

2018 LSBC 10  
Decision issued: March 15, 2018  
Citation issued: March 23, 2015

**THE LAW SOCIETY OF BRITISH COLUMBIA**

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

**and a hearing concerning**

**GERHARDUS ALBERTUS PYPER**

**RESPONDENT**

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

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Hearing date: December 4, 2017

Panel: Dean Lawton, QC, Chair  
Haydn Acheson, Public representative  
Richard Lindsay, QC, Lawyer

Discipline Counsel: Carolyn Gulabsingh  
Appearing on his own behalf: Gerhardus A. Pyper

- [1] These reasons follow upon a single day hearing on December 4, 2017. The Respondent (Mr. Pyper) attended the hearing without counsel. He gave evidence, cross-examined a witness, and made oral submissions.
- [2] This matter has a lengthy history. The citation against Mr. Pyper was issued on March 23, 2015. The hearing of the citation had previously commenced on November 6, 2015; however we adjourned the hearing that day at Mr. Pyper's request.

- [3] On granting the adjournment, we directed that the hearing proceed on January 25, 2016 peremptorily against Mr. Pyper.
- [4] Also on November 6, 2015 Mr. Pyper delivered to this Panel and the Law Society a notice of motion and affidavit seeking an order from us that the citation be dismissed or stayed. The motion asserted that we lacked the jurisdiction to hear the citation and sought a declaration that the Law Society was biased toward him.
- [5] We heard Mr. Pyper's motion on January 25, 2016; however, we adjourned our determination generally because Mr. Pyper had brought an appeal in the Court of Appeal concerning another citation against him and a motion he brought to dismiss that citation. The subject matter of the appeal relating to the motion to dismiss the earlier citation was very similar to the motion in this case. We provided reasons for our decision on the general adjournment on February 17, 2016 (2016 LSBC 08).
- [6] On March 3, 2017 the Court of Appeal heard Mr. Pyper's appeal concerning the earlier citation and similar motion, dismissing both.
- [7] On November 10, 2017 we issued our decision in respect of Mr. Pyper's notice of motion that we had heard on January 25, 2016 (2017 LSBC 41). We dismissed Mr. Pyper's motion, finding it an abuse of process being an inappropriate attempt to re-litigate the matters in the motion he brought in respect of the earlier citation, now determined and dismissed by the Court of Appeal.

## THE CITATION

- [8] The substantive elements of the citation allege:
1. In the course of representing your client, WF, in both criminal and a civil matter, you engaged Dr. M to provide opinion evidence and you failed to pay in full invoices received from Dr. M and failed to respond to communications from Dr. M regarding those invoices. In particular:
    - (a) you failed to pay in full invoices dated January 10, 2012, February 4, 2013, and May 7, 2013, contrary to Chapter 2, Rule 2 of the *Professional Conduct Handbook* then in force and Rule 7.1-2 of the *Code of Professional Conduct for British Columbia*; and
    - (b) you failed to respond substantively or at all to letters dated June 11, 2013, July 23, 2013, September 10, 2013 and December 3, 2013.

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

- [9] On August 18, 2015 the Law Society issued in writing a Notice to Admit pursuant to Rule 4-28 of the Law Society Rules. We are satisfied the Notice to Admit was served on Mr. Pyper pursuant to Rule 10-1.
- [10] Mr. Pyper did not respond to the Notice to Admit. Consequently, pursuant to Rules 4-28(7) and (8), Mr. Pyper is deemed to have admitted the truth of the facts described and the authenticity of the documents listed in the Notice to Admit.
- [11] At no time did Mr. Pyper apply to withdraw the deemed admission of the truth of the facts and authenticity of the documents contained in the Notice To Admit as contemplated under Rule 4-28(9).
- [12] The Notice to Admit was made and marked as Exhibit 4 at this hearing.
- [13] The Notice to Admit contains 92 enumerated facts deemed to have been admitted by Mr. Pyper.
- [14] The Notice to Admit contains 34 enumerated documents the authenticity of which are deemed to have been admitted by Mr. Pyper.
- [15] By way of background history, in January 2010 a client, WF, retained Mr. Pyper to represent him in defending a criminal charge of driving an automobile while his ability to do so was impaired by the consumption of alcohol or a drug (Notice to Admit, Tab 2). The client also retained Mr. Pyper to bring a civil action against the client's physician seeking damages for loss arising from alleged professional negligence of the physician. Both the criminal case and the civil case involved a question of the effect of a drug prescribed to the client.
- [16] From 2010 through 2013 Mr. Pyper employed two associate lawyers, LD and BE in his law practice (Transcript p. 94). In 2010 Mr. Pyper practised under the name "Gerhard A. Pyper, Esq. Barrister and Solicitor". By February 2011 Mr. Pyper was practising under the name "Pyper Law Group Barristers and Solicitors".
- [17] In December 2010, one of Mr. Pyper's employee associates, LD, obtained instructions from the client to engage Dr. M as an expert witness for the criminal and civil proceedings (Notice to Admit, Tabs 3 and 4). She contacted Dr. M by email message on December 14, 2010 confirming the engagement, and stating, "... [T]his email will confirm my client wishes to retain your services to complete an expert report." Although the email message was sent by LD, the sending entity identified at the foot of the email is "Pyper Law Group".

- [18] On December 22, 2010 LD sent a detailed engagement letter on “Gerhard A. Pyper, Esq. Barrister and Solicitor” letterhead to Dr. M stating at its introduction, “We represent WF in his defence of criminal charges under Sections 253(1)(a) and 253(1)(b) of the *Criminal Code of Canada* and his medical malpractice suit against Dr. VO” (Notice to Admit Tab 5).
- [19] On February 1, 2011 Dr. M sent a periodic account in the amount of \$2,360 for review of documents, review of literature, telephone consultations, and written report. The bill was addressed to Mr. Pyper. Mr. Pyper paid the bill on February 14, 2011 (Notice to Admit Tabs 6 and 8).
- [20] In August 2011 BE became involved in the client’s cases (Notice to Admit Tab 9).
- [21] On August 29, 2011 Dr. M sent a bill in the amount of \$2,398.50 to BE and Pyper Law Group. The services were described as “Review of file, telephone and e-mail consultations and written reports” related to the civil action. On September 19, 2011 BE wrote to Dr. M enclosing a cheque paying the bill, with a small adjustment as a result of an error in calculating the HST. The letter was sent on Pyper Law Group letterhead (Notice to Admit Tabs 10 and 11).
- [22] The trial of the criminal charges proceeded in January 2013, and the trial of the civil action proceeded in April 2013. Dr. M provided expert opinion evidence in both proceedings (Notice to Admit Tab 23).
- [23] On February 3, 2013 Dr. M sent a bill to Mr. Pyper at the Pyper Law Group in the amount of \$7,748. The services were described as “Review of file and documents. Literature review. Revision of report. Surrey meeting and trial. Travel time” (Notice to Admit Tab 17).
- [24] On February 18, 2013, BE wrote to Dr. M enclosing partial payment in the amount of \$5,600 toward Dr. M’s February 3, 2013 bill. The letter was sent on Pyper Law Group letterhead. BE stated that, before paying the balance of the bill, the client required a breakdown of some of the charges in the bill (Notice to Admit Tab 18).
- [25] Following the criminal trial the client was convicted. Following the civil trial, judgment was reserved for approximately one year, and the client’s action was dismissed with costs.
- [26] On May 7, 2013 Dr. M sent Mr. Pyper a bill in the amount of \$5,998 for his work in connection with the civil trial. The services were described as, “Travel/waiting time, Court time, Report writing and trial preparation.” Dr. M provided a cover letter with the bill stating that he put in many more hours than the bill reflected. He

proposed an alternate form of payment consisting of a research donation to the University of British Columbia in the amount of \$5,500 (Notice to Admit Tab 19). In his letter, Dr. M offered to speak with Mr. Pyper about payment of the bill.

- [27] On June 11, 2013 Dr. M wrote to Mr. Pyper stating that he had not received payment of his May 7, 2013 bill, and had not received the \$2,184 balance owing on his February 4, 2013 bill (Notice to Admit Tab 20).
- [28] There is no evidence Mr. Pyper responded to the June 11, 2013 letter from Dr. M.
- [29] On July 23, 2013 Dr. M wrote to Mr. Pyper, again requesting payment of his bills, and asking Mr. Pyper to contact him if there were “problems” he wished to discuss. Dr. M concluded the letter stating that if he had not heard from Mr. Pyper by August 15, 2013, he would be “forced to take the matter to the Law Society”. (Notice to Admit Tab 21).
- [30] There is no evidence Mr. Pyper responded to the July 23, 2013 letter from Dr. M.
- [31] On September 10, 2013 Dr. M wrote to Mr. Pyper stating that he did not understand why his bills had not been paid and that he had heard nothing from Mr. Pyper, “despite billings, letters, and telephone calls, which you have not returned.” Dr. M concludes the letter asking Mr. Pyper to contact him by letter or telephone (Notice to Admit Tab 22).
- [32] There is no evidence Mr. Pyper responded to the September 10, 2013 letter from Dr. M.
- [33] On October 8, 2013 Dr. M wrote to the Law Society with a complaint that Mr. Pyper had not paid his outstanding bills and did not answer letters or return telephone calls. The complaint letter contains an overview of Dr. M’s historical dealings with Mr. Pyper in the client’s cases (Notice to Admit Tab 23).
- [34] On December 3, 2013 Dr. M wrote to Mr. Pyper, again offering to discuss his outstanding bills, and informing Mr. Pyper he had made a complaint to the Law Society. He stated that the Law Society had asked him to “prepare a file outlining my involvement with Pyper and Company,” and he was doing so. He said he would prefer to deal directly with Mr. Pyper concerning the outstanding bills and invited Mr. Pyper to contact him (Notice to Admit Tab 24). There is no evidence Mr. Pyper responded to the December 3, 2013 letter from Dr. M.
- [35] On January 21, 2014 Dr. M wrote to the Law Society providing additional information staff had requested of him in connection with his complaint. He noted that health and other issues had delayed his response (Notice to Admit Tab 25).

- [36] On February 25, 2014 a Law Society staff lawyer wrote to Mr. Pyper providing him with copies of Dr. M's October 8, 2013 and January 21, 2014 letters. This appears to be the first notice from the Law Society sent to Mr. Pyper about the complaint. Mr. Pyper was requested to provide a written response to the complaint by March 12, 2014 (Notice to Admit Tab 26).
- [37] On March 17, 2014 the Law Society staff lawyer wrote to Mr. Pyper requesting a response to her letter of February 25, 2014, and alerting him to Rule 7.1-1 of the *Code* requiring lawyers to reply promptly and completely to any communication from the Law Society. The letter concluded with a requirement that Mr. Pyper provide a response to the complaint by March 31, 2014. The letter was attached as a PDF to an email sent to Mr. Pyper on March 17, 2014 with a notation in the email that the letter was urgent (Notice to Admit Tab 27).
- [38] On April 10, 2014 the Law Society staff lawyer wrote to Mr. Pyper requesting a reply to her letters of February 24 and March 17, 2014. She warned Mr. Pyper that, if he did not respond by April 15, 2014, the matter would be referred to the Discipline Committee or its Chair with a recommendation that the Chair issue a citation for his failure to respond to Law Society correspondence. The letter was attached as a PDF to an email sent to Mr. Pyper on April 10, 2014 (Notice to Admit Tab 28).
- [39] On April 17, 2014 Mr. Pyper wrote a letter responding to the staff lawyer's letters of February 25 and March 17, 2014 apologizing for the delay that he attributed to his workload. In the letter Mr. Pyper stated that the civil trial concluded in April 2013, judgment continued to be reserved, and the client was extremely upset about Dr. M's testimony in court and his account. Mr. Pyper stated in his letter to the Law Society staff lawyer that he "... does not have authority to pay Dr. M at least until the decision is rendered." Mr. Pyper also stated in the letter, "We intend to contact Dr. M again and apologize to him for the situation which has manifested itself as a result of the inability of the Court to pronounce a decision within a reasonable time after the trial, which was heard over a year ago." (Notice to Admit Tab 29).
- [40] On May 14, 2014 the staff lawyer for the Law Society wrote to Mr. Pyper acknowledging his letter of April 17, 2014 and asking for more information from him (Notice to Admit Tab 30).
- [41] Mr. Pyper did not write to Dr. M until June 6, 2014 (Notice to Admit Tab 31). Contrary to the stated intention in his April 17, 2014 letter to the Law Society staff lawyer, Mr. Pyper did not apologize when he wrote to Dr. M. In his June 6, 2014 letter to Dr. M he said, "We have instructions from our client to wait until the

decision of [the trial judge] has been pronounced before he will instruct us about further payments to you.” Apart from this letter, there is no evidence that Mr. Pyper ever responded to Dr. M’s letters of June 11, 2013, July 23, 2013, and December 3, 2013 enquiring about payment of Dr. M’s May 7, 2013 bill and the balance of his February 3, 2013 bill.

## **IN PERSON EVIDENCE AT THE HEARING**

- [42] Dr. M was called as a witness by the Law Society and cross-examined by Mr. Pyper.
- [43] Dr. M said that he was retained by Mr. Pyper’s firm to provide expert opinion evidence in the client’s criminal and civil proceedings.
- [44] Dr. M said at no time did Mr. Pyper or anyone from his office ever convey to Dr. M that the client would pay his accounts directly.
- [45] Dr. M said at no time did Mr. Pyper or anyone from his firm communicate to him that there was a problem with either his report or his testimony at either of the trials.
- [46] Dr. M said that, with the exception of a minor arithmetic error in calculating the HST on one of his bills, neither Mr. Pyper nor anyone at his firm ever communicated that there was a problem with his bills.
- [47] Dr. M said he was provided with a copy of the Notice to Admit in this hearing. Although he was not provided with copies of all of the documents contained in the Notice to Admit, he was provided with copies of all of his correspondence with Mr. Pyper and his firm. Dr. M confirmed that the contents of all the correspondence he wrote to Mr. Pyper and his firm were correct.
- [48] In addition to his oral testimony, on October 21, 2015 Dr. M affirmed an affidavit that was marked as Exhibit 5 at the hearing. Exhibit A to Dr. M’s affidavit is a copy of his letter of July 23, 2013 to Mr. Pyper in which he said he was following up on his previous correspondence regarding payment for invoices sent on February 4, 2013, May 7, 2013 and June 11, 2013. There is a handwritten annotation on Exhibit A referring to the sum of \$2,184, the words “old invoice” and \$5,998 and the words “new invoice”, for a total of \$8,182. In his testimony Dr. M confirmed the handwritten annotations were his.
- [49] In paragraph 3 of his affidavit, Dr. M stated he had not received a response from Mr. Pyper to letters he sent to him dated June 11, 2013, September 10, 2013 and

December 3, 2013. Dr. M stated in his oral testimony that, subsequent to his affirming his affidavit on October 21, 2015, he had received no payment in respect of his invoice of May 7, 2013 in the amount of \$5,998, and that the sum of \$2,184 remained unpaid from his February 4, 2013 invoice. Those unpaid amounts totalled \$8,192.

- [50] In cross-examination Mr. Pyper asked Dr. M if the Law Society had paid his outstanding bills, to which Dr. M responded the Law Society had not done so.
- [51] Mr. Pyper gave evidence. He stated that he did not retain Dr. M but that his associate LD did so.
- [52] Mr. Pyper said that, two or three days before the criminal trial, he had a discussion with Dr. M and told him that there was a problem or a deficiency in his report.
- [53] Mr. Pyper testified in referring to the client that, “WF right off the bat told me don’t pay this guy” in respect of the civil trial testimony of Dr. M.
- [54] Mr. Pyper stated that the civil trial took place in April 2013 and reasons for judgment were delivered in June 2014, more than a year after the trial concluded.
- [55] During Mr. Pyper’s cross-examination of Dr. M, he stated that he would have paid Dr. M’s account regardless of the results of the civil trial. Following a question from panel member Richard Lindsay, QC, about that statement, Mr. Pyper and Mr. Lindsay had the following exchange:

Lindsay: You would have paid this account regardless of result, knowing everything.

Pyper: I would have paid.

Lindsay: You would have paid it.

Pyper: I would have paid it today.

Lindsay: Right, Okay.

Pyper: If I am in control of my accounts.

Lindsay: All right.

Pyper: I would have paid it two years ago, three years ago.



[56] In his evidence in chief, Mr. Pyper complained that, since May 2014, the Law Society had had full control over both his trust account and his general account, and as a result he had not paid Dr. M.

[57] Mr. Pyper stated that Dr. M did not sue him for the unpaid accounts.

[58] In his testimony, Mr. Pyper repeated that he did not retain Dr. M as an expert.

[59] Mr. Pyper said that the Law Society “is sitting with my money” and that even if he wanted to he could not pay Dr. M.

[60] Mr. Pyper concluded his testimony stating, “I want to pay him (Dr. M) but I can’t. And that’s my evidence.”

[61] On questioning by panel member Haydn Acheson, the following exchange occurred:

Acheson: You said that you did not retain Dr. M, other lawyers did in your firm, correct? Did I ...

Pyper: Well ...

Acheson: Did I understand that correctly?

Pyper: Personally I did not.

Acheson: Okay.

Pyper: The law firm did. But the lawyer dealing with it was not me.

[62] In cross-examination Mr. Pyper stated that, on June 6, 2014, he was suspended from practice by the Law Society. His practice was placed into custodianship by court order.

[63] Mr. Pyper said he did not know if he responded to the letters Dr. M sent him on June 11, 2013, July 23, 2013 and September 10, 2013. Mr. Pyper said that he did not know if he responded to the December 3, 2013 letter from Dr. M to him at Tab 24 in the Notice to Admit.

## SUBMISSIONS OF THE PARTIES

[64] Ms. Gulabsingh, on behalf of the Law Society, made oral and written submissions. She acknowledged that the onus of proof is on the Law Society and the standard of proof is a balance of probabilities. (*Law Society of BC v. Schauble*, 2009 LSBC 11)

[65] Further, Ms. Gulabsingh referred to the case of *Law Society of BC v. Seifert*, 2009 LSBC 17 at paragraph 13, which states the following:

... the burden of proof throughout these proceedings rests on the Law Society to prove, with evidence that is clear, convincing and cogent, the facts necessary to support a finding of professional misconduct or incompetence on a balance of probabilities.

We agree that the burden of proof in this case rests upon the Law Society and the standard of proof is on a balance of probabilities considering all the evidence.

[66] Ms. Gulabsingh submitted with respect to the test for professional misconduct that professional misconduct itself is not defined in the *Legal Profession Act*, the Law Society Rules, the *Professional Conduct Handbook*, or the *Code of Professional Conduct for British Columbia*. Guidance accordingly is taken from other cases dealing with allegations of misconduct against lawyers. One well-known case is *Law Society of BC v. Martin*, 2005 LSBC 16, where the hearing panel concluded at paragraph 171 that the test for professional misconduct is:

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

[67] Further, at paragraph 154, the panel in *Martin* stated:

The real question to be determined is essentially whether the Respondent's behaviour displays culpability which is grounded in a fundamental degree of fault, that is whether it displays gross culpable neglect in his duties as a lawyer.

[68] In *Re: Lawyer 12*, 2011 LSBC 35, the single bench hearing panel stated the following with respect to the test for professional misconduct by members of the Law Society:

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.

We agree with the analysis and commentary submitted by the Law Society that professional misconduct on the part of a lawyer occurs when the conduct in question is found to be a marked departure from that expected by the Law Society of lawyers.

- [69] With respect to the evidence in this case, the Law Society relies on the Notice to Admit filed as Exhibit 4 in the hearing. Ms. Gulabsingh referred specifically to paragraphs 64 through 67 of the Notice to Admit, urging us to conclude that the total amount owed to Dr. M in respect of the January 10, 2012, February 4, 2013, and May 7, 2013 invoices is \$8,518. This is marginally more than the \$8,182 amount referred to by Dr. M in his affidavit marked as Exhibit 5 and is accounted for when one adds the unpaid portions of the January 10, 2012 and February 4, 2013 bills to the completely unpaid bill of May 7, 2013.
- [70] The Law Society submits that the evidence taken as a whole clearly and cogently establishes that Mr. Pyper was responsible for paying Dr. M's accounts, he failed to do so for over four and a half years, and he ignored numerous letters from Dr. M in 2013 enquiring about payment of his overdue bills.
- [71] The Law Society submits that, pursuant to the *Code of Professional Conduct for British Columbia*, Rule 7.1-2, in force as of January 1, 2013, a lawyer must promptly meet financial obligations in relation to his or her practice. The Commentary with respect to Rule 7.1-2 states that, in order to maintain the honour of the Bar, lawyers have a professional duty, quite apart from any legal liability, to meet financial obligations incurred, assumed or undertaken on behalf of clients, unless before incurring such an obligation, the lawyer clearly indicates in writing that the obligation is not to be a personal one.
- [72] The Law Society submits that Mr. Pyper never wrote to Dr. M informing him that the obligation to pay his bills was not a personal one, and that Mr. Pyper's failure to respond to Dr. M's enquiries about his unpaid bills constituted professional misconduct and was a breach of Rule 7.2-5 of the *Code of Professional Conduct*, which provides:

A lawyer must answer with reasonable promptness all professional letters and communications from other lawyers that require an answer, and a lawyer must be punctual in fulfilling all commitments.

[73] The Law Society submits that earlier panel decisions demonstrate the obligation to answer professional letters and communications promptly is owed not only to other lawyers and the Law Society but also to non-lawyers a lawyer deals with in the course of acting for a client. For example, in *Law Society of BC v. Smith*, 2005 LSBC 27, a lawyer was cited for failing to respond to communication from representatives of an insurance company in respect of a client matter. Concluding that this failure constituted professional misconduct, the panel stated the following at paragraph 8 in its reasons:

The Panel emphasizes that the duty for all members to respond promptly is a duty that is owed not only to fellow members and to the Law Society but also to lay persons with whom the member may be dealing with in course [sic] of acting for a client.

[74] The Law Society submits that Mr. Pyper's failure to pay Dr. M's bills and his failure to respond to communications from Dr. M demonstrate a marked departure from the standards the Law Society expects lawyers to maintain, and accordingly this failure constitutes professional misconduct.

[75] Mr. Pyper submits that, although he would have paid Dr. M's accounts, he has been unable to do so because the Law Society obtained a custodianship order over his practice for the period from May 2014 until the time of the hearing on December 4, 2017. This circumstance, he asserts, has prevented him from being informed about the amount of money in his general and trust accounts, and has prevented and continues to prevent him from being able to pay Dr. M.

[76] The Panel received no evidence about the status of the custodian's control over Mr. Pyper's general and trust accounts and the amounts of money, if any, deposited in those accounts.

[77] Mr. Pyper submits that the Panel cannot rely on the deemed authenticity of documents and facts in the Notice to Admit, but acknowledges that he has made no objection to the admissibility of the Notice to Admit at any time.

[78] Mr. Pyper submits that the Law Society's allegations that he has committed professional misconduct in this case cannot be heard by the Panel because the Law Society has "dirty hands".

[79] Ms. Gulabsingh objected to Mr. Pyper's remarks in the hearing about alleged bias in the prosecution of this case, and the Law Society having "dirty hands". The Panel responded to her objection stating that there was nothing in the evidence that

created in us any concern about her conduct as a barrister and solicitor in the prosecution of the this case.

## **ANALYSIS AND FINDINGS**

[80] In this case the Panel had as evidence the Notice to Admit marked as Exhibit 4, the affidavit of Dr. M affirmed on October 21, 2015 marked as Exhibit 5, the oral testimony of Dr. M, and the oral testimony of Mr. Pyper.

[81] In his oral testimony, Dr. M confirmed the evidence in his affidavit and in the Notice to Admit that an amount totaling \$8,182 stemming from his bills of January 10, 2012, February 4, 2013 and May 7, 2013 had not been paid to him.

[82] In his oral testimony Dr. M said that neither Mr. Pyper nor anyone from his office ever told him there had been “a problem” with his evidence at the criminal or civil trial.

[83] Dr. M testified that he never received a response to his letters of June 11, 2013, July 23, 2013, September 10, 2013, and December 3, 2013 in which he asked Mr. Pyper why his bills had not been paid and why his letters were not answered and phone calls not returned.

[84] The only evidence before us that Mr. Pyper communicated any discontent with Dr. M's evidence at the criminal and civil trials was Mr. Pyper's June 6, 2014 letter to Dr. M. The letter includes the following paragraphs:

... As previously advised, our Client WF is extremely unhappy about your evidence in both the criminal and civil trials in that your evidence supported more the defense case in the civil matter than his claim.

...

We have instructions from our client to wait until the decision of [the trial judge] has been pronounced before he will instruct us about further payments to you.

[85] In his evidence Mr. Pyper said he could not remember signing that letter to Dr. M and does not know who wrote the letter. He also said he was suspended from practice at the time the letter was dated.

[86] Given Mr. Pyper's lack of recollection of writing the letter, the Panel prefers the evidence of Dr. M where it may conflict with the contents of Mr. Pyper's June 6,

2014 letter. In particular, we are not persuaded of the accuracy in Mr. Pyper's remark in the letter that he had "previously advised" Dr. M that the client was unhappy with Dr. M's evidence.

- [87] In cross-examination Mr. Pyper said that he could not remember responding to any of Dr. M's June 11, 2013, July 23, 2013, September 10, 2013, and December 3, 2013 letters.
- [88] Mr. Pyper asserts that he did not retain Dr. M to provide expert opinion evidence for the client in the criminal and civil trials, but his firm's associates may have done so. We are satisfied on the evidence that lawyers LD and BE were employee associates of Mr. Pyper and his firm. Accordingly, we are satisfied that Mr. Pyper was responsible for paying Dr. M's accounts.
- [89] Based on all the evidence we make the following findings of fact:
- (a) Dr. M's unpaid bills totaling \$8,518 are a financial obligation in respect of Mr. Pyper's practice and Mr. Pyper has not paid the amounts owing or remaining owing in the bills;
  - (b) Mr. Pyper acknowledged the unpaid bills of Dr. M remained a financial obligation of his practice, and he would have paid them if he could;
  - (c) Mr. Pyper failed to respond to Dr. M's letters, and he provided the Panel with no explanation about why he failed to do so.
- [90] As a result of our findings in paragraph 89(c) above, we are satisfied that the Law Society has proven the elements enumerated in allegation 1(b) of the citation and that Mr. Pyper's failure to respond to Dr. M's letters dated June 11, 2013, July 23, 2013, September 10, 2013 and December 3, 2013 demonstrates a marked departure from the conduct the Law Society expects of lawyers and constitutes professional misconduct.
- [91] As stated earlier at paragraph 76 in these reasons, we have no evidence about the status of Mr. Pyper's general and trust accounts. The evidence we do have from Mr. Pyper is that these accounts were not available to him, and if he had access to them he would have paid Dr. M's bills. In the circumstances of this case, although we are concerned about elements of Mr. Pyper's recollection of events as outlined in these reasons, after considering all the evidence we are not satisfied on a balance of probabilities that Mr. Pyper's failure to pay Dr. M's bills results from wrongful or negligent conduct on his part contrary to Chapter 2, Rule 2 of the *Professional Conduct Handbook* in force at the time of the alleged misconduct, and Rule 7.1-2

of the *Code of Professional Conduct for British Columbia*. Accordingly, we dismiss the allegation of professional misconduct contained in paragraph 1(a) of the citation.

- [92] In our opinion a lawyer's refusal or delay in paying a consultant's bill, or the bill of any other person who may provide services or goods to a lawyer, will not automatically amount to professional misconduct.
- [93] There may be circumstances – and in making the following remarks we are not critical of anything said or done by Dr. M in this case – where a consultant or expert witness engaged by a lawyer provides a report that contains significant errors, or contains opinion or other content not properly part of the engagement agreement. Additionally, there may be circumstances in which lawyers purchase or leases goods or services for their practices where the goods or services are defective or otherwise not adequate or fit for their intended purpose.
- [94] However, lawyers are expected to communicate promptly with a provider of goods and services where a question or dispute arises over the correctness or quality of those goods or services and any bill associated with them. Lawyers are also expected to do their best to resolve such disputes. If they cannot be resolved, then it may be necessary for the parties to have the matter determined by a court, or settled through alternate dispute resolution.