

2022 LSBC 48
Hearing File No.: HE20200033
Decision Issued: November 28, 2022
Citation Issued: May 25, 2020

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

LEONIDES TUNGOHAN

RESPONDENT

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

Hearing dates:	October 3, 4 and 5, 2022
Written submissions:	October 7, 2022
Panel:	Kimberly Henders Miller, Chair Kim Carter, Bencher Ruth Wittenberg, Public representative
Discipline Counsel:	Angela R. Westmacott, KC Kaitlyn Chewka
Appearing on his own behalf:	Leonides Tungohan
Written reasons of the Panel by:	Kimberly Henders Miller

BACKGROUND

- [1] On May 25, 2020, the Law Society of British Columbia issued a citation (the “Citation”) alleging that between approximately July 1, 2019 and April 1, 2020, the Respondent breached a June 5, 2015 Law Society hearing panel order by failing to submit reports for four reporting periods from March 1, 2019 to February 29, 2020, thus committing professional misconduct as set out in s. 38(4) of the *Legal Profession Act*, SBC 1998, c. 9 (the “Act”).
- [2] A hearing was held from October 3 to 5, 2022, in which the parties called evidence and the Law Society provided written and oral submissions. The Respondent declined to provide oral submissions and provided written submissions on October 7, 2022.
- [3] For the reasons set out below, the Panel finds that the Law Society has proven that the Respondent committed professional misconduct.

ISSUES

- [4] It is evident that the Respondent did not file the reports as contemplated by the Law Society hearing panel order. The issue is whether the Respondent has otherwise satisfied this requirement.
- [5] The Respondent urges the Panel to consider a much wider scope of issues, summarized as follows:
- (a) that the Law Society’s investigation into the matter was flawed;
 - (b) that since at least 2018, various representatives of the Law Society failed to respond adequately to his correspondence; and
 - (c) that the Practice Standards Committee’s decision not to remove the quarterly report requirement is flawed and is not determinative.
- [6] While the Panel has considered the underlying facts, the additional issues, as framed by the Respondent, do not assist in the determination of this matter. Therefore, the Panel declines to broaden the scope of the inquiry.

FACTS

- [7] In these proceedings, the Law Society issued a detailed notice to admit dated May 31, 2020 (the “Notice to Admit”) to the Respondent.

- [8] In his response to the Notice to Admit, dated July 6, 2021, the Respondent made some of the admissions requested by the Law Society.
- [9] Both parties filed Books of Documents, composed mainly of Law Society correspondence and prior decisions relating to the matter.
- [10] Three witnesses from the Law Society were called during the hearing to give evidence and speak to the documents. The Law Society called Gurprit Bains, Deputy Chief Legal Officer. The Respondent called Sharleen Dumont, Staff Lawyer, Investigations, Monitoring and Enforcement, and Eva Thiess, Deputy Director of the Trust Assurance department. The Respondent did not testify.
- [11] The Respondent's admissions and the documentary evidence formed the primary evidentiary basis for this hearing.

Service of the Citation

- [12] On May 25, 2020, the Citation was served on the Respondent in accordance with Rule 4-19.

The Respondent's membership in the Law Society

- [13] The Respondent was called and admitted as a member of the Law Society in 2008. His current status is "practising lawyer".

Background

- [14] A May 29, 2013 citation relating to the withdrawal of funds from trust resulted in a finding of misconduct by a hearing panel. In *Law Society of BC v. Tungohan*, 2015 LSBC 26 ("*Tungohan 2015 disciplinary action*"), the hearing panel made the order, which contained the quarterly report requirement at the heart of this matter:

(b) The Respondent is required to produce to the Law Society a report from an accountant (approved by the Law Society Compliance Audit Department) on a quarterly basis. That is to say, commencing on the date of this decision on disciplinary action, and every three month period thereafter, the Respondent must provide the Law Society within 30 days a report that states that the Respondent's general account and trust account are in compliance with the Law Society accounting rules. This condition will remain in place until the Practice Standards Committee determines it is no longer necessary.

(the “Order”)

- [15] To summarize, the Order requires submission of a quarterly report, prepared by an approved accountant, stating that the Respondent’s general and trust account are in compliance with the Law Society Rules (the “Quarterly Report”). The Order requires that the Quarterly Report must be provided to the Law Society 30 days after each reporting period (the “Quarterly Report Requirement”), until the Respondent is relieved of the requirement by the Practice Standards Committee. Compliance with the Order is monitored by the Investigation, Monitoring and Enforcement group of the Law Society.
- [16] The Quarterly Report Requirement is separate and distinct from the requirement under the Law Society Rules that a trust report must be submitted annually for law firms in BC (“Annual Trust Report”). The Respondent’s Annual Trust Report period runs from December 1 to November 30 and is to be filed by the last day of February each year. Compliance with this requirement is monitored by the Trust Assurance department of the Law Society.
- [17] While the matter before the Panel concerns the submission of Quarterly Reports, throughout the relevant time period, the Respondent was engaging in a large volume of communications with the Law Society concerning many issues, including his pursuit of reviews, stays, deferrals and postponements of various decisions, obligations and aspects of the disciplinary hearing panel’s decision; his submission of Annual Trust Reports; as well as the Quarterly Report Requirement. The Respondent tends to confound his many issues through omnibus communications and submissions to the Law Society and adjudicating bodies.
- [18] It is also apparent that during the relevant time period, the Respondent sought stays, reviews and appeals of the decision regarding the May 29, 2013 citation through the Executive Director of the Law Society, the review board and the BC Court of Appeal. As a result, many decisions by many different adjudicators have been rendered in this matter.
- [19] Although the history of this matter prior to the Citation period is lengthy and complex, it is important in order to give context to the actions of the parties in relation to this Citation. It is against this backdrop that the facts of this matter must be considered.

Events between issuance of the Order and the Citation period

- [20] On June 5, 2015, the same day the Order was issued, the Respondent launched a review of the decision and a stay of the Order. This would be the first of his many

efforts to be relieved of the Quarterly Report Requirement. As a result, the Quarterly Report Requirement was stayed on August 31, 2015, pending review. This stay was extended on two subsequent occasions until December 12, 2016, when the review board issued its decision declining to set aside or vary the Order: *Law Society of BC v. Tungohan*, 2016 LSBC 45.

- [21] By letter of January 17, 2017, the Law Society reminded the Respondent of his obligation under the Order, which would require him to provide the first Quarterly Report by April 11, 2017.
- [22] On May 30, 2017, the review board issued a decision on Clarification and Costs, in which it addressed the timing of the commencement of the reporting period and the due date for the first Quarterly Report: *Law Society of BC v. Tungohan*, 2017 LSBC 19. The review board determined that the quarterly reporting period should commence on June 5, 2015, and that the report should be submitted within 30 days.
- [23] By letter of May 31, 2017, the Law Society reminded the Respondent of his obligation under the Order, which would require him to provide the first Quarterly Report by June 29, 2017.
- [24] By letter of June 29, 2017, the Respondent applied for a deferment of the Quarterly Report Requirement. This request was dismissed by the review board on August 30, 2017: *Law Society of BC v. Tungohan*, 2017 LSBC 31.
- [25] The Respondent pursued an appeal of the review board decision relating to the May 29, 2013 citation. On November 24, 2017, the BC Court of Appeal dismissed the appeal as it related to the finding of professional misconduct, but allowed the appeal as it related to costs ordered by the panel: *Law Society of BC v. Tungohan*, 2017 BCCA 423. The matter of costs was remitted back to the review board for consideration.
- [26] On December 12, 2017, the Respondent filed an application for an extension of time to submit the Quarterly Reports. This application was dismissed by the review board on February 13, 2018: *Law Society of BC v. Tungohan*, 2018 LSBC 05.
- [27] By letter of February 15, 2018, the Law Society reminded the Respondent of his obligation under the Order, which required him to provide the first Quarterly Report by June 29, 2017. This report was now overdue. The Law Society notified the Respondent that a complaint investigation file was being opened as a result of noncompliance with the Order (the “2018 Complaint”).

[28] On June 4, 2018, the review board rendered its decision on the remitted issue of costs: *Law Society of BC v. Tungohan*, 2018 LSBC 15. On August 23, 2018, the Respondent filed a “motion for clarification” of the decision. On January 16, 2019, the review board rendered its decision: *Law Society of BC v. Tungohan*, 2019 LSBC 02 (“*Tungohan 2019 review*”). Although the decision dealt with costs, the Respondent raised other issues, including the Quarterly Report Requirement. He submitted that his Annual Trust Reports for 2016 and 2017 should fulfill the Quarterly Report Requirement. The Respondent places much import on the following passages of this decision:

[24] Mr. Tungohan has also raised issues regarding the accounting reports that he was ordered to produce to the Law Society pursuant to the hearing panel’s decision on Disciplinary Action. Mr. Tungohan was required to produce accounting reports to the Law Society on a quarterly basis confirming that his trust and general accounts are in compliance with Law Society accounting rules. This requirement was to remain in force until the Practice Standards Committee determines it is no longer necessary.

...

[28] We agree that it is not appropriate for this Review Board to make an order with respect to the accounting reports. We have been provided with limited information regarding what appears to be an ongoing issue between Mr. Tungohan and the Law Society regarding compliance with the order to file accounting reports. We do not consider that it is appropriate to resolve this dispute based on the material that is before us, and moreover, we do not consider that it is the proper role of this Review Board to resolve the matters raised by Mr. Tungohan. It is not the role of this Review Board to review or approve Mr. Tungohan’s accounting reports. *The accounting report requirement should be addressed and resolved by Mr. Tungohan and the Law Society as set out in the order made by the hearing panel.*

[emphasis added]

[29] By letters of March 1 and 4, 2019, the Respondent reiterated to the Law Society, amongst other issues, his position that his previous Annual Trust Reports should fulfill the Quarterly Report Requirement. He also sought clarification of the difference between the two reports.

- [30] By letter of March 6, 2019, Ms. Bains responded to the Respondent. This letter became a focus for much of the Respondent's case.
- [31] In the March 6, 2019 letter, Ms. Bains agreed to accept the Respondent's Annual Trust Reports for 2016 and 2017 as satisfying the Quarterly Report Requirement for the periods covered therein. This would leave Quarterly Reports overdue for the period of June 5 to November 29, 2015 and the period December 1, 2017 to December 1, 2018. She indicated that she may accept the 2018 Annual Trust Report as satisfying the Quarterly Report Requirement for that period. She made it clear that she did not have the authority to grant a filing extension. She advised that if the Respondent filed the 2018 Annual Trust Report, the next Quarterly Report would cover the period from December 1, 2018 to March 5, 2019 and would be due on April 4, 2019.
- [32] In concluding the letter, Ms. Bains reminded the Respondent that he could bring an application to be relieved of the Quarterly Report Requirement, as per the Order, and reiterated which Quarterly Reports were overdue.
- [33] Ms. Bains testified that she exercised her discretion in this way because, after five review board decisions and a Court of Appeal decision, she wanted to instill some clarity and hoped to forge "a clear path forward." The Panel notes that while the intent of this decision is worthy, it had the unfortunate result of opening the door to the Respondent to take the position that the "waters had been muddied."
- [34] By letter of March 7, 2019, in addition to raising several other issues, the Respondent requested that the filing of his 2018 Annual Trust Report be held in abeyance "pending a resolution of the issues." He advised that he held a "legitimate expectation" that "the Law Society will adhere to the tenor, import and effect of the decision of the Review Board to discuss and resolve all accounting issues."
- [35] By letter of March 8, 2019, the Law Society advised the Respondent that its position regarding the outstanding Quarterly Reports remained the same. He was advised that the Trust Assurance department would respond regarding the submission of his Annual Trust Report.
- [36] By letter of April 4, 2019, the Respondent notified Ms. Bains that he had submitted his 2018 Annual Trust Report on March 30, 2019, and that the report also included the period of December 1, 2018 to February 28, 2019 "for the purposes of the Quarterly Report."
- [37] By letter of April 10, 2019, Ms. Bains advised the Respondent that the augmented 2018 Annual Trust Report satisfied the Quarterly Report Requirement for that

period. The Respondent was reminded that the Quarterly Report for the period from March 1 to May 31, 2019 was due on July 1, 2019.

- [38] By letter of April 11, 2019, the Respondent was advised that the 2018 Complaint file was being closed given his “substantial compliance” with the Order.

Events during the Citation period

- [39] On June 27, 2019, the Respondent, for the first time, applied to the Practice Standards Committee for relief from the requirement to provide Quarterly Reports, as contemplated in the Order.
- [40] By email of July 2, 2019, the Respondent was reminded that his Quarterly Report for March 1 to May 31, 2019 was now overdue. Following this, there was an exchange of correspondence between the Respondent and the Law Society where the Respondent advocated that the Quarterly Report Requirement should be held in abeyance pending the decision of the Practice Standards Committee. The Law Society responded that the Quarterly Report was still due until the Practice Standards Committee relieved the Respondent of the requirement.
- [41] By email of September 19, 2019, the Respondent was again reminded that the Quarterly Report due on July 1, 2019, remained overdue.
- [42] On September 26, 2019, the Practice Standards Committee dismissed the Respondent’s application. The reasons for the dismissal were released on October 4, 2019. The Respondent had advised the Practice Standards Committee that he was no longer engaging in the practice of law. However, he had not changed his practising status to non-practising, nor closed his trust account. In the absence of these two events, the Practice Standards Committee found that the submission of Quarterly Reports, or trust Reports as accepted, was still necessary.
- [43] By email of October 16, 2019, the Respondent was again reminded that the Quarterly Report due on July 1, 2019, remained overdue.
- [44] By email of November 5, 2019, the Respondent was again reminded that the Quarterly Report due on July 1, 2019, remained overdue and that the report for the period June 1 to August 31, 2019, was now also overdue.
- [45] On November 15, 2019, the Respondent filed an application with the Practice Standards Committee for a review of its decision of September 26, 2019.
- [46] By letter of December 5, 2019, the Respondent was notified by the Law Society that a complaint file had been opened regarding his continued failure to meet the

Quarterly Report Requirement of the Order (the “2019 Complaint”). The 2019 Complaint led to the Citation being issued.

- [47] By letter of January 14, 2020, the Respondent responded to the 2019 Complaint, citing the principle of “legitimate expectation”, essentially proposing that since he had launched a review, there was no finality to the Practice Standards Committee decisions and no “legal or factual basis for investigation.” He also advocated that the Law Society was not giving effect to what he called “the direction of the Hearing Panel: to determine whether or not the firm’s general and trust account are in compliance with Law Society accounting rules.” This is presumably a reference to the obiter comments of the review board in *Tungohan 2019 review*.
- [48] By letter of March 4, 2020 to the Executive Director of the Law Society, the Respondent requested remedies relating to his 2019 Annual Trust Report, citing the pending review by the Practice Standards Committee relating to the Quarterly Report Requirement.
- [49] By letter of March 31, 2020, Ms. Bains responded, advising that the Trust Assurance department would respond regarding his obligations to file his Annual Trust Report. She reminded the Respondent that the Order remained in effect and that the Quarterly Reports for July 1, 2019, October 1, 2019 and January 1, 2020 were overdue. She advised that the Quarterly Report for the period of December 1, 2019 to February 29, 2020 would become due on April 1, 2020.
- [50] On March 5, 2020, the Practice Standards Committee dismissed the Respondent’s application to be relieved from the Quarterly Report Requirement. The Respondent was notified of the decision by letter of April 1, 2020.
- [51] On or about May 4, 2020, the Respondent sought a review of the April 1, 2020 Practice Standards Committee decision. By letter of May 21, 2020, the Practice Standards Committee declined to consider a subsequent review of this decision, absent a material change in facts.
- [52] The Respondent filed his Annual Trust Reports for the periods ending November 30, 2018, 2019 and 2020, although each of these was filed late (March 30, 2019, October 3, 2020 and March 31, 2021, respectively). The Panel notes that the Annual Trust Report that would cover the first part of the Citation period was filed months after the Citation issued.
- [53] No Quarterly Reports have been filed for the four reporting periods in the Citation (March 1, 2019 to February 29, 2020).

ANALYSIS

Professional misconduct

- [54] Section 38(4)(b)(i) of the *Act* authorizes a panel, after a hearing, to determine that a respondent has committed professional misconduct.
- [55] It is well established that the test for professional misconduct requires conduct that is a “marked departure” from what the Law Society expects of lawyers. The Law Society will meet the burden of proving this objective test on a balance of probabilities where the lawyer’s conduct displays gross culpable neglect of their duties: *Law Society of BC v. Martin*, 2005 LSBC 16 at paras. 171 and 172; *Law Society of BC v. Guo*, 2021 LSBC 20 at paras. 52 and 53.
- [56] In *Law Society of BC v. Ben-Oliel*, 2016 LSBC 35, a hearing panel held that failure to comply with a hearing panel order is *prima facie* evidence of professional misconduct, stating at para. 26:

The regulation of the legal profession in the public interest is the principal purpose of the Law Society. The effective regulation of the profession requires that members of the profession comply with the orders made by the Law Society. The failure to comply with an order of the Law Society made pursuant to the *Legal Profession Act* impacts upon the ability of the Law Society to regulate the profession in the public interest and undermines the public’s confidence in the integrity of the profession ...

- [57] The failure to comply with a hearing panel order is a breach of the requirement in Chapter 7.1-1 of the *Code of Professional Conduct for British Columbia* to “comply with orders made under the *Legal Profession Act* or Law Society Rules.” The importance of this requirement was described in *Guo* at para. 55:

It is important that lawyers scrupulously adhere to this requirement because, unless they do so, the Law Society’s ability to regulate lawyers’ conduct in the public interest is significantly undermined and so too is the public’s confidence in the profession and the administration of justice more generally. See *Law Society of BC v. Cunningham*, [2017 LSBC 37](#), at para. [18](#); *Law Society of BC v. McLean*, [2015 LSBC 9](#), at paras. [128-129](#), [131](#); *Law Society of BC v. Coutlee*, [2010 LSBC 27](#), at para. [14](#); *Law Society of BC v. Welder*, [2012 LSBC 18](#), at para. [19](#); *Law Society of BC v. Pyper*, [2016 LSBC 01](#), at para. [65](#); *Law Society of BC v. Jessacher*, [2016 LSBC 11](#), at paras. [44-45](#).

- [58] Given the factors at stake, failure to comply with a professional regulatory body's order is considered to be serious misconduct. See *Ben-Oliel* at para 26; *Ontario (College of Physicians and Surgeons of Ontario) v. Francis*, 2011 ONCPSD 7; *Ontario (College of Physicians and Surgeons of Ontario) v. Deep*, 2010 ONCPSD 20.

The doctrine of legitimate expectations

- [59] The Respondent argues that he had a legitimate expectation that the Law Society should accept Annual Trust Reports in lieu of the Quarterly Reports. This argument seems to be based on his position that the Quarterly Reports are redundant and that the Law Society accepted the Annual Reports in lieu of Quarterly Reports for a specified time period.
- [60] The doctrine arises from the common law duty of procedural fairness. It is engaged when a public body makes representations about the manner in which it conducts itself in a way that leads a party to believe they can rely on that conduct. It does not confer substantive rights but can provide for certain procedures to be observed on the basis of fairness: *Reference Re Canada Assistance Plan (B.C.)*, [1991] 2 SCR 525.
- [61] In order for the doctrine to apply, certain conditions must be present. These were described in *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 SCR 559, at para. 95:

The specific conditions which must be satisfied in order for the doctrine of legitimate expectations to apply are summarized succinctly in a leading authority entitled *Judicial Review of Administrative Action in Canada*:

The distinguishing characteristic of a legitimate expectation is that it arises from some conduct of the decision-maker, or some other relevant actor. Thus, a legitimate expectation may result from an official practice or assurance that certain procedures will be followed as part of the decision-making process, or that a positive decision can be anticipated. As well, the existence of administrative rules of procedure, or a procedure on which the agency had voluntarily embarked in a particular instance, may give rise to a legitimate expectation that such procedures will be followed. Of course, *the practice or conduct said to give rise to the reasonable expectation must be clear, unambiguous and unqualified.*

[emphasis in original]

Application

- [62] From the time that the hearing panel issued the Order in 2016, to the Citation period, the Respondent has been engaged in an uninterrupted and voluminous effort to be relieved of the Quarterly Report Requirement.
- [63] The Respondent has legitimately utilized the available review and appeal mechanisms available to him. At each step, the Quarterly Report Requirement has been validated. However, even when a route of review or appeal has reached its conclusion, the Respondent does not accept the result. It is against this background that the Respondent comes before this Panel.
- [64] The issue here is a narrow one: did the Respondent fail to comply with the Order?
- [65] The Respondent argues that he has satisfied the Quarterly Report Requirement. He has not. The requirement under the Order is clear. The Respondent has failed to provide Quarterly Reports as required by the Order.
- [66] The Respondent argues that the Quarterly Reports are redundant. Whether that is the case or is not, is immaterial: absent being relieved of the Quarterly Report Requirement, the Respondent is required to comply with it.
- [67] The Respondent argued that the January 16, 2019 decision in *Tungohan 2019 review* incorporated a direction for the Law Society to resolve the matter of outstanding Quarterly Reports by way of Annual Reports. It did not. A plain reading of the decision makes it clear that the review board confirmed the Quarterly Report Requirement and declined to consider the issue.
- [68] On March 6 and April 10, 2019, the Law Society agreed to accept Annual Reports for the period covered by the 2016, 2017 and augmented 2018 annual report reporting periods, to the Respondent's benefit.
- [69] In the subsequent correspondence between the Law Society and the Respondent, there could be no confusion that the Quarterly Report Requirement was still in force and that the Respondent was expected to commence submission with the reporting period starting March 1, 2019, this report being due on July 1, 2019. The Respondent was reminded of this obligation on no less than five occasions between April 10 and November 5, 2019.
- [70] The Respondent argues that he had a legitimate expectation that the Annual Trust Reports could be submitted in lieu of the Quarterly Reports. He did not. The

acceptance of the Annual Trust Reports was clearly qualified to pertain to a specific time period.

CONCLUSION

[71] The Panel need look no further than the original hearing panel decision in *Tungohan 2015 disciplinary action* to appreciate the public interest in the Quarterly Report Requirement. There, at paras. 10 and 11, the Respondent's conduct was described as "numerous breaches relating to the handling of money in the Respondent's trust and general accounts" and "the failure to maintain books, accounts and records appropriately." At para. 25, the hearing panel stated:

There is a need for specific deterrence in order for the Panel and the public to be assured this will not happen again. As indicated above, ensuring compliance with the Law Society's accounting rules is very important in order that the public may have confidence in how a lawyer handles a client's money. This Panel must consider the need to ensure the public's confidence in the integrity of the profession and give it paramountcy over the rehabilitation of the Respondent.

[72] It is trite to say that the failure of any person to abide by the regulations of their professional regulatory body undermines the ability of that body to regulate its members effectively and meaningfully. This is particularly so when such a body makes an order for the purpose of protecting the public as the result of prior misconduct. The failure of a lawyer to abide by a hearing panel's order in these circumstances renders impotent the authority of the Law Society and can have no possible outcome but the erosion of public confidence in the profession.

[73] The Law Society has proven on a balance of probabilities that the Respondent's failure to comply with the Order constitutes professional misconduct.