

2022 LSBC 06  
Hearing File No.: HE20200039  
Decision Issued: January 26, 2022  
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: October 26, 2021

Panel: Michael F. Welsh, QC, Chair  
Linda Berg, Public representative  
Catherine W. Chow, Lawyer

Discipline Counsel: Mandana Namazi

No one appearing on behalf of the Respondent

Written reasons of the Panel by Catherine W. Chow

## PART I: INTRODUCTION AND OVERVIEW

- [1] The citation in this matter was authorized by the Discipline Committee on May 27, 2020, issued on June 8, 2020 and amended on June 12, 2020 (“Citation”).
- [2] Pursuant to the Citation, the allegations against the Respondent, Aaron Murray Lessing, are as follows:
1. On or about July 13, 2012, the Respondent disclosed confidential information of his prospective client, HM, contrary to Chapter 5, Rule 1 of the *Professional Conduct Handbook*, then in force, by forwarding an email from HM to PS;
  2. On or about July 5, 2014, the Respondent disclosed confidential information of his client, SD, contrary to rule 3.3-1 of the *Code of Professional Conduct for British Columbia*, by forwarding an email from opposing counsel to PS;
  3. On or about April 16, 2017, the Respondent disclosed confidential information of his client, EB, contrary to rule 3.3-1 of the *Code of Professional Conduct for British Columbia*, by sending an email to PS;
  4. On or about December 12, 2018, the Respondent, in relation to his family proceedings against PS, failed to act with honour, integrity, courtesy and civility when he swore and filed an affidavit, which he intended to rely upon or did later rely upon in court, containing statements for which he had no factual basis, including statements that alleged or implied that counsel for PS was doing one or more of the following:
    - (a) improperly billing PS;
    - (b) conspiring or working with PS to defeat the Respondent’s interest in the family home;
    - (c) assisting or facilitating PS’s breach of a court order; and
    - (d) facilitating or procuring unqualified expert evidence,any and all of which conduct constitutes professional misconduct or conduct unbecoming the profession, pursuant to s. 38(4) of the *Legal Profession Act* (“Act”).

## **PART II: ISSUES**

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

## **PART III: PRELIMINARY MATTERS**

### **Service of citation and notice of hearing**

- [4] By letter dated June 8, 2020, the Respondent was served with the original citation authorized May 27, 2020. By letter dated June 24, 2020, the Respondent was served with the amended citation, in accordance with Rule 4-19 of Rules.
- [5] As the requirement for service under Rule 4-19 has been met, Rule 4-41 provides that the hearing panel may proceed with a hearing. The hearing of this matter was scheduled for October 26, 2021.

### **Proceeding in the absence of the respondent**

- [6] The Respondent was provided with notice of the hearing date in this matter, in accordance with Rule 4-32 of the Rules.
- [7] The Respondent was not in attendance at, and filed no responding material with respect to, the hearing. The Respondent has been entirely unresponsive to these proceedings.
- [8] Section 42(2) of the *Act* permits a hearing panel to proceed in the absence of a respondent if the panel is satisfied that the respondent has been served with the notice of hearing.
- [9] Counsel for the Law Society asked that the hearing proceed in the Respondent’s absence because of his complete lack of response to these proceedings and because of well-established case authorities (*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), which set out the following factors:
- (a) whether the respondent has been provided with notice of the hearing date;

- (b) whether the respondent has been cautioned that the hearing may proceed in their absence;
- (c) whether the panel adjourned for 15 minutes in case the respondent was merely delayed;
- (d) whether the respondent has provided any explanation for their non-attendance;
- (e) whether the respondent is a former member of the Law Society; and
- (f) whether the respondent has admitted to the underlying conduct.

[10] After the required adjournment, the Panel found that the hearing should proceed in the absence of the Respondent. The Respondent was given notice of the hearing, was cautioned that the hearing could proceed in his absence and has provided no explanation for his non-attendance. The fact that the Respondent is a former member who has to date failed to participate in the hearing process makes it more likely than not that his absence is intentional.

#### **Notice to admit deemed admitted**

[11] On August 26, 2021, the Respondent was served with a notice to admit dated August 25, 2021 (“NTA”), with a 21-day requirement for response by September 17, 2021. The Panel finds that the Respondent did not respond to the NTA and, accordingly, pursuant to Rule 4-28(7), the NTA has been deemed admitted in its entirety, and for the purposes of this Hearing, the facts set out in the NTA are deemed proven facts and the documents included and referred to are deemed authentic documents.

### **PART IV: FACTS**

#### **The Respondent’s background**

[12] The Respondent was called and admitted as a member of the Law Society of British Columbia on May 17, 1991. He practised as a lawyer in Surrey, British Columbia.

[13] Between December 2, 2019 and January 1, 2021, the Respondent was suspended from the practice of law in British Columbia. On January 1, 2021, the Respondent became a former member of the Law Society of British Columbia for non-payment of fees.

**Factual overview**

- [14] The NTA sets out a detailed chronology of events. The admissions are clear and unambiguous and are supported by the underlying documents. The Panel summarizes pertinent highlights that support our findings.
- [15] During the material time frame of the Citation, the Respondent, as a practitioner in family law, was acutely aware that public access to court files was restricted in family law matters.

**Breach of client confidentiality – HM**

- [16] On July 12, 2012, the Respondent was retained by HM, a client, respecting a child custody matter. In HM's email of July 12, 2012, HM provided the Respondent with personal and confidential information about her ex-husband, including his difficulty with pornography, infidelity and history of anger and violence toward her. HM highlighted various behaviours and mental health concerns with her young child, which she says stems from early life stressors, including an incident in which the child was molested by an uncle.
- [17] On July 13, 2012, the Respondent forwarded this email of July 12, 2012 to PS. The Respondent did not seek permission from HM or inform HM that her email had been forwarded, and HM did not waive privilege or consent to her personal and confidential information being shared with PS.

**Breach of client confidentiality – SD**

- [18] In July 2014, the Respondent represented SD in family law proceedings against her husband.
- [19] On July 4, 2014, the husband's lawyer emailed an application response and affidavit to the Respondent. The affidavit sets out, amongst other things, details of the husband's personal financial circumstances (including tax forms and notices of assessment), details of his relationship with the client and the husband's personal medical information.
- [20] On July 5, 2014, without seeking or obtaining permission from SD, her husband or the husband's lawyer, the Respondent forwarded the affidavit to PS. The Respondent did not inform SD, her husband or the husband's lawyer that he had done so; nor did they waive privilege or consent to the personal and confidential information being shared with PS.

**Breach of client confidentiality – EB**

- [21] EB, represented by the Respondent, was the respondent in a family law proceeding commenced by his wife. On April 16, 2017, the Respondent emailed PS a copy of EB's affidavit. In the Respondent's email to PS, he entitled it "Bedtime reading".
- [22] The affidavit of EB contains highly personal and confidential information, including EB's account of his relationship with his wife and her background, which includes allegations of drug use, erratic behaviours, infidelity, beliefs regarding mental health issues, verbal abuse, violence towards him and private medical information. The affidavit also sets out EB's concerns about the conduct of his wife's boyfriend towards their daughters, including physical hitting and molestation. Details of private conversations between the children and a social worker, and the children's full names and dates of birth, are also set out in the affidavit.
- [23] The Respondent did not seek permission from EB, nor did he inform EB that his affidavit had been forwarded, and EB did not waive privilege or consent to this personal and confidential information being shared with PS.
- [24] In addition to emailing PS these client materials, the Respondent brought home other confidential documents from work to read passages to PS, including EB's Custody and Access Report.

**The Respondent's response**

- [25] The Respondent admits that he sent the July 13, 2012, July 5, 2014 and April 16, 2017 emails to PS. The Respondent stated in his July 2, 2019 response to the Law Society that the purpose in sending this material to PS was so that she could print the documents for him on the home printer for his subsequent review.
- [26] In her interview with the Law Society on February 1, 2019, PS stated that she never worked for the Respondent as a legal assistant or bookkeeper, or in any other capacity. PS stated that the Respondent did not work out of their home.
- [27] On October 31, 2019, PS further advised that:
- (a) the Respondent did not ask her to print things for him;
  - (b) the Respondent always had access on his phone or other devices. There was no reason to send the documents to her to print;
  - (c) PS never worked for the Respondent or his law firm;

- (d) they had a home printer, but the Respondent did not have a home office;
- (e) the Respondent did not work from home or bring files home; he got up early and went to the office, stayed late at the office or went into the office on weekends;
- (f) the Respondent never told PS not to read things; and
- (g) the Respondent also brought information home on a memory stick. He would say to her words to the effect that “you have to look at this”, “you have to read this” and “can you believe this”.

### **The Respondent’s affidavit**

[28] The Respondent and PS married on December 31, 2010 and separated in April 2018.

[29] After their separation in 2018, the Respondent was engaged in family law proceedings with PS. PS was represented by RD, a family law lawyer. At that time, the Respondent was prohibited from representing himself in any court or tribunal.

[30] On December 12, 2018, the Respondent swore an affidavit in the proceedings. In this affidavit, the Respondent stated:

94. I understand that [RD] has placed a mortgage against the former family home which secures payment of the legal fees she incurs pursuant to her retainer agreement with the Claimant (amount unstated). I am highly afraid that [RD]’s personalization of this matter may involve her billing a large amount over the fees for the case, and then paying back the Claimant so as to defeat my interest in the family home.

...

97. It is also my observation and belief that [RD] is assisting and facilitating the Claimant’s breach of the Order of Justice Morellato while facilitating opinion-based evidence from an unqualified person without my knowledge and consent.

[31] The Respondent personally drafted this affidavit. It was commissioned by an associate at the Respondent’s firm and filed on December 12, 2018 in the New

Westminster Supreme Court Registry. The Respondent relied upon this affidavit in court on more than one occasion.

[32] The Respondent had no factual basis for making these statements in this affidavit.

[33] In the Respondent's response to the Law Society dated July 2, 2019, he wrote that the affidavit was not tendered for the truth of its contents, but only for the fact that they were honestly made:

The comments in these paragraphs are true and accurate reflections of my personal knowledge or information or belief. This has been very bitter family litigation, and I felt it was important to present these concerns in order to provide some balancing considerations for any judge who would be assessing the matter.

[emphasis added]

[34] We agree with counsel for the Law Society that the underlined passage in the Respondent's statement to the Law Society was untruthful, or at least misleading.

[35] Rather than providing a further substantive response, the Respondent advised the Law Society by letter dated January 17, 2020 from his former counsel, Henry C. Wood, QC, that:

[The Respondent] has decided to leave the practice of law. He has no intention of returning but he understands that he will remain under suspension until the Law Society relieves him of that restriction.

### **The complaint**

[36] On or about December 14, 2018, the Law Society received a complaint from PS, the Respondent's former spouse.

[37] On or about December 16, 2018, the Law Society received a further complaint from PS.

[38] During her interview with the Law Society on February 1, 2019, PS explained her understanding of why the Respondent shared confidential client information with her. PS stated in her interview that the Respondent was especially "fascinated" with EB's case. PS observed that the Respondent had always been drawn to or was intrigued by "bizarre sexual kind of behaviours" of his clients, or that he was "smitten" with criminal activities of his clients, such as pot operations and a case involving steroids.

- [39] PS further stated in her interview with the Law Society that she told the Respondent at the time that “maybe it’s better that you not tell me so much information”.

## **PART V: THE APPLICABLE LAW**

### **Onus and standard of proof**

- [40] The onus of proof is on the Law Society to prove on a balance of probabilities that the alleged facts occurred and constitute professional misconduct.

### **Test for professional misconduct**

- [41] Because the term “professional misconduct” is not defined in the *Act*, the Rules or the *Code of Professional Conduct for British Columbia* (“*Code*”), we must look to the leading case of *Law Society of BC v. Martin*, 2005 LSBC 16. In *Martin*, at para. 171, the panel defined professional misconduct to mean “whether the facts as made out disclose a marked departure from that conduct the Law Society expects of its members.”
- [42] The *Martin* test has been accepted by many subsequent panels, and was affirmed by the review panel in *Re: Lawyer 12*, 2011 LSBC 35.
- [43] We accept that the test in *Martin* is an objective one, as confirmed in *Law Society of BC v. Sangha*, 2020 LSBC 03 at para. 67.

### **Test for conduct unbecoming**

- [44] “Conduct unbecoming the profession” is defined in s. 1 of the *Act* as:

“**conduct unbecoming the profession**” includes a matter, conduct or thing that is considered, in the judgment of the benchers, a panel, or a review board,

(a) to be contrary to the best interest of the public or of the legal profession, or

(b) to harm the standing of the legal profession.

- [45] The panel in *Law Society of BC v. Berge*, 2005 LSBC 28 stated:

[68] Further guidance on the meaning and application of the words “best interests of the public” are found in the Canons of Legal Ethics (the “Canons”) published by the Law Society and issued to all members.

[69] The introductory paragraphs of the Canons state that they are a “general guide, and not a denial of the existence of other duties equally imperative and of other rights, though not specifically mentioned.” They go on to say that a lawyer is:

a minister of justice, an officer of the courts, a client’s advocate, and a member of an ancient, honourable and learned profession.

In these several capacities it is a lawyer’s duty to promote the interests of the state, serve the cause of justice, maintain the authority and dignity of the courts, be faithful to clients, be candid and courteous in relations with other lawyers and demonstrate personal integrity.

...

[71] Under the duty to oneself, the Canons state that “all lawyers should bear in mind that they can maintain the high traditions of the profession by steadfastly adhering to the time-honoured virtues of probity, integrity, honesty and dignity.”

[46] The commentary to Rule 2.2-1 provides that a lawyer’s conduct should always reflect favourably on the legal profession, inspire the confidence, respect and trust of clients and the community, and avoid even the appearance of impropriety.

[47] In *Law Society of BC v. Watt*, 2001 LSBC 16, the review panel stated that:

[19] “Conduct unbecoming a lawyer” is an inclusively-defined term in Section 1(1) of the *Legal Profession Act*, which refers to the conduct being considered in the judgment of the Benchers to be either contrary to the best interest of the public or of the legal profession or to harm the standing of the legal profession. Justice Clancy, of the Supreme Court of British Columbia, held, in *Re Pierce and the Law Society of British Columbia* (1993), 103 D.L.R. (4<sup>th</sup>) 233 at 247:

When considering conduct unbecoming, the Benchers' consideration must, therefore, be limited to the public interest in the conduct or competence of a member of the profession.

[20] The Benchers discipline Members for some “off-the-job” conduct because lawyers hold positions of trust, confidence, and responsibility giving rise to many benefits but imposing obligations not shared with most other citizens ... If a lawyer acts in an improper way, in private or public life, there may be a loss of public confidence in the lawyer, in the legal profession generally, and in the self-regulation of the legal profession if the conduct is not properly penalized in its professional aspect. It is possible that conduct unbecoming may lead to controversy about the legal profession and lawyers, which may disrupt the proper functioning of lawyers in British Columbia as they relate to clients, interested third parties (such as witnesses, police officers, and service providers), other lawyers (within and without the jurisdiction), the judiciary, the press, and, put generally, anyone who may be expected to rely on lawyers behaving in a dependable, upright way. The behaviour of lawyers must satisfy the reasonable expectations which the British Columbia public holds of them. By their behavior, lawyers must maintain the confidence and respect of the public; lawyers must lead by example. ...

[48] We accept the submission of counsel for the Law Society that a useful working definition, as set out in *Watt* at paras. 19 and 20, between “professional misconduct” and “conduct unbecoming”, is that professional misconduct refers to conduct occurring in the course of a lawyer’s practice while conduct unbecoming refers to conduct in the lawyer’s private life. Sometimes, a lawyer’s conduct will straddle both his professional and personal life.

### **Applicable rules provisions**

[49] There are three different governing provisions that apply to each of the three allegations at issue respecting the disclosure of confidential information.

[50] Allegation 1 concerns misconduct on or about July 13, 2012. The relevant rules from Chapter 5 of the *Professional Conduct Handbook* (“*Handbook*”), then in force, are:

1. A lawyer shall hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship, regardless of the nature or source of the information or of the fact that others may share the knowledge, and shall not divulge any such information unless disclosure is expressly or impliedly authorized by the client, or is required by law or by a court.
2. A lawyer shall take all reasonable steps to ensure the privacy and safekeeping of a client's confidential information.
3. A lawyer shall not disclose the fact of having been consulted or retained by a person unless the nature of the matter requires such disclosure.
4. A lawyer shall preserve the client's secrets even after the termination of the retainer, whether or not differences have arisen between them.
- ...
8. A lawyer shall avoid indiscreet conversations or gossip, and shall not repeat gossip or information about a client's affairs, even though the client is not named or otherwise identified.
- ...
11. A lawyer may:
  - (a) with the express or implied authority of the client, disclose confidential information, and
  - (b) unless the client directs otherwise, disclose the client's affairs to partners, associates and articled students and, to the extent necessary, to legal assistants, non-legal staff such as secretaries and filing clerks, and to others whose services are utilized by the lawyer.

[51] Allegations 2 and 3 are alleged to have occurred on or about July 5, 2014 and April 16, 2017 and the following rules of the *Code* (which mirror the previous *Handbook* provisions) are applicable:

**3.3-1** A lawyer at all times must hold in strict confidence all information concerning the business and affairs of a client acquired in the course of the professional relationship and must not divulge any such information unless:

- (a) expressly or impliedly authorized by the client;
- (b) required by law or a court to do so;
- (c) required to deliver the information to the Law Society; or
- (d) otherwise permitted by this rule.

**3.3-2** A lawyer must not use or disclose a client's or former client's confidential information to the disadvantage of the client or former client, or for the benefit of the lawyer or a third person without the consent of the client or former client.

[52] Allegation 4 concerns conduct that is dealt with in more than one place in the *Code*. The *Code* itself is not exhaustive of a lawyer's professional conduct obligations. The obligations identified in it are only the minimum standards of conduct expected of lawyers.

[53] Counsel for the Law Society directs the Hearing Panel to rules 2.1-2, 2.1-4, 2.1-5, 2.2-1, 5.1-1, 5.1-2, 5.1-5 and 7.2-1, which, with the associated commentary, guides the following issues:

- (a) a lawyer's duty to the court;
- (b) a lawyer's duty to other lawyers;
- (c) a lawyer's duty to themselves;
- (d) a lawyer's duty to carry on the practice of law honourably and with integrity;
- (e) a lawyer's relationship to the administration of justice;
- (f) a lawyer's duty to not abuse, deceive, mislead, misstate or knowingly assert as fact that which cannot be reasonably supported by the evidence; and
- (g) a lawyer's duty to be courteous and act in good faith.

- [54] The Hearing Panel agrees with the submission by counsel for the Law Society that there are many overarching and fundamental principles that inform a lawyer's obligations to the court, the public and other lawyers. These principles, in their totality, apply when considering the circumstances of the Respondent's alleged misconduct in regards to the fourth allegation of the Citation.
- [55] The Panel adopts the legal framework presented by the Law Society as summarized above (which was uncontroverted by the Respondent) to be the appropriate framework for our analysis.

## **PART VII: LEGAL ANALYSIS**

- [56] Any one of the four allegations in the Citation, if established to constitute a marked departure from that conduct the Law Society expects of lawyers, could constitute professional misconduct, conduct unbecoming the profession or a breach of the *Act* or Rules. Accordingly, we review the allegations below to determine the appropriate categorization in this case.

### **Allegations 1, 2 and 3**

- [57] Counsel for the Law Society submitted that the Respondent's conduct in sending confidential information in each of the three instances individually, and in aggregate, amounts to a marked departure from that conduct the Law Society expects of lawyers.
- [58] We find that the Respondent breached his duties pursuant to Chapter 5 of the *Handbook* (which mirrors the *Code*) and rules 3.3-1 and 3.2-2 of the *Code* (confidentiality obligations) as applicable during the material time of each allegation. The Respondent breached rule 3.3-1 of the *Code* when he sent the emails to PS as he failed to "hold in strict confidence all information concerning the business and affairs of a client acquired in the course of the professional relationship and ... not divulge any such information."
- [59] Given the reference line "Bedtime reading", and multiple instances of sending emails and affidavits or reading client files to PS, the Respondent's actions are not accidental. Rather, the Respondent's actions and possibly, motivations, are deeply concerning and a flagrant violation of the most private and personal confidences shared with him in his capacity as a lawyer for his clients. We note that his clients were vulnerable and going through very difficult personal experiences. The Respondent's actions grossly betrayed the competence and compassion and respect required of him.

[60] Counsel for the Law Society directed the Hearing Panel to three cases concerning the disclosure of a client's confidential information amounting to professional misconduct:

1. *Law Society of BC v. McCormick*, 2015 LSBC 28: the panel found that the disclosure of confidential information amounted to professional misconduct. In *McCormick*, the respondent gave an interview to CBC Television in which she disclosed confidential information that she had obtained in the course of her retainer. While the respondent took legal advice prior to the interview and the advising lawyer was present during the interview, the respondent admitted that portions of the interview transcript contained confidential information which she disclosed without her client's consent. The hearing panel determined that the respondent had committed professional misconduct;
2. *Law Society of BC v. Ooi*, 2010 LSBC 06: the panel found that the respondent improperly disclosed confidential business or affairs of her client when she disclosed a letter related to her client's debt to the bank, which she received in her capacity as her client's lawyer. The respondent later represented a company, which her husband had a direct or indirect interest in a loan transaction to her client. The respondent admitted that she provided her husband with a copy of her client's letter and, as a result, she committed professional misconduct; and
3. *Law Society of BC v. Markovitz*, 2021 LSBC 22: the panel determined that the respondent had committed professional misconduct by disclosing confidential information he received in criminal matter. The respondent received a package of disclosure from provincial crown counsel following a first appearance he made on behalf of the accused. The disclosure was subject to an implied undertaking to the court that the contents would not be disclosed for any purpose other than defending the accused. A month later, the accused retained new counsel. While the respondent was vacationing in Hawaii, he verified information to a reporter, which the reporter later used in a published story. The panel determined that the respondent had committed professional misconduct by disclosing confidential information that he had learned during his retainer and that the misconduct was serious.

[61] In a similar case, *Law Society of BC v. McLeod*, 2014 LSBC 16 (*F&D*) and 2015 LSBC 03 (*DA*), the hearing panel found that the respondent had committed professional misconduct when he disclosed confidential client information in an attempt to be removed as his client's solicitor of record for a misrepresentation action. Before this, the client had replaced the respondent with new counsel in a

personal injury action. The respondent prepared, filed and served a notice of application containing confidential client information, which included details regarding a neurologist's report showing that the client had probably not suffered any brain damage and a statement that the client had told the respondent he was retired but had been offered consulting positions.

[62] The hearing panel in *McLeod DA* quoted the case of *MacDonald Estate v. Martin* [1990] 3 SCR 1235 on the importance of preserving client confidentiality:

[13] Lawyers are an integral and vitally important part of our system of justice. It is they who prepare and put their clients' cases before courts and tribunals. In preparing for a hearing of a contentious matter, a client will often be required to reveal to the lawyer retained highly confidential information. The client's most secret devices and desires, the client's most frightening fears will often, of necessity, be revealed. The client must be secure in the knowledge that the lawyer will neither disclose nor take advantage of these revelations.

Our judicial system could not operate if this were not the case. It cannot function properly if doubt or suspicion exists in the mind of the public that the confidential information disclosed by a client to a lawyer might be revealed.

[emphasis added]

[63] The respondent in *McLeod* argued that his clients suffered no harm as a result of his disclosures. The panel disagreed and aptly stated in *McLeod DA*:

[15] Further, as was stated in *Law Society of Upper Canada v. A Member*, 2005 CanLII 16408 (ONLST), client harm following a breach of client confidentiality is irrelevant to a determination of professional misconduct. When such breaches occur, there is harm to the reputation of lawyers generally and to the public's faith in the solicitor-client relationship, a relationship steeped in trust.

[16] Lawyers hold a unique position among professionals who receive confidential information from clients. Confidential information given to a doctor or to an accountant might be compellable. Confidential information given to a lawyer is only compellable in the rarest of circumstances. One of the hallmarks of solicitor-

client relationships is the sanctity and non-disclosure of confidential information without informed consent.

[emphasis added]

- [64] We agree with the panel in *McLeod DA* that the disclosure of confidential information constitutes professional misconduct, regardless of whether there is specific client harm, because the legal profession as a whole suffers. We further note that neither the *Code* nor the *Handbook* require client harm to occur to determine a finding of professional misconduct.
- [65] With respect to the Respondent's disclosure of confidential client information in each of the allegations, we prefer the evidence of PS that the Respondent disclosed, intentionally for warped or callous purposes, the exceedingly sensitive, personal and confidential information of his clients. While no known harm resulted to the clients in question, we find the Respondent's disclosure of confidential client information to harm the reputation of lawyers and the legal profession as a whole. Such intentional disclosures erode the public confidence in lawyers, and are plainly a marked departure from the standard expected of the profession. We find this professional misconduct to be serious and reprehensible.
- [66] Accordingly, the Panel finds that the evidence establishes professional misconduct in relation to allegations 1, 2 and 3.

#### **Allegation 4**

- [67] With respect to the fourth allegation, the Respondent prepared, swore and relied upon an affidavit in his own divorce, in which he was represented by legal counsel. The Panel will examine two general categories of connected professional obligations as they relate to the Respondent's conduct in the impugned affidavit:
1. A lawyer's duty to act with honour and integrity – misleading or untruthful nature of the contents of the affidavit; and
  2. A lawyer's duty to act with courtesy and civility – spurious and shocking allegations made about opposing counsel.
- [68] In allegation 4, we must consider how the Respondent's behaviour in the conduct of his private life merged into his professional life. As in *Watt* a useful working definition between "professional misconduct" and "conduct unbecoming" is that professional misconduct refers to conduct occurring in the course of a lawyer's

practice while conduct unbecoming refers to conduct in the lawyer's private life. In this case, the Respondent's behaviour straddled both.

[69] Counsel for the Law Society cited the Supreme Court of Canada's decision in *Groia v. Law Society of Upper Canada* 2018 SCC 27, which dealt with an allegation of incivility arising in the course of a trial. In upholding the appeal panel's findings in this regard, the court made the following observations at para. 83:

To be clear, in some circumstances, bad faith allegations or allegations that lack a reasonable basis may, on their own, warrant a finding of professional misconduct. However, a law society disciplinary tribunal must always take into account the full panoply of contextual factors particular to an individual case before making that determination.

[70] The court further observes the difference between civility and resolute advocacy, where a law society should not sanction lawyers for sincerely held but mistaken legal positions or questionable legal strategies. We adopt the Supreme Court's comment at para. 84 of *Groia* that "... [a]llegations that impugn opposing counsel's integrity must not be made lightly. A reputation for integrity is a lawyer's most important professional asset."

[71] The Supreme Court cautioned at para. 93 that allegations of professional misconduct, or other challenges to opposing counsel's integrity, must be "made in good faith" and have a "reasonable basis".

[72] We accept the guiding cases presented by counsel for the Law Society to determine whether the impugned conduct amounts to professional misconduct, notably as follows:

1. *Law Society of BC v. Harding*, 2003 LSBC 20: the respondent stated in public at a restaurant in the presence of other lawyers that another lawyer had admitted enough during an examination for discovery to be disbarred;
2. *Law Society of BC v. Laarakker*, 2011 LSBC 29: the respondent posted rude comments on an internet blog about an Ontario lawyer and sent a fax to that lawyer containing further similar comments. The panel found that the respondent's statement that he believed his position was correct did not relieve him of culpability. In this case, the panel found the conduct to be a "mixture" of conduct in the respondent's private life and in the course of the lawyer's practice, which amounted to professional misconduct;

3. *Law Society of Upper Canada v. Dixon*, 1999 LSDD No. 42: the respondent made outrageous comments about a prosecutor having “dropped the ball” as to why charges were stayed even though there was strong evidence against the accused. The respondent made this statement despite having no first-hand knowledge of the case, instead relying on second-hand unverified information. The respondent also told a colleague that the real reason the charges were stayed was that another crown counsel had a relationship with the accused that begun years earlier when they were involved in using cocaine together; and
4. *Law Society of BC v. Singh*, 2020 LSBC 01, 2021 LSBC 12: the respondent sent multiple communications disparaging opposing counsel, members of the public and the court that the hearing panel described as “scandalous in the extreme”. The panel determined he had committed professional misconduct.

[73] Based on the case law submitted by counsel for the Law Society, professional misconduct can be made out where the impugned conduct straddles a lawyer’s private and professional life, where unfounded allegations are made that impugn another lawyer’s integrity.

[74] Counsel for the Law Society provided the following cases of misleading statements being placed by lawyers before a court:

1. *Law Society of BC v. Hart*, 2007 LSBC 50: the respondent permitted his client to swear an affidavit that the client advised contained inaccurate statements, and then relied on it in a court application without advising the court of the inaccuracies, despite having told his client he would do so. The respondent admitted he had committed professional misconduct and the panel agreed;
2. *Law Society of BC v. Penty*, 2015 LSBC 51: the respondent made misrepresentations to the court, both in oral testimony and by written submissions, regarding his legal assistant and his legal assistant’s time on files. The respondent admitted he had committed professional misconduct and the panel agreed; and
3. *Law Society of BC v. Jackson*, 2015 LSBC 57: the respondent swore two affidavits in support of a without notice application, which contained misleading statements and provided instructions to a junior associate that were contrary to her obligation of candour to the court and her duty to fully and frankly disclose all material facts.

[75] We accept this case law presented by counsel for the Law Society and agree with the panel’s finding in *Jackson* at para. 117:

A lawyer must be candid and forthright in all dealings with the court. This is a fundamental ethical duty. This duty is enforced by the courts and the Law Society. The due administration of justice depends upon lawyers, at all times, displaying a high degree of trustworthiness and integrity. Any failure to comply with this duty is a serious transgression.

[76] When we apply these standards to the conduct of the Respondent, we are deeply concerned and find professional misconduct in the Respondent's actions respecting the affidavit. When the Respondent impugned the integrity of opposing counsel, without any factual or good faith basis in the affidavit, we find that to be professional misconduct. When the Respondent relied upon his affidavit in open court to challenge the integrity of counsel for PS, we find professional misconduct. When the Respondent used his firm's resources and acted in his professional capacity as a lawyer to prepare, swear and file the affidavit (despite having legal counsel), we find his conduct to be abusive of the legal system and his position as lawyer and we conclude, without reservation, that it constitutes professional misconduct.

[77] In summary, the Respondent's affidavit was dishonest and lacked integrity, courtesy and civility. His conduct falls markedly short of the standard expected of the profession. We find that the Respondent's conduct in relation to allegation 4 constitutes professional misconduct.

#### **PART VIII: CONCLUSION AND ORDERS**

[78] For the reasons set out in this decision, the Panel finds that the conduct underlying each of allegations 1, 2, 3 and 4 of the Citation, as deemed admitted to by the Respondent, constitute a marked departure from that standard the Law Society expects of lawyers. Accordingly, we find that the Respondent's conduct set out in relation to all four allegations constitutes professional misconduct.