

2019 LSBC 07  
Decision issued: March 11, 2019  
Citation issued: October 5, 2017

**THE LAW SOCIETY OF BRITISH COLUMBIA**

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

**and a hearing concerning**

**SANDA LING KING**

**RESPONDENT**

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**DECISION OF THE HEARING PANEL**

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Hearing date: December 10, 2018

Panel: Elizabeth J. Rowbotham, Chair  
Dan Goodleaf, Public representative  
David Layton, QC, Lawyer

Discipline Counsel: Gavin Cameron  
Counsel for the Respondent: Robyn A. Jarvis

**INTRODUCTION**

**The citation**

- [1] On October 5, 2017 the Law Society issued a citation against the Respondent that contained four allegations of professional misconduct arising from a single real estate transaction.
- [2] Briefly summarized, the citation alleged that the Respondent:
- (a) acted in a conflict of interest in connection with the sale of real property,
  - (b) acted in a conflict of interest in connection with the distribution of the proceeds of sale of real property,

- (c) breached her obligation, when dealing with a self-represented person, to advise the self-represented person to obtain independent legal advice and to take care that the self-represented person did not proceed under the impression that his interests would be protected by the Respondent, and
- (d) improperly altered a document to be filed with the Land Title Office, certifying it to be a true copy of the original document and filing the altered document electronically with the Land Title Office.

[3] The Respondent denies the first two allegations in the citation (summarized in (a) and (b) above), and the Law Society did not proceed on those two allegations. Consequently, allegations 1 and 2 in the citation are dismissed.

[4] This hearing considered allegations 3 and 4 of the citation, which are:

3. In the further alternative to allegation 1, in or about February 2014, while you were acting for HM and FD in the sale of real property, you communicated and met with DM and obtained and witnessed his signature on a document to be used to cancel a Certificate of Pending Litigation, without doing one or more of the following, contrary to rule 7.2-9 of the *Code of Professional Conduct for British Columbia*:
  - (a) urging DM to obtain independent legal representation;
  - (b) taking care to see that DM was not proceeding under the impression that his interests would be protected by you; and
  - (c) making it clear to DM that you were acting exclusively in the interests of HM and FD.

This conduct constitutes professional misconduct pursuant to s. 38(4) of the *Legal Profession Act*.

4. On or about February 26, 2015, you affixed your digital signature and submitted to the Land Title Office a Form 17 cancellation of a Certificate of Pending Litigation with a supporting document signed by DM (the “Supporting Document”) when you had altered the Supporting Document without the knowledge or consent of DM and without advising him that you had done so.

This conduct constitutes professional misconduct pursuant to section 38(4) of the *Legal Profession Act*.

- [5] The Respondent made a conditional admission that she committed professional misconduct with respect to allegations 3 and 4 of the citation and consented to disciplinary action of a fine in the amount of \$8,000 and costs in the amount of \$750.

**Conditional admission and consent to disciplinary action**

- [6] Rule 4-30 of the Law Society Rules provides that:
- (1) A respondent may, at least 14 days before the date set for a hearing under this part, tender to the Discipline Committee a conditional admission of a discipline violation and the respondent's consent to a specified disciplinary action.
  - (2) The chair of the Discipline Committee may waive the 14-day limit in subrule (1).
  - (3) The Discipline Committee may, in its discretion, accept or reject a conditional admission and proposed disciplinary action.
  - (4) If the Discipline Committee accepts the conditional admission and proposed disciplinary action, it must instruct discipline counsel to recommend its acceptance to the hearing panel.
  - (5) If the panel accepts the respondent's proposed disciplinary action it must
    - (a) instruct the Executive Director to record the lawyer's admission on the lawyer's professional conduct record,
    - (b) impose the disciplinary action that the respondent has proposed, and
    - (c) notify the respondent and the complainant of the disposition.
- [7] The Discipline Committee of the Law Society accepted the Respondent's conditional admission and proposed disciplinary action, and discipline counsel recommended to the Panel at this hearing that the Panel accept those admissions and the proposed disciplinary action.
- [8] Pursuant to Rule 4-30, the Panel may only accept or reject the proposed disciplinary action. If the Panel does not accept the proposed disciplinary action, it must advise the chair of the Discipline Committee of its decision and proceed no further with the hearing of the citation (Rule 4-31(3)).
- [9] The panel in *Law Society of BC v. Rai*, 2011 LSBC 02, considered the panel's role on a Rule 4-22 (now Rule 4-30) conditional admission and proposed disciplinary action and stated, at para. 7:

This provision exists to protect the public. The Panel must be satisfied that the proposed admission on the substantive matter is appropriate. In most cases, this will not be a problem. The Panel must also be satisfied that the proposed disciplinary action is “acceptable”. What does that mean? This Panel believes that a disciplinary action is acceptable if it is within the range of a fair and reasonable disciplinary action in all the circumstances. The Panel thus has a limited role. The question the Panel has to ask itself is, not whether it would have imposed exactly the same disciplinary action, but rather, “Is the proposed disciplinary action within the range of a fair and reasonable disciplinary action?”

- [10] For the reasons set out below, this Panel is satisfied that the proposed admission is appropriate and that a fine of \$8,000 and costs in the amount of \$750 is within the range of a fair and reasonable disciplinary action.

## **FACTS**

- [11] The Respondent was called and admitted as a member of the Law Society of British Columbia on February 20, 1998. The Respondent maintains a solicitor's practice, primarily in the areas of real estate, wills and estates, and corporate law.
- [12] The Respondent had previously represented DM and his wife HM in connection with real estate transactions, including the purchase of their family home (the “Property”) in 2012.
- [13] The Property was registered in the name of HM and her father FD.
- [14] In 2013, DM and HM separated and DM commenced matrimonial proceedings.
- [15] On July 16, 2013, Mr. Justice Skolrood granted an order that restricted the ability of DM and HM to transfer, dispose, encumber or otherwise deal with any property that was or may have been a family asset or with any assets at issue in the matrimonial proceedings. The Property was a family asset.
- [16] In late 2013, DM discovered that HM had listed the Property for sale. DM was concerned that his mother, SM, who had provided financial assistance to the family, be repaid from the sale proceeds. DM set a deadline by which agreement was to be reached on the disposition of the sale proceeds, failing which he would register a Certificate of Pending Litigation (“CPL”) against the Property. DM and HM did not reach agreement on this issue.

- [17] In January 2014, a contract of purchase and sale was entered into for the Property, with a closing date of February 26, 2014.
- [18] HM and her father FD retained the Respondent to deal with the real estate transaction, and on February 14, 2014, the Respondent's office opened a file for the sale of the Property on behalf of HM and FD.
- [19] On February 19, 2014, the Respondent's office received documents from the purchaser's lawyer to complete the sale of the Property.
- [20] On February 20, 2014, DM registered a CPL against the Property.
- [21] Also on February 20, 2014, DM was arrested and detained at the Surrey Pre-Trial Centre following an altercation with HM and their daughter.
- [22] On February 25, 2014, HM called the Respondent and advised the Respondent that there was a CPL on the Property and that the CPL needed to be removed in order for the sale of the Property to close. This was the first the Respondent was aware that there was a CPL on the Property. HM also told the Respondent that DM was in jail.
- [23] DM also called the Respondent on February 25, 2014. DM asked the Respondent to help remove the CPL from the Property.
- [24] The Respondent obtained a copy of the CPL from the Land Title Office. The CPL contained a certification from the Land Title Registrar that the CPL related to a *Family Law Act* proceeding in respect of the division of property. DM was named as the claimant/petitioner in the proceeding, and HM and FD were named as the respondents.
- [25] The Respondent drafted a release of the CPL (the "Release"). The Respondent did not ask either HM or DM about the family law proceedings in which the CPL was filed.
- [26] Later on February 25, 2014, the Respondent attended at the Surrey Pre-Trial Centre, bringing the Release and meeting with DM.
- [27] During this meeting, DM told the Respondent that he wanted to ensure that his mother received \$40,000 from the sale proceeds of the Property. DM signed the Release.

- [28] The Respondent did not advise DM to obtain independent legal advice, nor did she tell him that she was not protecting his interests and was acting exclusively in the interests of HM and her father, FD.
- [29] Also on February 25, 2014, the Respondent's law partner met with HM and her father, FD to attend to the completion of the sale documents for the Property.
- [30] When the Respondent was preparing to file the Release in the Land Title Office, she noticed that she had forgotten to add the officer certification onto the Release.
- [31] The Respondent altered the original Release by "cutting and pasting" her officer certification onto the Release. She also changed the file number on the top of the Release. She then applied her own initials, as well as initials purporting to be the initials of DM, to the amended portion of the Release.
- [32] The Respondent affixed her digital signature and submitted the altered Release and a Form 17 Cancellation of Charge to discharge the CPL at the Land Title Office through the Land Title Electronic Filing System ("EFS") using her Juricert access.
- [33] The Respondent did not advise DM, either before or after she amended the Release, that she amended the Release and affixed his initials before filing the Release.
- [34] The Respondent did not advise the Land Title Office, at the time of filing or at any subsequent time, that the Release was not a true copy of the original.
- [35] On closing, \$40,000 was paid from the proceeds of sale to SM, DM's mother. The remainder was disbursed to HM, her father, FD and other relatives. None of the proceeds of sale were paid to DM and no proceeds of sale were retained in trust.

## DISCUSSION

- [36] In *Law Society of BC v. Kaminski*, 2018 LSBC 14, the panel considered the meaning of 'professional misconduct' and stated, at para. 43:

What constitutes professional misconduct is not defined in the Act or the Rules or described in the *Code of Professional Conduct*. Since the decision by the hearing panel in *Law Society of BC v. Martin*, 2005 LSBC 16, the vast majority of panels have adopted as a test for professional misconduct whether the conduct of the lawyer in question exhibited a "marked departure" from the standard of conduct the Law Society expects of lawyers. This is a subjective test that must be applied after taking into account decisions of other hearing panels, publications by the Law Society, the accepted standards for practice

currently accepted by the members of the legal profession in British Columbia and what, at the relevant time, is required for protection of the public interest.

### **The allegations**

- [37] This matter involves two aspects of the Respondent's conduct: (i) breach of professional obligations when dealing with a self-represented party; and (ii) the unauthorized alteration of a document to be filed in the Land Title Office.

#### **Breach of professional obligations when dealing with a self-represented party**

- [38] Rule 7.2-9 of the *Code of Professional Conduct for British Columbia* (the "Code") provides:

When a lawyer deals on a client's behalf with an unrepresented person, the lawyer must:

- (a) urge the unrepresented person to obtain independent legal representation;
- (b) take care to see that the unrepresented person is not proceeding under the impression that his or her interests will be protected by the lawyer; and
- (c) make it clear to the unrepresented person that the lawyer is acting exclusively in the interests of the client.

- [39] The purpose of rule 7.2-9 is to help ensure that there is no misunderstanding on the part of a self-represented person that the lawyer and the self-represented person are in a solicitor-client relationship, and that the self-represented person understands that the lawyer is not representing his or her interests.

- [40] In the circumstances of this matter, DM was in the Surrey Pre-Trial Centre and the sale of the Property was to complete the next day. We do not know, but expect it unlikely that DM would have retained another real estate lawyer to remove the CPL. Nonetheless, the Respondent failed to urge him to obtain independent legal representation. She also failed to inform DM that she was not acting for him but rather, was acting solely on behalf of HM and HM's father, FD. We therefore accept the Respondent's admission of professional misconduct regarding her failure to comply with Rule 7.2-9.

### Electronic filing of documents

[41] The EFS at the Land Title Office, created by Part 10.1 of the *Land Title Act*, RSBC 1996, c. 250, enables a subscriber to electronically file Land Title documents at the Land Title Office. The Law Society is a designated certification authority and operates the on-line Juricert service.

[42] Section 1 of the *Land Title Act* defines a ‘true copy’ as meaning:

- (a) in relation to a paper document, an exact copy of the document, and
- (b) in relation to an electronic instrument, electronic plan application or electronic plan, as those terms are defined in section 168.1, a legible paper copy of the electronic instrument, electronic plan application or electronic plan containing every material provision and particular contained in the original.

[43] The Respondent applied for, and was issued, a Juricert Certificate by the Law Society. As a result, the Respondent is able to electronically file documents in the Land Title Office.

[44] As described in *Law Society of BC v. Williams*, 2010 LSBC 31, at paras. 12-14:

Both the execution provisions under Part 5 of the *Land Title Act* and the electronic submission provisions under Part 10.1 are important safeguards of the integrity of the land title system in British Columbia. As officers under the *Act*, members of the legal profession play a key role in ensuring the integrity of transfer documents and safeguarding the system from fraud.

Given the importance of the role played by lawyers who act as officers, conduct related to the electronic submission of improperly executed documents must be viewed as serious. ...

... the submission of documents that are defective in their execution harms the land title system by eroding the reliability and authenticity of documents submitted for registration. Further, because the officer does not submit the originally executed document when an electronic document is submitted for registration, the defect is not apparent, and the Land Title Office cannot scrutinize the original document to ensure its registrability.

[45] In this matter, the Respondent altered the Release without DM’s knowledge or authority, purported to add DM’s initials, presumably to reflect his agreement to

those changes, and failed to file a true copy of the Release originally signed by DM.

[46] As set out in *Law Society of BC v. Milne*, 2004 LSBC 19, at para 29:

... it must be made very clear to the members of the profession that a document cannot be altered without authority and that the integrity of a signed document is fundamental to our practice and to the preservation of the rule of law in our society. ...

[47] Consequently, we accept the Respondent's admission of professional conduct in relation to the alteration of the Release and failure to file a true copy of the Release.

### **Disciplinary action**

[48] As past panels have noted, the purpose of disciplinary proceedings is not to punish, but rather, is to ensure that high professional standards are maintained so as to protect the public and preserve public confidence in the legal profession. *Law Society of BC v. Rai*, 2011 LSBC 02, para 61; *Law Society of BC v. Reith*, 2015 LSBC 50, para 30.

[49] In determining what the appropriate disciplinary action should be, reference is made to the relevant factors set out in *Law Society of BC v. Ogilvie*, 1999 LSBC 17.

[50] We agree with counsel for the Law Society that the relevant factors to consider in this matter are:

- (a) The nature and gravity of the misconduct;
- (b) The Respondent's professional conduct record ("PCR") and consideration of progressive discipline;
- (c) The presence or absence of mitigating or aggravating factors; and
- (d) The range of sanctions imposed in similar cases.

### **Nature and gravity of the misconduct**

[51] The Respondent knowingly altered an executed document. Although the changes were not substantive, the Respondent purported to affix, without authorization, the initials of another onto the document.

- [52] Lawyers, irrespective of the area in which they practise, are routinely entrusted with documents. Lawyers routinely receive documents from their clients, from opposing counsel, and even from third parties. Lawyers are expected to keep the documents safe and to only use them for the purpose for which they were given to the lawyer. As mentioned above, “the integrity of a signed document is fundamental to our practice.” Altering an executed document, even in a minor way, without permission is unacceptable.
- [53] The Respondent also submitted the Release when she knew, having altered the original document, that she was not submitting the original document.
- [54] As discussed above, lawyers are officers under the *Land Title Act* and play a key role in ensuring the integrity of documents submitted to the Land Title Office and in safeguarding the land title system from fraud. Altering a document and knowingly filing a document that the Respondent knew was not a true copy of the original is very serious misconduct.
- [55] The Respondent’s failure to comply with the requirements of rule 7.2-9 and, in particular, her failure to tell DM that she was not acting for him, but rather for HM and FD, was also serious. A lawyer must take care to ensure that a self-represented person is not operating under any misapprehension that the lawyer is looking after his or her legal interests in the matter.

#### **The respondent’s PCR and consideration of progressive discipline**

- [56] The Respondent was admitted to the Law Society of British Columbia in 1998, and this is her first conduct matter. We consider this a mitigating factor.

#### **The presence or absence of other mitigating or aggravating factors**

- [57] The Respondent acknowledged her misconduct early on in the discipline process. In addition, the Respondent has taken efforts to revise her firm’s policies and procedures regarding conflicts and dealing with self-represented parties, and procedures regarding co-owners in order to determine in advance whether there is any conflict or dispute among them in relation to a legal matter or property. We consider these to be mitigating factors in determining the appropriate disciplinary sanction.

#### **The range of sanctions imposed in similar cases**

- [58] In *Law Society of BC v. Ebrahim*, 2010 LSBC 14, a lawyer, while acting for his clients in respect of the purchase of three residential strata lots and the proposed

assignment of the purchase and sale contract of one the lots to a third party, failed to advise a third party that he was not protecting the third party's interest and released the third party's funds from trust, which were applied to the purchase of the two residential strata lots in which the third party had no interest. The lawyer, who had no PCR, admitted the conduct constituted professional misconduct. The lawyer was fined \$3,000 and ordered to pay costs.

- [59] In *Law Society of BC v. Williams*, 2010 LSBC 31, the lawyer filed a release of a builders lien in the Land Title Office. The lawyer knew that the release was not properly executed and witnessed as required by the *Land Title Act*, but applied his electronic signature to the release and filed it in the Land Title Office anyway. The lawyer, who had no prior PCR, self-reported his conduct to the Law Society. The lawyer was reprimanded for professional misconduct and ordered to pay costs.
- [60] In *Law Society of BC v. Skapski*, 2012 LSBC 08, the lawyer's client had executed a solemn declaration on an Application to Replace a Commercial Fishing Vessel for Fisheries and Oceans in 2001. In 2009, the lawyer affixed his signature to the solemn declaration, misdated the document as having been sworn in 2001, and submitted it to Fisheries and Oceans Canada. The lawyer had no prior PCR, was reprimanded and ordered to pay costs.
- [61] In *Law Society of BC v. Reith*, 2015 LSBC 50, the lawyer, in the course of providing legal services in connection with the transfer of a fractional interest in a time-share property, acted in a conflict of interest when he acted for multiple parties in the transfer, withdrew fees from his trust account without first preparing a bill and delivering it to the client, filed a form in the Land Title Office when he believed the corporate entity on whose behalf he was filing the form lacked the capacity to transfer the property, and provided inadequate service to his client. The lawyer was fined \$3,000 and ordered to pay costs.
- [62] In *Law Society of BC v. Dent*, 2016 LSBC 05, the vendor and purchaser in a real estate transaction attended the lawyer's office. The vendor was a long-standing client of the lawyer. Upon completion of the transaction, the purchaser requested an accounting of the monies paid for the purchase of the property and sought an accounting from the lawyer, who took the position that he represented the vendor only. The lawyer was found to have failed to advise the purchaser that he was not protecting her interest. The lawyer was fined \$5,000 and ordered to pay costs.
- [63] We are of the view that a fine in the amount of \$8,000 is within the range of what is fair and reasonable in all of the circumstances in this matter.

**NON-DISCLOSURE ORDER**

[64] The parties have requested that the Panel make an order that, if a person, other than a party, makes a request for exhibits filed in this matter or transcripts of these proceedings, any information protected by client confidentiality be redacted before those documents are disclosed.

[65] The request is granted.

**DISCIPLINARY ACTION AND COSTS**

[66] The parties have agreed to an order for costs against the Respondent in the amount of \$750.

[67] We acknowledge that Schedule 4 (Tariff for Hearing and Review Costs) sets out costs in the range of \$1,000 to \$3,500 for a hearing under Rule 4-30. However, Rule 5-11(4) permits a panel to order costs other than that permitted by the tariff in Schedule 4 if, in the judgment of the panel, "it is reasonable and appropriate to so order." Given the parties' agreement on the quantum of costs, and the fact that the evidentiary record was minimal and the hearing took well under half a day, we conclude that an order for costs in the amount of \$750 is reasonable and appropriate.

[68] We order that the Respondent, on or before June 30, 2019, pay:

- (a) a fine in the amount of \$8,000;
- (b) costs in the amount of \$750;
- (c) if any person, other than a party, seeks to obtain a copy of any exhibit filed in these proceedings, client names and identifying information, and any information protected by client confidentiality must be redacted from the exhibit before it is disclosed to that person; and
- (d) if any person, other than a party, applies for a copy of the transcript of these proceedings, client names and identifying information, and any information protected by client confidentiality must be redacted from the transcript before it is disclosed to that person.

[69] The Panel instructs the Executive Director to record the Respondent's admission on the Respondent's professional conduct record.