

2019 LSBC 08  
Decision issued: March 18, 2019  
Citation issued: November 10, 2016  
Citation amended: June 8, 2017

**THE LAW SOCIETY OF BRITISH COLUMBIA**

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

**and a hearing concerning**

**PIR INDAR PAUL SINGH SAHOTA**

**RESPONDENT**

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**DECISION OF THE HEARING PANEL**

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Written Materials: December 13, 2018

Panel: Gavin Hume, QC, Lawyer, Chair  
Clarence Bolt, Public Representative  
Geoffrey McDonald, Bencher

Discipline Counsel: Alison Kirby  
Counsel for the Respondent: Craig E. Jones, QC

**BACKGROUND**

- [1] The Respondent, Pir Indar Paul Singh Sahota, is before the Hearing Panel concerning allegations that he breached a trust condition imposed by opposing counsel, that he failed to respond promptly to opposing counsel, that he failed to provide sufficient quality of service to his client and failed to properly supervise his staff and that he breached a trust condition imposed by a financial institution. The citation for this matter was authorized November 3, 2016, issued November 10, 2016 and amended June 8, 2017. The Respondent admits that the citation as amended was properly issued and served.
- [2] The Law Society and the Respondent presented a conditional admission of a discipline violation and consented to specified disciplinary action pursuant to Rule 4-30 of the Law Society Rules (the “Rules”). The Law Society and the Respondent requested a hearing in writing, rather than an oral hearing, pursuant to Law Society Practice Direction issued April 6, 2018. The Panel received a Book of Exhibits

including the amended citation, the Respondent's November 22, 2018 letter to the Chair of the Discipline Committee, a Notice to Admit dated July 21, 2017, with attachments, and the Respondent's professional conduct record.

### **PRELIMINARY MATTERS**

- [3] After considering the joint application for a hearing in writing rather than an oral hearing, the Panel agreed that this matter was appropriate for a written hearing.
- [4] The Respondent is deemed to have admitted the truth of the facts set out in the Notice to Admit when he failed to respond after being provided with a copy of it on July 24, 2017. Pursuant to Rule 5-6(6) of the Rules, the Panel accepted the Notice to Admit as an admission made or deemed to have been made under Rule 4-28.

### **CONDITIONAL ADMISSION OF A DISCIPLINE VIOLATION**

- [5] The Respondent has made a conditional admission of a discipline violation and consents to a proposed disciplinary action pursuant to Rule 4-30. On December 6, 2018, the Discipline Committee considered and approved the proposal. The Discipline Committee recommends that the Hearing Panel accept the proposal.
- [6] The Hearing Panel may only accept or reject the proposal. It cannot substitute a different determination or select a different disciplinary action. If the Hearing Panel does not accept the admission or the proposed disciplinary action, the matter would be returned to the Discipline Committee to set a hearing before a new panel. In considering whether to accept or reject the proposal, the Hearing Panel must be satisfied that: (1) the proposed admission on the matter is appropriate; and (2) when considering all of the circumstances, the proposed disciplinary action is in the range of a fair and reasonable disposition for the misconduct.
- [7] The proposed disciplinary action in this case is that the Respondent is to be:
  - (1) suspended for one month commencing on the first day of the month immediately following the issuance of the hearing panel's decision, or such other date as the hearing panel may direct or counsel may agree; and,
  - (2) prohibited from engaging in any capacity with files involving the purchase, sale or financing of real estate until relieved of this restriction on his practice by the Discipline Committee.

[8] The citation as amended alleges four separate discipline violations as follows:

1. In the course of representing his client, MT, in connection with the transfer to him of an interest in matrimonial property, the Respondent failed to honour one or more of the trust conditions imposed by opposing counsel in their letter dated June 16, 2014 by:
  - (a) failing to provide opposing counsel, within five business days of the registration of transfer of documents, a copy of the Respondent's letter to the lender enclosing the payout monies;
  - (b) failing to provide opposing counsel, within five business days of the registration of transfer of documents, a copy of the payout statement received from the lender enclosing the payout monies;
  - (c) failing to provide opposing counsel, within five business days of the registration of transfer of documents, a copy of the Respondent's cheques in payment of the amount owing to the lender;
  - (d) failing to attend to the registration of the discharge of the mortgage registered against the property under [number] upon receipt of discharge;
  - (e) failing to attend to the registration of the discharge of the mortgage registered against the property under [number] (transferred to [number]) upon receipt of the discharge;
  - (f) failing to provide opposing counsel with details of the registration of the discharges in a timely way,

contrary to rule 7.2-11 of the *Code of Professional Conduct for British Columbia* (the "Code");

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

2. In the course of representing his client, MT, in connection with the transfer to him of an interest in matrimonial property, the Respondent failed to answer with reasonable promptness some or all of the communications dated June 20, 2014, July 17, 2014, July 23, 2014, August 16, 2014 and August 18, 2014 from opposing counsel that required a response, contrary to rule 7.2-5 of the Code;

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

3. In the course of representing his client, MT, in connection with the transfer to him of an interest in matrimonial property, the Respondent failed to serve his client in a competent, timely, conscientious, diligent and efficient way so as to provide a quality of service at least equal to that which would be generally expected of a competent lawyer in a like situation, failed to properly supervise his staff, or both, contrary to one or both rules 3.2-1 and 6.1-1 of the Code by doing one or more of the following:
  - (a) instructing staff to send a letter dated April 17, 2014, prepared by his contract conveyancer that imposed trust conditions on opposing counsel and that were not applicable to the transaction, without reviewing or signing the letter;
  - (b) signing and sending a letter dated June 17, 2014, prepared by his contract conveyancer imposing trust conditions on opposing counsel that were not applicable to the transaction;
  - (c) instructing staff to send a letter incorrectly dated June 17, 2014 prepared by his contract conveyancer that imposed trust conditions on opposing counsel that were not applicable to the transaction, without reviewing or signing the letter;
  - (d) failing to ensure that his client's Form A transfer was registered concurrently with or after the discharge of a certificate of pending litigation and court order filed against the property;
  - (e) failing to ensure that his contract conveyancer had followed his instructions to forward discharge and payout documents to opposing counsel;
  - (f) failing to have a bring-forward system in place to ensure that outstanding undertakings and discharges would be appropriately handled and followed up.

This conduct constitutes professional misconduct or incompetent performance of duties pursuant to s. 38(4) of the Act.

4. In the course of representing his client, [the financial institution], in connection with the registration of a mortgage in the amount of \$550,000

against title to a property to be owned solely by his client, MT, the Respondent failed to honour one or more trust conditions imposed by the financial institution in its instructions to solicitor dated January 17, 2014 by:

- (a) failing to register the mortgage as a first-ranking mortgage;
- (b) disbursing the mortgage funds prior to all the funding conditions set out in the Credit Documents and the mortgage instructions having been satisfied or complied with;
- (c) disbursing the mortgage funds prior to all other liens, mortgages or encumbrances being discharged;
- (d) failing to provide the financial institution with a state of title certificate showing full registration of the mortgage within 120 days of its submission for registration.

This conduct constitutes professional misconduct or incompetent performance of duties pursuant to s. 38(4) of the Act.

## **FACTS**

[9] The Respondent acted for MT, the husband in a family law matter (the “Client”). Under the terms of a settlement, the wife’s interest in the matrimonial home was to be transferred to the Client in exchange for payment by the Client to the wife and payout of various charges, including two mortgages in favour of the financial institution that were registered against the property.

[10] On June 16, 2014, the Respondent received the transfer documents on his undertaking to attend to the discharge of the mortgages in favour of the financial institution and to provide opposing counsel, within five business days of closing, copies of letters, cheques, payout statements and evidence of delivery or receipt of payout cheques to the financial institution. The Respondent was also to obtain discharges from the financial institution in a timely manner and immediately upon receipt of the discharges, register the discharges at the Land Title Office. The Respondent was required to register a new mortgage in favour of the financial institution as part of the transfer of the property to the Client. The Respondent reviewed and understood these undertakings.

[11] On June 17, 2014, the Respondent’s conveyancer prepared a letter with undertakings for opposing counsel that were not applicable to the transfer. The

conveyancer also prepared a trust cheque. The letter and the trust cheque were set aside for the Respondent's review. The Respondent did not review the letter or the trust cheque and instructed his staff to forward the letter and trust cheque to opposing counsel.

- [12] On June 18, 2014, opposing counsel sent a letter rejecting the incorrect undertaking conditions.
- [13] On June 20, 2014, the Respondent filed the Form A Transfer but did not register the discharges of the mortgages. That day, the Respondent's conveyancer drafted a new letter, incorrectly dated June 17, 2014, advising that the trust funds previously sent could be released on a number of undertakings. These undertakings were the same inapplicable ones sent in the previous June 17, 2014 letter and rejected by opposing counsel on June 18, 2014. The Respondent did not review the letter or the undertakings and sent it to opposing counsel unsigned.
- [14] The Respondent did not respond to multiple attempts by opposing counsel to contact him regarding the discharges and the documents required in the undertakings. Opposing counsel attempted to communicate with the Respondent on June 20, 2014, July 17, 2014, July 23, 2014, August 16, 2014 and August 18, 2014. The Respondent was aware that he was required to respond to these communications but did not do so in a meaningful or substantive way.
- [15] Despite having outstanding undertakings, the Respondent left the country on July 26, 2014, failing to arrange for another lawyer to manage his practice or to take steps to fulfill his undertakings in his absence.
- [16] On August 19, 2014, opposing counsel complained to the Law Society.
- [17] The Respondent returned to Canada on September 2, 2014. On September 10, 2014, the Respondent registered the discharges of the mortgages in favour of the financial institution. The new mortgage in favour of the financial institution was not registered.
- [18] On October 14, 2014, the Client sold the property to a third party. The Respondent did not handle its purchase and sale. The new mortgage was not registered at that time but was, nonetheless, paid out on October 21, 2014.
- [19] The Respondent waited until September 22, 2015 to provide opposing counsel with copies of the letters and cheques sent to the financial institution but did not convey to opposing counsel the payout statements required by the undertaking.

- [20] The Respondent did not have an appropriate system for supervising his staff or ensuring that his files, and in particular his undertakings, were dealt with in a timely manner.
- [21] The Law Society submits that these allegations amount to misconduct pursuant to section 38(4) of the Act. The Respondent agrees and admits to professional misconduct pursuant to the Act.

## ANALYSIS

- [22] In accepting the proposed resolution, the Hearing Panel must be satisfied that the conduct in the allegations amounts to professional misconduct. A breach of the Rules does not necessarily constitute professional misconduct (*Law Society of BC v. Lyons*, 2008 LSBC 09 and 32). The conduct must be "... a marked departure from that conduct the Law Society expects of its members ...” (*Law Society of BC v. Martin*, 2005 LSBC 16 at paragraph 171 and affirmed in *Re: Lawyer 12*, 2011 LSBC 35).
- [23] The Hearing Panel accepts the Respondent’s admission that the conduct outlined in each of the four allegations constitutes professional misconduct. The Respondent took minimal steps to comply with his undertakings, thereby breaching them. As in *Law Society of BC v. Dhindsa*, 2014 LSBC 18, the Respondent had minimal oversight and made little effort to ensure compliance with his undertakings. These breaches of undertakings included failures to register a new mortgage and to discharge other mortgages. Undertakings are solemn promises fundamental to the practice of law. Lawyers must make diligent efforts to keep them (*Law Society of BC v. Heringa*, 2004 BCCA 97, and *Hammond v. Law Society of BC*, 2004 BCCA 560). The Respondent ignored correspondence from opposing counsel regarding the breaches and sent out unsigned and unread correspondence that purported to place opposing counsel on irrelevant undertakings. The Respondent failed to supervise his staff and ran a disorganized and haphazard practice.
- [24] Having concluded that the Respondent is guilty of professional misconduct, the Hearing Panel must determine whether the proposed disciplinary action as agreed to by the Respondent and the Law Society is fair and reasonable. *Law Society of BC v. Ogilvie*, 1999 LSBC 17 sets out the factors that the Panel must consider when evaluating a proposed disposition to this citation (*Law Society of BC v. Faminoff*, 2017 LSBC 04). The Panel finds that the relevant *Ogilvie* factors are “(a) the nature and gravity of the conduct proven” and “(c) the previous character of the respondent, including details of prior discipline.”

- [25] First, with respect to “nature and gravity”, the Respondent’s behaviour clearly represents misconduct as laid out in the citation, agreed to by both the Respondent and the Law Society and overviewed in paragraph 23 above. The Respondent breached his undertakings, ignored opposing counsel, and failed both to manage his staff and to run a disciplined office. His conduct falls short of the quality of service expected of a competent lawyer.
- [26] Second, the Respondent’s professional conduct record includes practice supervision by the Practice Standard Committee (the “PSC”), as well as recommendations by the PSC between 2010 and 2012 to address major deficiencies in his practice, including the need to refresh his knowledge of professional responsibilities and of “substantive and procedural law”; to put in place effective office systems and organization; to communicate with clients, counsel, and others in a timely manner; and to upgrade his skills effectively to carry out client instructions.
- [27] On May 11, 2015, the Law Society cited the Respondent for professional misconduct in managing financial aspects of his practice, particularly in real estate transactions, between July 2008 and July 2011. In July 2016, a hearing panel found the Respondent’s conduct constituted professional misconduct and noted, “So comprehensively inept is [the Respondent] that it may not be appropriate to describe his behaviour as negligent.” (*Law Society of BC v Sahota*, 2016 LSBC 29) The hearing panel ordered a one-month suspension as well as the following order: “The Respondent is prohibited from engaging in any capacity with files involving the purchase, sale or financing of real estate until relieved of this condition by the Practice Standards Committee” (*Law Society of BC v. Sahota*, 2017 LSBC 18).
- [28] The Discipline Committee applied for review of this decision. The subsequent review board decision increased the one-month suspension to three months and upheld the practice prohibition (*Law Society of BC v. Sahota*, 2018 LSBC 20). Although the events laid out in that citation predated the events of this citation and the citation was not issued until after the events of this case occurred, the matters raised are relevant to the current citation, particularly as the breaches and misconduct in both citations involve practices in the same area of law, namely real estate.
- [29] When applying the case law to the Respondent and the facts of this case, the Hearing Panel holds that the proposed suspension, Order 1, is at the low end of the range of a fair and reasonable disposition. As noted above, the misconduct was serious and continued over a considerable period. The Respondent’s professional conduct history, including the citations, indicates major deficiencies in his practice. The review board’s discussion of the Law Society’s review of the 2015 citation

includes a lengthy overview on lengths of suspensions for similar misconduct cases, at the end of which they conclude that the seriousness of the misconduct warrants increasing the suspension to three months.

- [30] The brevity of the proposed suspension in this case is offset by the proposed Order 2, which will prohibit the Respondent from engaging in real estate transactions. As well, the Respondent is either serving, or has recently finished serving, the three-month suspension ordered by the previous citation (*Sahota*, 2018). The Panel holds that, as long as the one-month suspension proposed in this hearing is served consecutively to that suspension, and not concurrently, the proposed Order 1 is within the range of reasonable dispositions.
- [31] The Panel supports the proposed Order 2 prohibition because it protects the public from the Respondent repeating the conduct that led to both citations until such time as the Discipline Committee is convinced of the Respondent's fitness to practise in this field of law. This prohibition is identical to that ordered by both the hearing panel and the review board in response to the 2015 citation (*Sahota*, 2016 and *Sahota*, 2018). The one-month suspension carries weight only with this prohibition, which ends only when determined by the Discipline Committee. One of the *Ogilvie* factors notes "the need to ensure the public's confidence in the integrity of the profession." Public trust is fundamental to a society based on the rule of law. The public must have faith in the integrity and security of its fundamental transactions.

## **PRIVACY**

- [32] Pursuant to Sections 87 and 88 of the Act, the Law Society during the course of its investigation and hearing processes can compel disclosure to the Law Society of information that is otherwise confidential or protected by solicitor client privilege. Rule 5-9 allows any person to obtain a copy of an exhibit that has been tendered in a hearing open to the public. This, however, is subject to solicitor client privilege. Certain documents were produced in this matter which are confidential or subject to solicitor client privilege. The Law Society seeks an order under Rule 5-8(2)(a) to restrict access to some information that may be contained in exhibits admitted in this proceeding in order to prevent disclosure of confidential or privileged information to the public. In the view of the Panel, it is appropriate to grant such an order in the interests of clients and others who may be affected. It is so ordered.

## CONCLUSION

[33] The Hearing Panel accepts the Respondent's admission of misconduct on all four allegations. The Hearing Panel accepts that, in all of the circumstances, the proposed disciplinary action is within the range of fair and reasonable.

[34] The Hearing Panel orders that:

- (a) Pursuant to section 38(5)(d) of the Act, the Respondent is suspended from the practice of law for one month commencing either on April 1, 2019 or on the first day after the conclusion of the suspension imposed on the Respondent by *Sahota*, 2018, whichever is later;
- (b) Pursuant to section 38(5)(c) of the Act, the Respondent is prohibited from engaging in any capacity with files involving the purchase, sale or financing of real estate until relieved of this condition by the Discipline Committee; and,
- (c) Pursuant to Rule 5-8(2)(a), if any person, other than a party, seeks to obtain a copy of any exhibit filed in these proceedings, the client names, identifying information and any information protected by solicitor-client privilege must be redacted from the exhibit before it is disclosed to that person.

[35] As required under Rule 4-30(5)(a), the Executive Director is instructed to record the Respondent's admission on his Professional Conduct Record.