

2015 LSBC 43
Decision issued: September 28, 2015
Oral reasons: September 2, 2015
Citation issued: June 25, 2015

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

KRISTA MARGRET JESSACHER

RESPONDENT

**DECISION OF THE HEARING PANEL
ON FACTS, DETERMINATION AND DISCIPLINARY ACTION**

Hearing date: September 2, 2015

Panel: Philip Riddell, Chair
Ralston S. Alexander, QC, Lawyer
Glenys Blackadder, Public representative

Discipline Counsel: Kieron Grady
No-one appearing on behalf of the Respondent

INTRODUCTION

[1] Krista Margaret Jessacher (the “Respondent”) is a non-practising member of the Law Society of British Columbia (the “Law Society”). The citation was authorized on June 19, 2015 and issued on June 25, 2015. The citation states:

1. You [the Respondent] failed to provide a full and substantive response promptly or at all to the communications from the Law Society concerning its investigation of Law Society complaint file [number], arising from your involvement with JA and her family law matter, 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 both letters dated February 3, 2015 and March 19, 2015 by one or both of the following:

- (a) not providing all the documents requested in the letter of March 19, 2015; and
- (b) not answering all the requests for information set out in one or both of the letters.

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

- [2] This is a summary hearing conducted under Rule 4-33. It proceeded by way of affidavit evidence.
- [3] The Respondent did not appear at the hearing, and the hearing proceeded in her absence.
- [4] At the conclusion of the hearing the Panel found that the Respondent had committed professional misconduct in the manner set out in the citation. The Panel imposed a fine of \$5,000 with an order for costs in the amount of \$1,335.68, with both amounts payable by April 30, 2016. The Panel ordered that, pursuant to s. 38(5)(c) of the *Legal Profession Act*, the Respondent provide by September 16, 2015 a complete and substantive response to the inquiries made in the Law Society letters to her dated February 3 and March 19, 2015.
- [5] We advised that our written reasons would follow, and these are our reasons.

NON-ATTENDANCE BY RESPONDENT

- [6] The hearing commenced at 9:30 am and the Respondent did not appear. The hearing was stood down until 9:52 am to be sure that the Respondent had an opportunity to appear and that she was not just “late.” By 9:52 the Respondent had still not appeared.
- [7] Section 42(2) of the *Legal Profession Act* permits a hearing panel to proceed in the absence of the Respondent. To proceed in the absence of the Respondent s. 42(2) of the *Legal Profession Act* requires that the Panel be satisfied that the Respondent was served with the Notice of Hearing.

- [8] The Respondent was served with a copy of the citation by email on July 3, 2015, pursuant to Rule 4-19, and acknowledged receipt.
- [9] The Respondent was served by email with the Notice of Hearing and other hearing materials on July 20, 2015. That email was sent to the same email address to which the citation was emailed on July 3, 2015.
- [10] On July 29, 2015 the Notice of Hearing and other materials from counsel for the Law Society were couriered to the Respondent and the delivery of those materials occurred on July 30, 2015.
- [11] The Respondent was advised that the hearing could proceed in her absence in the citation, in the Notice of Hearing, and in correspondence from the Law Society.
- [12] In these circumstances the Panel proceeded in the absence of the Respondent pursuant to s. 42(2) of the *Legal Profession Act*.

PRINCIPLES

- [13] The Law Society bears the onus of proof on the balance of probabilities: *Law Society of BC v. Tak*, 2009 LSBC 25.
- [14] Failure to respond to communications from the Law Society constitutes professional misconduct. In *Law Society of BC v. Martin*, 2005 LSBC 16 at para. 171, the test for professional misconduct was set out as: “whether the facts as made out disclose a marked departure from the conduct the Law Society expects of its members; if so, it is professional misconduct.”
- [15] A lawyer has an obligation to reply promptly and completely to any communications from the Law Society, cooperate fully in any investigation, produce files and documents for examination or copying, and answer questions and provide information as required: (Rule 7.1-1 of the *Code of Professional Conduct for British Columbia*, Rules 3-5(7), 3-5(8(a)), 3-5(8)(b) and 3-5(11)).
- [16] The “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.” *Law Society of BC v. Dobbin*, 1999 LSBC 27 at para. 25.

FACTS

- [17] On December 24, 2014 the Law Society received a complaint regarding the conduct of the Respondent in relation to a file involving JA. In particular the practise of law by the Respondent. On January 8, 2015 Alex Willms (“Willms”), a staff lawyer with the Law Society, was assigned to investigate the complaint.
- [18] On July 14, 2010, as a non-practising member of the Law Society, the Respondent signed an undertaking not to practise law.
- [19] Willms was investigating a complaint of breach of undertaking to the Law Society and of practising law while not authorized.
- [20] Willms wrote to the Respondent on February 3, 2015 seeking her response to the complaint that she was practising law at a time when she was not entitled to do so.
- [21] On March 6, 2015 Willms conducted an interview of the Respondent (the “Interview”). The Interview dealt with the complaint of practising law at a time the Respondent was not entitled to do so and a breach of her undertaking not to practise law. During the course of that Interview the Respondent was asked several questions that she refused to answer, and the Respondent was directed to supply copies of certain documents.
- [22] On March 19, 2015 Willms sent a letter to the Respondent requesting answers to questions that the Respondent had refused to answer at the Interview and copies of documents that had been requested at the Interview. The Respondent was given until April 8, 2015 to respond.
- [23] On April 9, 2015 the Respondent sent the Law Society her affidavit sworn April 2, 2015, which had been filed in the family matter involving JA. At paragraph 13 of that affidavit she stated with respect to the Interview: “I refuse to answer questions that would not benefit the client. I now refuse to participate any further in a process that seems contrived.” The Respondent further stated: “The Law Society is in receipt of all information needed to resolve this complaint. No further information is needed for an informed response.”
- [24] On April 25, 2015 Willms wrote to the Respondent advising her that he did not consider her affidavit of April 2, 2015 to be responsive to the requests he had made in his letter of March 19, 2015. The Respondent was given until May 8, 2015 to respond.

- [25] On May 8, 2015 the Law Society received a letter from the Respondent dated May 7, 2015, which did not respond to the matters requested in Willms' letter of March 19, 2015.
- [26] As of the date of this hearing the Respondent has not provided a substantive response to Willms' letters of February 5 and March 19, 2005.

DETERMINATION ON FACTS

- [27] There has been an unexplained persistent failure by the Respondent to respond to Willms' letters of February 5 and March 19, 2015. This is *prima facie* evidence of professional misconduct, and the Respondent has not provided any evidence, let alone evidence to the standard of a persuasive burden, to explain her failure to respond.
- [28] The Respondent's conduct in failing to respond shows a marked departure from the conduct expected of a lawyer and constitutes professional misconduct. The allegations as set out in the citation have been proved by the Law Society on the balance of probabilities.

DISCIPLINARY ACTION

- [29] The purpose of the discipline process is not to punish or exact retribution, it is to discharge the Law Society's statutory obligation as set out in s. 3 of the *Legal Profession Act* to protect the public interest in the administration of justice: *Law Society of BC v. Hill*, 2011 LSBC 16.
- [30] The factors in assessing a penalty are set out in *Law Society of BC v. Ogilvie*, 1999 LSBC 17.
- [31] The failure of a member of the Law Society to respond to the Law Society goes to the core of the Law Society's ability to regulate its members in the public interest.
- [32] The Respondent has an unrelated Professional Conduct Record.
- [33] The Respondent has yet to provide the responses that she is required to provide.
- [34] The Respondent said in the Interview that she had been working for JA since late 2013, performing a number of functions including drafting pleadings. The Respondent states that her work for JA has developed into a "*low bono*" file. The underlying complaint is that the Respondent is practising law when she is not entitled to do so. That activity may be for financial gain. The failure to respond

has the effect of frustrating the Law Society's investigation of the underlying complaint.

- [35] The Law Society provided several cases setting out the range of fines for failure to respond to the Law Society, being fines ranging from \$2,000 to \$5,000.
- [36] Given that the failure to respond by the Respondent frustrates the ability of the Law Society to investigate the allegations that she is engaged in the unauthorized practice of law and is in breach of her undertaking to the Law Society, her continued refusal to respond, the need for general and specific deterrence, the requirement to ensure public confidence, a fine of \$5,000 has to be imposed in order to uphold the public interest in the administration of justice.
- [37] Given that the Respondent did not attend at the hearing, we have not been provided with any information regarding her personal financial circumstance. The Respondent will have until April 30, 2016 to pay the fine.
- [38] The Respondent must provide complete and substantive responses to the inquiries made in the Law Society letters to her dated February 3, 2015 and March 9, 2015 by September 16, 2015.

COSTS

- [39] The Law Society seeks an order for costs in the amount \$1,335.68. This is composed of \$1,000 for a half day hearing (Schedule 4, Tariff Item 24) and disbursements in the amount of \$335.68.
- [40] Rule 5-11 requires the Panel to award the Tariff costs unless we are satisfied that we should depart from the Tariff under Rule 5-11(4). *Law Society of BC v. Racette*, 2006 LSBC 29, sets out some of the factors to determine the reasonableness of an award of costs. Having considered those facts the Law Society is awarded costs in the amount of \$1335.68. Given the lack of information regarding the Respondent's personal financial circumstances she will have until April 30, 2016 to pay the award of costs.