

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

CHRISTOPHER RUSSELL JAMES COOK

RESPONDENT

AGREED STATEMENT OF FACTS

Member Background

1. Christopher Russell James Cook (the “Respondent”) was called and admitted as a member of the Law Society of British Columbia on August 1, 2006.
2. From August 1, 2006 to May 28, 2007, the Respondent worked at a small firm in Castlegar, British Columbia, practising in the areas of commercial lending transactions, creditors’ remedies, wills and estates, criminal law, family law, and civil litigation.
3. From May 29, 2007 to October 31, 2008, the Respondent worked at a small firm in Nelson, British Columbia, practising in the areas of civil litigation, wills and estates, and real estate law.
4. Since November 1, 2008, the Respondent has worked as a sole practitioner in Castlegar and Nelson, British Columbia, practising primarily in the areas of civil litigation, wills and estates, and real estate law.

Citation and Service

5. The Citation in this matter was authorized by the Discipline Committee on June 8, 2017, and issued on June 21, 2017 (“Citation”).
6. The Respondent admits that on June 22, 2017, he was served with a copy of the Citation in accordance with Rule 4-19 of the Law Society Rules.
7. An amended citation was issued on February 19, 2018 (“Amended Citation”), in accordance with Rule 4-21 of the Law Society Rules.
8. The Respondent admits that on February 20, 2018, he was provided with written notice of the Amended Citation in accordance with Rule 4-21 of the Law Society Rules.

Attachments

9. Except where otherwise stated, it is agreed in respect of each document attached to this Agreed Statement of Facts that:
 - (a) it is a true copy of the original document;
 - (b) it was written or created on the date on the face of the document;
 - (c) where by the content or nature of the document it was intended to be sent or delivered, that it was sent or delivered on the date it bears on its face and was subsequently received by the intended recipient;
 - (d) where on its face the document purports to have been written or created under the instructions of the person who signed it or where on its face the document’s creation was authorized by the person who signed it, that it was so written, created or authorized;
 - (e) where the document purports on its face to have been received on a particular date or time, that it was so received; and
 - (f) it is admitted into evidence for the proof of the statements made and not for the proof of the truth of its contents, unless otherwise indicated.

Conveyance of [address], Castlegar, British Columbia

10. On or about July 7, 2015, AT retained the Respondent to act for him in a real estate conveyance. The Respondent received his initial conveyancing instructions from AT’s realtor, [realtor]. The estimated completion date of the conveyance was July 30, 2015.

11. The civic address of the subject property was [address], Castlegar, British Columbia (the “Property”). The Property was owned jointly by PP (deceased) and HP.
12. Pursuant to a Contract of Purchase and Sale dated June 29, 2015, HP (by way of her power of attorney, TR) agreed to sell the Property to AT. The Conveyancer’s Instruction Report, the Contract of Purchase and Sale, and a July 6, 2015 Contract of Purchase and Sale Addendum all set out the legal description of the Property as:
 - PID: [legal description].
13. On July 20, 2015, the Respondent’s conveyancer, CB, requested a title search for [the property].
14. On July 20, 2015, CB requested a copy of the Tax Certificate for the Property from the Tax Department of the City of Castlegar. The request set out the legal description of the Property as [legal description].
15. On July 21, 2015, the City of Castlegar provided the Respondent with the requested document. The Tax Certificate indicated that in addition to [Lot number], the legal description for the Property also included:
 - [legal description], Kootenay Land District except Plan [number].
16. On August 8, 2016, the Respondent was interviewed by two Law Society investigators. During the interview, the Respondent explained that when he reviewed the Tax Certificate, he did not see that the legal description for the Property included Lots [number] and [number]:

CC: But in this case, what had happened was is that the conveyancing instructions did not include that second parcel. Both CB and I missed this indication on the tax folio. I looked at this document as I do with all the documents that came in, but I did not see the extra legal, I did not see that section and to be quite honest with you, I look at these documents a lot more carefully now to make sure I don’t ever miss the legals again. It’s, it’s you know it’s, it’s something where I did not see this indication, the indication of a, of another lot on here on this folio but in every other file where I’ve looked at these things, they don’t often jump out at you. So it was just one of these things where I, I made a mistake.
17. On July 21, 2015, the Respondent sent a letter to PK, a notary public acting for the seller of the Property. The letter enclosed the following closing documents for execution by the seller:

- Form A Transfer;
- Vendor's Statement of adjustments;
- GST Certificate;
- Statutory Declaration re: Residency;
- Title Search; and
- Tax Certificate.

18. On July 24, 2015, PK filed a Form 17 transferring Lot 5 to the surviving joint tenant, HP, with the Land Title Office. Included with the Form 17 was a death certificate for PP and a statutory declaration signed by TR.

19. PK was interviewed by two Law Society investigators on October 26, 2016. During the interview, PK explained that in July 2015, he was also not aware of the need for the conveyance to transfer both Lots [number] and [number]:

MS: Right, okay, so let me back right up to the beginning on this. The, at the time of the conveyance in July of 2015, were you aware that there was the need to transfer two lots?

PK: No, it wasn't, I mean it wasn't in the contract, obviously the mortgage people missed it and when Chris Cook provided us with documentation, there was no mention of it.

...

MS: Right. So at that time, when the, when this transaction was closing, you didn't believe there to be any issues with the documentation that Mr. Cook had prepared and sent to your office?

PK: Well again, everybody went off the contract and there was, nobody was made aware of it.

20. After the closing documents were executed and returned to the Respondent's office, on July 30, 2015, the Respondent registered the Form A at the Land Title Office under registration number [number], and the Form B under registration number [number].

21. On August 4, 2015, the Respondent wrote to AT to report on the transaction and confirm the completion of his purchase of the Property. The Respondent enclosed copies of the filed Form A (number) and Form B (number), along with other closing documents.

22. On September 9, 2015, the Respondent's office was informed that Lot [number] was associated with Lot [number]. That day, the Respondent sent an email to PK that read:

I was just notified by BC assessment that there is another lot associated with the subject property. I missed this on the tax certificate (attached). The contract only had one lot listed and only one search sent with the contract, so I wasn't looking for the second lot information on the tax certificate. ...oops.

I have attached the title search for lot [number] and a Form A – Transfer for Lot [number] for your client's execution and return to our office for registration. Please let me know when you have transferred the property to HP as surviving Joint Tenant, thanks.

23. On September 14, 2015, PK wrote to the Respondent by email to advise that HP had passed away. PK recommended that the Respondent contact the realtors and the Land Title Office with respect to the issue.
24. During his August 8, 2016 interview with Law Society investigators, the Respondent explained that his conveyancer, CB, then spoke with staff at PK's office about the difficulties created by the fact that the seller had passed away. CB subsequently advised the Respondent that she had "worked something out":
- CC: She said she worked something out with [name], yeah, essentially that was what she indicated to me verbally, and that's, I got a, I got a Form A sent to me by CB, I didn't look at the bottom of it, I signed it and then sent it back to her and it got registered.
25. On September 16, 2015, the Respondent caused the following documents to be filed with the Land Title Office:
- (a) a Form 17 (number) transferring Lot [number] from PP and HP into the name of the surviving joint tenant, HP. Enclosed with the filing was the death certificate for PP and the statutory declaration signed by TR that had been prepared by PK in relation to Lot [number] only; and
 - (b) a Form A transfer for Lot [number] (number) from HP to AT.
26. The Respondent admits that by affixing his digital signature to the conveyancing forms on September 16, 2015, he certified that he had a true copy of the forms in hand, when he did not.

27. During his August 8, 2016 interview with Law Society investigators, the Respondent explained that he knew that HP's death was a legal impediment to filing documents with the Land Title Office by power of attorney:

MS: And this is, this is, this may be a, may be one of those questions that I should know the answer to but I don't, at this point in time we know that HP has passed away, right?

CC: Yes, we do by, at this point in time for certain yes.

MS: So is that not an impediment to filing documents with the Land Title Office by power of attorney?

CC: Certainly, certainly.

MS: And ...

CC: It is a legal impediment.

MS: And did you turn your mind to that issue at that point?

CC: Yes.

28. During his August 8, 2016 interview with Law Society investigators, the Respondent indicated that after he learned of the problem with Lot [number], he spoke with CB about it and asked her in general terms to "deal with" the situation:

MS: Okay. Now, back to, I had asked, I think, when you first found out about this, and you mentioned your office received a call from BC Assessments or BC – was it BC Assessments?

CC: I think it was, yeah.

...

CC: And then I basically called up CB, like I said, and said look, what the hell's going on here? And at that time I said look, CB, I'm basically having a nervous breakdown. I need you to take care of this, okay, so go and deal with it. I've got a zillion other things that I have to do here including dismantle an office, go and create the solution here, something

along those lines although I'm sure it was much more forceful and using more curse words. She said okay, yes, Chris, I'll contact PK's office and see what I can work out. I didn't hear anything after that until she basically got in contact with me, I think it was probably a few weeks later and said we've worked something out with PK's office, I've spoken to [name]. I'm sending you the Land Title form for registration, please sign it and send it back to me. I didn't get into, at that time, I didn't really get into what had happened. I didn't really come to a full awareness of what had happened until March when I got PK's letter and that was a surprise.

LS: And [name] was...?

CC: [name] was PK's assistant.

LS: Okay.

MS: So it was CB who sort of worked out the idea in terms of how to fix the error that, that occurred here?

CC: Yes.

29. On approximately October 2, 2015, CB realized that the September 16, 2015 Form A referred to Lot [number] and not Lot [number]. CB sent the Respondent an updated Form A pertaining to Lot [number]. In an email dated October 2, 2015, CB wrote:

Chris, please sign and return the attached ... long story, but between preparation of the various transfers on this file, I had you sign the one for Lot [number], which will now need to be withdrawn.

30. On October 5, 2015, the Respondent filed an updated Form A (number) with the Land Title Office. On October 14, 2015, the Respondent digitally signed a corrective declaration related to Form A (number), to expand the parcel identifier and legal description of the land.
31. During his August 8, 2016 interview with Law Society investigators, the Respondent indicated that when Form A (number) was filed, he did not have a corresponding true copy of the document in his file:

LS: So that's a Form A freehold transfer, it's registered under number [number].

CC: Yes, that, that's for Lot [number], yes.

LS: October 5th, 2015

CC: Yes.

MS: And this is the document that you're talking about that CB prepared that you signed without confirming things in the file.

CC: Yes, there, there was no written, there was no signed document in my file that was signed by HP and myself, there was no such document.

MS: Right. Have you spoken with CB since and asked how this document came to be prepared?

CC: Yes, I did and I, she informed me in March or when, just after I got PK's letter and that she had prepared that document and had me sign it and then registered it in the Land Title Office.

MS: And when you signed it, you affixed, you didn't, you affixed your digital signature to this document?

CC: That is correct, yes, I did.

32. On October 15, 2015, the Respondent wrote to the Land Title Office, requesting the withdrawal of the Form A transfer registered on September 16, 2015 under [number].
33. On February 29, 2016, PK wrote to the Respondent to advise that he had become aware of the Form A transfer of Lot [number] on October 5, 2015, and that the transfer indicated that TR, the attorney, had executed the transfer in the Respondent's presence on July 24, 2015. PK further indicated that TR had provided a statutory declaration stating that she had never been to the Respondent's office to sign any documents, and that she had never signed any documents in the presence of the Respondent.
34. On March 4, 2016, PK spoke with the Respondent by telephone. The Respondent advised PK that TR had attended his office, and that he had witnessed her sign the Form A. The Respondent told PK that he would send him a signed copy of the Form A showing TR' signature.
35. On April 11, 2016, the Respondent sent a letter to HP via TR, in care of PK. In his letter, the Respondent stated, in part:

I can advise that on October 5, 2016, when I digitally signed the Form A to transfer Parcel No. [number] into AT's name, I did not review the bottom of that document before I digitally signed it and sent it back to my conveyancer by email. In particular, that Form A indicates that I notarized her signature, when in fact I did not notarize any documents signed by TR.

I recall that I also understood from my secretary that the seller had signed a Form A at 'another notary's office' and 'had made its way back into the file', but I did not check the file nor did I make any further inquiry about the document

36. During an October 26, 2016 interview with Law Society investigators, PK indicated that TR was not trying to retain Lot [number]:

MS: What's been TR' position throughout this? Is she trying to retain this parcel [number] or is she ...?

PK: No, I mean she just wants this corrected and I mean she's kind of frustrated that it's taken so long and you know, she just wants the error corrected.

37. On April 15, 2016, the Respondent filed another Form A transfer document with the Land Title Office in relation to Lot [number] (number).
38. The Respondent admits that when the Form A (number) was filed on April 15, 2016, he did not have an executed copy of the document in his file.
39. Form A [number] was filed in error. On May 4, 2016, the Respondent wrote to the Land Title Office to ask that it be withdrawn.
40. On May 8, 2017, the Respondent notified AT about the issues with Lot [number], including the fact that the Respondent had transferred the lot to AT without a proper Form A from the seller, and the need for the CIBC mortgage to be registered against both Lots [number] and [number]. The Respondent recommended that AT obtain independent legal advice, and indicated that he would cover the costs for doing so. The Respondent also recommended that AT consolidate Lots [number] and [number], in order to avoid having to pay a per-parcel storm water drain fee levied by the City of Castlegar.
41. AT obtained independent legal advice from another lawyer, and executed a Form C Charge in front of that lawyer. The Form C extended the CIBC mortgage to Lot [number].

42. In May 2017, the Respondent's office registered the Form C at the Land Title Office. In addition, further to AT's instructions, the Respondent's office consolidated Lots [number] and [number].
43. On May 31, 2017, the Respondent wrote to AT to provide him with a State of Title Certificate for Lot [number] confirming the extension of the mortgage over that lot.

[Bank] Mortgage

44. On July 27, 2015, the Respondent sent a Solicitor's Interim Report/Requisition for Funds to [the Bank]. This document indicated that the legal description for [address], Castlegar, British Columbia was [legal description].
45. On July 28, 2015, [the Bank] retained the Respondent as counsel in relation to the mortgage transaction.
46. On August 6, 2015, the Respondent wrote to [the Bank], and confirmed that a [Bank] mortgage had been registered against the Property.
47. During his August 8, 2016 interview with the Law Society, the Respondent explained that the [Bank] mortgage should have been registered against both lots, but that the Respondent did not register a mortgage against Lot [number]:

MS: And so it was your responsibility to register a mortgage against AT's property for [the Bank]?

CC: Absolutely.

MS: And I take it the mortgage should have been registered over Lots [number] and [number]?

CC: Yes.

MS: And were there ever any discussions between you and CB with respect of what should be done vis-à-vis [the Bank]?

CC: No, no, we, we didn't talk about anything to do with [the Bank], we just were focused on what I guess would be the originating problem and then I suppose as far as the way CB thought about it at the time, you know that problem, once it was solved, would solve the other problems that, as, as, based on what we discussed in March, it was just like okay CB, take me through what happened because I need to know because this is probably going to come up. So basically she considered that the discussions or the

correspondence that she'd had with [name] led her to assume that it would be okay to register based on you know [name] saying this is what we would do. And so she did and basically that was the end of it until it came up in March again and at that point, I got a thorough awareness of what had happened.

MS: Right, but there's a bit of a hole in the solution in terms of just registering because that doesn't deal with the fact that the [Bank] mortgage is not registered on Lot [number].

CC: I supposed, yeah, I suppose that's worth saying

48. During the interview with Law Society Investigators, the Respondent also indicated that he had not advised [the Bank] about the issues arising from his failure to transfer Lot [number]:

MS: Did you notify [the Bank] at any point about these issues that had arisen with respect to these lots?

CC: No, I haven't notified [the Bank] because, or at least I don't believe that we've notified [the Bank] but I guess the reason being that we assumed that we're going to nip this problem in the bud at some point, if it hasn't already been.

49. The Respondent admits that he did not recommend to [the Bank] that they obtain independent legal advice, or that there was a possibility that the Respondent may no longer be able to act for them.

50. On May 15, 2017, the Respondent wrote to [the Bank] to advise that AT's mortgage in relation to the Property had been extended to Lot [number], and provided a copy of a registered Extension of Mortgage.

51. On May 31, 2017, the Respondent provided [the Bank] with a copy of the State of Title Certificate for Lot [number], as further confirmation that [the Bank's] mortgage had been extended to Lot [number].

Admission of Misconduct

52. The Respondent admits that on or about September 16, 2015, in the course of acting for his client AT regarding the purchase of real property in Castlegar, British Columbia, he caused to be filed electronically at the Land Title Office a Form A transfer and Form 17 fee simple form with an attached statutory declaration which were purportedly executed by the registered owner's attorney under a power of attorney, when he knew or ought to have known that:

- (a) the power of attorney had expired;
 - (b) the attorney had not executed the Form A before him or at all;
 - (c) the Form 17 fee simple form attached a statutory declaration relating to a different lot than set out in the Form 17;
 - (d) the Form 17 fee simple form purported to transmit a lot from one joint tenant to another when both individuals were deceased;
 - (e) he had not witnessed the attorney's signature on the Form A; and
 - (f) he did not have the originally signed documents in his possession;
- as set out as allegation 1 in the Amended Citation.

53. The Respondent admits that his conduct in doing so constitutes professional misconduct.

54. The Respondent admits that on or about October 5, 2015 in the course of acting for his client AT regarding the purchase of real property in Castlegar, British Columbia, he caused a Form A transfer to be filed electronically at the Land Title Office which was purportedly executed before him by the registered owner's attorney under a power of attorney when he knew or ought to have known that:

- (a) the power of attorney had expired;
- (b) he had not witnessed the attorney's signature;
- (c) the attorney had not executed the Form A transfer before him or at all; and
- (d) he did not have the originally signed document in your possession;

as set out as allegation 2 in the Amended Citation.

55. The Respondent admits that his conduct in doing so constitutes professional misconduct.

56. The Respondent admits that on or about April 15, 2016 in the course of acting for his client AT regarding the purchase of real property in Castlegar, British Columbia, he caused a Form A transfer to be electronically filed at the Land Title Office which was purportedly executed before him by the registered owner's attorney under a power of attorney when he knew or ought to have known that:

- (a) the power of attorney had expired;
- (b) he had not witnessed the signature of the attorney;
- (c) the attorney had not executed the Form A transfer before him or at all; and
- (d) he did not have the originally signed document in your possession;

as set out as allegation 3 in the Amended Citation.

57. The Respondent admits that his conduct in doing so constitutes professional misconduct.
58. The Respondent admits that upon discovery of an error or omission made in connection with the transfer of real property in Castlegar, British Columbia to his client AT and the registration of a mortgage against that property in favour of his client [the Bank], he failed to do one or more of the following:
- (a) honestly and candidly advise his clients about the status of the matter;
 - (b) promptly notify his clients of the error or omission;
 - (c) recommend that his clients obtain independent legal advice; and
 - (d) advise his clients of the possibility that he may no longer be able to act;
- contrary to rules 2.2-1, 3.2-2, 3.4-1 and 7.8-1 of the *Code of Professional Conduct for British Columbia*, as set out as allegation 4 in the Amended Citation.
59. The Respondent admits that his conduct in doing so constitutes professional misconduct.
60. The Respondent admits that on or about March 4, 2016, in connection with his representation of AT regarding the purchase of real property in Castlegar, British Columbia, he represented to PK, the notary acting for the seller, that he had witnessed the signature of the seller's attorney on a Form A transfer document when he knew or ought to have known that he did not, as set out as allegation 5 in the Amended Citation.
61. The Respondent admits that his conduct in doing so constitutes professional misconduct.

As a result of these admissions, the Respondent has undertaken for a period of six (6) months, commencing on November 9, 2018 as follows:

- (a) Not to apply for reinstatement to the Law Society of British Columbia (the "Law Society");
- (b) Not to apply for membership in any other law society (or like governing body regulating the practice of law) without first advising in writing the Law Society; and
- (c) Not to permit his name to appear on the letterhead of, or otherwise work in any capacity whatsoever for, any lawyer or law firm in British Columbia, without obtaining the prior written consent of the Discipline Committee of the Law Society.