

2024 LSBC 29  
Hearing File No.: HE20230002  
Decision Issued: June 13, 2024  
Citation Issued: March 8, 2023

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:	January 22 and 23, 2024
Written submissions:	March 15, 2024
Panel:	Herman Van Ommen, KC, Chair Tanya Chamberlain, Bencher Kris Gustavson, Public Representative
Discipline Counsel:	Marsha Down
Acting on his own behalf:	Leonides Tungohan

## introduction

[1] The Law Society of British Columbia (the “Law Society”) issued a citation against Leonides Tungohan (the “Respondent”) on March 8, 2023. The citation was amended by the Law Society on July 26, 2023 (the “Citation”).

[2] The Citation alleges the Respondent committed professional misconduct by failing to comply with a June 5, 2015 order of a hearing panel (the “2015 Order”) requiring him to produce quarterly accountant’s reports to the Law Society (the “Quarterly Reports”).

[3] The Respondent was ordered to produce the Quarterly Reports to the Law Society from an accountant (approved by the Compliance Audit Department), to demonstrate that his general and trust account complied with Law Society’s accounting rules, until the Practice Standards Committee (the “PSC”) removed the requirement imposed by the hearing panel in *Law Society of BC v. Tungohan, 2015 LSBC 26* (“*2015 Tungohan Disciplinary Action*”).

[4] The Law Society alleges the Respondent did not file 11 Quarterly Reports covering the period March 1, 2020 to November 30, 2022 (the “Citation Period”) as required by the 2015 Order, and that the failure to do so amounted to professional misconduct.

[5] In response, the Respondent says that he had an honest belief that by filing his annual Trust Reports (“Annual Trust Reports”) overlapping the Citation Period that he was in compliance with the 2015 Order. He submits his honest belief was bolstered when the Law Society accepted his Annual Trust Reports for the period December 1, 2017, to February 28, 2019, in lieu of the Quarterly Reports.

[6] The Law Society submits that the Respondent has not adduced any evidence of his honest belief, and the Panel should find that he knowingly and deliberately breached the 2015 Order, and that breach amounted to professional misconduct.

## CITATION

[7] The Citation alleges that the Respondent engaged in professional misconduct as follows:

Between approximately July 1, 2020, and January 1, 2023, you breached a June 5, 2015 Law Society hearing panel order by failing to submit reports from an accountant to the Law Society by one or more of the 11 dates set out in Schedule “A”, contrary to rule 7.1-1(e) of the *Code of Professional Conduct for British Columbia* (the *BC Code*”).

## SERVICE OF CITATION

[8] The Respondent was served with the Citation in accordance with Rules 4-19 and 10-1 of the Law Society Rules (the “Rules”).

## PROCEDURAL HISTORY

[9] This matter has a lengthy procedural history.

[10] On June 5, 2015, the hearing panel issued the 2015 Order that required the Respondent to produce accountant’s reports to the Law Society on a quarterly basis. The reports were to cover the period commencing on the date of the decision (June 5, 2015) and were to be filed every three months thereafter (*2015 Tungohan disciplinary action*, at para. 34).

[11] The Respondent brought a s. 47 review to set aside the 2015 Order. On December 12, 2016, the review board issued a decision declining to set aside or vary any of the orders made by the hearing panel (*Law Society of BC v. Tungohan*, 2016 LSBC 45 (the “*Tungohan Review 2016 Decision*”)).

[12] The Law Society sought clarification of the 2015 Order, specifically the timing of the Quarterly Reports and to address the costs payable by the Respondent. On May 30, 2017, the review board issued a decision confirming that the period covered by the reports was to commence June 15, 2015 finding that if “the first report had not already been submitted, it should be submitted within 30 days of this Ruling” (*Law Society of BC v. Tungohan*, 2017 LSBC 19, at para. 3).

[13] The Respondent appealed the *Tungohan Review 2016 Decision* to the Court of Appeal (the “Appeal”).

[14] After commencing the Appeal, the Respondent sought to defer the requirement to provide the Quarterly Reports until the Appeal had been heard, and an extension of time to pay the fine and costs ordered in *2015 Tungohan disciplinary action*, upheld in *Tungohan Review 2016 Decision*.

[15] On August 30, 2017, the review board issued a decision granting the Respondent’s application for additional time to pay the fine and the costs order but declined to accede to his request to defer the preparation of the Quarterly Reports, confirming the Respondent’s obligations to produce them (*Law Society of BC v. Tungohan*, 2017 LSBC 31, at paras. 15 to 19).

[16] On November 24, 2017 the Appeal was allowed in part. The court upheld the finding of professional misconduct against the Respondent but remitted the matter of the

hearing panel's costs award back to the review board (*Law Society of British Columbia v. Tungohan*, 2017 BCCA 423).

[17] In February 2018, the review board granted the Respondent's request for an extension of time to pay the costs of the s. 47 review. The review board denied his request for an extension of time to begin providing the Quarterly Reports (*Law Society of BC v. Tungohan*, 2018 LSBC 5 at paras. 20 to 21).

[18] On June 4, 2018, the review board issued a decision on the reconsideration of the hearing panel's costs order in *2015 Tungohan disciplinary action*, upheld by the review board in *Tungohan Review 2016 Decision*, and determined it was appropriate to reduce costs (*Law Society of BC v. Tungohan*, 2018 LSBC 15).

[19] On January 16, 2019, the review board issued a decision on the issue of the costs of the s. 47 review (*Law Society of BC v. Tungohan*, 2019 LSBC 2).

[20] On June 27, 2019, the Respondent applied to the PSC to review the requirement of the 2015 Order that he submit the Quarterly Reports.

[21] On October 4, 2019, the Chair of the PSC, Sarah Westwood, denied the Respondent's application (the "PSC's First Decision").

[22] On November 15, 2019, the Respondent sent further correspondence to Ms. Westwood disagreeing with the PSC's First Decision.

[23] On April 1, 2020, the PSC issued a further decision denying the Respondent's request to be relieved of the obligation to provide the Quarterly Reports (the "PSC's Second Decision").

[24] On May 4, 2020, the Respondent requested a re-consideration of the PSC's Second Decision which was denied on May 21, 2020. His further request of May 22, 2020, was denied on May 28, 2020.

[25] On January 2, 2023, following the Citation Period, the Respondent brought a further application for a reconsideration of the PSC's Second Decision.

[26] On January 18, 2024, the Respondent brought an adjournment application seeking to adjourn the matter generally, pending a s. 47 review application on the hearing of a different citation, which was denied (*Law Society of BC v. Tungohan*, 2024 LSBC 4 ("*Tungohan Prehearing Application*").

## Application to Adjourn

[27] On January 22, 2024, after the Law Society closed the evidentiary portion of its case, the Respondent sought an order that the hearing be adjourned in order to have time to compel the attendance of Mr. Don Avison, Executive Director of the Law Society, to testify as the Respondent's only witness. The Law Society opposed the application.

[28] The Respondent's adjournment application was dismissed by the Panel, with reasons to follow. Paragraphs 29 to 37 below are those reasons.

[29] In his application to adjourn, the Respondent did not articulate what evidence he expected Mr. Avison to give that would assist his defence. In his summary of evidence, he merely stated that Mr. Avison would testify concerning his involvement with and knowledge of matters in certain enumerated documents. He did not connect any of that anticipated evidence with a particular defence or matters of disputed facts where Mr. Avison could be expected to provide relevant or necessary evidence that could not be found from another source.

[30] In response to the application, the Law Society noted that the Respondent had, a week previously, applied for an adjournment on different grounds and that adjournment had been dismissed on January 18, 2024. The Respondent had not notified the Law Society or Mr. Avison of his intention to call him as a witness until January 19, 2024, the Friday before the hearing was to commence on Monday January 22, 2024.

[31] The Respondent failed to comply with Practice Direction 9.5 (1) and (3) which required him to provide a list of witnesses 14 days before the hearing. Law Society counsel by letter dated January 3, 2024 asked the Respondent to comply with Practice Direction 9.5. This request was followed up by email on January 17, 2024. The Respondent did not comply with those requests and as a result, the Law Society obtained an order on January 18, 2024 from the Motions Adjudicator that the Respondent do so by noon on January 19, 2024.

[32] The Respondent did not serve a summons on Mr. Avison as he was entitled to do under s. 44 of the *Legal Profession Act*, SBC 1998, c.9 (the "*Act*") and Practice Direction 10.5. The Respondent also did not apply to this Panel for an order under s. 44(4) of the *Act* and Practice Direction 10.5 (3) compelling Mr. Avison to attend. He sought only to adjourn the portion of the hearing dealing with his response.

[33] The Motions Adjudicator in *Tungohan Prehearing Application*, at para. 9 to 10, noted the following when refusing the Respondent's previous application for an adjournment:

The granting of an adjournment is a discretionary matter, and the decision on whether to grant an adjournment must be considered in light of the circumstances, having regard to the right of the applicant to a fair hearing weighed against the desirability of a speedy and expeditious hearing (*Howatt v. College of Physician and Surgeons of Ontario*, 2003 CanLII 29563 (ON SCDC), [2003] O.J. No. 138, at para. 31).

In *Law Society of BC v. Hart*, 2019 LSBC 39, at para. 13, the panel referred to the non-exhaustive list of factors to be considered in an adjournment application:

In this context, as stated in Macaulay & Sprague, *Practice and Procedure Before Administrative Tribunals*, (Toronto: Thomson Carswell, 2004), the following non-exhaustive list of factors are to be considered:

- (a) the purpose of the adjournment (relevance to the proceedings, necessary for a fair hearing);
- (b) has the participant seeking the adjournment acted in good faith and reasonably in attempting to avoid the necessity of adjourning;
- (c) the position of other participants and the reasonableness of their actions;
- (d) the seriousness of the harm resulting if the adjournment is not granted;
- (e) the seriousness of the harm resulting if the adjournment is granted (to the other participants, etc., including the length of adjournment required);
- (f) is there any way to compensate for any harm identified;
- (g) how many adjournments has the party requesting the adjournment been granted in the past; and
- (h) was the hearing to be peremptory, and if so, were the parties consulted in selecting the date and were they advised of its peremptory nature.

[34] The Respondent has not acted in a manner that would show that the testimony of Mr. Avison in his defence was relevant or necessary. Despite being asked by Law Society counsel to advise who he intended to call as witnesses as required by the Practice Direction 9.5, he failed to do so until ordered. Then he finally did so on the eve of the hearing after a previous adjournment request was refused. He failed to serve a summons on Mr. Avison as he could have done. Lastly, he made no application to us that we order Mr. Avison to attend. He sought only an adjournment.

[35] In the absence of a basis to show that Mr. Avison's attendance would assist the Respondent in his defence providing relevant or necessary evidence, we are unable to find that refusing the adjournment would cause the Respondent harm. We find in the circumstances, including the delay and lack of effort taken by the Respondent in requesting Mr. Avison's presence, that the public interest in an expeditious hearing outweighs any potential harm to the Respondent of not having additional time to seek to compel Mr. Avison to attend to testify.

[36] As noted, the Respondent had previously sought an adjournment and has not complied with the Practice Directions had he wanted to ensure the attendance of Mr. Avison.

[37] As a result, we denied the application to adjourn.

[38] The hearing commenced on January 22, 2024, and concluded on January 23, 2024.

[39] The Law Society provided written final submissions dated February 6, 2024. The Respondent provided his final submissions and response to the Law Society's Submissions dated March 1, 2024. The Law Society provided reply submissions on March 8, 2024.

## ISSUES

[40] The Panel must determine each of the following:

- (a) Was the Respondent obliged to file Quarterly Reports pursuant to the terms of the 2015 Order?
- (b) Did the Respondent breach the 2015 Order?
- (c) If the Respondent was in breach of the 2015 Order, does his conduct amount to professional misconduct?

## ONUS AND BURDEN OF PROOF

[41] The Law Society must establish on a balance of probabilities that the Respondent committed professional misconduct. The standard of proof is high, requiring clear and cogent evidence (*Foo v. Law Society of British Columbia*, 2017 BCCA 51, at para. 63; *Law Society of BC v. Schauble*, 2009 LSBC 11, at para. 43; and *Hamilton v. Law Society of British Columbia*, 2002 BCCA 367, at para. 46).

## PROFESSIONAL MISCONDUCT

[42] The test for professional misconduct is contained in the decision of *Law Society of BC v. Martin*, 2005 LSBC 16, at para. 171:

The test ... 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.

[43] The *Martin* test is objective, meaning that the Panel must consider whether the Respondent has failed to meet the standard of conduct expected of all lawyers, and then determine if his conduct falls markedly below that standard.

[44] The Respondent referred to the decision of *Law Society of BC v. Lawyer 10*, 2010 LSBC 02, in addition to the test in *Martin*. The Panel finds that the test for professional misconduct is as articulated in *Martin* above. The test for professional misconduct in *Lawyer 10* was explicitly rejected by the hearing panel in *Law Society of BC v. Lawyer 12*, 2011 LSBC 35, in favour of the test in *Martin*.

## STANDARDS OF CONDUCT OF LAWYERS

[45] Rule 7.1-1 of the *BC Code* sets out the obligations of lawyers to their regulator as follows:

- (a) replying promptly and completely to any communication from the Law Society;
- (b) providing documents as required to the Law Society;
- (c) not improperly obstructing or delaying Law Society investigations, audits and inquiries;
- (d) cooperating with Law Society investigations, audits and inquiries involving the lawyer or a member of the lawyer's firm;
- (e) complying with orders made under the *Act* or Rules; and
- (f) otherwise complying with the Law Society's regulation of the lawyer's practice.



## EVIDENCE ADDUCED AT THE HEARING

### The Law Society

[46] The Law Society relied on the documents attached to, and the facts set out in, the Law Society's Notice to Admit that were admitted by the Respondent, either as to the authenticity of the document or the truth of the facts, in the Respondent's response to the Law Society's Notice to Admit. A redacted copy of the Law Society's Notice to Admit, that did not contain the facts and documents that were not admitted, was entered into evidence as an exhibit.

[47] The Law Society relied on the following decisions:

- (i) *2015 Tungohan Disciplinary Action*.
- (ii) *Tungohan Review 2016 Decision*.
- (iii) *Law Society of BC v. Tungohan*, 2017 LSBC 19.
- (iv) *Law Society of BC v. Tungohan*, 2017 LSBC 31.
- (v) *Law Society of British Columbia v. Tungohan*, 2017 BCCA 423.
- (vi) *Law Society of BC v. Tungohan*, 2018 LSBC 5.
- (vii) *Law Society of BC v. Tungohan*, 2019 LSBC 2.

[48] The Law Society relied on the documents attached to the Law Society's Notice to Admit as evidence of the making of the statements, not the truth of their contents. The comments of the Respondent contained in the Respondent's response to the Law Society's Notice to Admit were admitted for the fact the statements were made and not the truth of their contents.

[49] The Law Society also relied on the following evidence at the hearing:

- (a) the affidavit of Ciara Herlihy with copies of the Respondent's Annual Trust Reports for the periods ending November 2015 to November 22, 2022 (the "Herlihy Affidavit");
- (b) correspondence between the Respondent and persons at the Law Society contained in the Law Society's Book of Documents; and
- (c) the *viva voce* testimony of Gurprit Bains, Deputy Chief Legal Officer of the Law Society ("Ms. Bains").

## The Respondent

[50] At the hearing, the Respondent relied on the admitted facts and the documents admitted as authentic, attached or set out in, a redacted version of the Respondent's Notice to Admit (the "Respondent's Redacted NTA"). The Respondent's Redacted NTA did not include the facts and documents that were not admitted by the Law Society, either as to the authenticity of the document or the truth of the facts, in its response to the Respondent's Notice to Admit. The Respondent also relied on a book of documents. The Respondent called no further evidence. He did not testify.

[51] The Law Society submitted that the documents admitted by the Law Society as authentic in its response to the Respondent's Notice to Admit were admitted to prove the statements in the documents were made and not for the proof of the statements recorded in them. The Law Society also noted that many of the admitted facts as set out in the Respondent's Notice to Admit were descriptions of correspondence between the Respondent and the Law Society. The Law Society submitted that an admission that the description was true was not an admission that the content of the correspondence was true.

## REVIEW OF THE EVIDENCE

[52] The Panel reviewed all of the admissible evidence adduced at the hearing by the Law Society and the Respondent.

[53] The Respondent was called and admitted as a member of the Law Society on May 1, 2008.

[54] The Respondent was a practicing member of the Law Society during the the Citation Period.

[55] The 2015 Order required the Respondent to produce the Quarterly Reports to the Law Society as follows:

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's accounting rules. This condition will remain in place until the Practice Standards Committee determines it is no longer necessary.

[56] The Respondent challenged the 2015 Order from 2016 to 2023 by applying for a s. 47 review and with his Appeal. The requirement that he produce the Quarterly Reports was never set aside by the review board or the Court of Appeal.

[57] The Respondent attempted to challenge the necessity of providing the Quarterly reports by corresponding directly with the Law Society. These attempts were not successful.

[58] The Respondent applied twice to the PSC to have the Quarterly Report requirement removed without success.

[59] Ms. Bains testified at the hearing that the Respondent never submitted any Quarterly Reports.

[60] She testified that in March and April 2019 she agreed to accept, retroactively, accountant's reports filed with the Respondent's annual 2016 to 2018 trust reports. She accepted that these Annual Trust Reports satisfied the requirements in the 2015 Order for the periods ending November 30, 2016, November 30, 2017, and November 30, 2018.

[61] Ms. Bains testified that she accepted the Annual Trust Reports in lieu of the Quarterly Reports because of the lengthy history of the matter, and in an effort to try to get the Respondent to comply and move the matter forward.

[62] On April 10, 2019, Ms. Bains advised the Respondent by letter that he must file Quarterly Reports for March 1, 2019 to May 31, 2019 which would be due July 1, 2019.

[63] Ms. Bains' evidence in cross-examination was that an order from the Trust Department to file an accountant's report did not change the Respondent's obligation to file Quarterly Reports pursuant to the 2015 Order.

[64] She testified that for the years 2020 to 2022 the Respondent filed Annual Trust Reports that were self-reporting and not completed by an accountant. Her evidence was not challenged or contradicted.

[65] The Respondent did not testify.

## ANALYSIS

[66] The Citation alleges that the Respondent breached the 2015 Order by failing to provide Quarterly Reports for the Citation Period contrary to rule 7.1-1(e) of the *BC Code* which amounted to professional misconduct.

**Was the Respondent obliged to file Quarterly Reports pursuant to the terms of the 2015 Order?**

[67] The Panel finds that the 2015 Order required the Respondent to submit the Quarterly Reports until the PSC relieved him of the obligation.

[68] The Respondent adduced evidence of his efforts to attempt to have the requirement to produce Quarterly Reports removed through correspondence with the Law Society from 2016 to 2023; however, he adduced no evidence before the Panel that he was successful in so doing.

[69] The Respondent applied on two occasions to the PSC seeking to have the requirement to produce the Quarterly Reports removed. These applications were denied. The Panel finds that the PSC has never removed the requirement that he produce Quarterly Reports.

[70] The Respondent sought a review of the 2015 Order to set aside the requirement to file the Quarterly reports and sought to defer that requirement a number of times between 2016 and 2023. He was unsuccessful. The Panel finds that no review board has overturned the requirement in the 2015 Order that he produce the Quarterly Reports.

[71] The Respondent appealed the *Tungohan Review 2016 Decision* to the British Columbia Court of Appeal concerning the requirement that he produce the Quarterly Reports. He was unsuccessful in so doing.

[72] The Panel finds that no court has removed the requirement that he produce the Quarterly Reports pursuant to the 2015 Order.

[73] The Respondent submits that the Panel should find that his conduct from 2016 to 2023 demonstrates his “genuine belief” that he was not required to produce the Quarterly Reports.

[74] The Panel finds that the evidence adduced before us does not demonstrate what the Respondent’s subjective belief was during the Citation Period. There is no evidence before the Panel concerning the Respondent’s state of mind during the Citation Period. The circumstantial evidence of his strenuous efforts to remove the requirement suggests he knew exactly what was required of him to comply with the 2015 Order.

[75] Ms. Bains testified that she agreed to accept the Respondent’s Annual Trust Reports in lieu of the Quarterly Reports from 2016 to 2018 (the “Quarterly Report Exemption”). She reminded him in a letter in April 2019 that he was still required to produce by July 1, 2019 the Quarterly Reports for March 1, 2019 to May 31, 2019.

[76] The Respondent submits that as a result of Ms. Bains granting him the Quarterly Report Exemption, he believed he could continue to produce Annual Trust Reports in lieu of the Quarterly Reports. The Respondent did not testify about this belief before the Panel.

[77] The Respondent challenged the credibility of Ms. Bains' testimony in his submissions on the basis that she testified to new matters not covered by the documents in evidence. He argued that her evidence was inconsistent with some of the documents adduced at the hearing, relying on the decision of *Law Society of BC v. Scheirer*, 2021 LSBC 51, citing *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357.

[78] Ms. Bains testified and was cross-examined by the Respondent. The Panel has reviewed her evidence and the other evidence adduced at the hearing. The Panel does not accept that her evidence related to new matters or was inconsistent with the documentary evidence adduced. We find that the evidence of Ms. Bains is entirely consistent with the other evidence adduced at the hearing and is uncontradicted.

[79] The Panel accepts Ms. Bains' evidence that she granted the Quarterly Report Exemption for the period 2016 to 2018 and that the Respondent was notified that he was required to produce Quarterly Reports thereafter as required by the 2015 Order.

[80] The Respondent has not adduced any evidence before the Panel that he was not required to produce the Quarterly Reports during the Citation Period.

[81] The Panel finds that the Respondent was required to produce the Quarterly Reports pursuant to the 2015 Order during the Citation period.

#### **Did the Respondent breach the 2015 Order?**

[82] The Respondent has not adduced any evidence that he complied with the 2015 Order that required him to produce the Quarterly Reports for the Citation Period.

[83] Ms. Bains testified at the hearing that the Respondent has never produced any Quarterly Reports, either during the Citation Period or prior to it. This evidence was not contradicted, and the Panel accepts it.

[84] The Respondent argued in his submissions that as a result of Ms. Bains granting him the Quarterly Report Exemption, he believed that by submitting the Annual Trust Reports he would be complying with the 2015 Order and therefore, was not in breach. There is no admissible evidence adduced by the Respondent of this belief.

[85] Ms. Bains testified that she did not tell the Respondent that if he filed Annual Trust reports in future, he would be exempt from producing the Quarterly Reports. Her April

2019 letter to the Respondent advised him that his next Quarterly Report would be due on July 1, 2019, for the period March 1, 2019, to May 31, 2019. The Panel accepts Ms. Bains' evidence on this matter that she did not agree to any further exemptions.

[86] The Panel finds that Ms. Bains provided the Respondent with an accommodation in an effort to secure his compliance with the 2015 Order when she granted him the Quarterly Report Exemption. The Respondent should not be entitled to use that accommodation to now say he has complied with the 2015 Order.

[87] The Panel finds that the Respondent was aware that the requirement to produce the Quarterly Reports remained in place because of the decisions made by the review board and the Court of Appeal. He is not entitled to rely on an accommodation provided to him by Ms. Bains in 2019 to escape his breach of the 2015 Order. Ms. Bains made it clear in her letter of April 2019 that he was still required to produce the Quarterly Reports.

[88] The Respondent applied to the PSC to have the requirement to produce the Quarterly Reports removed without success on two occasions. The Panel finds that the Respondent was aware from the decisions of the PSC that he was obliged to produce the Quarterly Reports.

[89] The Respondent submits that his conduct during the Citation Period demonstrates his genuine belief that he was not required to provide the Quarterly Reports. The Panel disagrees.

[90] The Panel finds that the Respondent's conduct since the 2015 Order and during the Citation Period demonstrates that he knew that he was obliged to produce the Quarterly Reports. We find that his repeated efforts to review, appeal, write to the Law Society and apply to the PSC to have the requirement that he produce the Quarterly Reports removed, demonstrates that he was well aware the requirement existed.

[91] The Respondent is not able to avail himself of the defence of "honest but mistaken belief" because he did not testify and adduced no other evidence that is admissible for the truth of its contents to establish that belief, only his submissions, which are not evidence. There is no evidence before the Panel as to why the Respondent did not comply with the 2015 Order.

[92] The Law Society argued that even if the Respondent had testified about his honest belief about being relieved of the obligation to file the Quarterly Reports, such evidence would not be a defence because the test in *Martin* is objective and not subjective as to the Respondent's state of mind.

[93] The Panel need not consider this issue, as no evidence of the Respondent's subjective belief about the filing of the Quarterly Reports was adduced.

[94] In the result, the Panel finds that the Respondent knowingly and deliberately breached the 2015 Order.

**If the Respondent was in breach of the 2015 Order, does his conduct amount to professional misconduct?**

[95] The Law Society submits that when a citation is proven, and a panel issues an order that is designed to enforce performance of an act by a lawyer, non-compliance with that order is not an option (*Law Society of BC v. Jessacher*, 2016 LSBC 11, at paras. 44 to 45, and *Law Society of BC v. Farion*, 2017 LSBC 05).

[96] The Panel agrees with the submissions of the Law Society that lawyers must "scrupulously" adhere to orders made under the *Act* or Law Society Rules so that the Law Society has the ability to regulate the conduct of lawyers in the public interest and to protect the public. The public's confidence in the legal profession is eroded when lawyers do not follow such orders. *Law Society of BC v. Guo*, 2021 LSBC 20.

[97] Lawyers are officers of the court and are required pursuant to the *BC Code* to follow orders. The courts, the Law Society and the public are entitled to expect lawyers will follow and comply with orders.

[98] The Panel finds that once the 2015 Order was made, the Respondent had no choice but to comply. The Panel accepts the evidence of Ms. Bains that the Respondent has never filed any Quarterly Reports as required by the 2015 Order.

[99] The Panel finds that Respondent failed to comply with the 2015 Order without explanation, which resulted in a *prima facie* case of professional misconduct. *Law Society of BC v. Ben-Oliel*, 2016 LSBC 35.

[100] The Respondent relied on the decision in *Lawyer 12*, where the panel found that the lawyer had not committed professional misconduct because the panel accepted his evidence of an honest, but mistaken belief that the reports he had prepared satisfied an order made. There is no evidence of the Respondent's state of mind before the Panel. He did not testify. Neither did he prepare or submit the Quarterly Reports.

[101] The Respondent referred the Panel to the *Law Society of BC v. Welder*, 2011 LSBC 06, and *Law Society of BC v. MacGregor*, 2018 LSBC 39, in his submissions with respect to what kind of conduct by a lawyer will result in professional misconduct.

[102] In *Welder* the review panel found that it was professional misconduct to fail to respond to written questions by the Law Society. The Panel finds that the Respondent's conduct in failing to produce the Quarterly Reports was akin to the lawyer's professional misconduct in *Welder* at para. 32.

[103] In *MacGregor*, the panel found that a lawyer committed professional misconduct by counselling his client to breach a term of a separation agreement. The panel found that the test in *Martin* was met, finding that the conduct of the lawyer was a marked departure from the standard expected of lawyers (*MacGregor*, at paras. 59 and 60).

[104] The panel in *MacGregor* relied on the decision of *Law Society of BC v. Kirkhope*, 2013 LSBC 18, at para. 43, to find that where a lawyer participates in an intentional breach of an order or a separation agreement, it will amount to professional misconduct.

[105] The Panel finds that the Respondent intentionally breached the 2015 Order by failing to produce the Quarterly Reports which amounted to professional misconduct (see *MacGregor*).

[106] The Respondent submitted that his conduct in failing to produce the Quarterly Reports did not amount to professional misconduct because of "events beyond his control" relying on the test in *Lawyer 10*. The test for professional misconduct is contained in *Martin*, which was affirmed in *Lawyer 12*, and not in *Lawyer 10* (*Lawyer 10*, at para. 31; *Lawyer 12*, at para. 8; and *Martin*, at para. 71).

[107] The Respondent's conduct in failing to produce the Quarterly Reports was a "marked departure" from what the Law Society expects of its members.

[108] The Panel concludes that the Respondent's persistent and ongoing refusal to follow and comply with the 2015 Order was contrary to rule 7.1-1(e) of the *BC Code*, and was a marked and substantial departure from the conduct reasonably expected of lawyers. In the result, the Panel finds that the Respondent committed professional misconduct.