

2022 LSBC 02
Hearing File No.: HE20200098
Decision Issued: January 13, 2022
Citation Issued: December 1, 2020
Citation Amended: September 28, 2021
Citation Further Amended: November 19, 2021

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: November 30, 2021

Panel: Jennifer Chow, QC, Chair
Nan Bennett, Public representative
Sandra Weafer, Lawyer

Discipline Counsel: Ilana Teicher

No one appearing on behalf of the Respondent:

Written reasons of the Panel by: Jennifer Chow, QC

INTRODUCTION

- [1] For over three and a half years, the Respondent failed to fulfill his duties as executor of his former client, WD's, estate. Those failed duties included: failing to take steps to apply for probate and administration; failing to respond to communications from beneficiaries; failing to renounce his executorship despite repeated requests by the beneficiaries to do so; and failing to sign a mortgage renewal as executor. As a result of those failures, the beneficiaries suffered financial and emotional distress from the delayed administration of the estate.
- [2] After considering all of the circumstances, the Panel is satisfied that the Respondent failed to fulfill his duties as executor of WD's estate and that this conduct was a marked departure from that conduct the Law Society expects from lawyers.

THE CITATION

- [3] The citation contains two sets of allegations, both relating to the Respondent's failure to fulfill his duties as executor of WD's estate. The original citation was authorized by the Discipline Committee on November 12, 2020, issued on December 1, 2020, amended on September 28, 2021 and further amended on November 19, 2021 (collectively, the "Citation"). The Citation provides:
1. Between approximately May 2016 and December 2019, while serving as executor for the estate of WD, who had been your client, you failed to provide the quality of service expected of a competent lawyer, contrary to one or more of rules 3.1-1, 3.1-2 and 3.2-1 of the *Code of Professional Conduct for British Columbia*, or your fiduciary duties, by failing to do one or more of the following:
 - (a) take appropriate steps to probate the will;
 - (b) respond to e-mails sent by one or more of the beneficiaries dated May 13, 2016, June 15, 2016, November 3, 2016, March 12, 2017, February 5, 2019, March 8, 2019, June 27, 2019, July 3, 2019 and July 30, 2019;
 - (c) ensure the will was probated and the estate administered in a timely manner; and
 - (d) renounce your executorship after it became evident that you were unable or unwilling to assume the role of executor.

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

2. Between approximately May 2019 and July 2019, while serving as the executor for the estate of WD, who had been your client, you failed to respond to communications from [bank] that were brought to your attention and which required a reply, and in particular you failed to respond to such communications from [bank] dated May 29, 2019 and June 26, 2019.

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

THE RESPONDENT'S ABSENCE

- [4] The Respondent did not attend the start of the hearing. After a 15-minute adjournment, the Law Society applied to proceed with the hearing in the absence of the Respondent, pursuant to s. 42(2) of the *Legal Profession Act* (the "Act").
- [5] After a brief adjournment to deliberate, the Panel granted the Law Society's application. The Panel was satisfied that the Respondent was properly served with the Notice of Hearing and thus, proceeded with the hearing in the Respondent's absence, pursuant to s. 42(2) of the *Act*. We considered the following factors:
 - (a) the Respondent was properly served with notice of the hearing, deemed to be served on June 10, 2021;
 - (b) the Respondent was cautioned that the panel may proceed in his absence in the Citation, the Notice of Hearing and a letter dated November 9, 2021 sent by discipline counsel;
 - (c) when the Respondent was not present at the start of the hearing, the Panel stood down for 15 minutes;
 - (d) no evidence was before us about why the Respondent was not in attendance;
 - (e) the Respondent is a former member of the Law Society. The evidence shows that the Respondent became a former member on January 1, 2021 for non-payment of fees; and
 - (f) except for a deemed admission, the Respondent has not himself admitted the underlying misconduct.

(See *Law Society of BC v. Tak*, 2014 LSBC 27; *Law Society of BC v. Gellert*, 2013 LSBC 22; *Law Society of BC v. Hopkinson*, 2020 LSBC 17; *Law Society of BC v. McKinley*, 2019 LSBC 20; and *Law Society of BC v. Fogarty*, 2021 LSBC 25.)

SERVICE OF CITATION

- [6] The Panel also finds that the Citation was properly served in accordance with Rule 4-19. The Panel reviewed various affidavits of service regarding the Citation. We are satisfied that the service requirements of Rule 10-1(0.1)(1)(b)(iii) were met regarding service at a party's last known email address.

NOTICE TO ADMIT

- [7] On September 29, 2021, the Law Society served the Respondent with a notice to admit (the "Notice to Admit") at his last known email address, in accordance with Rule 10-1(0.1)(1)(b)(iii). Service of the Notice to Admit is deemed to have taken place on September 30, 2021. The Law Society did not receive any reply. Accordingly, the underlying facts in the Notice to Admit are deemed admitted, pursuant to Rule 4-28(7).
- [8] The following facts are largely taken from the Notice to Admit.

Member background

- [9] The Respondent was called and admitted to the British Columbia Bar on May 17, 1991.
- [10] From September 1991 to August 1993, the Respondent practised as a sole practitioner in Surrey, British Columbia. From August 1993 to April 2011, the Respondent practised at Hittrich Lessing Kovacs Zukerman in Surrey, British Columbia. From May 2011 to December 2019, the Respondent practised at Lessing, Brandon & Company LLP (the "Firm") in Surrey, British Columbia.
- [11] Between December 2, 2019 and January 1, 2021, the Respondent's membership with the Law Society was suspended for failing to respond to four Law Society investigations. On January 1, 2021, the Respondent became a former member of the Law Society for non-payment of fees.

WD's Will

- [12] WD passed away on April 29, 2016. WD executed his Last Will and Testament on February 25, 2004 (the "Will"), which named the Respondent as executor and trustee of his estate. The Will provided for the residual proceeds to be divided equally among WD's three children when they reached the age of 25. The three children are BD, MG and CD.
- [13] WD and MG's mother, LD, had started the process of separating before WD died. The Respondent was WD's lawyer and had represented WD regarding the family matters.

Chronology of events

Summary of facts regarding allegation 1

- [14] Over a three-year period, MG contacted the Respondent on at least eight occasions asking for updates on the status of the application for probate and when she could anticipate completion of the estate administration.
- [15] From May 2016 to August 2019, MG communicated with the Respondent, his assistant, AL, or his associate, MF, to inquire about her father's estate. Initially, MG emailed the Respondent directly; however, by June 2016, MG communicated mainly with AL. In 2019, MF became involved to assist with completing the work regarding the estate.
- [16] Between May 13, 2016 and August 13, 2019, MG emailed the Respondent, AL or MF at least 14 times regarding the status of the estate and when probate would be filed. The Respondent provided little substantive response except on isolated occasions, namely: on June 9, 2016, the Respondent emailed to advise MG that one of his paralegals was working on the file; on May 2, 2017, the Respondent emailed to say they should meet; and on May 27, 2017, the Respondent met with MG and her siblings.
- [17] After May 2017, the Respondent did not reply to MG's emails nor did he provide any progress updates. After 2017, the Respondent did not take any steps to probate the Will, nor ensure that the Will was probated and the estate was administered in a timely manner.
- [18] Between January 14, 2019 and March 8, 2019, after learning that the Respondent had not yet submitted the application for probate, MG or her siblings emailed the Respondent, AL or MF on three occasions asking that the Respondent step down as

executor and hand the matter over. The Respondent did not respond nor did he renounce his executorship.

2016

- [19] On May 12, 2016, MG and her siblings emailed the Respondent confirming their agreement to sell their father's horses. On May 13, 2016, MG emailed the Respondent with concerns she had about her father's estate and asked for advice. The Respondent failed to respond to MG's May 13, 2016 email.
- [20] On May 17, 2016, MG received a copy of the Will from the Respondent's assistant, NB.
- [21] On June 8, 2016, MG and her siblings confirmed by email an agreement that they reached about an individual doing their father's taxes. That same day, MG also emailed the Respondent enclosing a bill to be paid by the estate.
- [22] On June 9, 2016, the Respondent replied stating: "... I have one of my paralegals working on this, she is organizing and dealing with this. I will forward that bill along to her."
- [23] On June 15, 2016, MG emailed the Respondent stating: "just wondering how things are going ... any update would be appreciated." The Respondent failed to respond to MG's June 15, 2016 email.
- [24] On June 22, 2016, MG emailed the Respondent stating: "How's everything going?? any update would be appreciated." That same day, AL replied stating that the firm's accountant was in the process of getting an account set up for the estate. AL stated that once an account was set up and the cheques deposited, they would be able to commence getting the ball rolling and she would work quickly to get matters caught up.
- [25] On July 8, 2016, AL emailed MG, with a copy to the Respondent, stating: "Good news, the account has been fully set up and I have received the deposit books so I will get the cheques deposited and then we can start dealing with the bills etc."
- [26] On July 14, 2016, MG emailed AL asking, among other things, about releasing a certificate of pending litigation on the family home.
- [27] On July 15, 2016, AL replied stating that she would "need to defer to [the Respondent] and research on current caselaw surrounding this issue."

[28] On November 3, 2016, MG emailed AL stating: “Just wanted to see how things are going? ... ” The Respondent failed to respond to MG’s November 3, 2016 email.

2017

[29] On March 12, 2017, MG emailed AL to inquire about the status of probate. The Respondent failed to respond to MG’s March 12, 2017 email.

[30] On May 1, 2017, MG emailed AL and the Respondent stating: “Can i please be sent an update on my dads estate. Is there a form i can be sent stating it has been sent for probate? I emailed over a month ago and haven’t heard back from anyone ... Id really appreciated [sic] anykind [sic] of update please i feel in the dark.”

[31] On May 2, 2017, the Respondent replied to MG stating: “Thanks for your email, it would be great if you could please contact [AL] and arrange to have [sic] come in to see me ... There are several decisions to make which we will discuss, after which we can then move forward and complete this.”

[32] On May 27, 2017, a meeting took place between the Respondent, MG and her two siblings.

[33] On May 29, 2017, AL emailed the Respondent seeking instructions following the Respondent’s meeting with MG and her siblings.

2018

[34] On February 2, 2018, AL emailed MG twice asking that she provide the mailing or email addresses for her and her siblings. She stated that she needed the addresses for her probate application. AL also stated that she would need MG and her siblings “to send [her] acknowledgements that [they] received the email from [the Respondent] – he has to give Notice that the Probate application will be submitted.”

[35] On December 14, 2018, MG emailed AL to follow up on their February 2018 emails. She stated: “ ... i never heard from you after i sent you my siblings emails last February. Did my Dads estate get submitted for Probate? any update would be great. hopefully its almost complete.”

[36] On December 20, 2018, AL replied stating: “Probate has not been submitted which is disappointing. I have an associate who is going to be dealing with finalizing and submitting everything in the New Year.”

2019

[37] On January 14, 2019, MG and AL exchanged several emails about the application for probate not having been submitted:

- (a) MG wrote: “I wasn’t expecting to hear that.. May i please ask why the delay? Last February you had asked for my siblings emails for the probate application, is something wrong with the file? we haven’t had any update or communication from [the Respondent] in over a year, last i heard was from you regarding the emails. Can you please forward this to whoever is handling my Dads file as my siblings and I would like an update. feeling in the dark”;
- (b) AL stated: “I can’t entirely say why except that [the Respondent] has been dealing with a personal matter since the beginning of last year and he has not been working at his normal capacity. He may share it with you but I cannot. I will be having an associate continue with the file to get it completed ASAP.”;
- (c) MG then emailed, with a copy to the Respondent, and stated: “Im sorry to hear that. in that case, can you kindly ask [the Respondent] to Close the file and release the documents to my siblings and i? One less thing for him to worry about. [BD, CD] and I are all in agreeance.”; and
- (d) AL replied, with a copy to the Respondent and MF, and stated: “With [the Respondent] as executor, he has to file for the Probate. I will ensure it gets handled quickly.”

[38] On February 5, 2019, MG emailed AL on behalf of all the siblings asking that the Respondent renounce acting as executor. She stated:

My siblings and I would like to kindly ask [the Respondent] to renounce his position [sic] executor, close my dads file and hand over all documents.

He has neglected to work on my dad’s estate due to a personal matter of his own. My Dad left him in charge to look out for the best interest of us kids and we feel he’s not doing so. [The Respondent] could have passed it over to someone else in the office over a year ago.

We are extremely disappointed in the lack of communication, delay and have been very patient in the matter.

Please have all documents ready for release by Feb 8th.

- [39] That same day, AL forwarded the email to the Respondent and MF. The Respondent failed to respond to MG's February 5, 2019 email.
- [40] On March 8, 2019, MG's brother, BD, emailed AL. He stated that his sister had tried on several occasions asking the Respondent "to hand over my dad's file as he isn't doing his job." He asked for a response as soon as possible. That same day, AL replied: "... I have sent it (and the ones from [MG]) to [the Respondent] and I will be speaking to him when he returns from court." The Respondent failed to respond to BD's March 8, 2019 email.
- [41] On March 20, 2019, AL emailed MG stating: "I got your message. I have sent your number onto [the Respondent] (along with the various emails) and have asked him to please contact you." That same day, AL emailed the Respondent, with a copy to MF, stating: "Still waiting on this and [MG] has called ... Can you please call [MG] or [BD] or ?????".
- [42] On March 28, 2019, MG emailed AL stating that she had not heard from the Respondent. She asked if she could make an appointment to come in. MG stated that she was "unsure what is going to happen." MG apologized for "all the back and forth" stating that: "... its just really upsetting that my dad has been gone for almost 3 YEARS and we still have to deal with this.. i thought [the Respondent] would have been on top of it and more communicative. its a lot on my heart as I still struggle with the lose [sic] of my dad."
- [43] On May 24, 2019, MF emailed MG. He stated that the Respondent had asked that he prepare the documents for the application for probate and that he had begun to get the documents in order. He stated that he wanted to "go over certain things" with the Respondent before they filed the documents and would be in touch with her after speaking with the Respondent on the topic.
- [44] On June 5, 2019, MG replied to MF's email. She thanked him for the update. She stated: "yes please let us know what [the Respondent] says as we dont even know what is happening with the estate?"
- [45] On June 27, 2019, MG emailed MF stating: "Just checking in for an update?". MF forwarded that email to AL and the Respondent. The Respondent failed to respond to MG's June 27, 2019 email.
- [46] On July 3, 2019, MG's husband, DG, emailed AL on behalf of MG and himself, asking for a status update regarding filing for probate. That same day, AL

forwarded that email to the Respondent and MF stating: “[MG]’s husband is looking for an update on the [WD] Estate matter.” The Respondent failed to respond to DG’s July 3, 2019 email.

- [47] On July 11, 2019, AL forwarded a further copy of DG’s email to the Respondent and MF.
- [48] On July 30, 2019, MG emailed MF regarding his May 24, 2019 email stating: “It’s been almost 2 month [sic] since I’ve heard from you. I’m sure by now you have had a conversation with [the Respondent] about my Dads estate ...” She asked for information about the estate’s assets. She stated that her family had put their “lives on hold due to this estate and haven’t been able to move forward.” The Respondent failed to respond to MG’s July 30, 2019 email.
- [49] That same day, MF forwarded MG’s email to the Respondent. MF advised the Respondent that he had drafted the documents for the probate application, but there was an issue in that “the estate debts exceed the value of the assets if we don’t factor in the house. I don’t see how we can administer the estate and pay off the debts without selling the house (whether to his ex or someone else).” The Respondent responded to MF’s email stating: “I have dealt with the creditor on one major and it is not being claimed. When I review I will show you.”
- [50] On August 13, 2019, MG forwarded AL, the Respondent and MF a copy of her July 30, 2019 email asking AL to “please see my email below as I only seem to get a response from you.”
- [51] On August 21, 2019, AL emailed MG stating that she would remind the Respondent to review the matter.

Summary of facts regarding allegation 2

- [52] The Respondent failed to respond to time sensitive communications from the bank regarding LD’s mortgage renewal, despite the matter being brought to the Respondent’s attention several times for a response.
- [53] On May 29, 2019, RS, a financial advisor at the bank, emailed MF. The subject line stated: “SIGNATURE NEEDED – Mortgage Renewal.” The email indicated that RS had spoken with MF that day regarding LD’s mortgage renewal. RS stated:

I met with [LD] on Saturday as the mortgage is coming up for renewal. The current contracted rate is quite high. I really wanted to help her through this life change by securing this low early renewal rate. I

processed a rate exception request to get a further discount and was approved by my branch manager.

- [54] RS also stated in that email that she would need the signature from the Respondent as executor on the renewal contract to sign on behalf of WD, who remained on title. That same day, MF forwarded the email to the Respondent and AL. The Respondent failed to respond to RS' May 29, 2019 email.
- [55] On May 31, 2019, RS emailed MF asking for an update. RS said she hoped to finalize the renewal as soon as possible so that the next mortgage payment would be at the adjusted lower amount. That same day, MF replied indicating that he had forwarded the information she provided to the Respondent for review and signature and that he would follow up with the Respondent shortly.
- [56] On June 4, 2019, MG emailed MF to inquire whether he had received an email from the bank regarding LD's mortgage renewal. That same day, MF forwarded the email to the Respondent, with a copy to AL.
- [57] On June 5, 2019, MG emailed MF about, among other things, the mortgage renewal on behalf of her mother, LD. That same day, MF emailed the Respondent, with a copy to AL, stating:
- [MG] followed up with respect to the mortgage renewal on behalf of her mother. The bank indicated to me that the estate's executor needs to sign the renewal forms for the mortgage to be renewed. As I understand it, the interest rate is quite a bit lower on the renewal.
- [58] That same day, MF replied to MG stating that they had received the refinancing information from the bank and that he had forwarded it to the Respondent, whose signature was required.
- [59] On June 26, 2019, RS emailed MF again asking for an update. She asked if he knew of a reason why the Respondent had not signed the renewal agreement. She stated: "... He has sent no communication after your forwarded email. I'm just a bit confused, we are causing unnecessary hardship for [LD] with her adjusted income in this difficult time." That same day, MF forwarded the email to the Respondent, with a copy to AL. The Respondent failed to respond to RS' June 26, 2019 email.
- [60] On June 27, 2019, MG followed up with an email to MF. That same day, MF forwarded the email string to the Respondent, with a copy to AL.

- [61] On July 11, 2019, the Firm's reception emailed AL and the Respondent stating that LD had come by to drop off the bank papers that the Respondent needed to sign in front of a bank member.
- [62] On July 30, 2019, MG emailed MF saying that they were still waiting for the Respondent to sign the mortgage renewal, and that his failure to do so was costing them money. That same day, MF emailed the Respondent reminding him that "the mortgage financing still needs to be dealt with."
- [63] To date, the Respondent has not signed the mortgage renewal. LD had to hire a notary to remove WD from title so that she could renew the mortgage.

The Law Society investigation

- [64] Since the Respondent did not attend the hearing, the Panel has set out some detailed communications to demonstrate that he knew of the allegations against him.
- [65] On or about July 24, 2019, the Law Society received a written complaint from MG. MG's complaint about the Respondent included concerns over delay, inactivity and failures to respond relating to the granting of probate regarding WD's estate.
- [66] On August 27, 2019, the Law Society provided counsel for the Respondent with a copy of MG's written complaint and requested the Respondent's response to the concerns raised.
- [67] On October 7, 2019, the Respondent provided his response. He admitted that he had not obtained probate of the Will. The Respondent advised that he had engaged members of the Firm (his assistant and later, an associate) to make the application for a grant of probate:

The file had been handled by an assistant of mine and in the past year by an associate lawyer. I have had little to do with the file. From my review to be able to respond, it appears that the required information for probate has been gathered, assets and liabilities accounted for. What is yet required is referred to below. In essence, the remaining steps will depend on potential litigation.

...

The estate is reasonably straightforward, except in two regards, both of which involve potentially litigious issues. First, the deceased (who was [MG]'s father), was separated from [MG]'s mother and in the midst of family law litigation which concern claims to family property. Second,

the largest debt claim was made by a third party leasing company which is a [sic] partly or wholly disputed. The answer to whether or not there are sufficient estate cash resources to pay the estate debts will rest on whether the leasing company claim is successful in whole or in part against the estate. In turn, the outcome of that claim will determine whether the estate needs to proceed with the claim in the family law litigation.

The claim by the leasing company has been inactive for over a year. On behalf of the estate, it is our recommendation to provide statutory notice to the leasing company. In the event the claim is not pursued as required, the estate can then go forward on the basis that the claim is barred. Alternatively, if the limitation period does not expire, the claim should be disputed for the amount claimed by the leasing company.

...

I ought to have attended to this sooner, for which I apologize to [MG]. I intend to recommend that this estate matter be transferred to outside counsel so that [MG's] concerns are dealt with without further delay.

- [68] The Respondent stated that he had assigned the estate file to an associate lawyer as he “did not have the bandwidth [sic] or the time to deal with the matter effectively.” He stated that: “... we have not been sufficiently responsive to [MG].” He stated that: “... As others were dealing with the matter, [he] relied upon them, including for purposes of keeping [MG] informed.” He stated that he “must and [does] take responsibility for any failures in that regard.”
- [69] On December 18, 2019, the Law Society wrote to counsel for the Respondent asking, among other things, whether the transfer to outside counsel had taken place. The Respondent did not respond to this letter.
- [70] On February 4, 2020, the Law Society wrote to counsel for the Respondent asking if the Respondent intended to renounce his position as executor and urging him to take steps without further delay. The Respondent did not respond to this letter.
- [71] To date, the Respondent has not renounced his executorship nor has he applied for a grant of probate to administer WD's estate. MG has retained new counsel to assist in obtaining probate for WD's estate.
- [72] Between August 27, 2019 and November 10, 2020, the Law Society exchanged further communications with counsel for the Respondent.

Onus and standard of proof

[73] It is well-established that the Law Society bears the burden and onus of proof in demonstrating on a balance of probabilities that the Respondent committed professional misconduct as alleged in the Citation (see *Foo v. Law Society of British Columbia*, 2017 BCCA 151, para. 63).

Test for professional misconduct

[74] The term “professional misconduct” is not defined in the *Act*, the Rules or the *Code of Professional Conduct for British Columbia (the “Code”)*. As established by the leading case of *Law Society of BC v. Martin*, 2005 LSBC 16, para. 171 (see also *Re: Lawyer 12*, 2011 LSBC 35), the test for professional misconduct is “whether the facts as made out disclose a marked departure from that conduct the Law Society expects of its members.” The *Martin* test is an objective test (*Law Society of BC v. Sangha*, 2020 LSBC 03).

Discussion

[75] Based on the Notice to Admit, the Panel finds that the Law Society has met its burden and onus of proof. The Panel is satisfied on a balance of probabilities that the Respondent has failed to fulfill his duties as executor and that such failures constitute a marked departure from that conduct the Law Society expects of lawyers.

Allegation 1

[76] Allegation 1 engages rules 3.1-1, 3.1-2 and 3.2-1 of the *Code*, which governs a lawyer’s competence, quality of service and fiduciary duties.

[77] The client is entitled to assume that lawyers have the ability and the capacity to deal adequately with all legal matters undertaken on the client’s behalf. Rule 3.1-2 of the *Code* requires lawyers to perform all legal services undertaken to the standard of a competent lawyer. As set out in Commentary 1 to this rule, lawyers are held out to be knowledgeable, skilled and capable in the practice of law.

[78] The beneficiaries of WD’s estate, particularly MG, trusted the Respondent to fulfill his duties as WD’s former lawyer and executor of WD’s estate. The Panel also finds that in addition to contravening the *Code*, the Respondent breached his fiduciary duties as executor and trustee of WD’s estate. An executor is a trustee and, accordingly, owes a fiduciary duty to the beneficiaries of an estate (see *Haley*

(*Re*), 2017 BCSC 2057, paras. 135 and 136; and Waters' Law of Trusts in Canada (4th ed)).

- [79] Rule 3.1-1 of the *Code* defines a “competent lawyer” as one who, among other things:
- (a) communicates at all relevant stages of a matter in a timely and effective manner (rule 3.1-1(d));
 - (b) performs all functions conscientiously, diligently and in a timely and cost-effective manner (rule 3.1-1(e); and
 - (c) complies in letter and spirit with all rules pertaining to the appropriate professional conduct of lawyers (rule 3.1-1(g)).
- [80] Lawyers have a duty to respond promptly to other lawyers, the Law Society and lay persons with whom the lawyer may be dealing with in the course of acting for a client. We agree with the Law Society that this duty applies equally to beneficiaries as well as communications from a bank. As set out in Commentaries 5 and 6 to rule 3.1-2, lawyers have an obligation not to undertake work without honestly feeling competent to handle it and to recognize when they lack the competence to do that work so that they decline the work or retain a lawyer with the necessary expertise. Additionally, the list of examples make it clear that lawyers have a duty to answer communications requiring an answer within a reasonable time, and that they must ensure that work is done in a timely manner so that its value to the client is maintained.
- [81] By failing to respond to communications from beneficiaries and the bank, the Respondent failed to meet the quality of service expected of a competent lawyer. Although the rules and Commentaries discussed above expressly deal with clients, we agree with the Law Society that when a lawyer is also acting as an executor and trustee of an estate, the rules and Commentaries discussed above also apply to beneficiaries and banks requiring signatures from an estate’s executor. Accordingly, we find that when a lawyer is appointed as an executor, the lawyer will be held to the standards required by the *Act*, the Rules and the *Code*.
- [82] The Respondent’s conduct is properly characterized as professional misconduct, rather than conduct unbecoming a lawyer. The Respondent’s appointment as executor arose directly from his solicitor-client relationship with the deceased. The Respondent represented WD in separation proceedings before WD’s death and was known to the family as WD’s lawyer. In his letter to the Law Society of October 7, 2019, the Respondent recognized that his professional conduct was at issue when

he stated that he had “assigned the estate file to an associate lawyer as I did not have the bandwidth [sic] or the time to deal with the matter effectively.” Further, the Respondent also stated that: “ ... we have not been sufficiently responsive to [MG] ... I must and do take responsibility for any failures in that regard.”

- [83] The Respondent failed to live up to the standards required of lawyers as required by the *Code*. The Panel finds that over the course of more than three and a half years from WD’s death to the Respondent’s suspension in December 2019, the Respondent took little to no steps to apply for probate of WD’s estate. Rather than ensuring he was promptly and diligently fulfilling his role as executor and trustee of his former client’s estate, the Respondent became the direct cause of the delay in applying for and obtaining probate and administering WD’s estate. For years the beneficiaries wrote to the Respondent, his assistant or his associate asking about WD’s estate, to no avail.
- [84] An aggravating factor in this case is the Respondent’s continued failure to fulfill his duties as executor after he became aware of MG’s complaint to the Law Society. Instead of promptly addressing MG’s concerns, the Respondent continued to prolong the delay. Instead of taking action to apply for probate and administer WD’s estate, the Respondent chose to do nothing. He could have hired counsel, stepped down as executor as requested by the beneficiaries or responded to communications from the beneficiaries. Eventually, the Respondent stopped communicating with the Law Society as well.
- [85] After his suspension in December 2019, the Respondent could have advised MG to retain new counsel at that, or a much earlier stage, given that he knew of MG’s complaint. Instead, the Respondent left WD’s estate file with his old firm without instructions. MG had to retain new counsel to assist in obtaining probate for her father’s estate.

Allegation 2

- [86] The Respondent failed to fulfill his executor’s duties when he failed to sign mortgage renewal documents as WD’s executor. The Respondent made no attempts to respond to the bank’s, MG’s or her mother’s communications. Instead, LD was forced to hire a notary to remove WD’s name from title so that she could renew the mortgage.
- [87] In his role as executor and trustee of WD’s estate, the Respondent essentially ignored the bank. Additionally, the Respondent’s associate reminded him of the mortgage renewal concerns as well as the other concerns raised by the beneficiaries, to no avail.

JURISPRUDENCE

- [88] The jurisprudence demonstrates that lawyers commit professional misconduct when they fail to serve their clients as competent lawyers, including instances where lawyers themselves are the cause of delay and inconveniences to their clients and other persons in the course of acting for their clients.
- [89] In *Law Society of BC v. McTavish*, 2018 LSBC 02, the lawyer was found to have committed professional misconduct by failing to serve his client in a conscientious, diligent and efficient manner. After six years, the estate was still undistributed and not wound up. The lawyer took nearly four years to finalize probate after being retained to resolve his client's mother's estate. The straightforward estate case had only one significant asset and two beneficiaries. The evidence showed lengthy periods of delay and inactivity. The lawyer admitted that he failed to take appropriate steps to apply for probate or to administer the estate, failed to keep the client reasonably informed, failed to respond to communications from the client and failed to provide the client with complete and accurate information about the status of the estate. The panel in *McTavish*, at para. 62, found that the lawyer's misconduct was serious as he had failed to provide appropriate legal services to the public, which went to the heart of the Law Society's mandate to regulate the profession and uphold the public interest in the administration of justice.
- [90] In *Law Society of BC v. Wesley*, 2015 LSBC 05, the lawyer was found to have committed professional misconduct by failing to serve her client in a conscientious, diligent and efficient manner. The lawyer delayed entering a family order for approximately 20 months and failed to inform her client of the risks of an unentered order or the costs involved to settle the terms of an order. The lawyer was unable to explain why she failed to take the appropriate steps. The client was unable to enforce the terms of the order and the lawyer was fined \$3,000.
- [91] In *Law Society of BC v. Hart*, 2014 LSBC 17, the lawyer was found to have committed professional misconduct by failing to serve his client in a conscientious, diligent and efficient manner. The lawyer caused a nearly three year delay in his client's straightforward family matter that could have been resolved within a year.
- [92] In *Law Society of BC v. Wilson*, 2012 LSBC 06, the lawyer admitted to conduct unbecoming a lawyer after failing, for six years, to either renounce his executorship over the estate of a former client, to apply for probate or to file tax returns for the estate. The Law Society did not seek a determination of professional misconduct in that case. However, the case emphasizes the duties of lawyers as executor to apply to the court for probate or to renounce that role where lawyers are unwilling or unable to fulfill those duties.

[93] In *Law Society of BC v. Smith*, 2005 LSBC 27, the lawyer was found to have committed professional misconduct after failing to communicate with an insurance company regarding a client matter. The panel emphasized, at para. 8, that all lawyers have a duty to respond promptly to other lawyers, the Law Society and to lay persons with whom the lawyer may be dealing with in the course of acting for a client.

DISCUSSION

[94] The Panel finds that the Respondent's failure to fulfill his duties as executor of WD's estate is a marked departure from that conduct the Law Society expects of lawyers. We find that the Law Society has met the onus and burden of proof regarding both allegations set out in the Citation.

[95] In particular, the Panel finds that the Respondent failed to fulfill his duties as executor of WD's estate by failing to apply for and obtain a grant of probate, and to administer the estate. Additionally, the Respondent failed to respond to communications from the estate's beneficiaries over a period of three and a half years. Finally, the Respondent failed to respond to communications from a bank which required the Respondent's signature as executor on mortgage renewal documents related to WD's estate.

[96] The Panel finds that the Respondent's conduct regarding both allegations in the Citation to be egregious in that he failed to provide a quality of service expected of a competent lawyer. Instead of providing assistance to others, the Respondent's failure to fulfill his duties as executor prolonged the financial and psychological stress on the beneficiaries and LD.

[97] The Panel agrees with the Law Society that lawyers are not held to a standard of perfection. However, lawyers who act as executors and thus trustees of estates should renounce their role as executors if they cannot provide a quality of service required under the *Code*, the *Act* and the Rules. The protection of public interest in the administration of justice is not upheld when lawyers do not act competently. The public must be able to trust that lawyers acting as executors and thus fiduciaries, will act to serve the best interests of beneficiaries. Without this trust, the interests of both the legal profession and the public are harmed.

DETERMINATION

[98] After considering all of the circumstances, the Panel finds that the Respondent has committed professional misconduct regarding both allegations in the Citation.