

2013 : No. 4

Aaron Murray Lessing

Surrey, BC

Called to the bar: May 17, 1991

Discipline hearing : March 29, July 30 and 31, 2012

Panel : David Renwick, QC, Chair, Graeme Roberts and Donald Silversides, QC

Report issued : May 28 (2012 LSBC 19) and October 1, 2012 (2012 LSBC?29)

Counsel : Alison Kirby for the Law Society and Henry Wood, QC for -Aaron Murray Lessing

Facts

Failing to notify the Law Society of monetary judgments

Between 2002 and 2011, eight monetary judgments were made against Aaron Murray Lessing.

One of the judgments required him to make monthly instalments to the co-owner of his condominium. When Lessing did not make any payments after the first instalment, the co-owner filed a complaint with the Law Society.

During the Law Society's investigation, it was discovered that five other judgments had also remained unsatisfied for more than seven days and that Lessing had not notified the Society of the existence of these judgments.

In August 2009, the Law Society wrote to Lessing informing him of his obligations to notify the executive director, pursuant to Rule 3-44. Lessing responded that he was not aware of the rule and that he would comply in future.

Two more judgments were made against Lessing in December 2010 and February 2011. In February and March 2011, counsel for the client involved in litigation with Lessing advised the Law Society of the two judgments and that the amounts that Lessing had been ordered to pay remained unpaid.

The Law Society wrote to Lessing asking whether a judgment had been satisfied and, if not, whether he had notified the executive director. Lessing replied that he did not report these orders because they were made in his absence and he intended to apply to set both orders aside, including the order for costs.

Lessing satisfied these two judgments in July 2011.

Lessing did not satisfy any of the eight monetary judgments within seven days after the date of their entry. He failed to notify the Law Society in writing of the circumstances of the judgments against him and to provide a written proposal for satisfying the judgments, as required by Law Society rules.

Failing to comply with three court orders

Lessing represented himself in matrimonial proceedings in the Supreme Court of BC that involved claims for spousal support, child support and a division of assets.

During the proceedings, Lessing received an order to provide opposing counsel with incorporation documents by August 29, 2008. Lessing did not provide the incorporation documents, despite receiving several letters from opposing counsel.

On April 14, 2009, there was a second order that Lessing provide a list of documents and information to opposing council before May 7, 2009.

A third order was made when Lessing did not provide the list of documents or any of the documents specified in the second order.

On June 4, 2009, at a court hearing that was not attended by Lessing or his counsel, Lessing was found in contempt of court for failing to comply with the three orders. A fourth order was made at this time.

On June 9, 2009, Lessing produced the incorporation documents required in the first order. He subsequently produced the documents that had been ordered to provide in the second and third orders.

Lessing consulted a psychologist for counselling in early 2012. The psychologist advised the panel that, in his diagnosis, Lessing went through a period of clinical depression and showed symptoms of post-traumatic stress disorder, likely triggered by his marital issue. The psychologist -believed that the chances of Lessing repeating this type of avoidant -behaviour or getting into a similar state of depression and traumatized paralysis was low.

Determination

The panel determined that, by failing to notify the Law Society of first six monetary judgments, Lessing breached the Law Society rules and that, by failing to notify the Law Society of the last two judgments, he committed professional misconduct. In the panel's view, Lessing was aware of his obligations under Rule 3-44 when the last two of the unsatisfied monetary judgments were entered, so they warranted more severe disciplinary action.

The panel determined that Lessing committed conduct unbecoming a lawyer by failing to comply with three court orders. Failing to comply with court orders and being found in contempt of court by a judge is very serious conduct that undermines the rule of law; however, the panel considered mitigating circumstances:

1. The panel found that Lessing made a serious mistake in representing himself in the matrimonial litigation; simultaneously acting as litigant and his own counsel undoubtedly clouded his judgment.
2. The panel agreed that, except for the incorporation documents that should have been matters of public record, Lessing's delay in producing the documents required by the court orders was not substantial.
3. The court permitted Lessing to cure his contempt by producing within 14 days the documents required in the earlier orders, and he did so.
4. The panel accepted Lessing's testimony regarding his mental state and his inability to deal with the matrimonial proceedings in which he acted as his own counsel, and accepted the psychologist's conclusion that Lessing was suffering from clinical depression in 2008 and 2009.

The panel also considered Lessing's professional conduct record, which included four conduct reviews between 1999 and 2011. None of these conduct reviews involved serious actions, and the conduct was not similar to the conduct in this case.

Disciplinary Action

The panel ordered that Lessing pay:

1. \$2,000 fine (first citation);
2. \$12,000 fine (second citation); and
3. \$8,000 in costs

The Discipline Committee has referred the decision on disciplinary action to the Benchers for review on the record, under section 47 of the *Legal Profession Act*.