

2025 LSBC 13
Hearing File No.: HE20230005
Decision Issued: May 26, 2025
Citation Issued: May 4, 2023

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

NICKOLAUS HAROLD MACDONALD WEISER

RESPONDENT

**DECISION OF THE HEARING PANEL
ON DISCIPLINARY ACTION**

Written materials: January 8, 2025

Hearing in Writing Commenced: February 10, 2025

Panel: Kate Saunders, KC, Chair
Gregory Cran, Public Representative
Jaspreet Malik, Benchers

Discipline Counsel: Gagan K. Mann

No one appearing on behalf of the
Respondent

OVERVIEW

[1] The Law Society of British Columbia (the “Law Society”) seeks a finding of ungovernability and disbarment of the Respondent as well as its costs and disbursements.

[2] For the reasons set out below, the Panel finds the Respondent is ungovernable and orders disbarment.

[3] The Panel also orders the Respondent to pay costs in the amount of \$6,717.60 within 30 days of the issuance of these reasons.

PRELIMINARY MATTERS

Proceeding in Absence of the Respondent

[4] Section 42(2) of the *Legal Profession Act* (the “Act”) permits a panel to proceed with a hearing in the absence of a respondent if satisfied that the respondent was properly served with notice of the hearing.

[5] Rule 10-1(1) of the Law Society Rules (the “Rules”) provides that a party may be served with a notice of hearing or other document by, among other things, sending it to their last known email address or sending it via registered mail to their last known business or residential address.

[6] The Panel issued a Memorandum dated November 19, 2024 (the “Memorandum”) which directed that the hearing would commence on February 10, 2025 and set a schedule for the written materials of the parties. The Memorandum also contained the following caution:

Your provision of written materials to the Hearing Panel may be your only opportunity to present evidence or make submissions. If you fail to provide written materials, the Panel may proceed without those materials and make any order that it could have made had you participated in the hearing in writing.

[7] The Memorandum was served on the Respondent at his last known email address. The Panel finds that the Memorandum was served on the Respondent on November 20, 2024.

[8] Neither the Tribunal nor the Law Society received any communication from the Respondent in relation to this hearing.

[9] The Panel finds it is appropriate to proceed in the absence of the Respondent. The Panel is satisfied that the Respondent was properly served with notice of this hearing and that the hearing should proceed since:

- (a) the Respondent was cautioned that the hearing may proceed in his absence;
- (b) the Respondent was served at the last email address known by the Law Society to be associated with him;
- (c) the Respondent has not appeared at any hearings conducted by this Tribunal in respect of him since November 20, 2023: *Law Society of BC v. Weiser*, 2024 LSBC 6, *Law Society of BC v. Weiser*, 2024 LSBC 18 (“*Weiser Disciplinary Action #3*”) and *Law Society of BC v. Weiser*, 2024 LSBC 43 (the facts and determination decision of this Panel (“F&D decision”)); and
- (d) the Respondent is a former member of the Law Society.

Jurisdiction Over a Former Member of the Law Society

[10] On January 1, 2024, the Respondent ceased to be a member of the Law Society for non-payment of fees.

[11] Further, following the hearing of an unrelated citation, the Respondent was found ungovernable and disbarred by this Tribunal in reasons issued on March 25, 2024: *Weiser Disciplinary Action #3*.

[12] This Panel makes the following conclusions on jurisdiction:

- (a) We have jurisdiction over a former member (*Law Society of BC v. Guo*, 2024 LSBC 39, at para. 16 (“*Guo*”)); and
- (b) The Rules and the *Act* apply to former members (*Guo*, at para. 17 and 18).

[13] Discipline over former members is an important part of maintaining the public’s confidence in the legal profession. Former members cannot avoid discipline by simply ceasing their membership and avoiding the consequences of their misconduct.

FACTUAL BACKGROUND

[14] The Respondent was cited by the Law Society for failing to comply with an Order of the Practice Standards Committee within the 14-day deadline imposed, contrary to rule 7.1-1(e) of the *Code of Professional Conduct for British Columbia* (the “Code”).

[15] The Panel’s conclusion on the sole allegation was:

- (a) non-compliance with Orders is serious misconduct;
- (b) the Respondent’s misconduct was relatively brief, as he achieved substantial compliance with all terms of the Order within three months of the deadline;
- (c) there is no explanation for the non-compliance with the Order; and
- (d) the Respondent’s conduct was cavalier and illustrated culpable neglect for his duties as a lawyer.

[16] The Panel found the Respondent’s actions constituted professional misconduct.

POSITION OF THE LAW SOCIETY

[17] The Law Society submits that the Respondent is ungovernable and should be disbarred.

[18] In the alternative, the Law Society submits that if we do not determine that the Respondent is ungovernable, we should nonetheless conclude that disbarment is the appropriate sanction for the misconduct we have found.

IMPACT OF A PREVIOUS FINDING OF UNGOVERNABILITY

[19] As set out above, the Respondent was previously found ungovernable and disbarred in *Weiser Disciplinary Action #3*.

[20] In *Guo*, the panel tackled the issue of a previous finding of ungovernability and the impact of that finding on a subsequent hearing panel. At paras. 36 through 38 of *Guo*, the panel held:

[36] As noted above, the Respondent has already been found to be ungovernable twice on substantially the same evidence as before this Panel: *Ungovernability Decision #1* and *Ungovernability Decision #2*.

[37] Strictly speaking, this Panel is not bound by previous decisions of this Tribunal. Nevertheless, prior decisions provide important context to the analysis: *Irving Pulp & Paper Ltd v. LEP, Local 30*, 2013 SCC 34 at paras. 6, 75 and 78. As the Supreme Court of Canada observed in *Irving* at para. 78 and 79:

Consistent rules and decisions are fundamental to the rule of law. As Professor Weiler, a leading authority in this area, observed in *Re United Steelworkers and Triangle Conduit & Cable Canada (1968) Ltd.* (1970), 1970 CanLII 1688 (ON LA), 21 L.A.C. 332:

This board is not bound by any strict rule of stare decisis to follow a decision of another board in a different bargaining relationship. *Yet the demand of predictability, objectivity, and impersonality in arbitration require that rules which are established in earlier cases be followed unless they can be fairly distinguished or unless they appear to be unreasonable.* [p. 344.]

[emphasis in original]

See, also D.J.M. Brown and D.M. Beatty, *Canadian Labour Arbitration* (4th ed. (loose-leaf)), at topic 1:3200 (including discussion of the “Presumption Resulting From Arbitral Consensus”); R.M. Snyder, *Collective Agreement Arbitration in Canada* (4th ed. 2009), at p. 51 (identifying Professor Weiler's view as “typical”).

... Reasonableness review includes the ability of courts to question for consistency where, in cases like this one, there is no apparent basis for implying a rationale for an inconsistency.

[38] Inconsistency with other decisions made by a tribunal is pertinent to the reasonableness of a decision. As noted by Professor Paul Daly in “The Principle of Stare Decisis in Canadian Administrative Law” (2016) 49:1 R.J.T. 757 at 769, there is a “strong case for branding as reviewable those cases where statutory authorities inexplicably fail to act consistently”. Previous decisions provide a “direct contextual comparison against which” the reasonableness of a new decision can be considered. Where this Tribunal departs from a previous decision, the departure must generally be accompanied by an explanation justifying it.

[21] At para. 43 of *Guo* the panel held:

[43] While *Ungovernability Decision #1* and *Ungovernability Decision #2* are based on the same evidence as is now before this Panel, this Panel must make its own determination on ungovernability taking into account the applicable law and specific circumstances of this matter.

[22] This Panel makes its own determination based on the record before it.

[23] In *Guo*, the issue of collateral attack was not considered, and it is not squarely before us, but it is an issue that will need to be addressed if a panel wishes to come to a different conclusion on ungovernability on the same evidence when an ungovernability finding is sought for a subsequent citation that was not before the first panel.

UNGOVERNABILITY

[24] In *Weiser Disciplinary Action #3* the framework for determining ungovernability was set out as follows:

[17] Ungovernability was discussed in *Law Society of BC v. Hall*, 2007 LSBC 26 (“*Hall 2007*”), a case that involved misconduct described as “pervasive, extremely serious and, in the case of the failure to maintain proper books and records, extended over a period of years”. The panel held at para. 27:

The foregoing cases suggest that the relevant factors upon which a finding of ungovernability might be made will include some or all of the following:

1. A consistent and repetitive failure to respond to the Law Society's inquiries.
2. An element of neglect of duties and obligations to the Law Society with respect to trust account reporting and records.
3. Some element of misleading behaviour directed to a client and/or the Law Society.
4. A failure or refusal to attend at the discipline hearing convened to consider the offending behaviours.
5. A discipline history involving allegations of professional misconduct over a period of time and involving a series of different circumstances.
6. A history of breaches of undertaking without apparent regard for the consequences of such behaviour.

7. A record or history of practicing law while under suspension.

[18] An eighth consideration was added to the *Hall 2007* factors in *Law Society of BC v. Welder*, [2015 LSBC 35](#):

... the number of citations and conduct reviews the Respondent has acquired in his professional conduct record.

[19] Once a finding of ungovernability is made, disbarment must follow as it is the only disciplinary action that will effectively protect the public.

[25] The Panel accepts and will apply the eight-part framework.

APPLICATION OF UNGOVERNABILITY PRINCIPLES

A consistent and repetitive failure to respond to Law Society inquiries

[26] The Panel accepts and adopts paras. 20 to 26 of *Weiser Disciplinary Action #3*.

[27] In addition, in this proceeding the Respondent failed to respond to multiple inquiries from the Law Society as set out at para. 37 of the F&D Decision.

An element of neglect of duties and obligations to the Law Society with respect to trust account reporting and records

[28] The Panel accepts and adopts paras. 27 to 29 of *Weiser Disciplinary Action #3*.

[29] There are no trust account related allegations to add from the F&D Decision.

Some element of misleading behaviour directed to a client and/or the Law Society

[30] The Panel accepts and adopts paras. 30 to 33 of *Weiser Disciplinary Action #3*.

[31] There are no allegations of misleading behaviour to add from the F&D Decision.

A failure or refusal to attend the discipline hearing convened to consider the offending behaviours

[32] The Panel accepts and adopts paras. 34 to 36 of *Weiser Disciplinary Action #3*.

[33] In addition, in this proceeding the Respondent failed to participate as set out at para. 7 of the F&D Decision and has not provided any submissions in this hearing.

A discipline history involving allegations of professional misconduct over a period of time and involving a series of different circumstances

[34] The Panel accepts and adopts paras. 37 and 38 of *Weiser Disciplinary Action #3*.

[35] In addition, in this proceeding the Respondent failed to comply with an Order from the Practice Standards Committee as set out at para. 76 of the F&D Decision.

A record of having practiced law while suspended

[36] The Panel accepts and adopts para. 39 of *Weiser Disciplinary Action #3*.

[37] There are no allegations of practicing law while suspended to add from the F&D Decision.

The number of citations and conduct reviews the Respondent has acquired in his professional conduct record

[38] The Panel accepts and adopts paras. 40 and 41 of *Weiser Disciplinary Action #3*.

[39] In addition, in this proceeding the Respondent's conduct related to a failure to comply with an order of the Regulator as set out at para. 68 to 74 of the F&D Decision.

Conclusion of Application of Ungovernability Factors

[40] The Panel accepts and adopts paras. 42 to 45 of *Weiser Disciplinary Action #3*.

[41] Based on the totality of the evidence, no compelling reason has been presented to depart from the earlier conclusion. The Respondent's continued failure to comply with regulatory obligations reinforces the previous determination in *Weiser Disciplinary Action #3* that the Respondent is ungovernable.

APPROPRIATE SANCTION

[42] In *Weiser Disciplinary Action #3* at para. 19 the panel held:

[19] Once a finding of ungovernability is made, disbarment must follow as it is the only disciplinary action that will effectively protect the public.

[43] The Panel agrees that disbarment is the only appropriate sanction following a finding of ungovernability and the Respondent is therefore disbarred.

APPROPRIATE DISCIPLINARY ACTION ABSENT UNGOVERNABILITY

[44] In *Guo*, the panel set out the issue and framework at paras. 61 through 65:

[61] It is necessary for this Panel to assess the appropriate disciplinary action for the Respondent in the event that this Panel is wrong in its determination of ungovernability.

[62] Following an adverse determination being made against a respondent, section 38(5) of the *Act* requires the hearing panel to order one or more of the following:

- (a) reprimand the Respondent;
- (b) fine the Respondent an amount not exceeding \$50,000;
- (c) impose conditions or limitations on the Respondent's practice;
- (d) suspend the Respondent from the practice of law or from practice in one or more fields of law
 - (i) for a specified period of time;
 - (ii) until the Respondent fulfills a condition imposed under paragraph (c) or complies with a requirement under paragraph (f);
 - (iii) from a specified date until the Respondent fulfills a condition imposed under paragraph (c) or complies with a requirement under paragraph (f); or
 - (iv) for a specified minimum period of time and until the Respondent fulfills a condition imposed under paragraph (c) or complies with a requirement under paragraph (f);
- (e) disbar the Respondent; or
- (f) require the Respondent to do one or more of the following:
 - (i) complete a remedial program to the satisfaction of the practice standards committee;

- (ii) appear before a board of examiners appointed by this Panel or by the practice standards committee and satisfy the board that the Respondent is competent to practise law or to practise in one or more fields of law;
- (iii) appear before a board of examiners appointed by this Panel or by the practice standards committee and satisfy the board that the Respondent's competence to practise law is not adversely affected by a physical or mental disability, or dependency on alcohol or drugs;
- (iv) practise law only as a partner, employee or associate of one or more other lawyers.

[63] The disciplinary action imposed must fulfill the Law Society's duty to "uphold and protect the public interest in the administration of justice": *Act*, s. 3. Disciplinary action must protect the public from professional misconduct as well as maintain public confidence in the profession and the Law Society's oversight of the profession. It must also support and assist the respondent in fulfilling their duties in the practice of law.

[64] Where there is a conflict between protecting the public and assisting the respondent in fulfilling their duties, the protection of the public will prevail: *Law Society of BC v. Lessing*, 2013 LSBC 29 at para. 60.

[65] Unlike a consideration of ungovernability which focuses primarily on the global conduct of the respondent, the factors considered in assessing the appropriate disciplinary action following an adverse determination are more focused on, although not limited to, the respondent's specific conduct at issue. A non-exhaustive list of the categories of factors that may be relevant to assessing the appropriate disciplinary action include:

- (a) nature, gravity and consequences of the conduct;
- (b) character and professional conduct record of the respondent;
- (c) acknowledgement of the misconduct and remedial action; and
- (d) public confidence in the legal profession including public confidence in the disciplinary process.

Law Society of BC v. Dent, 2016 LSBC 5 at paras. 12 to 25

[45] The Law Society submits that, absent a finding of ungovernability, the appropriate disciplinary action in this matter is still disbarment.

Nature, gravity and consequences of the conduct

[46] As set out above, the Respondent failed to comply with an Order of the Practice Standards Committee within 14 days as required. To the Respondent's credit, he did achieve substantial compliance within 3 months of the deadline. Because of the Respondent's non-participation with the hearing process the Panel was left with no explanation for the non-compliance.

[47] There is some indication of mental health concerns, but no evidence submitted to explain the delay. The Practice Standards Committee recommended that the Respondent attend counselling sessions (para. 35 of the F&D Decision).

[48] The harm caused by the Respondent's misconduct is to the Law Society as the Regulator. Non-compliance with an Order of the Regulator is not acceptable. It undermines the authority of the Regulator, which in turn undermines the public's confidence in the legal profession.

Character and professional conduct record of the respondent

[49] In *Weiser Disciplinary Action #3*, the Panel found the Respondent's professional conduct record ("PCR") a significant aggravating factor.

[50] The Respondent's prior misconduct demonstrates an inability to deal with the Regulator in a timely manner. In this case, it was more of the same. The Practice Standards Committee made its recommendations on July 11, 2022. The Respondent did not comply with the Regulator and on December 13, 2022, the Practice Standards Committee made its Order. In February 2023, the Respondent started to comply with the Practice Standards Committee's recommendations that were eventually turned into the Order. The seven-plus-month delay between July 2022 and February 2023 is at the core of the Respondent's misconduct.

Acknowledgement of the Misconduct and Remedial Action

[51] As set out above, the Respondent substantially complied with the Order of the Practice Standards Committee within three months.

[52] No explanation was provided for the delay despite counselling being one of the steps that the Respondent was required to take.

[53] The obvious question is whether the counselling the Respondent was ordered to undertake would have assisted him in engaging with the Regulator more promptly. However, there is no evidence before the Panel that would allow it to make that determination.

Public Confidence in the Legal Profession and the Disciplinary Process

[54] The Regulator's ability to regulate the profession is essential to maintaining the public's confidence in the legal profession.

[55] The Respondent's non-compliance with an Order of the Regulator strikes at the heart of the Regulator's function.

Appropriate Sanction

[56] On the one hand, the Respondent breached an Order of the Regulator and offered no explanation for the delay in compliance. On the other hand, the Respondent substantially complied with the Order within three months of the deadline.

[57] In *Law Society of BC v. Ben-Oliel*, 2016 LSBC 35, the respondent was suspended for two months for failing to comply with an order of a hearing panel.

[58] In *Law Society of BC v. Farion*, 2017 LSBC 5, the respondent was suspended for 30 days for failing to comply with an order of a hearing panel.

[59] In *Law Society of BC v. Tungohan*, 2023 LSBC 33, the respondent was suspended for three months for failing to comply with an order requiring quarterly accounting reports to the Law Society.

[60] Based on previous decisions, the appropriate range of sanction is a suspension of one to three months absent significant aggravating or mitigating factors.

[61] The Law Society submits that disbarment is warranted in this case, instead of a suspension, as the Respondent was previously disbarred on the basis of ungovernability and none of the above cases involve as serious a conduct history as the instant case. The Law Society says that the Respondent's PCR is a significant aggravating factor and implicitly submits that progressive discipline should apply. Additionally, the Law Society submits there are no mitigating factors in this case and that a lesser sanction would not preserve public confidence in the Law Society's ability to regulate its members.

[62] The Panel disagrees with the Law Society's submission that in the absence of a finding of ungovernability, the appropriate sanction remains disbarment. In our view, if

this Panel had not confirmed the finding of ungovernability, a 45-day suspension would have been the appropriate sanction for the present misconduct

[63] The Panel finds that this sanction will preserve public confidence in the legal profession and the disciplinary process as it is consistent with other decisions of the Tribunal and it is a significant suspension. It will meet the goals of general and specific deterrence as it will give notice to the legal profession of the significant sanction that will be imposed if lawyers do not comply with orders of their Regulator on a timely basis. Furthermore, if the Respondent were to apply at some point in the future for readmission as a member of the Law Society of BC, a credentials hearing is mandatory. In order to be reinstated the hearing panel must be satisfied the Respondent is of good character and repute and fit to become a barrister and solicitor of the Supreme court: sections 15 and 19(3) of the *Act*.

COSTS

[64] The Law Society seeks costs of \$6,717.60 payable within 30 days of the issuance of the Hearing Panel's decision.

[65] The Panel finds the costs outlined in the draft bill of cost to be reasonable. There is no evidence to establish a basis to reduce the amount of costs claimed. Pursuant to Rule 5-11 of the Rules, this Panel orders that the Respondent pay \$6,717.60 within 30 days of the issuance of these reasons.