2025 LSBC 05
Hearing File No.: HE20220038
Decision Issued: February 6, 2024
Citation Issued: December 13, 2022

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL

HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

LEONARD HIL MARRIOTT

RESPONDENT

DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION

Hearing dates:	June 24 to 28, November 8, 2024
Panel:	Christopher A. McPherson, KC, Chair Cyril Kesten, Public representative Julie Mantini, Lawyer
Discipline Counsel:	Ilana Teicher
Appearing on his own behalf:	Leonard Hil Marriott

OVERVIEW

[1] Leonard Hil Marriott (the "Respondent") faces a citation issued December 13, 2022 (the "Citation"). Broadly speaking, there are three allegations.

[2] The first allegation is that between May 2019 and September 2020, the Respondent failed to provide his client, SG with the quality of service expected of a competent lawyer concerning a straight-forward property transfer matter. Essentially, as opposed to placing the family home into SG's name as the surviving joint tenant, the Respondent filed a completely incorrect form and ended up severing the Joint Tenancy. Further, it is alleged that he failed to communicate effectively with his elderly, unsophisticated client; to deal with the matter in a timely fashion; to keep SG reasonably informed; and various other sub-allegations. The Citation alleges that the conduct of the Respondent amounts to professional misconduct or incompetent performance of duties, pursuant to s. 38(4) of the *Legal Profession Act* (the "*Act*"). The Law Society of British Columbia (the "Law Society") says in submissions that while it is open to the Panel to make a finding of incompetent performance of duties, the more appropriate finding is professional misconduct

[3] The second allegation concerns the estate of MM, the spouse of SG. The Law Society alleges that between July 2019 and September 2020, the Respondent drafted and filed materials in the Supreme Court of British Columbia that he knew or ought to have known contained false or misleading information, or that he failed to ensure the materials were forthright and accurate, or both. In particular, the Law Society says that he failed to disclose the existence of a will, valid or not, for the deceased; identify other potential beneficiaries; accurately represent the value of the estate; advise the court that a related notice of dispute had been filed; and take appropriate steps to rectify and correct the information filed. The Law Society says that this conduct also amounts to professional misconduct pursuant to s. 38(4) of the *Act*.

[4] The third allegation also concerns the estate of MM. The Law Society alleges that in or about November 2019, the Respondent told counsel for BD that he was not in possession of and had never seen a valid will for the deceased when he knew or ought to have known that this statement was false or misleading. The Law Society says that this conduct also amounts to professional misconduct pursuant to s. 38(4) of the *Act*.

[5] This Panel finds that the Law Society has proven the first and second allegation and that this conduct constitutes professional misconduct as it is a marked departure from the standard expected of lawyers. This Panel finds that the Law Society has failed to establish the third allegation. Accordingly, we dismiss the third allegation. Our reasons are set out below.

PRELIMINARY MATTER

[6] The Respondent was correctly served with the Citation in this matter.

UNDISPUTED FACTS

[7] Much of the factual background is not disputed. For the most part, the facts are established by the Notice to Admit drafted by the Law Society, dated September 14, 2023, and the Respondent's admission of facts in his Response to Notice to Admit, dated October 26, 2023. We will set out the undisputed facts then turn to the evidence, which are summarized in the submissions of the Law Society, and then discuss our other findings of fact.

The Respondent

[8] The Respondent was called and admitted as a member of the Law Society on February 14, 1992. He practiced as a sole practitioner for a few months, then became an inactive member. He became a former member on December 31, 1992. The Respondent was reinstated on November 3, 2015 and resumed practicing on October 3, 2016 at Gerry M. Laarakker Law Corporation in Vernon. He practiced there until January 1, 2018, and since then has practiced in his own firm.

[9] At the time that these allegations arose, the Respondent had practiced law for a total of less than three years, with a gap of approximately 23 years from when he first qualified to practice.

Background

[10] SG retained the Respondent on about May 21, 2019. At the time, SG was 81 years of age. Her spouse MM had died on August 25, 2018. At the time of his death, the couple owned a home together in Swansea Point, BC. Some twenty years before the death of MM, SG had transferred the property from herself, as the sole owner, to the two of them as joint tenants, which was the situation at the time of MM's death.

[11] As of July 1, 2018, the home had an assessed value of $596,000. While MM has two adult sons by a previous relationship, since the home was in joint tenancy, in the normal course, the title and entire ownership of the home would transfer to the surviving joint tenant, SG, upon the death of MM.

[12] As far as is known, MM had executed two wills as follows: one on January 24, 2013 (the "2013 Will") and one on March 17, 2017 (the "2017 Will"). The 2013 Will appointed SG as trustee; and HM, a friend of SG, and BD, a niece of SG, as alternate trustees. The 2017 Will appointed SG as trustee and HM as alternate trustee.

Meeting of May 21, 2019

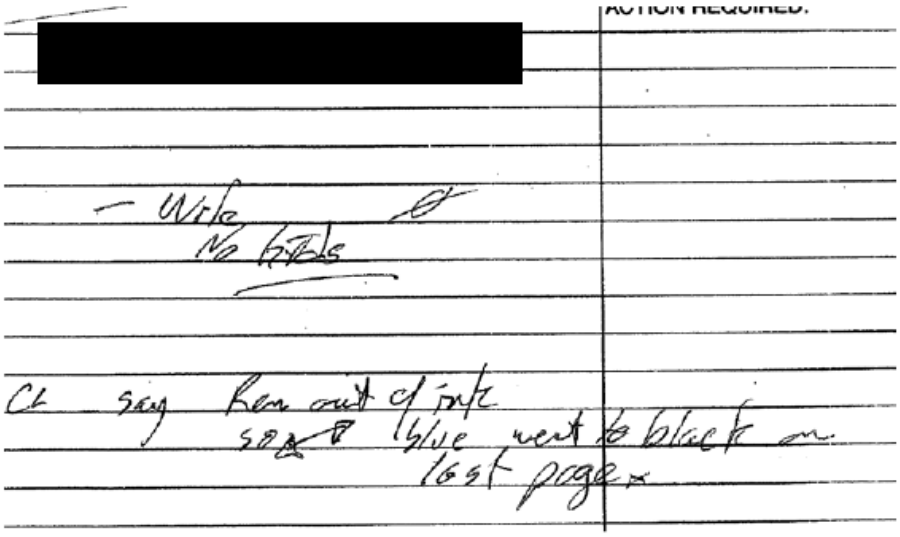
[13] SG met with the Respondent to discuss her will, power of attorney, and representation agreement. HM, the friend and the power of attorney of SG, drove her there but did not attend the meeting itself.

[14] At the meeting, SG told the Respondent that she had a son from a previous marriage and a grandson. The Respondent made some handwritten notes on a wills questionnaire intake form and arranged for a title search of the home which showed that MM and SG were joint tenants.

Meeting of May 28, 2019

[15] SG met with the Respondent again one week later. She signed a retainer letter and instructed the Respondent to transfer title to the home into her name. She also provided the Respondent with an original colour copy of the 2017 Will.

[16] Both HM, and a legal assistant for the Respondent were at the meeting. The Respondent made further handwritten notes. Below is a partial image of those notes (the redacted image is the full name of MM):



[17] At the request of the Respondent, SG signed a Form A Freehold Transfer (the "Form A") and a Property Transfer Tax Return (the "PPT Return").

[18] The relevant excerpt from the Form A is below. The redacted name is SG:

[redacted], HOMEMAKER
[redacted]
MARA BRITISH COLUMBIA
[redacted] CANADA
50 / 100 INTEREST

[19] The relevant excerpt from the PTT Return is:

PART A – PURCHASER / TRANSFEREE (*List all purchasers acquiring an interest in the property with this transaction*)
PURCHASER 1 INDIVIDUAL ✓ CORPORATION OTHER:
Are you claiming an exemption? **16 - Changing a Joint Tenancy to a Tenancy In Common** Percentage interest acquired **50.0000** %

[20] It is patently obvious that both documents are, on their face, incorrect.

The Result of the Error

[21] The Respondent filed the incorrect documents on May 28, 2019. On June 5, 2019, he obtained the State of Title Certificate which, based on the incorrect documents that the Respondent filed, showed that SG and MM each held an undivided half interest in the home as tenants in common – the opposite of what was intended.

[22] The Respondent realized the basic error and tried to correct it by filing a new Form A together with a statutory declaration with the Land Title and Survey Authority of British Columbia (the "LTSA"). The attempt was unsuccessful.

Follow-up with the Client

[23] After his failed attempt at correcting his error, the Respondent met with SG on June 20, 2019. The Respondent told her about the error and said he would correct it at no cost.

Attempt at Correcting the Error – Application for Estate Grant

[24] The Respondent testified that, after consulting with the LTSA, he concluded that the best way to correct his fundamental error was to seek a Grant of Administration without Will, and presumably, once probate was granted, to then transfer the property into the name of SG as sole owner.

[25] The Respondent prepared materials necessary for the application. He met with SG on June 27, 2019, at which time several documents were signed. None of the documents

refer to any wills or testamentary documents of MM. They did not mention any of his children.

[26] The documents specifically state that no affidavit of "Delivery in Form 9" was filed because there were no beneficiaries to whom delivery must be made. The documents state that there are no children of the deceased. The affidavit of SG, prepared by the Respondent, says that she was the only heir and that there is no other family. All of this was clearly incorrect.

[27] The Respondent says that SG told him that MM had no children. For the reasons set out below, we conclude that SG never told the Respondent that MM had no children.

[28] The documents continue with a litany of mistakes. The Form P5 Affidavit, also sworn by SG and prepared by the Respondent's office, states that she believes that there was no will of the deceased. This too is obviously an error as SG herself gave a copy of the 2017 Will to the Respondent (leaving aside for now whether the 2017 Will was valid).

[29] The value of the estate is set out to be $0. While the Panel can accept that the value of an undivided half interest in property assessed at $598,000 would be less, possibly considerably less, than one half of the assessed value, it certainly is not zero, even if there are no other assets. There is nothing to suggest that the Respondent canvassed any other assets of the estate with SG, which based on her evidence would have clearly revealed the sons of MM.

[30] On August 16, 2019, after the court questioned the zero valuation, the Respondent filed a Notice of Application which attempted to address the zero valuation. Paragraph 7 of the Notice of Application states in part that a grant of administration, "is needed only to correct the property transfer made in error". No fulsome description of the error was set out.

Notice of Dispute

[31] On September 16, 2019, BD, SG's niece, the alternate trustee of the 2013 Will referred to in paragraph 12 above, filed a Notice of Dispute concerning the estate of MM. She stated that there was a will. She served the Notice of Dispute on that same date.

[32] The Respondent did not inform his client, SG, about the Notice of Dispute until August 20, 2020, close to one year after he received it, when his office told HM, SG's friend.

The Application

[33] On October 23, 2019, two months after the Vernon court registry inquired about the zero valuation of the estate, the Respondent's legal assistant emailed a Form P14 affidavit to HM (SG did not use email, so such correspondence went through HM) saying it was to clarify why the estate had zero value. On November 4, 2019, the Respondent filed a requisition with the Vernon registry in which he clarified the zero valuation and more fully laid out the error concerning the severing of the joint tenancy.

[34] The Respondent did not tell the registry about the Notice of Dispute, which was filed under a different file number.

[35] Master Keim denied the application, clearly telling the Respondent that the relevant forms were incorrect and that the necessary documents to correct the forms must be filed.

[36] Eventually, after further discussions between HM and the Respondent, SG signed the P14 affidavit, even though HM did not feel the form made sense but just trusted the Respondent because he was a lawyer.

Communications with other Counsel

[37] On November 28, 2019, RM, a paralegal with the law firm Kidston and Company ("Kidston"), sent an email to the Respondent saying that they had been retained by BD and asked for a copy of the most recent will of MM.

[38] The next day, the Respondent replied to the paralegal, RM, and told her that he was not in possession of, nor had he seen, a valid will. He also told her that he was seeking probate to correct the error regarding the Joint Tenancy.

[39] Further discussions led to information that W. Jay Hack ("Hack"), a lawyer at Davidson Lawyers, had prepared the 2013 Will. On January 6, 2020, RM emailed the Respondent asking if Hack was able to shed any light as to the earlier will. She followed up on January 31, 2020, as she had had no response. The Respondent spoke with Robert Ross ("Ross"), a lawyer at Kidston, on February 28, 2020, the result of which was that the Respondent agreed to speak with Hack, authorize him to release whatever will he had in his possession, to provide a copy of the will the Respondent had in his possession, and to provide documents confirming the assets of MM.

[40] On April 3, 2020, BM, a legal assistant at the Respondent's firm, emailed Hack asking that he provide a previous original will. Hack responded the same day saying that they did not have an original will.

[41] On April 9, 2020, BM emailed Ross and told him that they were told that Hack did not have an original will. He also provided Ross with a copy of the 2017 Will. On the same day, Ross replied pointing out that he thought that the copy was missing page 2 and asked for it. He also noted that Hack referred to an "original" will and Ross asked if Hack had a copy of "any" will.

[42] The Respondent's office replied to Ross on May 5, 2020, agreeing that the page numbers do not seem to correspond, and that there was no page 2, but that the clause numbering is sequential. While it is not necessary for the Panel to make a finding in this regard, it is equally plausible that the "page 2" was indeed missing and that the actual page 2 had subclauses (as does the 2013 Will) that would also be sequential.

[43] More significantly, the Respondent's office said that Hack did not possess a copy of any will.

The July 2020 Application

[44] On July 20, 2020, the Respondent filed a Notice of Application for the probate application to be heard in person. It sought a grant of administration for SG, and to remove the Notice of Dispute filed by BD.

[45] This application sets out more details of the error that led to the severance of the joint tenancy but made no reference at all to any will (valid or not) of MM, nor does it refer to his sons. Further correspondence took place between the Respondent's office and Kidston. The application was eventually adjourned generally.

Further Correspondence

[46] In August and September 2020 email correspondence took place between the Respondent's legal assistant, GJ and SG's friend, HM regarding the will of MM. On September 25, 2020, Taeya Fitzpatrick, a lawyer, told the Respondent's office that she was now acting for SG and provided notice that there might be a potential claim and advising the Respondent to reach out to the insurers. A few days later, even after being dismissed as counsel and receiving a Notice of Change of Solicitor, the Respondent provided notice to MM's sons regarding the application by SG for estate administration.

Resolution of the Error

[47] On April 22, 2021, SG filed a Petition in the Supreme Court of British Columbia through her new counsel seeking to rectify title based upon her right of survivorship.

[48] On September 20, 2021, Justice Kirchner heard the Petition by telephone and granted an order that title belonged solely to SG.

DETERMINATION OF DISPUTED FACTS

Some Basic Considerations

[49] Some of the facts in this hearing are in dispute and were the subject of oral evidence. The determination of credibility is often challenging, and it is vital to look at far more than the demeanor of witnesses and whether they seem to be convinced of the truth. As stated in *Faryna v. Chorny*, 1951 CanLII 252 (BCCA), [1952] 2 D.L.R. 354, p. 357:

> … the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

[50] This approach has been adopted in innumerable cases, including by hearing panels in many LSBC Tribunal hearings.

[51] In assessing credibility and reliability, this Panel, among other considerations, has kept in mind the following:

(a) whether the evidence of the witness fits with the independent, accepted evidence;

(b) whether the evidence of the witness accords with common sense, or to put it another way, whether the evidence seems unlikely or unreasonable;

(c) the witness' ability and opportunity to observe and recall events;

(d) the importance of the events to the witness;

(e) whether the witness changes evidence during the course of the testimony of the witness;

(f) whether the witness has a motive to lie;

(g) the general demeanor of a witness, although as referred to above, the Panel is cognizant that the demeanor of a witness is an unreliable guide as to whether that witness is truthful.

SG

[52] SG testified that she retained the Respondent to prepare and execute a new will for herself and to prepare a power of attorney in favour of HM. After meeting with the Respondent on May 21 and May 28, 2019, she instructed him to ensure that the home was transferred solely into her name.

[53] She said that she understood that the 2017 Will, prepared by her husband, replaced the 2013 Will prepared by Davidson Lawyers. She believed that the 2017 Will was valid. She provided the 2017 Will to the Respondent.

[54] On several occasions, the Respondent provided SG with documents to sign. She said that he did not review the documents with her but showed her where to sign. SG deposed that she did not read the documents before she signed them but trusted the Respondent and signed the documents as instructed by the Respondent.

[55] SG deposed that she last met with the Respondent on June 27, 2019, and after that date heard nothing further from him. The Respondent did not tell her about the Notice of Dispute filed and served by BD. She ended up retaining Ms. Fitzpatrick to deal with the error concerning ownership of the home.

[56] SG is certain that at some point during the retainer, she told the Respondent that MM had two sons from a prior marriage. She testified that she would never have told him that MM had no sons.

Assessment of the credibility of SG

[57] We find SG to be a credible and reliable witness. Her evidence fits with the documentary evidence, the undisputed facts outlined in the Notice to Admit and the evidence of HM. Importantly, her evidence accorded with common sense, particularly her reliance on, and trust in, the Respondent, a lawyer. For the most part, her evidence was clear and consistent, both internally and externally. She displayed occasional lapses in memory and understanding but never on a salient point.

[58] The key dispute in the evidence is whether SG told the Respondent that MM did not have children. The Panel finds it inconceivable that SG would lie about this well-known fact. It was hardly a secret. She had no motive to lie about this at all. It must be remembered that the whole point of meeting with the Respondent was to get *her* affairs in order: *her* will, *her* power of attorney, and *her* representation agreement. This would, obviously, entail dealing with the primary asset: the home she held in joint tenancy with MM at his death. Notably, SG owned the home in her own name prior to her marriage

with MM. MM's sons had no interest in any of these matters. The Panel finds that SG did not lie to the Respondent about MM's sons.

[59] The Panel notes that it was not until the Respondent decided to probate the estate of MM that the existence of his sons became relevant.

[60] SG displayed no bias against the Respondent whatsoever. She obviously found the process frustrating, particularly how long it was taking. She described the error regarding the transfer into her name as the surviving joint tenant as a "very honest mistake."

[61] SG gave her evidence in a straightforward, clear manner. The Panel finds that she was doing her very best to be as accurate as possible. She was certain that she told the Respondent that MM had two adult sons. We accept her evidence.

HM

[62] HM was a friend of both MM and SG, whom she had known for some 50 years. She confirmed that the Respondent did not review the Form A and the PPT Return with SG at the May 28, 2019, meeting at which she was present.

[63] HM deposed that in October 2019 she received the affidavit which said that the value of the estate was zero, and did not understand the document. She first told SG not to sign the affidavit. She met with the Respondent on her own on November 20, 2019, and while she still did not think the document made sense, she told SG to sign it because she trusted the Respondent since he was a lawyer.

[64] HM was not told about the Notice of Dispute until August 20, 2020, after which she suggested that SG switch lawyers.

Assessment of credibility of HM

[65] Like SG, HM gave her evidence in a straightforward, unbiased manner. She also had no reason to mislead the Panel. She too was obviously frustrated with the process and did not understand some of the documents prepared by the Respondent's office but advised SG to sign them since they were placing their trust in the lawyer. Her evidence was consistent internally and with independent evidence.

Ross, Daniel Hutchinson, and Hack

[66] Ross testified that his firm, Kidston, was retained by BD in November 2019. He initially wanted further information about the estate of MM to advise his client.

[67] He confirmed that the Respondent told him on November 29, 2019, that he was "neither in possession nor have I seen a valid will of the deceased." He wondered to himself, however, if there was a will at all. It seemed to Ross that perhaps there was an invalid will, or a will that the Respondent did not know about. In short, Ross wanted to find *a* will, if any.

[68] Ross observed that he would not presume that because part of a will might be invalid that the whole will would necessarily be invalid since that determination would be up to a judge.

[69] On April 9, 2020, Ross received a copy of the 2017 Will from the Respondent.

[70] There was considerable confusion about the existence of a will, or whether there were multiple wills, or whether there could be invalid wills, or if there was an original will, or copies of wills.

[71] Eventually, the Respondent served Ross with the July 2020 application referred to above. Ross pointed out that it was necessary to serve the sons of MM and that he was not acting for them.

[72] The evidence of Daniel Hutchinson ("Hutchinson"), a solicitor with Kidston, was to the same effect. He also related the confusion concerning the existence of wills, valid or not.

[73] Hack prepared the 2013 Will. He testified that in March 2017, MM retrieved the original of the 2013 Will from their office and Davidson Lawyers only maintained a copy. He also testified that he was contacted by Kidston in November 2019 about obtaining a copy of the 2013 Will which he was unable to release without the consent of the primary executor, SG. After that, nothing happened until April 2020 when the Respondent's office asked whether he had an *original* will. Hack said that this was the first communication he had had with the Respondent's office about this matter. He allowed that it was possible that there had been an earlier conversation, but he had no notes and no recollection of any such conversation.

[74] In July 2020, after further contact with both Kidston and the Respondent, Hack provided both with a copy of the 2013 Will.

Assessment of credibility

[75] All the independent lawyers gave their evidence in a clear and unbiased manner. Where available they relied on documents, particularly correspondence by email, to refresh their memory and to relate a coherent narrative concerning a confusing set of

interactions amongst the lawyers which took place almost five years before they gave evidence.

[76] Ross and Hutchinson were primarily concerned about tracking down any wills, valid or not, so they could properly advise their client, BD.

[77] Hack acted for MM concerning the 2013 Will and found himself in a difficult position trying to respond to inquiries from Kidston and from the Respondent's office while at the same time maintaining privilege over the communications with his former client. Hack struck the Panel as a careful lawyer. We accept his evidence that he had no recollection of any conversation with the Respondent's office prior to April 2020. We note that there are no written notes of any sort memorializing any such conversation. Also, given the other correspondence it appears unlikely that any such conversation took place. Hack no longer had the original of the 2013 Will, just as he told the other lawyers. He did have a copy, which he provided when it became clear that this was a source of confusion.

The Respondent

[78] The Respondent described the error regarding severing the joint tenancy as an "honest mistake".

[79] He testified that SG told him that MM had no sons. He opined that she was probably worried that they would inherit something and that she would get less. He also made a remark that "the client is the second person to lie to you in life."

[80] He said that he typically takes limited notes during meetings with clients.

[81] His opinion was that the 2017 Will was not valid, although he said that it was sufficient either as a testamentary document or evidence of intention to revoke any former will. He testified that this was why he did not advise the court of the existence of the 2017 Will.

[82] He said that he felt the home was worth "zero or one" since there would be a constructive or resulting trust in favour of SG as the surviving joint tenant.

[83] He said that he had no obligation to tell the court about the Notice of Dispute, since it was filed in the same registry, although a different file number.

[84] He claimed that Hack told him in a telephone conversation that he had no will at all, original or copy. As referred to above, Hack is a careful lawyer. He told the Respondent that he did not have an original will. This Panel concludes that he never told the Respondent that he had no will of MM, even a copy.

[85] The Respondent thought that Ross would be acting for the sons of MM when he delivered the July 2020 application to Ross, although Ross had never told him that he was acting or was expecting to act for the sons.

[86] Concerning the validity of the 2017 Will, the Respondent agreed that, on its face, it met the requirements of section 37 of the *Wills, Estates and Succession Act* ("*WESA*"). He further agreed that it could have been a testamentary document. He also agreed that a court could always rule that the will was nevertheless effective or was indeed a testamentary document. Despite this acknowledgement, the Respondent agreed that he represented to the court that no testamentary document had been found.

[87] When confronted on cross-examination with the full version of the Form P5 of the BC Supreme Court Rules, the Respondent agreed that it was incumbent upon him to advise the court that no testamentary document had been found, or if one had been found to attach any such document to the affidavit, whether valid or not. If he was of the view that the testamentary document was invalid or not relevant, he was obliged to state the reasons.

[88] Despite the clear language of the form being brought to his attention, he refused to agree that he needed to have notified the court of the 2017 Will.

[89] He was also unable to provide an explanation as the why, once he knew with certainty that MM had two sons, he did not advise the court. The absolute latest date that the Respondent was aware of the existence of the two sons of MM was November 29, 2019, when he filed the Form P14 affidavit of SG. He took no steps to correct the misleading information provided to the court.

[90] Concerning the initial meeting with SG, he agreed on cross-examination the purpose was to discuss her will, her power of attorney and her representation agreement. He also confirmed that at the May 28, 2019, meeting SG signed her will and instructed the Respondent to transfer title of their home solely into her name.

[91] He maintained that the note from the May 28, 2019, meeting which said "no kids" referred to MM having no kids, not to there being no kids from the marriage between MM and SG.

[92] This is in direct contrast to the Respondent's statement to a Law Society investigator on March 23, 2022, wherein he stated that the "no kids" reference in the file concerning the May 28, 2019 meeting referred to MM and SG having no kids together.

[93] The Panel notes that this amounts to a clear inconsistency on one of the most important, disputed facts at this hearing. The Panel also notes that, given the purpose of

the first two meetings with SG, essentially to get her own affairs in order, whether MM had children from a previous relationship would have had virtually no relevance.

[94] Regarding the Form A and the PTT Return, the Respondent agreed that they were incorrect. He agreed that the Form A described SG receiving a 50 percent interest as the transferee and that the PTT Return indicated that the joint tenancy was being changed to a tenancy in common. He claimed that while he had no specific recollection of reviewing the documents with SG, he "probably would have." He could not explain how he would have missed such glaring errors if he had reviewed the documents with SG.

[95] The Respondent also agreed that the file opening sheet dated May 28, 2019 said that the file was to sever the joint tenancy, an astonishing error given the instructions were to transfer title to the home solely into the name of SG, the surviving joint tenant.

[96] The Respondent's letter to SG of May 28, 2019 also contained fundamental errors, including showing SG as the only registered owner of the home and that SG instructed him to arrange for her to take 50 out of 100 percent interest in the home. It also contained other information not even applicable to the file.

Assessment of credibility of the Respondent

[97] The Respondent's evidence was replete with unresponsive and evasive answers. A few notable examples are set out below.

[98] Concerning the key factual dispute with the evidence of SG, whether she told him about MM's two sons, he provided a gratuitous and incongruous remark to the effect that "my little joke is that the client is the second person to lie to you in life." While the Panel does not dispute that clients' may lie to their lawyer, here SG had no reason to do so. As set out above, we find that SG never told the Respondent that MM had no children.

[99] The Panel finds that the notation made on May 28, 2019 referred to there being no "kids" from the marriage between SG and MM. Not only is this correct, given the reason for SG retaining the Respondent, whether SG had children from a previous relationship was of no relevance.

[100] MM's will was not necessary in order to prepare a will, power of attorney, or representation agreement for SG, let alone transferring the title to the surviving joint tenant. When confronted with the obvious proposition that at the time he did not know he would be seeking probate of the will of MM, he refused to agree, saying that "it would depend on the date I would have made the error." This answer made no sense. The basic error concerning his failure to transfer title to SG had not yet been made.

[101] The Respondent's justification for taking the probate route to correct his failure to transfer title to the surviving joint tenant also troubles the Panel. While he first sought to correct his mistake by way of statutory declaration, the LTSA rejected this approach. He testified that, based on information provided to him by the registry, he decided to seek a grant of estate administration even though title should have passed outside of the estate. He testified that in his view, seeking relief from the court would be more expensive and take longer. He alluded to the difficulties with accessing the court due to COVID, which left the Panel flummoxed. COVID did not impact the courts until March 2020.

[102] There is no need for this Panel to rule on whether the decision to seek a grant of administration was the correct approach. What is clear, once that decision was made, new issues arose, such that it was incumbent upon the Respondent to initiate a number of investigations. He had seen the 2017 Will. He felt it was invalid, but it was indisputably a will. He apparently did not ask if there were earlier wills of which SG (or HM) might be aware, or who other potential beneficiaries might be, or a detailed listing of the assets of the estate. Instead, he relied upon one note on a different issue which said, "no kids" and apparently decided that there were no potential beneficiaries other than SG.

[103] He proceeded to file the relevant documents which were replete with errors. Even after being questioned by the registry about the zero value, and receiving a Notice of Dispute, he took no steps to rectify the errors. He testified that by telling the court that a Notice of Dispute had been filed (in a different action) that he "would be notifying the court of what it's already been notified of". This was at best a disingenuous comment.

[104] The Respondent's answers were unsatisfactory when confronted with the fact that despite seeing the 2017 Will he did not advise the court or file a copy. He said that this was "not a will" but somehow might have been a testamentary document. Despite this and agreeing that it is ultimately up to the court to determine a will's validity, and the fact that the 2017 Will met the definition of "testamentary document" he said, "in the context it was meant that no will existed." This answer was nonsensical.

[105] When questioned about how a court was to decide whether to grant administration without all the information, the Respondent, remarkably in the Panel's view, said that would not be an issue when seeking a grant of administration, apparently because it was not likely to be litigated. This answer shows an abject misunderstanding of the role of counsel when presenting information and evidence to a court, particularly when there were no counsel representing other potential interests.

[106] Even once he was contacted by Kidston, the confusion, which could have been cleared up very easily, remained for months. The Respondent was unable to clearly answer a question about how Ross was to determine the validity of a will he had not seen, or for that matter even knew existed. The Respondent was also unclear about when he

had discussions with Hack about the 2013 Will. He claimed that Hack told him he had no will, which was patently wrong. Hack clearly communicated that he did not have an *original* will.

[107] The Respondent was also evasive when it was put to him why, on April 20, 2020, he would be asking Hack for a will if he had already had a discussion with Hack to the effect that Hack had no will. This statement is also directly contradicted by an email he sent to the paralegal, RM on July 24, 2020 saying that the Respondent was agreeable with RM contacting Hack and obtaining a copy of the "revoked 2013 Will."

[108] Towards the end of his cross-examination, the Respondent acknowledged that he had filed false information with the court. He claimed that he did not have the correct information when filed, but agreed he did not take steps to correct that material. However, he refused to accept that false information on key aspects of an application could mislead the court.

[109] Throughout his evidence, the Respondent prevaricated on key points, was inconsistent within his own evidence, did not answer questions directly, added incongruous and disingenuous statements, and gave answers that did not accord with other independent evidence, including documentary evidence and evidence of the other witnesses.

[110] In short, the Panel does not find him to be a reliable or credible witness.

ISSUES

[111] The Panel will consider the following issues:

1. Does the Citation include allegations of professional negligence requiring expert evidence?

2. Has the Law Society established professional misconduct or incompetent performance of duties?

LAW: PROFESSIONAL NEGLIGENCE AND EXPERT EVIDENCE

Position of the Respondent

[112] The Respondent takes the position that, while the Law Society has framed the allegations contained in the Citation as professional misconduct, they pertain to professional negligence.

[113] In support, he relies on: *Law Society of BC v. Guo*, 2023 LSBC 49; *Law Society of BC v. Guo*, 2023 LSBC 30; *Odobas v. Yates*, 2021 BCSC 2320 (CanLII); and *Bergen v. Guiker*, 2015 BCCA 283 (CanLII).

[114] The Respondent argues that the Law Society was obliged to lead expert evidence that the 2017 Will was valid, that the value of the estate (the home, in essence) was not zero, that it was necessary for the Respondent to amend the initial probate filings once the errors became clear, and that the Respondent was obliged to advise the court about the Notice of Dispute filed under a different file number.

[115] The Respondent submits that without expert evidence the Law Society has not proved professional negligence and therefore has not established any of the allegations contained in the Citation.

Position of the Law Society

[116] In its reply to the submissions of the Respondent, the Law Society submits that the Respondent has conflated professional negligence with professional misconduct. It says that the presence or absence of professional negligence based on a proven standard of care owed to an adverse party is distinct from the issues before an administrative tribunal.

[117] The Law Society submits that this matter involved allegations of professional misconduct against the Respondent, a member of the Law Society. The issue here is not whether he breached his duty of care owed to SG, but whether his actions were a marked departure from the conduct the Law Society expects of its members, or, concerning allegation 1 whether his actions amount to incompetent performance of his duties.

[118] In addition, the Law Society says that expert evidence is not necessary to establish professional misconduct or incompetent performance of duties except in certain, specific circumstances.

[119] The Law Society refers to *Law Society of BC v. Perrick*, 2014 LSBC 39 (affirmed 2016 LSBC 43). As stated in *Perrick*, broadly speaking, issues of professional misconduct and incompetent performance of duties can be divided into two categories: the "common sense" category, and the "professional" category. The latter *may* require expert evidence, as the issues could be more involved, complicated, and specialized.

[120] The Law Society says that the issues here do not involve specialized questions of law or technical knowledge likely to be beyond the experience of panel members. In contrast, it says that the facts here raise basic requirements expected of a competent lawyer.

[121] More specifically, the Law Society submits that the facts leading up to the so-called conveyancing error and the steps taken by the Respondent to correct that error, including his interaction, or lack thereof, with his client (allegation 1) do not raise any specialized or technical issues. Regarding allegations 2 and 3, the Law Society submits that validity of the 2017 Will and the value of the home are not matters to be determined by the Panel. Instead, the Law Society says that the questions are whether the Respondent committed professional misconduct by failing to disclose the existence of the 2017 Will to the court or to counsel and representing to the court that the value of the estate was zero.

ANALYSIS – PROFESSIONAL NEGLIGENCE AND EXPERT EVIDENCE

[122] The Panel agrees with the Law Society. Allegation 1 revolves around a very basic and elementary process: ensuring that title passes to a surviving joint tenant. The Panel requires no evidence, expert or not, that many people own property as joint tenants. One of the central reasons for doing so is that the property, which is often by far the most significant asset, transfers seamlessly and easily to the surviving joint tenant without the need for probate at all.

[123] Allegation 1 sets out particulars of how the Law Society says the Respondent committed professional misconduct, including failing to adequately investigate the facts, recognize his limitations, communicate effectively, ensure that all steps were attended to within a reasonable time frame, keep the client reasonably informed, take appropriate steps, pay reasonable attention to documentation and providing complete and accurate relevant information about the matters.

[124] All these issues are well within the compass of the Panel to resolve. There is nothing remotely technical or specialized about them.

[125] The same holds true for allegations 2 and 3. Those allegations allege drafting and filing materials with the Supreme Court of BC that he knew or ought to have known were false or misleading and that he never corrected, or misled other counsel about never seeing a valid will of MM. Again, no specialized knowledge is required.

[126] . The question to be answered is whether the Respondent committed professional misconduct during a straightforward retainer. An ordinary person is more than able to determine whether the conduct of the Respondent met or did not meet the standard of a competent Wills and Estates lawyer. Further technical information is not necessary on the facts here. The Panel is ideally suited to make the necessary determination.

LAW: PROFESSIONAL MISCONDUCT AND INCOMPETENT PERFORMANCE OF DUTIES

General Principles

[127] Section 38(4)(b)(i) of the *Act* authorized the Panel to determine, among other things, whether the Respondent has committed professional misconduct. The test for professional misconduct, a term not defined in the *Act,* is well-known. As stated in the oft-quoted decision *Law Society of BC v. Martin*, 2005 LSBC 16, at paragraph 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."

[128] The test is an objective one. In deciding whether the conduct in question fell below the appropriate standard, the Panel must consider the *Act*, the Rules, and the *Code*, together with the duties and responsibilities that a lawyer owes to his client, the courts, other lawyers and the public, in light of the facts determined by the Panel.

[129] Alternatively, section 38(4)(b)(iv) allows the Panel to determine whether the facts disclose that the Respondent has committed incompetent performance of duties. Given its findings regarding professional misconduct, the Panel finds it unnecessary to determine whether the Respondent has committed incompetent performance of duties.

Position of the Respondent

[130] The thrust of the argument of the Respondent is that the Law Society has mischaracterized the allegations as professional misconduct whereas they are allegations of professional negligence which remain unproven. However, as we understand his submissions, he says that he did not commit professional misconduct or incompetent performance of duties.

[131] The Respondent says that he conducted a thorough investigation and took appropriate corrective action. He says that he communicated regularly with the client in a timely manner. He also claims that delays caused by COVID-19 and a frivolous Notice of Dispute were extenuating circumstances beyond his control.

[132] Regarding the allegations of misrepresentations, the Respondent takes the position that he relied on information from his client (particularly concerning whether MM had sons from a previous relationship). He further says that, because his legal opinion was that the 2017 Will was not valid, he had no obligation to disclose that will to either the court or to other counsel.

Position of the Law Society

Allegation 1

[133] The Law Society says that transferring title to the surviving joint tenant was a straightforward task, but the facts show that the Respondent did not review the documents before they were submitted. The Form A and the PTT Return both indicate that the intention was to sever the joint tenancy. He used the incorrect form and then tried to resubmit the very same form in his failed attempt to correct the error with the LTSA. He evidently did not fully review the documents with his client, which would have revealed the error.

[134] The Respondent chose to correct the error through a probate application. The Law Society says that the evidence of SG and HM shows that the scope and nature of the probate application was not explained to SG adequately and that neither SG nor HM was kept informed of the progress, or lack thereof, of the application.

[135] The Law Society submits that the evidence shows a lack of effective communication with SG or HM and that the Respondent did not review or explain the documents. It is apparent, according to the Law Society, that SG signed the documents because she trusted the Respondent, as an unsophisticated member of the public would be expected to. The Law Society also says that it is manifest that the Respondent did not properly document the file, nor even provide copies of the relevant documents to his client or her power of attorney. This included, notably, not telling either SG or HM about the Notice of Dispute filed and served by BD, who was the niece of SG, until August 2020.

[136] The Law Society points out that there is no evidence that the Respondent properly re-evaluated the matter after the discovery of the failure to transfer title to the surviving joint tenant, nor any evidence that he gathered the appropriate information necessary to deal with probate, such as previous wills, details about potential beneficiaries, or the value of the estate.

[137] As a result, SG incurred both time and money to retain a new lawyer who was able to resolve the issue with an application to correct title made before the Supreme Court of BC. As pointed out by the Law Society, the hearing of the application took place during the "COVID-19 period" which the Respondent raises as an extenuating circumstance.

[138] The Law Society further says that it seems that the Respondent has difficulty distinguishing fact and legal opinion, particularly concerning the validity of the 2017 Will. Because he was of the legal opinion that the 2017 Will was not valid the

Respondent apparently felt he did not have to disclose it to the court and instead presented his belief that there was "no will" to the court.

[139] In conclusion, the Law Society says that the Respondent demonstrated a failure to provide the quality of service required of a competent lawyer and as such his conduct is a marked departure from that the Law Society expects from its members. It says that the Respondent failed to adequately explain documents, engaged in a flawed strategy to correct his errors, and when it became clear that the materials filed contained errors, he did nothing to correct those errors.

[140] The Law Society also submits that it is open to the Panel to make a finding of incompetent performance of duties, as he demonstrated a pattern of neglect, carelessness and mistakes. However, the Law Society says that, while a lack of skill was a factor, it was not the root cause. Instead, the Respondent's cavalier attitude concerning his duties to his client constitutes a marked departure from the conduct expected of the members of the Law Society, as such professional misconduct is the more appropriate finding.

Allegation 2

[141] The Law Society submits that lawyers are held to a high standard when presenting evidence to a court.

[142] The documents filed by the Respondent had several misrepresentations. While the Respondent told the court that there were no other wills, because the 2017 Will, in his legal opinion, was not valid, he concurrently took the position that it revoked all former wills. These two positions cannot be reconciled, and the Law Society quotes the words of the witness Ross that this position was an attempt to "have his cake and eat it too." The Law Society describes this position as "self-serving and disingenuous, or highly reckless at best."

[143] The Law Society points out that even if the Respondent had concerns about the validity of the 2017 Will, it was incumbent on him to disclose those concerns. The Supreme Court Rules themselves require an applicant for probate to include a copy of any testamentary document even if the applicant believes that it is invalid or irrelevant.

[144] The Law Society urges the Panel to reject the evidence of the Respondent that he was misled by SG. It says that there is nothing to corroborate this assertion, that there was no explanation for why SG might have said this, and that she had nothing to gain by lying to her lawyer. The Law Society says the suggestion by the Respondent that SG lied to him is simply not credible. In any event, it is nonsensical that the Respondent would simply take such a vital statement at face value with no attempt to verify this crucial information.

[145] Regarding the value of the estate, the Law Society says that the Respondent should have provided a fulsome explanation about the fact that he failed to properly transfer title into the name of the surviving joint tenant. Further, he ought to have made it clear in his materials that a Notice of Dispute was filed in a separate action, instead he sought a grant of administration despite being aware that there was an extant Notice of Dispute and knowing that a registrar could not grant the application if there was a Notice of Dispute. He maintained this position as late as July 2020, by which time it was beyond question that the materials were incorrect.

[146] In conclusion the Law Society says the Respondent knew or ought to have known that the materials he filed contained false or misleading information and never took any steps to correct the materials. The Law Society describes the behaviour of the Respondent as dishonest and high-handed and failed to meet his duty of candour and to ensure that he provide accurate information to the court, which constituted a marked departure from the conduct expected by the Law Society of its members.

Allegation 3

[147] The Law Society says that misleading other counsel is professional misconduct. It says that by telling Ross that he did not have, nor had he seen a valid will, when he had seen the 2017 Will, he misled counsel. It was many months before he provided a copy to Ross, and not until July 2020, did he facilitate Kidston obtaining a copy of the 2013 Will from Hack.

[148] The Law Society submits that the correspondence among paralegal, RM, Hutchinson, Ross and Hack shows obvious confusion and frustration on a topic that could easily have been dealt with months before. The Law Society submits that the Respondent knew or ought to have known that he was not being honest or forthcoming with Kidston when he simply told them he had not seen a *valid* will. The Law Society says that even if the Respondent genuinely believed that the 2017 Will was invalid, his statement to Kidston was, in effect, misleading.

ANALYSIS

Allegation 1

[149] As set out in the *Code*, a "competent" lawyer is one who has and used his or her knowledge and skills in an appropriate manner to assist the client. The lawyer is obliged to communicate in a timely and effective way, keeping in mind the sophistication and needs of a particular client, and to use the lawyer's intellect, skill and judgment, while always recognizing any limitations. Clients retain lawyers to assist them and can expect

their lawyer to be capable of dealing with all relevant legal matters. They are entitled to trust their lawyers and to have everything fully explained to them. Every lawyer has a duty to provide a quality of service at least equal to that which lawyers expect of a competent lawyer in similar circumstances. This necessarily entails reasonable attention to any documentation. See, for example rules 3.1-1, 3.1-2, 3.2-1 and related commentary.

[150] While there is a distinction between an error and lack of competence, evidence of gross neglect may give rise to disciplinary action. The provision of quality legal services is at the heart of the duty of a lawyer to the lawyer's client.

[151] SG went to the Respondent to perform some elementary legal services. She wanted her will drawn up, a power of attorney drafted and a representation agreement prepared. She was in her early eighties at the time. Her husband had died about nine months before. There was one significant asset: the family home, which was originally in her name before she arranged to transfer title to her and MM in joint tenancy decades before. The Respondent utterly failed to accomplish this relatively straightforward service and managed to sever the joint tenancy, meaning that title to the portion under the name of MM became part of his estate, instead of transferring to the surviving joint tenant, SG.

[152] In making this error, the Respondent used incorrect forms which SG executed based on his instructions. The Panel finds that he did not go over the forms with SG and simply directed her to where to sign. It is obvious that even a cursory review of the forms with his client would have revealed the error.

[153] This pattern continued after he realized the error. He failed to communicate effectively with his client or her power of attorney, and never explained how he was going to set about correcting his error. He decided to seek probate, even though the title to the property should have passed outside the estate. In doing so, he failed to take appropriate steps to carry out the client's instructions and protect her interests, including failing to investigate potential beneficiaries, the value of the estate, or the existence of wills apart from the 2017 Will which he decided was invalid although could serve to revoke any previous wills.

[154] It is apparent to the Panel that the Respondent simply relied upon a note made on May 28, 2019, which says "no kids." In the context, the Panel finds that this note referred to there being no kids from the relationship between SG and MM.

[155] As referred to above, the Panel has found that SG never told the Respondent that MM had no children.

[156] This pattern of ineffective communication continued over the following months. In September 2019, a niece of SG, BD, filed a Notice of Dispute, saying among other things

that there was a previous will (for which she was an alternate trustee). The Respondent did not tell his client or her power of attorney about the Notice of Dispute until August 2020. Indeed, based on the evidence of SG, which we accept, she heard nothing from the Respondent or his office after June 27, 2019.

[157] The simplest of communication would have revealed the multiple errors in the materials filed by the Respondent with the court concerning the application for probate.

[158] This lack of communication, particularly about key elements of the retainer, falls far short of the conduct expected by the Law Society of its members.

[159] The Respondent's file is bereft of vital information. There was no new file opened for the estate matter. There is no documentation about the validity of the 2017 Will. There is nothing to suggest the Respondent gathered any information about relatives of MM, the value of the estate, or previous wills. There is nothing that documents a telephone conversation with Hack wherein Hack told the Respondent that there was no will. There is nothing to suggest that the Respondent advised his client to seek independent legal advice once the error came to light.

[160] The Panel is left with an inescapable conclusion. Once he made the error, the Respondent's entire course of action was to attempt to resolve the error without letting anyone, whether that be his client, the court or opposing counsel, become aware of the details. It is particularly noteworthy to the Panel that even after the Respondent, on his own admission, was indisputably aware of the fundamental errors in the application for a grant of administration, he took no steps to rectify those errors. The course he decided upon was fraught with complications, which his lack of communication and his lack of candour compounded.

[161] As set out above, in summary the Panel concludes that the Respondent failed to:

(a) adequately investigate the facts and identify the legal issues, particularly once he decided to seek a grant of administration;

(b) communicate effectively with the client by failing to clarify her instructions, particularly regarding whether MM had children, and to properly advise her of the reasons for the steps he was taking, and by failing to adequately review the documents which he asked her to sign;

(c) ensure that all steps were attended to within a reasonable time frame, particularly the delays regarding correcting his errors concerning the property transfer;

(d) keep the client reasonably informed about the status and substance of her matter, including not telling her about the Notice of Dispute and any issues regarding the validity of the 2013 Will and the 2017 Will;

(e) take appropriate steps to carry out the client's instructions and protect her interests, particularly regarding his abject failure to transfer the property into her name as the surviving joint tenant;

(f) give reasonable attention to the review of documentation in the client's matters to avoid delay and unnecessary costs to correct errors or omissions as is apparent by making the basic errors in the transfer of the property, which would have been apparent if he had reviewed the transfer documents with SG; and

(g) provide his client with complete and accurate relevant information about the matters, most clearly demonstrated by his failure to even communicate with her after June 27, 2019.

[162] We do not find it necessary to determine whether the Respondent failed to recognize limitations in his ability to handle the matters and take appropriate steps accordingly.

[163] In conclusion, the Panel finds that his conduct as set out in allegation 1 constitutes a marked departure from the conduct expected by the Law Society of its members and that he committed professional misconduct under Section 38(4)(b)(i) of the *Act*.

[164] Given our conclusion regarding professional misconduct, it is not necessary for this Panel to reach a decision regarding incompetent performance of duties.

Allegation 2

[165] The courts depend upon the candour and forthright behaviour of counsel who appear before them. A lawyer must never attempt to deceive a court, or misstate facts, or act in any way except honourably, and must always treat the court with candour, fairness, courtesy, and respect. This is particularly true when potentially opposing interests are not represented. A lawyer must also ensure that once errors are discovered that the court be fully apprised of any such mistakes. See rules 2.1-2, 2.1-5, 2.2-1, 5.1-1, 5.1-2 and related commentary.

[166] Here, the Respondent filed materials with the court saying, among other things, that there were no interested parties or beneficiaries of the estate of MM, that the value of the estate was zero, and that there was no will or testamentary document of MM. He sought a

grant of administration in favour of SG. All these statements were false. MM had two sons, which the Respondent knew by late November 2019 at the absolute latest. It is apparent that by late November 2019 that the Respondent knew that he had made false representations to the court which would mislead the court on a vital point. Further, due to his error, the title to the home was registered at the LTSA as a one-half interest as a tenant-in-common. While the Panel can accept that such an interest was not half of the assessed value, it certainly was not zero. We find that the Respondent knew that the value of the estate was not zero. When the registry [in other words the court] questioned this, he failed to provide a fulsome answer and took no steps to ensure that the court had accurate materials. He testified that he thought the registry was just seeking the probate fees and referred to an "error" without a full explanation. He must have known that this too would mislead the court.

[167] In addition, he sought a grant of administration even though he knew that a Notice of Dispute had been filed. He filed an affidavit saying that he was unable to locate any prior wills or testamentary documents, even though he had seen the 2017 Will which he admitted met the formal requirements for a testamentary document. It is manifest that he knew that there was a will at the time of filing the affidavit. He may have believed that it was not valid but that does not relieve him of his obligations to advise the court of its existence. He ignored the stipulation in the Supreme Court of BC rules that he was obliged to provide any testamentary documents, even if he believed they were invalid.

[168] The Respondent had no coherent answer as to how the court was to decide on the probate application if it did not have all the relevant information, all of which was in the possession of the Respondent.

[169] His conduct regarding the application for a grant of administration was characterized by a complete lack of candour and fairness to the court and demonstrates that he was woefully unclear about his obligations. He must have known that it was misleading not to mention the Notice of Dispute. No other conclusion is reasonable. He must have known that a court required a copy of any will, valid or not. Without such information, a court would not have the evidence it required to make appropriate findings. Again, the inescapable conclusion is that he did not want the court to be aware of the full scope of his error concerning his failure to transfer title to the surviving joint tenant.

[170] The Panel concludes that the Respondent knew about the existence of a will for MM, knew he failed to identify other beneficiaries or heirs, knew that he did not accurately represent the value of the estate, decided not to advise the court that a related Notice of Dispute had been filed, and deliberately took no steps to rectify and correct information he had filed with the Supreme Court of British Columbia. He knew or ought

to have known that his conduct was misleading to the court. The Panel finds that his conduct was a marked departure from the conduct expected by the Law Society of its members and amounts to professional misconduct.

Allegation 3

[171] Allegation 3 specifically alleges that the Respondent committed professional misconduct by telling counsel for BD that he was not in possession of and had never seen a valid will for the deceased.

[172] The facts demonstrate that when approached by Kidston, the Respondent told counsel that he was neither in possession of nor had ever seen a valid will. The Respondent had, in fact, a copy of the 2017 Will, the validity of which had never been determined. The Panel is prepared to accept that the Respondent did not believe the 2017 Will was valid. The Panel finds that the Law Society has not proven that the statement that the Respondent has never seen a valid will is false. The validity of the 2017 has not been ruled upon by a court.

[173] This does not end the inquiry. The Law Society says that we should infer that the Respondent did so hoping that would be the end of the matter. The question then becomes: is this statement misleading? This statement certainly led to confusion, delay, and unnecessary correspondence. While the Panel is suspicious that the Respondent made the statement hoping to forestall further inquiries, we are unable to conclude that the Law Society has proven that the Respondent knew or ought to have known that the statement was misleading.

[174] We dismiss allegation 3.

CONCLUSION

[175] Concerning allegation 1, this Panel concludes that the Law Society has proven, that the respondent has failed to (a) adequately investigate the facts and identify the legal issues; (c) communicate effectively with the client; (d) ensure that all steps were attended to within a reasonable time frame; (e) keep the client reasonably informed about the status and substance of her matters; (f) take appropriate steps to carry out the client's instructions and protect her interests; (g) give reasonable attention to the review of documentation in the client's matters to avoid delay and unnecessary costs to correct errors or omissions; and (h) provide his client with complete and accurate relevant information about the matters.

[176] We find that the Law Society has failed to prove allegation 1(b) that he failed to recognize limitations in your ability to handle the matters and take appropriate steps accordingly.

[177] Based on our findings regarding allegation 1(a) to (h) of the Citation the Panel concludes that the Respondent failed to provide his client with the quality of service expected of a competent lawyer and that this conduct constitutes professional misconduct. While his conduct could also be characterized as incompetent performance of duties undertaken in the capacity of a lawyer, pursuant to s. 38(4) of the *Act,* the Panel prefers the adverse determination of professional misconduct as his conduct contained the added elements of lack of candour and honesty.

[178] This Panel concludes that the Law Society has proven allegation 2 (a) to (e) of the Citation and finds that the Respondent drafted and filed materials with the Supreme Court of British Columbia that he knew contained false or misleading information, that he failed to ensure the materials were forthright and accurate, and he failed to take appropriate steps to rectify and correct the information and materials filed. This conduct constitutes professional misconduct, pursuant to s. 38(4) of the *Act*.

[179] This Panel concludes that the Law Society has failed to prove allegation 3 of the Citation and accordingly we dismiss allegation 3.