

2021 LSBC 52
Hearing File No.: HE20210002
Decision Issued: December 14, 2021
Citation Issued: February 8, 2021

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

ROSARIO CATENO DI BELLA

RESPONDENT

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

Hearing date: September 28, 2021

Panel: Lisa J. Hamilton, QC, Chair
Darlene Hammell, Public representative
Gavin Hume, QC, Lawyer

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

Written reasons of the Panel by: Lisa J. Hamilton, QC

BACKGROUND

[1] On February 8, 2021, a citation (the “Citation”) was issued against the Respondent alleging that:

1. Between approximately July 23, 2020 and December 9, 2020, you failed to cooperate with the Law Society's investigation of the complaint file CO20200453 contrary to one or more of Rules 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 "*Code*"), and in particular, you failed to respond substantively or at all to one or more of the following correspondence from the Law Society:
 - (a) email communications dated July 23, 2020, August 18, 2020 and December 9, 2020; and
 - (b) letter dated October 14, 2020.

This conduct constitutes professional misconduct or a breach of the Act or rules, pursuant to s. 38(4) of the *Legal Profession Act* (the "*Act*").

- [2] Section 38(4) of the *Act* states that after a hearing, a panel must do one of the following:
- (a) dismiss the citation;
 - (b) determine that the respondent has committed one or more of the following:
 - (i) professional misconduct;
 - (ii) conduct unbecoming the profession;
 - (iii) a breach of this Act or the rules;
 - (iv) incompetent performance of duties undertaken in the capacity of a lawyer;
 - (v) if the respondent is an individual who is not a member of the society, conduct that would, if the respondent were a member, constitute professional misconduct, conduct unbecoming the profession or a breach of this Act or the rules.

FACTS

- [3] The Citation was served on the Respondent on February 10, 2021 as set out in the affidavit of service of a Law Society staff member. The Respondent was served

with a notice to admit (the “Notice to Admit”) by courier in accordance with Rule 4-28 on March 26, 2021. The Respondent did not respond to the Notice to Admit.

- [4] The evidence at the hearing consisted largely of the admissions by way of the Notice to Admit. As such, the facts set out below are directly from the Notice to Admit.
- [5] PM was the Respondent’s client.
- [6] The Respondent was appointed as an attorney over PM (pursuant to a power of attorney). He was also PM’s health care representative and executor of her Will.
- [7] PM passed away on January 31, 2020.
- [8] JM is PM’s son and beneficiary under her Will.
- [9] On May 28, 2020, JM submitted a complaint with the Law Society in respect of the Respondent (the “Complaint”).
- [10] The primary concerns noted in the Complaint were:
 - (a) delay/inactivity;
 - (b) failing to communicate; and
 - (c) failing to release PM’s file and/or records, or send a bill.
- [11] On June 2, 2020, the Respondent received an email letter from the Law Society which confirmed receipt of the Complaint and attached the Complaint (the “June 2 Letter”).
- [12] The June 2 Letter required the Respondent to provide a written response to the Complaint and eight enumerated points by June 15, 2020.
- [13] On June 22, 2020, the Law Society sent another letter to the Respondent, which indicated that the Law Society had not yet received his response to the June 2 Letter (the “June 22 Letter”).
- [14] The June 22 Letter reminded the Respondent of his obligation to cooperate fully with the Law Society investigation and that the Law Society required a response from the Respondent by July 6, 2020.
- [15] The Respondent emailed the Law Society on July 6, 2020 to advise:

I am responding to your letter of June 22, 2020. Unfortunately, due to my schedule I am unable to provide you with all the information you have requested until Friday, July 17, 2020.

- [16] The Law Society acknowledged the Respondent's July 6, 2020 email and stated that it looked forward to receipt of the Respondent's response and requested information by July 17, 2020.
- [17] On July 17, 2020, the Respondent emailed the Law Society and advised as follows:
- My apologies. I had hoped to get this to you today. Something unexpected interrupted me. I expect to have my reply completed and to you late on Monday.
- [18] On July 20, 2020, the Respondent emailed a letter to the Law Society in reply to the June 2 Letter along with six attachments. Upon receipt of the Respondent's letter and attachments, the Law Society investigator needed to speak to the Respondent.
- [19] On July 23, 2020, the Respondent received an email from the Law Society investigator in which the investigator indicated that she would like to speak with the Respondent and asked the Respondent if he was available that morning or the following morning for a telephone call.
- [20] The Respondent did not reply to the July 23, 2020 email.
- [21] On August 18, 2020, the Respondent received another email from the Law Society investigator as follows:
- Good morning Mr. Di Bella,
- I sent you an email on July 23, 2020 indicating that I would like to speak to you, but did not receive a response. I would like to speak with you. Please let me know when you are available to speak with me one day this week (other than Thursday morning).
- [22] The Respondent did not respond to the August 18, 2020 email.
- [23] The Respondent did not make himself available to speak to the Law Society investigator as requested.
- [24] On October 14, 2020, the Law Society investigator sent another letter to the Respondent (the "October 14 Letter").

- [25] In the October 14 Letter, the Respondent was asked to call the Law Society investigator by October 21, 2020 to discuss PM's remains, which were in the Respondent's possession, and to answer some further specific questions.
- [26] The Respondent did not call the Law Society investigator by October 21, 2020.
- [27] PM's remains continued to be in the Respondent's possession.
- [28] The October 14 Letter also requested that the Respondent provide his responses and information with respect to seven enumerated questions by November 3, 2020.
- [29] The Respondent did not respond to the October 14 Letter.
- [30] On December 9, 2020, the Respondent received an email from the Law Society investigator as follows:

Hello Mr. Di Bella,

Further to my letter to you dated October 14, 2020 (a copy of which is attached), I have not heard from you and have not received a response to my further inquiries.

I remind you of your obligation to assist the Law Society by responding to inquiries made of you during the course of an investigation (please see Rules 3-5(7) of the Law Society Rules and 7.1-1 of the *Code of Professional Conduct*). Your failure to respond is impeding the Law Society's investigation into this matter.

You are well past the deadlines set out in the letter and I have begun the process of referring your failure to respond to the Discipline Committee for its consideration. If there is a reason, medical or otherwise, that is preventing you from responding in this matter [sic] please contact me immediately so that we can discuss this issue.

- [31] The Respondent did not provide a response to the December 9, 2020 email.

LAW AND ANALYSIS

- [32] The Law Society has the burden of proof to establish that the facts it alleges constitute professional misconduct on a balance of probabilities.
- [33] The test for whether a lawyer's conduct constitutes professional misconduct, as set out in *Law Society of BC v. Martin*, 2005 LSBC 16 at para. 171, is whether the

facts disclose a “marked departure from that conduct the Law Society expects of its members.”

- [34] The test is objective: *Law Society of BC v. Sangha*, 2020 LSBC 03 at para. 67.
- [35] Unexplained, persistent failure to respond to Law Society communications will always be *prima facie* evidence of professional misconduct: *Law Society of BC v. Dobbin*, 1999 LSBC 27 at para. 25.
- [36] In *Dobbin*, the review panel stated “responding promptly, candidly and completely to Law Society communications is the cornerstone of our right to self-govern”: *Dobbin* at para. 23.
- [37] The Law Society’s very ability to regulate lawyers and protect the public requires that lawyers cooperate with investigations and provide complete, accurate and timely information.
- [38] Rules 3-5(7) and 3-5(11) of the Law Society Rules state:
- 3-5(7) A lawyer must co-operate fully in an investigation under this division 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.
- 3-5(11) A lawyer who is required to produce files, documents and other records, provide information or attend an interview under this rule must comply with the requirement
- (a) even if the information or files, documents and other records are privileged or confidential, and
- (b) as soon as practicable and, in any event, by the time and date set by the Executive Director.
- [39] Rule 7.1-1 of the *Code* states:

A lawyer must

- (a) reply promptly and completely to any communication from the Society;
- (b) provide documents as required to the Law Society;
- (c) not improperly obstruct or delay Law Society investigations, audits and inquiries;
- (d) cooperate with Law Society investigations, audits and inquiries involving the lawyer or a member of the lawyer's firm;
- (e) comply with orders made under the *Legal Profession Act* or Law Society Rules; and
- (f) otherwise comply with the Law Society's regulation of the lawyer's practice.

[40] The Respondent responded to the June 2 Letter and the June 22 Letter on July 20, 2020. However, the Law Society investigator required further information to complete her investigation.

[41] As such, almost immediately on July 23, 2020, the Law Society investigator asked the Respondent to speak to her that day or the following day.

[42] Having not heard from the Respondent, the Law Society investigator wrote to him on October 14, 2020 regarding the possibility of releasing PM's remains to her son and setting out in writing her additional questions.

[43] Despite the July 23, 2020 email and the October 14 Letter, the Respondent did not call, write or email the Law Society investigator at all after his letter dated July 20, 2020.

[44] The Respondent completely ignored the July 23, 2020 email from the Law Society investigator, the August 18, 2020 follow-up email, the detailed October 14 Letter and the December 9, 2020 follow-up email from the Law Society investigator.

[45] In failing to respond, the Respondent completely frustrated the Law Society's investigation. In addition, the Respondent did not contact the investigator to arrange for PM's ashes to be provided to her grieving family. Both are unacceptable.

[46] Lawyers are expected to respond completely, accurately and promptly to all correspondence from the Law Society. The Respondent failed to respond to any of

the Law Society's correspondence after July 20, 2020. The Respondent failed to respond to the Law Society investigator's attempts to retrieve PM's ashes for the family and her attempts to complete her investigation. The Respondent's conduct most certainly represents a marked departure from the type of conduct expected of lawyers.

[47] We find that pursuant to s. 38(4)(b)(i) of the *Act*, the Respondent has committed professional misconduct.

CONCLUSION

[48] The Respondent repeatedly failed to respond to correspondence from the Law Society between July 23, 2020 and December 9, 2020 and the Respondent's conduct constitutes professional misconduct.