitting in close proximity to the Client and placing his arm behind her. We conclude that when the Respondent engaged in this conduct, the Client pushed his arm away, stood up and left the residence; and

(y) At no time prior to the Meeting, during the Meeting or subsequent to the Meeting did the Respondent advise the Client that it was unlikely he would be able to obtain the result that she wanted.

ANALYSIS

Allegation 1

[16] The first allegation in the citation is that the Respondent committed professional misconduct by failing to provide the quality of service required by rule 3.2-1 of the *BC Code.* In particular, the specific allegations are that the Respondent failed to:

(a) keep your client reasonably informed about her family law matter;

(b) answer reasonable requests from your client for information;

(c) respond to your client's telephone calls;

(d) take appropriate steps to do what was promised to your client, or inform or explain to her that it was not possible to do so;

(e) take substantive steps to advance your client's file;

(f) make all reasonable efforts to provide prompt service to your client; and

(g) maintain appropriate filing and office organization systems to ensure that you were able to locate and review your client's file as and when necessary.

[17] In *Law Society of BC v. Menkes*, 2016 LSBC 24, the hearing panel stated that:

> [11] … At the core of a lawyer's duty to his or her client is that a lawyer provides quality and appropriate legal services …

[18] In *Law Society of BC v. Perrick*, 2014 LSBC 39, the hearing panel provided the following guidance:

> [43] However, there is one case that is of some assistance to this panel. In *Law Society of BC v Epstein*, 2011 LSBC 12, the following is stated:
>
> > [15] The test for determining whether professional misconduct has occurred is that set out in *Law Society of BC v. Martin*, 2005 LSBC 16 at paragraph [171] …
> >
> > [16] The Law Society's *Professional Conduct Handbook* is one source of information as to the conduct the Law Society expects of its members ... 'Quality of Service', reads, in part:

> A lawyer shall serve each client in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to that which would be expected of a competent lawyer in a similar situation. Without limiting the generality of the foregoing, the quality of service provided by a lawyer may be measured by the extent to which the lawyer:
>
> (a) keeps the client reasonably informed,
>
> (c) responds, when necessary, to the client's telephone calls,
>
> (f) answers within a reasonable time a communication that requires a reply,
>
> (g) does the work in hand in a prompt manner so that its value to the client is not diminished or lost,
>
> (h) prepares documents and performs other legal tasks accurately,

[44] What does this quotation mean? This Panel feels the question of quality of service means something beyond pure negligence. This comes from the requirement of a marked departure that is characterized by gross culpable neglect of a lawyer's duties. Although that threshold may be passed in a single incident, it is more likely to happen in multiple occurrences in representing the client. In addition, the quality of service requirement may happen when each of the individual occurrences of themselves are not sufficient to raise concerns about quality of service. However, cumulatively, they may raise issues of quality of service.

[45] Issues of quality of service can be divided into two general categories. One category can be described as the common sense category. An average person can determine this. This category would include such matters as: keeping the client informed, responding to correspondence, and filing court documents on time, to name a few.

[46] The second category is more sophisticated. What is the standard of a competent lawyer in handling the file? How do you gather the facts? What legal research do you do? How do you prepare for settlement, mediation or trial? This *may* require evidence from other lawyers

practising in the area. This could be described as the professional category.

[47] This Panel wishes to make it clear that these two categories are not mutually exclusive. They can overlap. For instance, the failure of a lawyer to interview witnesses, to review important documents, to name a few, may be proved by a common sense approach or by professional evidence.

[19] In *Law Society of BC v. McTavish*, 2018 LSBC 02, the hearing panel stated the following about a lawyer's provision of quality and appropriate legal services:

[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.

[20] The hearing panel in *Mctavish* referred to the same *Epstein* case to which the *Perrick* hearing panel referred:

[63] In *Law Society of BC v. Epstein*, 2011 LSBC 12 at paragraphs 20 and 21, the panel made the following comments about the seriousness of a lawyer's failure to provide competent quality of service to clients:

> The Respondent's misconduct consisted of a failure to serve his client competently in two particular respects: first, by failing, on two separate occasions, to perform accurately the same fairly elementary task of reading carefully the results of a title search and in the result failing in a timely way to advance his client's objectives and carry out her instructions; and second, by failing to respond in a timely way to her enquiries.
>
> These cannot in our opinion be considered trivial departures from the standard of conduct expected in the circumstances. They are serious. Each represents a failure to do something quite elementary — to do necessary work carefully and to keep the 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.

[21] Professional misconduct is not a defined term in the *Act*, the Rules or the *BC Code*. The hearing panel in *Martin* describes the test for professional misconduct as "whether the facts as made out disclose a marked departure from that conduct the Law Society expects of its members." The panel concluded:

> [154] … The real question to be determined is essentially 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.

[22] The *Martin* test is not a subjective test. The *Martin* test has been applied in numerous decisions and has been affirmed in *Re: Lawyer 12*, 2011 LSBC 35 and by the BC Court of Appeal in *Foo v. Law Society of British Columbia*, 2017 BCCA 151. We must consider the appropriate standard of conduct expected of a lawyer and then decide if the Respondent falls markedly below that standard.

[23] We have concluded that the Respondent is guilty of professional misconduct with respect to the first allegation in the citation. From April 2018 up to and including when the Client and the Respondent met on November 22, 2018, the Respondent did not keep the Client reasonably informed about her family law matter, did not respond to requests for information and did not return her telephone calls. In addition, he did not explain to the Client that it was not possible to proceed as she wished, did not take substantive steps to advance her matter and did not provide prompt service to her. Equally important, the Respondent did not maintain an appropriate file in order to maintain a factual and documentary history of his dealings with the Client, the management of her legal issues and the advice that he provided her.

Allegation 2

[24] The second allegation in the citation is that the Respondent committed professional misconduct by failing to act honourably and with integrity contrary to rule 2.2-1 of the *BC Code* when he met with the Client at his home and at which time he engaged in the following:

(a) consumed alcohol prior to the meeting;

(b) changed into inappropriate attire;

(c) offered your client an alcoholic beverage;

(d) poured yourself one or more alcoholic beverages while meeting with your client;

(e) sat in close proximity with your client in a manner that you knew or ought to have known would make her feel uncomfortable; and

(f) put your arm around your client.

[25] Rule 2.2-1 of the *BC Code* requires lawyers to act honourably and with integrity in the practice of law and when discharging all responsibilities to a client. Paragraphs 1 and 2 of the Commentary under this rule provides as follows:

> **[1]** Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. If clients have any doubt about their lawyers' trustworthiness, the essential element in the true lawyer-client relationship will be missing. If integrity is lacking, the lawyer's usefulness to the client and reputation within the profession will be destroyed, regardless of how competent the lawyer may be.
>
> **[2]** Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer's irresponsible conduct. Accordingly, a lawyer's conduct should reflect favourably on the legal profession, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety.

[26] This second allegation refers to the Meeting. Based on her understanding of the April retainer, the Client expected the Meeting to be a professional consultation. At the Meeting, she expected to receive advice and action on her file concerning outstanding issues arising from the breakup of her marriage.

[27] A client has every right to expect that a meeting will be conducted in a manner appropriate to the matters at hand. In general, in any meeting involving a lawyer and a client, the purpose of the meeting dictates the form it should take, its protocols and its behaviours. One would reasonably, and typically, expect that a meeting with a lawyer would include discussing such matters as the client's situation (past and present), planning strategy, reviewing financial issues and covering other relevant issues.

[28] It is the role of the Panel to assess if the conduct of the Respondent at the Meeting met the criteria for what a reasonable person would expect of such a meeting. More precisely, the Panel must decide if the Respondent's behaviours at the

Meeting were appropriate or inappropriate, within or outside of acceptable norms for delivering legal services.

[29] After examining the behaviours of the Respondent before and during the Meeting, we have concluded that he failed to act honourably and with integrity.

[30] The Respondent had consumed some alcohol prior to the Meeting. That would not necessarily constitute dishonourable conduct on the part of a lawyer. The important element in this consideration is context, particularly what followed after the Client and the Respondent met at his Abbotsford office around 3:30 pm on November 22, 2018. After being unable to find her file, the Respondent invited the Client to continue the Meeting at his home office some distance away.

[31] Although a lawyer should always be cautious and judicious in doing so, there may be legitimate circumstances in which a lawyer consumes alcohol and then meets with a client, or circumstances in which a lawyer consumes alcohol with clients. Much depends on context. For example, the Panel is alive to the fact that from time to time, lawyers and clients may socialize with one another in the context of the lawyer providing legal services to the client. Such socializing may include the consumption of alcohol at a luncheon, dinner, reception or other event *when the circumstances of such consumption are consistent with social convention*. In this case, however, there was nothing conventional or contextual to render appropriate either the Respondent's offer of alcohol to the Client or his personal consumption of alcohol at the Meeting.

[32] It may be appropriate for lawyers to change their attire before meeting with clients. Again, it depends on context. In this case, the change of clothes happened during the Meeting. The casual clothes into which the Respondent changed and how they were worn caused the Client concern.

[33] It may be appropriate for a lawyer and a client to sit on the same couch. Their proximity and the circumstances of the meeting will determine whether doing so is appropriate. At the Meeting, the couch was large enough for an appropriate space between the Respondent and the Client. Instead, the Respondent sat close enough to the Client to place his arm and hand behind her neck.

[34] The Client testified that the Respondent's actions caused her anxiety. She pushed him away and left the scene, despite the fact that she was determined to see action on her file after half a year of waiting for some indication from the Respondent of progress and despite being willing, with serious concerns, to go to his home office because the Respondent was unable to find her file at his business office. There is no context which can justify a lawyer sitting up against a client and putting his arm

behind her against her will. In the context of previous actions, namely the Respondent changing into inappropriate attire and his use of alcohol, the Client was justified in being concerned about the nature of his actions and to leave and file a complaint, which she did within two months.

[35] In summary, as described above, the behaviours of the Respondent while alone in his home with the Client, namely, changing his clothing, consuming a martini in the Client's presence, sitting in close proximity to the Client when not needing to, and putting his arm around the Client when the purpose of the Meeting was to discuss the Client's legal matter, are inappropriate and offensive behaviours when considered in context and combination.

[36] The Respondent acted irresponsibly in the circumstances. His conduct did not inspire the confidence, respect, or trust that was required to properly work with the Client.

[37] The combination of the Respondent's behaviours at the Meeting were dishonourable and clearly impaired the Client's trust in him and in the profession more broadly. Lawyers have a legal, professional, and moral obligation to treat clients with respect and dignity. In this case, we find that the combination of behaviours at the Meeting represented a marked departure from the conduct that the Law Society expects of lawyers. For the reasons we have described with respect to the second allegation in the citation, we conclude that the Respondent's behaviour constitutes professional misconduct.

DETERMINATION

[38] Therefore, we find that the Law Society has proven all allegations of misconduct against the Respondent contained in the citation.