

2019 LSBC 11  
Decision issued: March 25, 2019  
Citation issued: November 1, 2017

**THE LAW SOCIETY OF BRITISH COLUMBIA**

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

**and a hearing concerning**

**AMARJIT SINGH DHINDSA**

**RESPONDENT**

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**DECISION OF THE HEARING PANEL  
ON FACTS AND DETERMINATION**

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Hearing dates: November 14, 15 and 16, 2018  
January 22, 2019

Panel: Michelle Stanford, QC, Chair  
Brendan Matthews, Public representative  
Herman Van Ommen, QC, Lawyer

Discipline Counsel: Alison Kirby  
Counsel for the Respondent: Duncan Magnus

**INTRODUCTION**

[1] The Law Society issued a citation against Amarjit Singh Dhindsa (the “Respondent”) on November 1, 2017. The citation contained two allegations of misconduct. The Respondent was alleged to have committed professional misconduct by:

- (1) disclosing his Juricert password to his staff and permitting them to affix his electronic signature to documents filed with the Land Title Office, contrary to Rule 3-64(8)(b) of the Law Society Rules [formerly Rule 3-56(3.2)(b)] or rule 6.1-5 of the *Code of Professional Conduct for British Columbia* (the “BC Code”), or both ; and

(2) entering into Minutes of Settlement that included a term that a complaint made against him to the Law Society would be withdrawn, contrary to rule 3.2-6 or rule 7.1-1 of the *BC Code* or both.

[2] The Law Society elected not to proceed with the second allegation part way through the hearing. Consequently, that allegation is dismissed.

## **BACKGROUND**

[3] The Respondent was called and admitted as a member of the Law Society on June 8, 2001. He practised at various firms in the Lower Mainland and Merritt, BC until February 1, 2007 when he began practising under the name Dhindsa Law Corporation in Abbotsford, BC. He has practised primarily in the areas of real estate, corporate and commercial law.

[4] Between 2010 and 2015, the majority of the Respondent's work was residential real estate conveyancing. He had a very busy practice, averaging approximately 50 to more than 70 conveyances per month.

[5] At the hearing the Law Society called CW and KS, two of the conveyancers previously employed by the Respondent. The Respondent testified and, in addition, he called AB, who provided IT support to his office, and AD, a corporate assistant currently employed by him. In reply, the Law Society, with leave of the Panel, called Gerald Palmer, a lawyer whose practice the Respondent purchased in 2010 and with whom the Respondent practised until about the end of 2015.

## **FACTS**

[6] CW was an experienced conveyancer having worked in that area for about 23 years. She was the Respondent's main real estate conveyancer for over three years, from 2012 to the beginning of March 2015.

[7] As a real estate conveyancer for a purchaser, it was CW's job to conduct the necessary searches, draft the closing documents to be sent to the seller and request the mortgage proceeds. She would then "true up" the electronic version of the documents with the signed documents so that they were ready to be digitally signed by the Respondent and filed with the Land Title Office. For each closing, there were usually three documents that required a Juricert password before they could be registered with the Land Title Office: the property transfer tax form, the Form A transfer of title and the Form B mortgage.

[8] CW testified that she was given the Respondent's Juricert password during the first week she started at the firm. She was not certain who gave it to her, but she recalled that the

prior conveyancer showed her how to enter the Respondent's Juricert password to affix his electronic signature to Land Title documents on the Respondent's computer. She was also given the Respondent's password to enter his computer. It appears almost the entire office had the password to enter the Respondent's computer.

- [9] CW testified that, during the time she worked for the Respondent, she routinely used the Respondent's Juricert password to digitally sign Land Title documents. She used it when he was not in the office or when he was in the office but was too busy to do it himself.
- [10] CW testified that, to her knowledge, three other conveyancers also had the Respondent's Juricert password.
- [11] CW estimated that she used the Respondent's Juricert password on at least ten files per month, with an average of two or three documents per file.
- [12] When asked on cross-examination why she did not text or send an email to the Respondent to come into the office to digitally sign a document, CW replied, "Because I had the password, and I would just sign it myself."
- [13] CW testified that she worked "a lot of overtime." She would be in the office between 6:00 and 8:00 am sometimes until after 8:00 pm. She also worked some Saturdays. She testified that she would electronically sign documents in the Respondent's absence using his Juricert password so that she was ready to close the deals and keep the process going.
- [14] CW testified that she had never heard of the Respondent logging onto his computer remotely to electronically sign Land Title documents and she was not aware of his ever doing so on her files. She was adamant that she did not send the Respondent emails or texts when he was out of the office to tell him that the documents had been "trued up" and were ready for his digital signature.
- [15] When questioned as to whether she could be mistaken, CW testified, "Well, I don't remember ever doing that because I would just sign it myself. I don't know why I would wait for him to come back in the office. The only time I really would push would be for trust cheques to get signed." On cross-examination CW confirmed that she had never called the Respondent or asked him to sign documents remotely and that she could not recall ever talking to him about his ability to do so.
- [16] On cross-examination CW testified that Mr. Palmer would not juricert the Respondent's Land Title documents. She stated "I don't know if it was an agreement that they had, but he didn't juricert Amar's documents." She stated that she once asked Mr. Palmer to sign the Respondent's documents and he said no. She also testified that she did not ask the Respondent to sign Mr. Palmer's documents.

- [17] KS was one of the Respondent's legal assistants and conveyancers beginning about June 2010. She worked directly with the Respondent from December 2013 until she was laid off in November 2014. She continued to work part-time at his office closing her files until January 2015.
- [18] KS testified that, shortly after she started working at the Garden Street office where the Respondent was located, she went into his office to get him to sign a document and he gave her his Juricert password and instructed her "to go ahead and sign on, on his behalf" if he was not in the office. She testified further that the Respondent showed her how to use his Juricert password on his computer.
- [19] KS testified that she used the Respondent's Juricert password on about 15 files per month and that, in her view, the Respondent would have known she used it as he had to know how many purchases were completing that day, and if he was not in the office, someone had to sign them.
- [20] When asked whether Mr. Palmer would electronically sign the Respondent's documents, KS said that Mr. Palmer would only sign his own documents. She acknowledged though that she never asked the Respondent or Mr. Palmer to sign the other's documents.
- [21] KS testified that she was not aware that the Respondent could remotely log on to his computer to apply his digital signature and that he did not do so on her files. She testified that she did not send him emails when he was out of the office to tell him that documents were ready to be signed remotely and she was never asked by the Respondent to go to his computer, pull up a document and wait until he had remotely logged on.
- [22] KS testified that she was aware that CW had the Respondent's Juricert password as she had on one occasion watched CW at the Respondent's computer applying the Respondent's Juricert password to electronically sign Land Title documents. She also knew that another conveyancer filed discharges when the Respondent was not in the office and assumed that she was also given his Juricert password.
- [23] The Law Society closed its case after the first day of hearing. The Respondent began his testimony on the second day. He testified that he purchased Mr. Palmer's practice in June 2010. Mr. Palmer remained in the office located on Essendene Avenue in Abbotsford, and that office operated under the name Dhindsa Palmer. That state of affairs remained until 2014 when Mr. Palmer and the staff of the Essendene office, which included KS, moved to the Respondent's office on Garden Street.
- [24] The Respondent testified that he had never given his Juricert password to anyone and was not aware that any of his staff had at any time used his Juricert password to digitally sign documents. He acknowledged that he was not always in the office when documents

needed to be digitally signed for registration at the Land Title Office. He said that when that occurred, staff would either get Mr. Palmer to juricert the documents or they would contact him by text or email and he would then login remotely and juricert the documents himself.

- [25] The Respondent testified that he juricerted documents for Mr. Palmer and that Mr. Palmer juricerted documents for him. He testified that, in the previous evening, after hearing the testimony of CW and KS denying that that occurred, he went back to his office and located a number of files where he said that had occurred. These documents were marked as Exhibits 5 to 12 inclusive. The Law Society witnesses, CW and KS, were not given the opportunity to comment on those documents.
- [26] The Respondent said that one of the reasons to have Mr. Palmer in his office was so that they could cover for each other and juricert the other's documents when needed. He did not testify that he made such an arrangement with Mr. Palmer but that it was his understanding that that was occurring.
- [27] The Respondent testified that he had a remote login system for his offices installed in about 2008 or 2009. This enabled him, as well as staff, to log in to their computers to work remotely when the need arose. He said he could remotely log in from his mobile phone starting a few years later. He testified that, if he was not in the office and staff needed a document juricerted, they would email or text him. He would log in remotely and the staff person would go to his computer in the office and bring up the document and he would then apply his signature using his Juricert password.
- [28] The Respondent specifically denied ever giving anyone else his Juricert password; he knew that to do so was wrong and not permitted.
- [29] AB, who provided IT services to the Respondent's firm, testified that the Juricert Certificate was located on a separate path on the Respondent's computer, accessible only with a password.
- [30] AB confirmed that he had installed a remote login system and that it was used primarily by the Respondent. He said that he received notifications by email when the Respondent logged in remotely. He said it was seldom used and the Respondent mostly used it to access his calendar. He estimated that, in 2014, the Respondent logged in remotely "a few times."
- [31] AD, a corporate assistant currently employed by the Respondent, testified that her desk was located right next to the Respondent's office and that she would know when people went into his office.

- [32] AD described the Respondent using the remote login to juricert documents when he was not in the office in the same way as he did. She said she was not aware of anyone having his Juricert password and that she was not aware of others in the office having it either. She testified that she had heard both CW and KS ask Mr. Palmer to juricert the Respondent's documents when the Respondent was not in the office.
- [33] The Law Society applied for and was granted leave to call Mr. Palmer in reply. The reasons for granting leave will be dealt with later in this decision.
- [34] Mr. Palmer testified that he had made no arrangement with the Respondent to juricert his documents when he was not in the office. He said that he did not want to be involved in his files. He said that he did not recall ever doing so, but if he did, it would have been only a few times and not on a regular basis. He did not remember ever being asked by staff to juricert the Respondent's documents but acknowledged that that may have occurred.

## **CREDIBILITY**

- [35] The testimony of the Law Society witnesses is diametrically opposed to that of the Respondent and AD. Credibility is therefore a key issue. Both counsel referred the Panel to *Faryna v. Chorny*, [1952] 2 DLR 354, 1951 CanLII 252 (BCCA) in which the Court held at paras. 11-12:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. *The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, 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.* Only thus can a Court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skilful exaggeration with partial suppression of the truth. Again a witness may testify what he sincerely believes to be true, but he may be quite honestly mistaken. For a trial Judge to say, "I believe him because I judge him to be telling the truth", is to come to a conclusion on consideration of only half the problem. In truth it may easily be self-direction of a dangerous kind.

The trial judge ought to go further and say that evidence of the witness he believes is in accordance with the preponderance of probabilities in the case and,

if his view is to command confidence, also state his reasons for that conclusion. The law does not clothe the trial judge with a divine insight into the hearts and minds of the witnesses. And a Court of Appeal must be satisfied that the trial judge's finding of credibility is based not on one element only to the exclusion of others, but is based on all the elements by which it can be tested in the particular case.

[emphasis added]

- [36] Counsel for the Respondent argued that the Law Society witnesses ought not to be believed. He argued that both CW and KS failed to identify any specific file where they used the Respondent's Juricert password. We do not find this surprising given the number of files where this occurred and the length of time since the events occurred. They were not given a list of files they had worked on nor were they given the opportunity to review Exhibits 5 to 12.
- [37] Counsel for the Respondent also argued that, because CW was unable to recall exactly the steps required to juricert documents, she should not be believed. We do not find that surprising since she had not used that system for more than three years since leaving the Respondent's employ.
- [38] Counsel was also critical of CW's evidence because she testified that she did not remember who gave her the Respondent's Juricert password. He argued that she would have remembered if the Respondent had given it to her. We think, to the contrary, this was a good example of her being truthful and forthright. She could have easily "embellished" her evidence by saying the Respondent gave her the Juricert password. She did not do so. She was clear and unshaken in her evidence that she received the Juricert password in the first week of her employment and used it continuously and frequently during the more than three years she worked for the Respondent.
- [39] In her direct evidence, CW described an occasion where, needing documents juricerted on an urgent basis, she went into the Respondent's office while clients were present and used the Respondent's computer to juricert documents while the Respondent continued his meeting with the clients. Counsel argued that this was an unlikely event given the layout of the Respondent's office and that it was likely that confidential information would have been disclosed during such an occurrence. We agree that this would be an unusual event, but we believe CW. It was clear that she worked hard and was focused on completing the transactions she was responsible for. We believe that, in an urgent situation, she would interrupt the Respondent in a client meeting. She could only have proceeded as she described with the Respondent's concurrence.

- [40] CW left the Respondent's firm in unhappy circumstances and admitted that she had spoken negatively about him to a co-worker at her new place of employment who also knew the Respondent. In our view, her demeanour, body language, eye contact and responsiveness to questions showed her to be a witness testifying truthfully to the best of her ability. We find that she gave her evidence in an unbiased manner showing no animosity toward the Respondent.
- [41] Counsel for the Respondent argued that KS ought not to be believed because, among other things, she was impeached on a prior statement on two occasions. She had previously told a Law Society investigator that she used the Respondent's Juricert password "on a daily basis." On cross-examination, she acknowledged that that was not accurate. She said she used his Juricert password on about 15 files per month, which is not daily. Giving a general estimate of daily and then correcting that to 15 files per month does not, in our view, diminish her credibility. When witnesses are asked to give estimates about events that occurred years ago and over a long period of time, some variance and inaccuracy is to be expected. This is a normal frailty of human witnesses.
- [42] In her direct evidence, KS said that she had never had a discussion with the Respondent about using his Juricert password when he was in the office. She said he had never asked her to do so. In her statement to the Law Society investigator, she said "whenever he was in the office, I would tell him he has to sign it." Counsel for the Respondent argued that this was a contradiction. To the extent that it is, we find it to be a matter of semantics. When the Respondent was out of the office, KS used his Juricert password. When he was in the office, she told him he had to digitally sign the documents. There was no evidence that the Respondent requested KS to use his Juricert password when he was in the office.
- [43] Neither of these inconsistencies cast doubt on the veracity of her evidence.
- [44] KS acknowledged that she was uncomfortable using the Respondent's Juricert password and, although she had a good relationship with Mr. Palmer, she did not raise her discomfort with him. This, counsel for the Respondent argued, did not make sense. We are reluctant to draw that conclusion not knowing enough about her relationship with Mr. Palmer and the extent to which that might have been perceived as complaining about the Respondent, who was her employer.
- [45] KS gave her evidence and answered questions in cross directly without evasion and showed no hostility or animus toward the Respondent despite leaving her employment in unhappy circumstances.
- [46] On the other hand, AD, the Respondent's witness and a current employee, gave her evidence in an emotional and highly partisan manner. She directly accused CW and KS of lying "to screw someone over that hasn't done anything."

- [47] AD volunteered that CW was not a very good employee who showed up late frequently. AD completely identified with the Respondent. When asked about staff turnover, her answer included the following statements: “[CW] kept saying she needed more assistance, and so we hired her an assistant ... Reception was the only staff turnover because we were trying to make sure that we had a really solid person in reception.”
- [48] Use of the pronoun “we” by a law office assistant when describing steps taken by her employer and her open hostility toward witnesses adverse to the Respondent showed AD to be partial to the Respondent to the extent that this Panel is not prepared to rely on her evidence where it is not corroborated by documents or other witnesses.
- [49] The Respondent’s explanation for how documents needing to be juricerted when he was out of the office was, as noted previously, twofold: either he would login remotely or Mr. Palmer would do it. The evidence does not support either explanation.
- [50] AB testified that the Respondent only logged in a few times in the entire year of 2014 and then mostly to check his calendar. A few times in a year is not frequent enough to cover the number of times documents needed to be juricerted when he was out of the office. It is also worthy of note that, other than AD, no other former or current employee was called to verify his practice of logging in remotely to juricert documents. The Respondent testified that the emails and texts sent to him asking him to login remotely to juricert documents were not saved to the files. He did not describe any efforts made to locate such emails on the law firm’s server.
- [51] As noted above, after the Law Society closed its case, the Respondent, in the evening after the first day of hearing, went into his office and located documents, later marked as Exhibits 5 to 12, which he said show that he and Mr. Palmer had a practice of juricerting each other’s documents. The Law Society applied to call Mr. Palmer in reply, saying that this was a defence not anticipated and they had no notice of Exhibits 5 to 12, which had not been put to the Law Society witnesses. The Respondent objected asserting that the Law Society was splitting its case and to allow the evidence of Mr. Palmer would be prejudicial to him.
- [52] The Panel ruled that the Law Society could call Mr. Palmer in reply but only on the practice of juricerting each other’s documents. The reason for the ruling was that it was apparent that this defence and Exhibits 5 to 12 were new and the Law Society had not had the opportunity to deal with it in its case in chief. In *R v. Krause*, [1986] 2 SCR 466, Mr. Justice McIntyre wrote at p. 474 :

Where something new emerges in cross-examination, which is new in the sense that the Crown had no chance to deal with it in its case-in-chief ... then the Crown may be allowed to call evidence in rebuttal.

- [53] As noted above, Mr. Palmer's evidence was that he did not want to be involved with the Respondent's files and that, if he ever juricerted the Respondent's documents, it would only have been a few times.
- [54] While Exhibits 5 to 12 do indeed show that Mr. Palmer juricerted some of the Respondent's documents, and vice versa, they do not, in view of Mr. Palmer's evidence, establish that it was a practice that could explain how the Respondent's documents were juricerted when he was absent from the office.

## **ONUS AND STANDARD OF PROOF**

- [55] The onus of proof is on the Law Society, which must prove the allegations on a balance of probabilities. We note the cautions expressed in *F.H. v. McDougall*, 2008 SCC 53, and *Law Society of BC v. Schauble*, 2009 LSBC 11, that the evidence must be scrutinized with care and must be sufficiently clear, convincing and cogent.

## **PROFESSIONAL MISCONDUCT**

- [56] There was no real dispute concerning the test for professional misconduct, which is well established. The leading case is *Law Society of BC v. Martin*, 2005 LSBC 16, in which the hearing panel concluded at paragraph 171 that 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." The panel also commented at paragraph 154:

The real question to be determined is essentially whether the Respondent's behaviour displays culpability which is grounded in a fundamental degree of fault, that is whether it displays gross culpable neglect of his duties as a lawyer.

- [57] The bench review decision in *Re: Lawyer 12*, 2011 LSBC 35, is the leading pronouncement at the section 47 review level concerning the test for professional misconduct. Both the majority and the minority of the bench review panel confirmed the marked departure test set out in *Martin* and adopted the following formulation of that test expressed by the single bench hearing panel below:

- [14] In my view, the pith and substance of these various decisions displays a consistent application of a clear principle. The focus must be on the circumstances of the Respondent's conduct and whether that conduct falls markedly below the standard expected of its members.

[58] There was also no real dispute that disclosing the Respondent's Juricert password and/or allowing his staff to use it was wrongful. The Respondent admitted he knew he was not permitted to do so.

[59] The *Land Title Act*, the Law Society Rules and the *BC Code* collectively create a statutory and regulatory framework for the electronic filing system through the Land Title Office (the "LTO"). The integrity of that system must be maintained in order to minimize the risk of fraudulent transactions.

[60] A lawyer who discloses his or her Juricert password or allows anyone else to affix his or her digital signature to any document filed in the LTO is in violation of section 6.1-5 of the *BC Code*.

[61] The *BC Code* provides at section 6.1-5:

A lawyer who has personalized encrypted electronic access to any system for the electronic submission or registration of documents must not

- (a) permit others, including a non-lawyer employee, to use such access; or
- (b) disclose his or her password or access phrase or number to others.

[62] The commentary in the *BC Code* applicable to section 6.1-5 states:

[1] The implementation of systems for the electronic registration of documents imposes special responsibilities on lawyers and others using the system. The integrity and security of the system is achieved, in part, by its maintaining a record of those using the system for any transaction. Statements professing compliance with law without registration of supporting documents may be made only by lawyers in good standing. It is, therefore, important that lawyers should maintain and ensure the security and the exclusively personal use of the personalized access code, diskettes, etc., used to access the system and the personalized access pass phrase or number.

[63] Since 2007, a number of Law Society publications have been issued to inform lawyers of the digital signature requirements and remind them of the potential consequences for failing to comply with the requirements:

- (a) In May 2007, the Law Society published an article in the *Benchers' Bulletin* entitled "Electronic signatures on land title documents," which reminded lawyers of their obligations when granted the right to affix a digital signature to documents to be filed in the LTO and cautioned lawyers not to permit another person to affix a digital signature or their right to use the digital signature might be revoked.

- (b) In 2010, a Law Society hearing panel issued the decision *Law Society of BC v. Williams*, 2010 LSBC 31, in which they emphasized the importance of lawyers complying with the execution and electronic submission provisions of the *Land Title Act*, which were important safeguards of the integrity of the land title system. The panel stated as follows at paras. 12 and 13:

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. In this case, the executed paper copy of the Form C release was not registrable because, on its face, it had not been witnessed by an officer. The Respondent overcame this impediment to registration not by obtaining a properly executed document, but by incorporating his electronic signature and inserting his name under the signature space for the officer, then submitting an electronic version.

In *Williams*, the lawyer was found to have committed professional misconduct by filing a Form C release of builders lien based on the verbal instructions of his client without having the properly executed and witnessed document before him. He self-reported his misconduct to the Law Society.

- (c) In the Spring 2011 *Benchers' Bulletin*, in preparation for the LTO's requirements for e-filing, the Law Society provided detailed instructions on how to sign up with Juricert in an article entitled "Lawyers will be required to e-file LTO documents starting January 2012 – Are you ready?". Under the subheading "An offence for your assistant to affix your digital signature," the Law Society reminded lawyers that it is an offence under the *Land Title Act* for anyone, other than the subscriber, to apply a digital signature to electronic documents. The article provided, among other things:

Be aware that you must not allow anyone, including any staff member, to affix your digital signature to electronic filing applications, and that you must not use anyone else's.

- (d) In the Fall 2012 *Benchers' Bulletin*, under the heading "Conduct Reviews", the Law Society summarized two conduct reviews that were held to discuss the lawyers' failure to comply with the *Land Title Act* and requirements regarding the use of digital signatures after learning that the lawyers had permitted other persons to affix

their signatures to documents so they could be filed electronically. The summary concludes:

The lawyers were reminded that it was an offence under the Act and a breach of the Juricert (BC's certifying authority) terms and conditions to do so. This misuse could result in the revocation of their authority to e-file and disciplinary action. The digital signature requirements are designed to prevent fraud and to uphold the integrity of the land title system in British Columbia. Lawyers are reminded to keep their passwords confidential.

- (e) In the Winter 2012 *Benchers' Bulletin*, under the heading "Conduct Reviews", the Law Society summarized a conduct review that was held to discuss a lawyer's misconduct in allowing his paralegal to affix his electronic signature.
- (f) In the Winter 2014 *Benchers' Bulletin*, under the heading "Conduct Reviews", the Law Society summarized a conduct review that was held to discuss a lawyer's misconduct in allowing his real estate conveyancers to use his password to affix his electronic signature.

## **DETERMINATION**

[64] We find that the Law Society has proven allegation 1 in the citation on a balance of probabilities and that the Respondent committed professional misconduct.