

2015 LSBC 09
Decision issued: March 20, 2015
Citation issued: October 21, 2014

THE LAW SOCIETY OF BRITISH COLUMBIA

In the matter of the *Legal Profession Act*, SBC 1998, c. 9

and a hearing concerning

KEVIN ALEXANDER MCLEAN

RESPONDENT

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

Hearing dates: December 17, 2014 and
January 13, 2015

Panel: Miriam Kresivo, QC, Chair
William M. Everett, QC, Lawyer
Dan Goodleaf, Public representative

Discipline Counsel: Alison Kirby
No-one appearing on behalf of the Respondent

BACKGROUND

[1] The citation issued October 21, 2014 and amended November 7, 2014 alleges against the Respondent that:

1. You failed to provide a full and substantive response promptly or at all to communications from the Law Society concerning its investigation of Law Society complaint file number CO20140286, arising from a complaint made by BJ, contrary to Rule 3-5(6) and (10) of the Law Society Rules and Rule 7.1-1 of the *Code of Professional Conduct for British Columbia*. In particular, you failed to respond substantively to one or more of letters dated June 24,

2014, July 16, 2014, July 29, 2014, August 8, 2014 and September 3, 2014 by doing one or both of the following:

- (a) failing to provide your complete client file; and
 - (b) failing to answer all the requests for information set out in one or more of the letters.
2. You failed to provide a full and substantive response promptly or at all to communications from the Law Society concerning its investigation of Law Society complaint file number CO20130618, arising from a complaint made by the Practice Standards Committee, contrary to Rule 3-5(6) of the Law Society Rules and Rule 7.1-1 of the *Code of Professional Conduct for British Columbia*. In particular, you failed to respond substantively to requests for information set out in one or more of the letters dated July 8, 2014, July 29, 2014, August 6, 2014, August 18, 2014, August 27, 2014 and September 11, 2014.
3. You failed to provide a full and substantive response promptly or at all to communications from the Law Society concerning its investigation of Law Society complaint file number CO20130626, arising from a complaint made by SO, contrary to Rule 3-5(6) and (6.1) of the Law Society Rules and Rule 7.1-1 of the *Code of Professional Misconduct for British Columbia*. In particular, you failed to respond substantively to one or more of letters dated July 29, 2014, August 6, 2014, August 18, 2014, August 27, 2014 and September 10, 2014 by doing one or both of the following:
- (a) failing to answer all the requests for information set out in one or more of the letters;
 - (b) failing to attend a scheduled interview.
4. You failed to comply with a Rule 3-7.1 Order made by three Benchers on January 29, 2014 as subsequently varied on August 25, 2014, contrary to Rule 7.1-1(e) of the *Code of Professional Conduct for British Columbia*, by failing to do one or more of the following:
- (a) comply with the terms of the practice supervision agreement relating to:
 - (i) daily and weekly meetings with your practice supervisor; and
 - (ii) ensuring that all court documents are reviewed prior to being filed with the court;

- (b) immediately cease practising law until such time as you had entered into and agreed to comply with a new employment or practice supervision agreement approved by the Practice Standards Committee;
 - (c) operate your trust account with a second signatory who had been approved by the Executive Director of the Law Society and in particular, in failing to ensure that one trust cheque dated June 4, 2014, two trust cheques dated July 9, 2014 and two trust cheques dated July 10, 2014 were signed by an approved second signatory;
 - (d) provide the information and documentation requested about trust transactions in one or more letters dated July 17, 2014; July 30, 2014; August 11, 2014; August 20, 2014; September 10, 2014 and September 14, 2014 from Felicia Ciolfitto, Manager of Trust Regulation.
5. You failed to comply with an Order made by a hearing panel on July 29, 2014, contrary to Rule 7.1-1(e) of the *Code of Professional Conduct for British Columbia*, by failing to deliver to the Law Society on or before August 22, 2014 supporting documentation with respect to your non-attendance at a scheduled hearing on July 29, 2014 including documentation with respect to your medical condition and admission to Lions Gate Hospital on July 28, 2014.
6. You failed to successfully complete the Small Firm Course until in or about April 2014 contrary to one or more of the following:
- (a) Rule 3-18.2 of the Law Society Rules;
 - (b) your undertaking dated September 18, 2013 to the Law Society; and
 - (c) an Order made by three Benchers of the Law Society on January 29, 2014.
7. You failed to comply with an Order made by a hearing panel on September 29, 2014, contrary to Rule 7.1-1(e) of the *Code of Professional Conduct for British Columbia*, by failing to deliver to the Law Society on or before October 24, 2014 all medical clinical records of any medical practitioners seen by you in relation to your accident injuries of July 28, 2014 and the clinical records of Lions Gate Hospital/Vancouver Coastal Health from July 28, 2014 to date pertaining to your accident injuries of July 28, 2014.

The conduct referred to in paragraphs 1 to 7 above constitute professional misconduct pursuant to s. 38(4) of the *Legal Profession Act*.

SERVICE ON THE RESPONDENT

- [2] The Law Society initially experienced some difficulty in serving the amended citation and Notice of Hearing on the Respondent.
- [3] Upon application of the Law Society pursuant to Rule 10-1(1.2) of the Law Society Rules (“Rules”), the President of the Law Society ordered on November 12, 2014 (“President’s Order”) that the Law Society could serve any notice or other document on the Respondent by:
- (a) leaving a notice or document addressed to the Respondent at the place of business of Gary Lo at [address in Vancouver], or by sending it to Mr. Lo at [email address]; and
 - (b) sending an email to Mr. McLean at [email address] notifying him that the notice or document had been delivered to Mr. Lo.
- [4] The affidavit of Katherine Shaben sworn December 17, 2014 confirms that the Respondent was served on November 13, 2014 with a copy of the amended citation, Notice of Hearing, affidavit evidence and related documents in accordance with the provisions of the President’s Order.

PROCEEDING IN THE ABSENCE OF THE RESPONDENT

- [5] The Respondent was not in attendance on the original hearing date, December 17, 2014. Nor was he in attendance at the continuation of the hearing on January 13, 2015. No-one appeared on the Respondent’s behalf on either of the hearing dates, nor were any materials submitted in response to the Law Society’s allegations.
- [6] Section 42(2) of the *Legal Profession 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 notice of the hearing.
- [7] As stated above, the Panel is satisfied that the Respondent was properly served with notice of the hearing and the amended citation.
- [8] The amended citation states, in part, that:

If you fail to appear at the hearing, the Hearing Panel may proceed with the hearing in your absence and make any order that it could have made had you been present.

- [9] At the commencement of the hearing on December 17, 2014, the Respondent did not appear. Counsel for the Law Society presented the Panel with some additional material (which had been provided to the Respondent prior to the hearing). The Panel adjourned for approximately 30 minutes to discuss the material. When the Panel reconvened, the Respondent had still not appeared.
- [10] As a result, the Panel decided to proceed with the hearing on December 17, 2014 in the absence of the Respondent.
- [11] The hearing did not complete on December 17, 2014 and was adjourned, to be continued on January 13, 2015.
- [12] Prior to continuation of the hearing on January 13, 2015, the Law Society confirmed by affidavit of Katherine Shaben, sworn January 12, 2015, that it had served the Respondent with notice of the continuation of the hearing in accordance with the provisions of the President's Order. The notice stated in part:
- I remind you that should an adverse determination be made against you at the conclusion of the hearing, the Law Society will seek to immediately proceed to the disciplinary action phase of the hearing.
- [13] At the continuation of the hearing on January 13, 2015, the Respondent did not appear.
- [14] As a result, the Panel decided to proceed with and complete the hearing on January 13, 2015 in the absence of the Respondent.
- [15] At the beginning of the hearing on January 13, 2015, the Law Society made an application to the Panel seeking two further amendments to the amended citation. First, by deleting subparagraph (ii) of allegation 4(a) and second, by changing the date of "September 14, 2014" in allegation 4(d) to read "September 19, 2014".
- [16] Notice of the first amendment was served on the Respondent in accordance with the President's Order as confirmed by the affidavit of Katherine Shaben sworn January 12, 2015 and was granted by the Panel. There did not appear to be any evidence of notice of the second amendment being served on the Respondent. The Panel, nevertheless, granted the second amendment as it appeared to be merely a minor typing error regarding the date of a letter.

SUMMARY HEARING

[17] This hearing is brought pursuant to the summary hearing process set out in Rule 4-24.1 of the Rules. Rule 4-24.1 states:

Summary Hearing

4-24.1

- (1) This Rule may be applied in respect of the hearing of a citation comprising only allegations that the respondent has done one or more of the following:
 - (a) breached a Rule;
 - (b) breached an undertaking given to the Society;
 - (c) failed to respond to communication from the Society;
 - (d) breached an order made under the Act or these Rules.
- (3) Unless the panel rules otherwise, the respondent and discipline counsel may adduce evidence by
 - (a) affidavit,
 - (b) an agreed statement of facts, or
 - (c) an admission made or deemed to be made under Rule 4-20.1.
- (4) Despite Rules 4-34 and 4-35, the panel may consider facts, determination, disciplinary action and costs and issue a decision respecting all aspects of the proceeding.

[18] The amended citation contains allegations of failure to respond to communications from the Law Society, breaches of Orders made under the Act or Rules and breach of an undertaking given to the Law Society. As a result, the Panel decided to proceed by way of a summary hearing based on affidavit evidence.

ONUS

[19] The onus of proof in this summary hearing is on the Law Society and the standard of proof is the balance of probabilities. (*FH v. McDougall*, 2008 SCC 53, and *Law Society of BC v. Schauble*, 2009 LSBC 11.)

ALLEGATIONS 1 TO 3

[20] Allegations 1 to 3 each allege that the Respondent failed to respond to the Law Society, contrary to Rule 3-5(6) and rule 7.1-1 of the *Code of Professional Conduct for British Columbia* (the “BC Code”).

Allegation 1

Facts

[21] Mark Bussanich, a staff lawyer in the Law Society’s Investigation, Monitoring and Enforcement Department (“IME Department”), was assigned to investigate a complaint by BJ against the Respondent (the “BJ Complaint”). The BJ Complaint is still under investigation and the substance of the complaint does not form a part of allegation 1, which relates only to the Respondent’s failure to respond to the Law Society.

[22] Mr. Bussanich sent letters to the Respondent in connection with the BJ Complaint on June 24, 2014, July 16, 2014, July 29, 2014, August 8, 2014 and September 3, 2014 asking the Respondent to provide his client’s complete file and other information relating to the BJ Complaint.

[23] The Respondent failed to provide any substantive response to the foregoing letters.

[24] On July 28, 2014 the Respondent did send an email to the Law Society in connection with a hearing on another citation that was to begin on July 29, 2014 (“July 29 Citation”) stating that he had been hospitalized due to an accident and would be unable to attend the hearing. However, the Respondent failed to provide any medical evidence to substantiate the accident, injury or hospitalization, despite being ordered to do so by the panel hearing the July 29 Citation.

[25] There was also evidence that, since at least the end of August 2014, the Respondent had sent substantive emails to the Law Society and to opposing counsel on his client matters.

- [26] The Panel draws the inference from the foregoing evidence that the Respondent was at least, as of the end of August 2014, able to respond to the Law Society's letters.
- [27] The Panel finds that the evidence has established on the balance of probabilities that the Respondent failed to provide full and substantive responses, promptly or at all, to the Law Society's letters in relation to the BJ Complaint as particularized in allegation 1.

Allegation 2

Facts

- [28] Erin Berger, a staff lawyer in the Law Society's IME Department, was assigned, on or about January 2014, to investigate a complaint against the Respondent arising from a referral made by the Practice Standards Committee (the "Practice Standards Complaint").
- [29] Ms. Berger sent letters to the Respondent on July 8, 2014, July 29, 2014, August 6, 2014, August 18, 2014, August 27, 2014 and September 11, 2014 requiring a response to questions raised in respect of the Practice Standards Complaint. The Respondent has failed to provide a substantive response to any questions or requests for information in Ms. Berger's letters.
- [30] The Panel finds that the evidence has established on the balance of probabilities that the Respondent failed to provide full and substantive responses, promptly or at all, to the Law Society's letters in relation to the Practice Standards Complaint as particularized in allegation 2.

Allegation 3

Facts

- [31] Ms. Berger of the Law Society's IME Department was assigned, on or about January 2014, to investigate another complaint against the Respondent by SO (the "SO Complaint"). The SO Complaint is still under investigation and does not form part of allegation 3, which relates only to the Respondent's failure to respond to the Law Society.
- [32] Ms. Berger sent letters to the Respondent on July 29, 2014, August 6, 2014, August 18, 2014, August 27, 2014 and September 10, 2014, some of which requested him

to provide dates for an interview, requested information regarding his medical condition, or simply demanded that he respond to the Law Society's correspondence in relation to the SO Complaint.

- [33] The Respondent has failed to provide a substantive response to any of the requests for information in the Law Society's letters in relation to the SO Complaint.
- [34] The Panel finds that the evidence has *established on the balance of probabilities* that the Respondent failed to provide full and substantive responses, promptly or at all, to the Law Society's letters in relation to the SO Complaint as particularized in allegation 3.

ALLEGATION 4

- [35] Allegation 4 of the amended citation alleges that the Respondent failed to comply with a Benchers Order made under Rule 3-7.1 as particularized in allegations 4(a), 4(b), 4(c) and 4(d) respectively.
- [36] The Order in question was made by three Benchers on January 29, 2014, pursuant to Rule 3-7.1, placing interim conditions and limitations on the Respondent's practice ("Practice Order").
- [37] Paragraph 1(a) of the Practice Order required the Respondent to enter into and comply with a Practice Supervision Agreement ("PSA") with a lawyer satisfactory to the Practice Standards Department.
- [38] The Respondent entered into a PSA dated February 3, 2014 with Robert J. King as Practice Supervisor.

Allegation 4(a)

Facts

- [39] Allegation 4(a)(i) alleges that the Respondent failed to comply with the Practice Order by failing to comply with the terms of the PSA relating to *daily* and *weekly* meetings with his Practice Supervisor.
- [40] Paragraph 19 of the PSA required regular communications between the Respondent and Mr. King, as follows:

19. The Lawyer and the Practice Supervisor will communicate on a regular basis in person, by telephone and/or email, daily for the

purposes of fulfilling this Agreement. These communications are in addition to the File Progress Reports and the Compliance Reports.

- [41] In February 2014, John Nalleweg, a staff lawyer in the Practice Standards Department, was assigned the responsibility of liaising with the Respondent and Mr. King with respect to the PSA.
- [42] Mr. Nalleweg was informed by Kensi Gounden, Manager of the Law Society's Practice Standards Department, that on July 23, 2014, Mr. King had contacted that Department and advised that he had not received any substantive communications from the Respondent in the preceding three weeks.
- [43] Mr. Nalleweg spoke with Mr. King on July 23, 2014 and was informed by Mr. King as follows:
- (a) that he had become increasingly frustrated with communication with the Respondent and that sometime in the spring the Respondent had decided he would no longer take calls on his cell phone from Mr. King. Thereafter, Mr. King was forced to use email for all communications with the Respondent, except when they met face to face;
 - (b) that the Respondent had told Mr. King by email dated July 3, 2014 that he had come down with an illness and would not be coming into the office for some time; and
 - (c) that by mid-July Mr. King was growing increasingly concerned that the Respondent was not properly minding his practice and that he sent a series of emails seeking the Respondent's assurance that the practice was being managed in the Respondent's absence, to which he received no response.
- [44] Mr. King provided Mr. Nalleweg with copies of all his July 2014 communications with the Respondent.
- [45] On July 23, 2014, Mr. King emailed the Respondent expressing his concern that the Respondent had not confirmed that he was attending to his files and stated in part:
- Further to my previous emails, as you have not confirmed that you are attending to your files, and as your mail and phone messages continue to accumulate, I was left with no choice but to speak with Mr. Nalleweg this afternoon, as I told you I would do.

You must confirm to me by return email, by no later than 12:00 p.m. tomorrow (that is my deadline), that you are attending to your files and your practice, even if you are doing so from home. Mr. Nalleweg advised me that, if I do not receive your confirmation that you are attending to your files and your practice, the Law Society will have to consider appointing a custodian over your practice.

And, even if you are attending to your practice from home, we still have obligations under the PSA which require us to communicate about your files and your practice, including meetings. If we are unable to do so, I will be left with no choice but to give notice that I must terminate the PSA.

[46] On July 25, 2014, Mr. King sent a letter to the Respondent that stated in part:

Further to my numerous emails to you since Tuesday, July 15th, requesting you to confirm that you have been attending to your files, your mail, and your telephone messages, I have received no reply from you and your mail and messages continue to accumulate in your office.

...

As it appears that you are now practising without communicating with me, and as you are not attending at the office, or attending to your mail and phone messages, it has become impossible for me to supervise your practice and the matter is now out of my hands.

[47] By letter dated July 28, 2014 to the Respondent (copy to the Law Society) Mr. King gave notice of his resignation as Practice Supervisor, pursuant to paragraph 2.3 of the PSA, effective August 31, 2014.

[48] Discipline counsel asked the Panel to draw the inference, based on its review of the foregoing evidence, that, in the period between July 1, 2014 and Mr. King's notice of resignation on July 28, 2014, the Respondent failed, pursuant to paragraph 19 of the PSA, to "communicate on a regular basis, in person, by telephone and/or email, daily for the purpose of fulfilling this [PSA] Agreement."

[49] Mr. King certainly made every effort during that time period, through emails and telephone messages, to communicate with the Respondent regarding the status of the Respondent's files and his practice. Mr. King did receive an email from the Respondent on or about July 2, 2014 and a copy of a doctor's note advising that the Respondent would be unable to work due to illness until July 7, 2014. While there

were a few additional emails from the Respondent to Mr. King during that period, none were substantive responses to Mr. King's requests for communication regarding the status of his files and his practice. This led directly to Mr. King's decision to resign as Practice Supervisor effective August 31, 2014.

- [50] While there appears to be sufficient evidence to establish, on a balance of probabilities, that the Respondent failed to *communicate* on a daily basis as required by paragraph 19 of the PSA (in person, by telephone and/or by email), the amended citation alleges that the Respondent failed to comply with "the terms of the PSA relating to *daily* meetings."
- [51] Paragraph 19 of the PSA does not require "daily meetings." Rather, it requires a broad form of daily communication. The Law Society did not specifically allege that the Respondent failed to provide such communication in its amended citation. For that reason, the portion of allegation 4(a)(i) dealing with "daily meetings" is dismissed.
- [52] Allegation 4(a)(i) of the amended citation also alleges that the Respondent failed to comply with the terms of paragraph 20 of the PSA relating to weekly meetings with Mr. King, his Practice Supervisor.
- [53] Paragraph 20 of the PSA required regular in-person meetings between the Respondent and Mr. King as follows:
20. In addition to the communications referred to in paragraph 19 above, the Practice Supervisor will meet with the Lawyer in the Lawyer's offices at weekly [sic] for at least two hours, to review one or more files in detail, to ensure that the file progress reports are accurate and to ensure that there are no problems, such as communications issues, that are not reflected in the file progress reports. If the Practice Supervisor deems it appropriate, the in-person meetings shall be more frequent and/or longer.
- [54] Mr. Nalleweg deposed that he received a first quarterly report letter on or about April 30, 2014 from Mr. King regarding the Respondent's general compliance under the provisions of the PSA. Mr. King attached to that report a record of his meetings with the Respondent for the period from February 4, 2014 to April 29, 2014. Mr. Nalleweg also received a second quarterly report letter from Mr. King on or about July 31, 2014, to which Mr. King attached a record of his meetings with the Respondent for the period from May 5, 2015 to June 26, 2014.

- [55] At the hearing on December 17, 2014, counsel for the Law Society advised the Panel in her oral submissions and in her written submissions at para. 71 that, based on an analysis of the foregoing evidence of Mr. Nalleweg, the Respondent failed (as required by paragraph 20 of the PSA) to meet in person with Mr. King on a weekly basis, for at least two hours, for 18 of the weeks between January 29, 2014 and August 31, 2014.
- [56] At the continuation of the hearing on January 13, 2015, counsel for the Law Society advised the Panel that, based on a further analysis of the foregoing evidence of Mr. Nalleweg, the Respondent failed (as required by paragraph 20 of the PSA) to meet in person with Mr. King on a weekly basis, for at least two hours, for 19 of the 30 weeks that the PSA was in effect (not including the week Mr. King was away).
- [57] Based on the evidence of Mr. Nalleweg and the representations of counsel for the Law Society, we find that the evidence has established, on a balance of probabilities, that the Respondent failed on no less than 18 weeks during the existence of the PSA to meet in person with Mr. King, his Practice Supervisor, on a weekly basis for at least two hours as required by paragraph 1(a) of the Practice Order and paragraph 20 of the PSA.

Allegation 4(b)

Facts

- [58] Allegation 4(b) alleges that the Respondent failed to comply with the Practice Order by immediately ceasing to practise law until such time as he had entered into and agreed to comply with a new employment or practice supervision agreement approved by the Practice Standards Committee.
- [59] Paragraph 1(b) of the Practice Order provides as follows:

1. It is hereby ordered that Kevin Alexander McLean (the “Member”) is permitted to practise only with the following conditions and limitations on his practice:

...

- (b) if for any reason his employment supervision or practice supervision agreement is terminated, to immediately notify the Practice Standards Department and immediately cease practising law until such time as he has entered into and

agreed to comply with a new employment supervision or practice supervision agreement approved by the Practice Standards Committee;

- [60] As stated above, on July 28, 2014, Mr. King gave the Respondent and the Law Society notice of his resignation as Practice Supervisor under the PSA, effective August 31, 2014.
- [61] The Respondent has not entered into a new practice supervision agreement with a lawyer approved by the Practice Standards Committee.
- [62] On August 25, 2014, the Practice Order was varied by three Benchers to add additional restrictions to the Respondent's practice.
- [63] Through the Law Society Hearing Administrator, the three Benchers sent an email message to Law Society Discipline Counsel and the Respondent outlining the variations to the Practice Order. The email stated in part:

The Benchers have asked that it be communicated to Mr. McLean that these are additional restrictions to the restrictions contained in the order dated January 29, 2014. The Benchers want Mr. McLean to be reminded that they are aware that Mr. King has resigned as the practice supervisor as of August 31, 2014, and they remind Mr. McLean that he cannot practise law without a practice supervisor approved by the Law Society. The Benchers have directed that, if Mr. McLean chooses not to practise law, he must transfer his clients to other lawyers by August 31, 2014 or have a locum in place to assist his former clients. The Benchers advise the Law Society that should there be no approved supervisor or locum in place by August 31, 2014, they should consider other steps.

- [64] On September 2, 2014, Discipline Counsel for the Law Society sent an email to the Respondent attaching a letter to the Respondent that stated in part:

I write in response to your email dated August 29, 2014 to Ms. Rai.

1. Cannot Practise Law without a Practice Supervisor

You mention in your email that you are “just returning to practice.” I remind you that pursuant to subparagraphs 1(a) and (b) of the Order made by the Benchers dated January 29, 2014 as amended on August 25, 2014 (a draft copy of which is enclosed), you must **immediately cease to practise law** if your practice supervision agreement is terminated until such time as you have entered into a practice supervision agreement with a

practice supervisor who has been approved by the Practice Standards Department. **Accordingly, you are currently not entitled to practise law.** The practice of law is defined in section 1 of the *Legal Profession Act*. Please continue to keep Mr. Nalleweg informed of any proposed practice supervisor.

[65] As a result of the termination of the PSA, the Custodianship Department of the Law Society made enquiries to determine whether the Respondent's clients were being properly serviced. Trevor Kaatz, staff lawyer in the Custodianship Department, obtained the following email correspondence from DE, a lawyer acting for a defendant in a personal injury matter, which indicates that the Respondent was acting for the plaintiff:

- (a) an email dated September 3, 2014 from the Respondent to DE presenting a settlement offer on behalf of the plaintiff ;
- (b) an email exchange dated September 8, 2014 between DE and the Respondent, in which DE accepted the Respondent's settlement offer and the Respondent subsequently revoked the offer; and,
- (c) an email dated September 10, 2014 from the Respondent to DE in which the Respondent continued to discuss the status of the offer and stated that he was seeking instructions.

[66] DW, a Vancouver lawyer, informed Mr. Bussanich of the Law Society that the Respondent represented ZP, a former director, in an action commenced by DW's client, SL Corporation. DW provided the Law Society with the following emails that indicate that the Respondent was practising law:

- (a) an email dated September 5, 2014 from the Respondent to DW and others in which the Respondent discussed service of documents and setting dates for a hearing, and attaching an unfiled Notice to Admit and a Notice of Civil Claim filed in the court on September 3, 2014. The Notice to Admit appears to be signed by the Respondent. The Notice of Civil Claim shows the Plaintiff's address for service as McLean, Lo and Company, but appears to be signed by someone other than the Respondent.
- (b) an email dated September 10, 2014 from the Respondent to DW and others advising that there will be no further settlement meetings of any kind and requesting available dates.

[67] JV, a Vancouver lawyer, informed Mr. Bussanich of the Law Society that he represented certain plaintiffs in a BC Supreme Court civil action and that the Respondent acted for certain defendants in the action. The substantive litigation was concluded at trial. The Respondent filed an appeal and continued to raise corollary issues in the BC Supreme Court. JV contacted the Law Society and provided the Law Society with copies of the following documents that indicate that the Respondent was practising law:

- (a) an email dated September 5, 2014 from the Respondent to JV relating to his filing a factum and transcript in respect of the appeal and attaching a Consent Order for JV's signature;
- (b) an email dated September 8, 2014 from the Respondent to the BC Supreme Court Trial Scheduler, copied to JV, requesting a response to an earlier letter so that the Respondent would know whether he had to file application materials and/or submissions;
- (c) a Notice of Application filed in the BC Supreme Court on September 9, 2014, signed by the Respondent on August 31, 2014;
- (d) an affidavit of FY, sworn August 31, 2014 and filed in the action on September 9, 2014, in which the Respondent was the commissioner for taking FY's affidavit;
- (e) the affidavit of AD, sworn and filed in the action on September 11, 2014. In the affidavit, AD deposed that she was the Respondent's administrative assistant and further deposed that the Respondent's clients were ready to proceed with the appeal;
- (f) a Notice of Address for Service filed on behalf of the defendants in the action on September 15, 2014, stating that the defendants are represented by the Respondent;
- (g) an email exchange dated September 16, 2014 between the Respondent and JV concerning a date for a Chambers application to be heard on September 19, 2014 regarding the appeal of the action. JV subsequently informed Mr. Bussanich that no one appeared for the appellants at the application.
- (h) an unfiled affidavit sworn by the Respondent on September 23, 2014 in relation to the appeal, in which the Respondent deposed that he was "counsel of record."

[68] The Panel finds that the evidence has established, on the balance of probabilities, that the Respondent failed, following the termination of the PSA, to immediately cease practising law until such time as he had entered into and agreed to comply with a new employment agreement or practice supervision agreement approved by the Practice Standards Committee, contrary to paragraph 1(b) of the Practice Order.

Allegation 4(c)

Facts

[69] Allegation 4(c) alleges that the Respondent failed to comply with the Practice Order by operating his trust account without a second signatory who had been approved by the Executive Director of the Law Society.

[70] The Practice Order required the Respondent to have a second signatory on his trust account. The particular provisions of the Practice Order provide:

1. It is hereby ordered that Kevin Alexander McLean (the “Member”) is permitted to practise only with the following conditions and limitations on his practice:

...

- (d) to only operate his trust account(s) with a second signatory who is a practising lawyer, not an insolvent lawyer, and who is approved by the Executive Director of the Law Society;
- (e) to give immediate written notification to every financial institution in which he has a trust account that every withdrawal of funds from trust must be authorized by both the Member and his second signatory;
- (f) to provide to Felicia Ciolfitto, manager of Trust Regulation at the Law Society, a copy of the bank resolution from his financial institution(s) adding his second signatory to his trust account(s);
- (g) to provide Felicia Ciolfitto, by 5:00 pm on the 31st day after the effective date of the reconciliation made in accordance with Rule 3-65 of the Law Society Rules, a

copy of his monthly trust reconciliation report for each trust account and copies of his trust bank statements, cancelled cheques (front and back) or cheque images (front and back), and trust book of entry, to support each reconciliation.

- [71] Felicia Ciolfitto, employed by the Law Society as Manager, Trust Regulation, was the Executive Director's designate for the purpose of approving a second signatory for the Respondent's trust account. Ms. Ciolfitto approved Robert P. Pirooz, QC as the second signatory on the Respondent's trust account.
- [72] Paragraph 1(g) of the Practice Order required the Respondent to provide Ms. Ciolfitto with copies of his trust reconciliation report and copies of his trust book statements and cheque images (front and back) to support each reconciliation.
- [73] On July 17, 2014, Ms. Ciolfitto sent a letter to the Respondent by courier and email requesting, among other things, information about the identity of the second signatory on trust cheque no. 129 dated June 4, 2014 in the amount of \$60,600 and made payable to the Respondent. On July 30, 2014, August 11, 2014, and August 20, 2014, Ms. Ciolfitto sent follow-up letters to the Respondent by courier and email. Ms. Ciolfitto did not receive a response to her letters from the Respondent, other than auto-reply emails indicating that he had been injured.
- [74] On September 10, 2014, Ms. Ciolfitto sent a letter to the Respondent by courier and email again requesting a response to her letter of July 17, 2014 and further requesting the name of the signatories on the following trust cheques from the Respondent's trust account:
- (a) Cheque #128 dated July 9, 2014 in the amount of \$4,500 payable to Kevin A. McLean Law Corporation;
 - (b) Cheque #130 dated July 9, 2014 in the amount of \$21,500 payable to what appears to be "KM";
 - (c) Cheque #132 dated July 10, 2014 in the amount of \$7,492.89 payable to what appears to be "DL";
 - (d) Cheque #133 dated July 10, 2014 in the amount of \$25,000 payable to M International Ltd.
- [75] Ms. Ciolfitto's examination of the five cheques (referred to in paragraphs [73] and [74] above) drawn on the Respondent's trust account led her to believe, on the basis of her comparison of the signatures on those cheques with a signature she believed

to be that of Mr. Pirooz, that the cheques were not signed by Mr. Pirooz. On September 12, 2014, Ms. Ciolfitto referred the matter to the IME Department of the Law Society by written memo.

- [76] Mr. Bussanich of the Law Society's IME Department received Ms. Ciolfitto's referral memo dated September 12, 2014. On September 22, 2014, Mr. Bussanich sent to Mr. Pirooz by email copies of the five cheques (referred to in paragraphs [74] and [75] above) drawn on the Respondent's trust account and asked Mr. Pirooz to advise whether any of the signatures on the cheques were Mr. Pirooz's signature.
- [77] Mr. Bussanich received an email response from Mr. Pirooz on September 22, 2014 in which Mr. Pirooz stated that he had reviewed copies of cheque numbers 128, 129, 132 and 133, and that none of them bore his signature.
- [78] Mr. Pirooz, in his September 22, 2014 email response to Mr. Bussanich, did not confirm that he had reviewed cheque no. 130. However, it is clear that a copy of cheque no. 130 was included in Mr. Bussanich's September 22, 2014 email to Mr. Pirooz. Mr. Bussanich also spoke to Mr. Pirooz by telephone on September 22, 2014 and was told by Mr. Pirooz that he had not been asked to countersign any trust cheques for the Respondent after December 13, 2013. In that a copy of cheque no. 130 was included in the copies of cheques emailed by Mr. Bussanich to Mr. Pirooz for his review and was dated after December 13, 2013, the Panel draws the inference that cheque no. 130 was also not signed by Mr. Pirooz.
- [79] The Panel finds that the evidence has established, on the balance of probabilities, that the Respondent failed to operate his trust account with a secondary signatory who had been approved by the Executive Director of the Law Society (as particularized in allegation 4(c)), contrary to paragraph 1(d) of the Practice Order.

Allegation 4(d)

Facts

- [80] Allegation 4(d) alleges that the Respondent failed to comply with the Practice Order by failing to provide the information and documentation requested about trust transactions in various letters from Ms. Ciolfitto, Manager of Trust Relations at the Law Society.
- [81] Paragraph 1(h) of the Practice Order provides as follows:

1. It is hereby ordered that Kevin Alexander McLean (the “Member”) is permitted to practise only with the following conditions and limitations on his practice:

...

- (h) to provide to the Law Society, upon request and in any event no later than five days after the request, information and documentation related to any trust transaction, any records required to be kept under Division 7 of Part 3 of the Law Society Rules, or any of his files and to direct any financial institution to provide information relating to his trust accounts directly to the Law Society;

[82] On July 17, 2014, Ms. Ciolfitto sent a letter by courier and email to the Respondent requesting information and documentation about trust transactions in connection with the Respondent’s trust accounts.

[83] On July 30, 2014, August 11, 2014, and August 20, 2014, Ms. Ciolfitto sent follow-up letters by courier and email to the Respondent requesting a reply to her letter of July 17, 2014. Other than auto-reply emails indicating that the Respondent had been injured, Ms. Ciolfitto did not receive a response from the Respondent to her letters.

[84] On September 10, 2014, Ms. Ciolfitto sent a letter by courier and email to the Respondent requesting a response to her letter of July 17, 2014 and further information and documentation about trust transactions in connection with the Respondent’s trust accounts.

[85] On September 19, 2014, Ms. Ciolfitto sent a letter by courier and email to the Respondent requesting, among other things, a response to her letter of September 10, 2014.

[86] As of November 6, 2014, Ms. Ciolfitto had not received a substantive response from the Respondent to her letters of July 17 and September 10, 2014, or any of her follow-up letters.

[87] The Panel finds that the evidence has established, on a balance of probabilities, that the Respondent failed to provide information and documentation requested in various letters from Ms. Ciolfitto about trust transactions in relation to the Respondent’s trust accounts, as particularized in allegation 4(d).

ALLEGATIONS 5 AND 7

[88] Allegations 5 and 7 each allege that the Respondent failed to comply with Orders of a Bencher panel, contrary to rule 7.1-1(e) of the *BC Code*.

Allegation 5

Facts

[89] On July 29, 2014, a hearing of another citation against the Respondent was scheduled to commence. On July 28, 2014, the Respondent sent an email to Law Society Counsel and the Hearing Administrator advising as follows:

I was hit by a cyclist today and am currently in the Lions Gate Hospital.

My safety concerns about attending the LSBC remain but I will [sic] kept overnight at the hospital.

I will send the supporting documentation as [sic] why I will not be able to attend tomorrow.

Thank you.

[90] On July 29, 2014, the panel hearing the citation ordered that the hearing be adjourned to September 24, 2014 and further ordered the Respondent to deliver to the Law Society, on or before August 22, 2014, supporting documentation as to why he was unable to attend the hearing on July 29, 2014, including confirmation of his medical condition and admission to Lions Gate Hospital on July 28, 2014 (“Medical Records Order”).

[91] The Law Society sent the following correspondence to the Respondent in respect of the Medical Records Order:

- (a) on July 29, 2014, the Hearing Administrator of the Law Society sent to the Respondent, by email and courier, a copy of the Medical Records Order;
- (b) on July 30, 2014, Law Society counsel sent a letter to the Respondent by courier enclosing a copy of the Medical Records Order and requesting the documentation relating to his admission to Lions Gate Hospital by August 22, 2014; and,

- (c) on August 15, 2014, Law Society counsel sent the Respondent a letter by email reminding him to provide the documentation with respect to his admission to Lions Gate Hospital by August 22, 2014.

[92] The Respondent did not deliver to the Law Society, on or before August 22, 2014, any documentation as required by the Medical Records Order. Nor did the Respondent reply to the correspondence referred to in paragraph [91] above, other than by email auto-reply.

[93] The Panel finds that the evidence has established, on a balance of probabilities, that the Respondent failed to comply with the Medical Records Order, contrary to Rule 7.1-1(e) of the *BC Code*, by failing to deliver to the Law Society, on or before August 22, 2014, documentation with respect to his non-attendance at a scheduled Law Society hearing on July 29, 2014, including documentation with respect to his medical condition and admission to Lions Gate Hospital on July 28, 2014.

Allegation 7

Facts

- [94] On September 29, 2014, a hearing panel presiding over a hearing on another citation against the Respondent adjourned the hearing of that citation on the basis of a letter that the Respondent had forwarded from his orthodontist stating that the Respondent required extensive further dental work and would not be able to “litigate in court for some time due to speech issues.” The hearing panel ordered that the hearing be adjourned and that the Respondent deliver to the Law Society, on or before October 24, 2014, all medical clinical records of any medical practitioners seen by him in relation to his accident injuries of July 28, 2014 and the clinical records of Lions Gate Hospital/Vancouver Coastal Health from July 28, 2014 to the date of the Order pertaining to his accident injuries of July 28, 2014 (the “Second Medical Records Order”).
- [95] Kieron Grady, Law Society Discipline Counsel, sent a letter to the Respondent by Canada Post, courier and email, enclosing the Second Medical Records Order. The Respondent has not delivered the medical records as required by the Second Medical Records Order to the Law Society.
- [96] The Panel finds that the evidence has established, on a balance of probabilities, that the Respondent has failed to comply with the Second Medical Records Order, contrary to rule 7.1-1(e) of the *BC Code* by failing to deliver to the Law Society on or before October 24, 2014 all medical clinical records of any medical practitioners

seen by him in relation to his accident injuries of July 28, 2014 and the clinical records of Lions Gate Hospital/Vancouver Coastal Health from July 28, 2014 to the date of the Order pertaining to his accident injuries of July 28, 2014.

ALLEGATION 6

Facts

- [97] Allegation 6 is that the Respondent failed to successfully complete the Small Firm Practice Course (“Course”) until in or about April 2014, contrary to one or more of Rule 3-18.2, his undertaking to the Law Society dated September 18, 2013, and an Order made by three Benchers on January 29, 2014.
- [98] The Respondent was called to the bar in British Columbia on August 27, 2010. Between October 8, 2010 and April 1, 2012, he practised with law firms. On April 1, 2012 he commenced practising as a sole practitioner.
- [99] Rule 3-18.2 requires lawyers to take the Course within six months after commencing practice in a small firm setting.
- [100] The Respondent should have completed the Course within six months after commencing practice as a sole practitioner.
- [101] On December 6, 2012 the Practice Standards Committee of the Law Society ordered a practice review of the Respondent’s practice. On May 9, 2013 the Committee accepted 30 recommendations made by reviewers, including that the Respondent complete the Course as required by Rule 3-18.2 within 60 days of approval of the recommendations.
- [102] On May 10, 2013, Mr. Nalleweg sent a letter to the Respondent by courier informing him of the Committee’s acceptance of the recommendations, including recommendation 1 requiring that he complete the Course within 60 days.
- [103] On September 18, 2013, following correspondence between Mr. Nalleweg and the Respondent about completion of the recommended courses, the Respondent gave the following undertaking to the Law Society:

I undertake to have items 1, 2 and 3 completed by this Sunday, September 22, 2013. I will dedicate my weekends to these matters.

Items 1, 2 and 3 of the Committee’s recommendations were to complete the Course and other courses.

[104] The Course comprises 16 modules, and it should take six to eight hours to complete the full course.

[105] The Respondent did not complete the Course by September 22, 2013, in breach of his undertaking to the Law Society to do so.

[106] On January 15, 2014, during a Rule 3-7.1 proceeding, the Respondent indicated to the Benchers that he was “very confident” that he could get the Course done by January 31, 2014. He stated to the Benchers:

I can say to you, Mr. Walker that I can certainly get it done by January 31st. I obviously don't have any court scheduled right now but for the next week, one matter of my own, so I'm - I'm very confident that I can get it done by that date.

[107] The Respondent did not complete the Course by January 31, 2014.

[108] On January 29, 2014, three Benchers made an Order pursuant to Rule 3-7.1. Paragraph 1(c) of the Order required the Respondent to complete the Course by February 14, 2014.

[109] On February 5, 2014, Mr. Nalleweg sent the Respondent an email stating that he would be monitoring his completion of the Course and that the Respondent would be held to the deadline in the January 29, 2014 Order. On February 17, 2014, Mr. Nalleweg reviewed a computer printout of the Respondent's record with the Online Learning Centre and concluded that, as of that date, the Respondent had successfully completed only three of the 16 modules of the Course.

[110] The Respondent completed the Course with a 100 per cent pass rate on April 7, 2014.

[111] The Panel finds that the evidence has established, on the balance of probabilities, that the Respondent failed to complete the Small Firm Practice Course until April 7, 2014 contrary to Rule 3-18.2, his undertaking to the Law Society dated September 18, 2013, and an Order made by three Benchers on January 29, 2014.

DETERMINATION

[112] Section 38(4) of the *Legal Profession Act* requires that this Hearing Panel must either dismiss the citation or determine (among other options that are not relevant to this hearing) that the Respondent has committed professional misconduct and/or a breach of the *Legal Profession Act* or the Rules.

[113] Counsel for the Law Society advised the Panel that it is seeking a determination that the Respondent's conduct in respect of each of allegations 1 through 7 of the amended citation constitutes professional misconduct under s. 38(4) of the *Legal Profession Act*.

Test for professional misconduct

[114] Professional misconduct is not defined in the *Legal Profession Act*, the Rules or the *BC Code*. The test for professional misconduct has been defined in *Law Society of BC v. Martin*, 2005 LSBC 16 at paragraph 171, as follows:

... whether the facts as made out disclose a marked departure from that conduct the Law Society expects of its members; if so, it is professional misconduct.

[115] This test was affirmed in *Re: Lawyer 12*, 2011 LSBC 11 at paragraph 14, as follows:

In my view, the pith and substance of these various decisions displays a consistent application of a clear principle. The focus must be on the circumstances of the Respondent's conduct and whether that conduct falls markedly below the standard expected of its members.

The foregoing language was also approved by a Bencher Review Panel in *Re: Lawyer 12*, 2011 LSBC 35.

[116] A further issue is whether, under s. 38(4) of the *Legal Profession Act*, the Respondent's misconduct constitutes professional misconduct or a breach of the Rules.

[117] In *Law Society of BC v. Lyons*, 2008 LSBC 09, the panel considered the distinction between professional misconduct and a breach of the Rules at paras. 32 and 35 as follows:

[32] A breach of the Rules does not, in itself, constitute professional misconduct. A breach of the *Act* or the Rules that constitutes a "Rules breach", rather than professional misconduct, is one where the conduct, while not resulting in any loss to a client or done with any dishonest intent, is not an insignificant breach of the Rules and arises from the respondent paying little attention to the administrative side of practice (*Law Society of BC v. Smith*, 2004 LSBC 29).

...

- [35] In determining whether a particular set of facts constitutes professional misconduct or, alternatively, a breach of the *Act* or the Rules, panels must give weight to a number of factors, including the gravity of the misconduct, its duration, the number of breaches, the presence or absence of *mala fides*, and the harm caused by the respondent's conduct.

Allegations 1 – 3

- [118] Rule 7.1-1 of the *BC Code* requires lawyers to reply promptly and completely to any communication from the Law Society, provide documents required by the Law Society, and to cooperate with Law Society investigations involving the lawyer.
- [119] Rule 3-5(6) requires lawyers to cooperate in any complaint investigation by all available means including, but not limited to, responding fully and substantively, in the form specified by the Executive Director, to the complaint and to all requests made by the Executive Director in the course of the investigation.
- [120] The case law makes clear that the obligation to respond is fundamental to the Law Society's ability to govern its members and that a failure to do so will always be prima facie evidence of professional misconduct. *Law Society of BC v. Dobbin*, [1999] LSBC 27 at paras. 20 and 25, respectively.

20. The duty to reply to communications from the Law Society is in yet another category. While it is true that the duty to reply is only found explicitly set out in Chapter 13, Rule 3, of the *Professional Conduct Handbook* it is a cornerstone of our independent, self-governing profession. If the Law Society can not count on prompt, candid, and complete replies by members to its communications it will be unable to uphold and protect the public interest, which is the Law Society's paramount duty. The duty to reply to communications from the Law Society is at the heart of the Law Society's regulation of the practice of law and it is essential to the Law Society's mandate to uphold and protect the interests of its members. If members could ignore communications from the Law Society, the profession would not be governed but would be in a state of anarchy.

...

25. Frequently, the member's failure to respond to Law Society communications is a sequel to a prior, frustrating failure to respond to client communications or to other lawyers' communications. Procrastination in responding to the Law Society, or wilful failure to respond to the Law Society, may be symptomatic of other practice problems involving delay on files or other dereliction of professional duty. The Law Society is put in an impossible position in dealing with disgruntled clients, or disgruntled other lawyers, by a member's intransigent failure to respond. There is no doubt whatever that a persistent, intransigent failure to respond to Law Society communications brings the legal profession into disrepute. As a result, it is the decision of the Benchers that unexplained persistent failure to respond to Law Society communications will always be prima facie evidence of professional misconduct which throws upon the respondent member a persuasive burden to excuse his or her conduct. The circumstances which led the member to fail to respond are peculiarly within his or her means of knowledge. It can not be a part of the evidentiary burden of the Law Society to show both that the member persistently failed to respond and the reasons for that failure.

[121] In *Law Society of BC v. Cunningham*, 2007 LSBC 17, the respondent gave evidence that she knew she was required to respond to a particular complaint. The hearing panel noted that to avoid a finding of professional misconduct required evidence that the respondent was afflicted with an illness that incapacitated her to the extent that she was unable to answer correspondence.

[122] The Respondent did not attend this hearing, despite having been served with proper notice. There is therefore no evidence from him as to whether he was incapacitated to the extent that he was unable to respond to the Law Society.

[123] The only evidence before the Panel was some auto-reply emails from the Respondent and an indication in some emails that he had been in an accident and suffered an injury. As stated at paragraphs [24] and [25] above, the Respondent failed to provide any medical evidence to substantiate the accident, injury and hospitalization, and there was evidence from which the Panel drew the inference that, since at least the end of August 2014, the Respondent was able to respond to the Law Society.

[124] The facts, as set out above, regarding allegations 1 - 3 demonstrate a consistent and unexplained failure on the part of the Respondent to provide prompt and substantive responses to the Law Society regarding its investigation of three separate complaints. The failure to do so persisted over several months and demonstrates the Respondent's failure to treat such important issues seriously and diligently.

[125] The Respondent's conduct in respect of allegations 1 - 3 represents a marked departure from the conduct the Law Society expects of lawyers and, accordingly, constitutes professional misconduct.

Allegations 4(a), (b), (c) and (d), 5 and 7

[126] Rule 7.1-1(e) of the *BC Code* requires lawyers to comply with orders made under the *Legal Profession Act* or the Rules.

Allegations 4(a) – 4(d)

[127] Each of allegations 4(a) - 4(d) concern the failure of the Respondent to comply with the terms of the Practice Order made by three Benchers pursuant to Rule 3-7.1 (Exhibit 7, Tab 1) placing conditions and limitations on the Respondent's practice.

[128] In *Law Society of BC v. Coutlee*, 2010 LSBC 27, the panel noted at para. 14:

Regarding the nature and gravity of the conduct proven, the blatant disregard of a restriction on practice imposed by a hearing panel must be regarded as misconduct of a most serious nature. It goes to the heart of the ability of the Law Society to impose and enforce discipline on lawyers. The passage of time between the imposition of the restriction and the breach is in no way a mitigating factor.

[129] The facts, as set out above, regarding allegations 4(a) - 4(d) demonstrate the Respondent's failure to comply with the conditions and limitations placed on his practice by the Practice Order and the PSA. By ignoring those obligations, the Respondent undermined the very purpose of the Practice Order and PSA, and the ability of the Law Society to enforce compliance and protect the public interest. The Respondent's blatant disregard of his obligations to meet with his Practice Supervisor, to cease practising in the absence of a practice supervision agreement, to issue trust cheques only with the required secondary signatory appointed by the Law Society, and to provide documentation regarding trust transactions, are misconduct of a very serious nature.

Allegations 5 and 7

[130] Each of allegations 5 and 7 concern the failure of the Respondent to comply with the terms of the Medical Records Order and Second Medical Records Order made by hearing panels.

[131] The Respondent's failure to comply with the two clearly worded Orders was, again, a blatant and persistent disregard of his obligations to the Law Society under Rule 7.1-1(e) of the *BC Code*. Such disregard undermines the Law Society's ability to govern lawyers effectively and constitutes very serious misconduct.

[132] The Respondent's conduct in respect of each of allegations 4(a) - 4(d), 5 and 7 (with the exception of the portion of allegation 4(a)(i) regarding daily meetings, which was dismissed at paragraph [51] above) represents a marked departure from the conduct the Law Society expects of lawyers and, accordingly, constitutes professional misconduct.

Allegation 6

[133] The Respondent failed to complete the Small Firm Practice Course within six months after commencing practice as a sole practitioner (October 2012) in breach of Rule 3-18.2.

[134] This is not a case of the Respondent failing to comply with Rule 3-18.2 because he simply paid little or no attention to the administrative side of practice.

[135] In this case, the Respondent was not only required by the Rule to complete the Course, but as of May 10, 2013 he had notice of the Practice Standards Committee's adoption of a recommendation that he complete the Course within 60 days. Upon being urged by correspondence from the Law Society to complete the Course, he provided his undertaking to the Law Society to do so by September 22, 2013. He then breached that undertaking and subsequently advised a Benchers panel that he was very confident that he could complete the Course by January 31, 2014. He did not do so. The Respondent was ordered by three Benchers to complete the Course by February 14, 2014. Despite further urging by the Law Society, he failed to comply with the Order and did not complete the Course until April 7, 2014.

[136] The Respondent's blatant disregard for the Rule, his undertaking to the Law Society, and his failure to comply with the Order of three Benchers are very serious and persistent misconduct.

[137] The Respondent's conduct in respect of allegation 6 represents a marked departure from the conduct the Law Society expects of lawyers and, accordingly, constitutes professional misconduct.

CONCLUSION

[138] The Panel finds that the Law Society has proven each of allegations 1 to 7 against the Respondent on a balance of probabilities, with the exception of the portion of allegation 4(a)(i) relating to daily meetings with his practice supervisor, which was dismissed at paragraph [51] above.

[139] The Panel finds that, with respect to each of allegations 1 to 7, the Respondent has committed professional misconduct.