

2019 LSBC 25
Decision issued: July 9, 2019
Citation issued: October 30, 2018

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

CHRISTOPHER JAMES WILSON

RESPONDENT

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

Hearing date: May 17, 2019

Panel: Craig A.B. Ferris, QC, Chair
Ralston S. Alexander, QC, Lawyer
J. Paul Ruffell, Public Representative

Discipline Counsel: Michael D. Shirreff
Counsel for the Respondent: Richard Margetts, QC

BACKGROUND

[1] On October 30, 2018, a citation was issued against Christopher James Wilson (the “Respondent”) pursuant to the *Legal Profession Act* and Rule 4-13 of the Law Society Rules on the direction of the Chair of the Discipline Committee.

[2] Allegation 1 of the citation provides:

1. On or between approximately March 1, 2015 and August 30, 2018, you gave a non-lawyer one or more blank trust cheques, including one or more of the following, contrary to one or more of Rule 10-4 of the Law Society Rules, rules 3.5-2 and 6.1-3 of the *Code of Professional Conduct for British Columbia*, and your fiduciary duty owed to your clients:

- a. [Financial institution 1] trust account cheque #002018, marked “VOID” and containing your signature;
- b. [Financial institution 2] trust account cheque #006760, marked “VOID” and containing your signature;
- c. [Financial institution 3] trust account cheque #000549, marked “VOID” and containing your signature;
- d. [Financial institution 4] trust account cheque #000100, marked “VOID” and containing your signature;
- e. [Financial institution 4] trust cheque #000102, marked “VOID” and containing your signature; and/or
- f. [Financial institution 5] trust cheque #522, left blank other than containing your signature.

[3] Allegation 2 of the citation provides:

2. Between approximately August 2016 and November 2016, you improperly permitted your law firm staff to withdraw or failed to properly supervise such staff in withdrawing trust funds from your [financial institution 6] trust account [number] in approximately 177 instances by way of cheques, in circumstances where you were personally responsible for ensuring that the cheques were signed by a practising lawyer, contrary to one or more of Rules 3-54(3) and 3-64(5) of the Law Society Rules and rule 6.1-3 of the *Code of Professional Conduct for British Columbia*, and your fiduciary duty owed to your clients.

[4] Allegation 3 of the citation provides:

3. In relation to one or more of the following client files, you failed to comply with Part 3, Division 11 of the Law Society Rules (the “Rules”):
 - a. On client file [number] (Estate of SA), you failed to take reasonable steps to verify the identity of the client or you failed to obtain and retain a copy of every document used to verify the client’s identity, or both, contrary to Rules 3-102, 3-105, and 3-107;
 - b. On client file [number] (CA), you failed to take all required steps to verify the identity of the client, who was not present in Canada, through an agreement or arrangement in writing with an agent or you

failed to obtain and retain a copy of every document and/or attestation used to verify the client's identity, or both contrary to Rules 3-104, 3-105, and 3-107;

- c. On client file [number] (NM and CI), you failed to take all required steps to verify the identity of the clients, who were not present in Canada, through an agreement or arrangement in writing with an agent or you failed to obtain and retain a copy of every document and/or attestation used to verify each client's identity, contrary to Rules 3-104, 3-105, and 3-107;
- d. On client file [number] (DC and KO), you failed to take reasonable steps to verify the identity of the clients or you failed to obtain and retain a copy of every document used to verify each client's identity, or both, contrary to Rules 3-100, 3-102, 3-105, and 3-107;
- e. On client file [number] (EM), you failed to take reasonable steps to verify the identity of the client or you failed to obtain and retain a copy of every document used to verify the client's identity, or both, contrary to Rules 3-100, 3-102, 3-105, and 3-107;
- f. On client file [number] (WC and LH), you failed to take all required steps to verify the identity of the clients, who were present elsewhere in Canada, through an agreement or arrangement in writing with an agent or you failed to obtain and retain a copy of every document and/or attestation used to verify each client's identity, or both contrary to Rules 3-104, 3-105, and 3-107.

[5] Allegation 4 of the citation provides:

- 4. Between approximately March 2015 and November 2016, you either failed to ensure the security of your Juricert password or disclosed your password to your law firm staff and caused or permitted such staff to affix your digital signature on electronic instruments contrary to one or more of rules 6.1-3 and 6.1-5 of the *Code of Professional Conduct for British Columbia*, the terms and conditions of your Juricert registration and subscription, and s. 168.9 of the *Land Title Act*.

[6] The conduct alleged in each allegation was stated to constitute professional misconduct and, in allegations 1 to 3, to constitute a breach of the Act or rules, pursuant to section 38(4) of the Legal Profession Act.

- [7] The Respondent acknowledged that service of the citation complied with Rule 4-15 of the Law Society Rules.
- [8] This matter was scheduled for a three-day hearing until the parties brought a joint application to adjourn the hearing and conduct the hearing in writing in accordance with the Law Society's procedure for a "Hearing in Writing" pursuant to a Practice Direction issued on April 6, 2018.
- [9] The parties submitted an agreed statement of facts (the "ASOF") to the Panel as a component of the joint application for the hearing in writing.
- [10] The Panel considered the joint application and decided that this was an appropriate case to proceed on written materials only, without an oral hearing. In reaching that conclusion, the Panel considered whether it had questions about the facts of the matter that were not clearly answered in the ASOF. The Panel considered whether any credibility issues were presented by the ASOF and determined that the written record was complete and that no additional useful information would be provided by an oral hearing. On that basis, the Panel agreed to proceed to conduct the hearing pursuant to the April 6, 2018 Practice Direction, without an oral hearing.
- [11] Accordingly, the Panel ordered that the hearing was adjourned generally and proceeded to consider the matter on the basis of the written materials provided. In addition to the ASOF, the Panel considered submissions from the Law Society.
- [12] The Respondent, through counsel, acknowledged that the allegations made out in the citation and verified by the admissions in the ASOF constituted professional misconduct. No other submissions were advanced by the Respondent.

FACTS

- [13] We note for the record that the ASOF is a comprehensive document of 14 pages with 28 tabs of material referenced. The tabulated material comprises an additional 365 pages of information in support of the allegations in the citation. We provide the following summary of the facts for each allegation in the citation as verified by the ASOF:
- a. As a sole practitioner, the Respondent is responsible for a very busy law practice in Saanichton, British Columbia. In any given month, in addition to his wills and estates files, the Respondent may handle between 20 and 30 conveyancing matters. In an average year, over \$100 million flows through the Respondent's trust account.

- b. During the period of time material to this proceeding, the Respondent employed three legal assistants.
- c. A compliance audit (the “Audit”) of the Respondent’s firm was conducted from January 23 to 27, 2017 by the Trust Assurance Department of the Law Society (the “TAD”).
- d. The period audited was March 1, 2015 to January 22, 2017. The Audit revealed a number of irregularities that were brought to the attention of the Respondent.
- e. Specifically, the Law Society sought responses from the Respondent to various questions that were raised by the TAD, including questions on the following irregularities:
 - i. trust cheques signed in blank by the Respondent;
 - ii. trust cheques issued and negotiated bearing no lawyer’s signature;
 - iii. real estate documents signed out of British Columbia with no “agency” agreement (from the foreign lawyer) evident in the file; and
 - iv. violations of Law Society rules regarding the application of a Juricert approved digital signature;
- f. In the course of the investigation by the Law Society, the Respondent was interviewed on two different occasions and transcripts of the interviews were a part of the record reviewed by the Panel. The answers given in the letters from the Respondent to the Law Society and the information provided in the interviews was before the Panel as proof of the statements made by the Respondent;
- g. It was agreed by the Respondent that it was his practice to sign trust cheques in blank prior to his departure on vacation so that the transactions closing during his absence would complete;
- h. The Respondent has confirmed that he no longer signs blank trust cheques;
- i. The Audit revealed 177 trust cheques drawn on the Respondent’s [financial institution 6] account that were not signed by a lawyer. The

Audit noted that the total of those cheques not signed by a lawyer amounted to \$19,829,220.59. Forty-nine of the cheques were written for amounts in excess of \$100,000, and three of the cheques were written for amounts in excess of \$1,000,000. It was agreed that the Respondent was in the office when these cheques were written and not signed by him;

- j. The Respondent has admitted to numerous (at least six) breaches of the Law Society client identification rules. These violations occurred when the clients were signing documents in locations where the Respondent was not personally present to witness their signatures and verify their identities. In those circumstances, the Law Society Rules require the Respondent to enter an “agency” agreement with a remote lawyer or other official. In that agreement the verifying agent undertakes certain specific obligations in respect of client identification. In the admitted breaches, the Respondent obtained copies of the client identification without agent “verification” of authenticity;
- k. The ASOF describes the Respondent’s admitted breaches of the rules regarding the use of electronic signatures. The rules require that the electronic signature only be affixed to Land Title registry documents by the lawyer possessing the electronic signature. The rules further require that the electronic signature only be applied to a Land Title document after the lawyer has compared the electronic copy of the document to a paper copy of the document in the lawyer’s possession at the time the electronic signature is affixed;
- l. The Respondent admitted that this rule was breached on numerous occasions when his electronic signature was resident on the computer of his real estate assistant and the signature could be and was affixed by his assistant in that circumstance without the participation of the Respondent and without any comparison by the Respondent of the documents to which the signature was affixed; and
- m. In addition, the Respondent admitted a breach of rules regarding electronic signatures by failing to secure his password to the electronic signature so that he was the only person able to attach his digital signature to electronic documents for Land Title registration purposes.

BURDEN OF PROOF

[14] We have instructed ourselves that the burden of proving the allegations in the citation on the balance of probabilities rests with the Law Society. The admissions provided by the Respondent in the ASOF have allowed us to find that the Law Society has discharged this burden without an in-depth analysis of individual allegations.

ISSUES AND ANALYSIS

[15] There can be no conclusion reached upon the basis of the facts agreed upon and summarized above but that the Respondent was, during the period of time covered by the Audit, practising with total disregard for Law Society trust accounting rules.

[16] Allegation 1 of the citation alleges that the Respondent provided blank signed cheques contrary to the fiduciary duties of supervision and oversight upon which the trust accounting rules are based. Though the Respondent initially provided advice to the Law Society investigators that he did not sign blank trust cheques, it is apparent that the overwhelming evidence of the practice overtook his denials.

[17] At one point in the process of an interview with a Law Society investigator, the Respondent confronted the difficulty of solo practice, noting that vacations could become impossible if strict compliance with Law Society trust accounting rules was to be assured.

[18] It is this conundrum that faces all sole practitioners who have not made arrangements for another lawyer to “cover” for them during vacation and other necessary absences from the office. The frustration experienced by the Respondent in trying to put such a “back-up” system in place is not a justification for providing blank signed trust cheques to facilitate the flow of transactions while on vacation. There can be no justification for that response.

[19] Allegation 2 of the citation describes an astounding history of neglect and dereliction of duty on a grand scale. Nearly \$20 million of trust funds were disbursed by this law practice without a single signature of a lawyer to whom questions of professional responsibility and fiduciary obligations can be directed should something go wrong.

[20] Throughout the interviews and exchanges of correspondence, the Respondent maintained his position that he had no knowledge of this conduct by his staff and that, when it was brought to his attention by the Audit, he was surprised that his staff were behaving in this manner. This response of the Respondent tests his

credibility. It is beyond belief that nearly \$20 million of trust funds using 177 different trust cheques could have been processed in a very small, four-person office without some inkling of acknowledgement on the part of the Respondent. The circumstances are wide ranging and extensive.

- [21] The Law Society rules about client identification and verification are complex and important. The goal is to ensure that the legal profession does not become an inadvertent participant in the improper processing of laundered money and that the fraud of identity theft is not aided and abetted by lawyers.
- [22] Except in circumstances where the lawyer is in face-to-face contact with the client, the mere production of identification documents will not suffice. The rigour on this issue stems from the ease with which identification documents can be forged, manipulated and otherwise abused. When confronted with a non-resident client, an additional identity verification exercise is mandated. There are different levels of identification verification required depending upon the nature of the lawyer's retainer. The following summary deals with those encountered in real estate transactions as this is the subject of the citation before us.
- [23] One process is to be followed if the client is within Canada. In that circumstance, the identification documents are required to be reviewed by another lawyer or other approved official. Examples of qualified identification verification individuals, in addition to lawyers, are doctors, dentists, professional engineers, professional accountants, notary publics, judges, school principals, etc.
- [24] The qualified individual is required to review the identification documents provided by the non-resident client and provide an "attestation" (in a form provided) that the client and the identification documents have been reviewed and approved. A copy of the identification examined is to be attached to the signed attestation.
- [25] In circumstances where the client is outside Canada, a further layer of verification is engaged. It is necessary for the lawyer representing the non-resident client to enter a written agency agreement with a foreign lawyer or other responsible party (as described above) by the terms of which that remote party takes responsibility for the verification of the validity of the identification documents proffered by the non-resident client. That foreign official is then required to provide a similar attestation to that required to be provided by a Canadian official but in this circumstance, the attestation is provided pursuant to a written agreement with the lawyer representing the remote client.

- [26] It was in this verification step of the process that the Respondent lapsed and simply accepted identification documents provided by non-resident clients as valid.
- [27] In our review of the facts before us, we are driven to the inescapable conclusion that the Respondent's practice has grown to a point that it is too large for a single lawyer to supervise and manage within the rules. It is clear that the many breaches of the trust accounting rules are the direct result of there simply being insufficient hours in a day to manage all that requires attention.
- [28] The various allegations of this citation are the inevitable result of this volume of unsupervised work. The reported combined volume of real estate transactions, wills and estate files and general business advice to commercial clients has led to the outcome before us in this citation.

PROFESSIONAL MISCONDUCT

- [29] The current test for professional misconduct has been clearly developed in *Law Society of BC v. Martin*, 2005 LSBC 16, *Re: Lawyer 12*, 2011 LSBC 35, and subsequent decisions providing further clarifications. In its written submissions, the Law Society summarized the history leading to present understanding of the test and concluded with the following excerpt from a recent panel decision.
- [30] In the recent decision of *Law Society of BC v. King*, 2019 LSBC 07 at para. 36, the hearing panel cited with approval an excerpt from *Law Society of BC v. Kaminski*:

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.

- [31] We have applied this approach in considering the admissions of the Respondent to ensure that his admissions of professional misconduct on all allegations in the citation are properly founded.
- [32] There can be no doubt that the conduct of the Respondent constitutes a marked departure from conduct that the Law Society expects of lawyers. Each allegation in the citation stands alone as a clear demonstration of entirely inappropriate behaviour with the consequent marked departure outcome.

DECISION

- [33] We have, accordingly, accepted the admissions of the Respondent and confirm a determination that, on all four allegations in the citation, the Respondent has committed professional misconduct.

NON-DISCLOSURE ORDER

- [34] The Law Society requested an order under Rule 5-8(2) of the Rules that exhibits that contain confidential client information or privileged information not be disclosed to members of the public.
- [35] In order to prevent the disclosure of confidential or privileged information to the public, we order under Rule 5-8(2) that, if a member of the public requests copies of the exhibits in these proceedings, those exhibits must be redacted for confidential or privileged information before being provided.