

2020 LSBC 03
Decision issued: January 30, 2020
Citation issued: July 19, 2018

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

SUNEIL KYLE SANGHA

RESPONDENT

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

Written materials: October 1, 2019

Panel: Lisa J. Hamilton, QC, Chair
Darlene Hammell, Public representative
Shona A. Moore, QC, Lawyer

Discipline Counsel: Deborah K. Lovett, QC
Counsel for the Respondent: Michael D. Shirreff

BACKGROUND

[1] On July 19, 2018, a citation was issued against the Respondent (the “Citation”) pursuant to the *Legal Profession Act* and Rule 4-17 of the Law Society Rules.

[2] Allegation 1 of the Citation provides:

1. On approximately July 15, 2016, in the course of representing his clients KH and RS in a real estate matter, the Respondent falsely represented to the Land Title Office that he had applied his electronic signature to a Form A Transfer and Form B Mortgage (the “Forms”) in accordance with section 168.3(3) of the *Land Title Act*, RSBC 1996, c. 250, and that he had true copies of the Forms in his possession, contrary to rule 2.2-1 of the *Code of Professional Conduct for British Columbia* (the “Code”).

- [3] Allegation 2 of the Citation provides:
2. On approximately August 12, 2016, in the course of representing his clients BS and BM in a real estate matter, the Respondent falsely represented to the Land Title Office that he had applied his electronic signature to a Form A Transfer in accordance with section 168.3(3) of the *Land Title Act* and that he had a true copy of the Form A Transfer in his possession, contrary to rule 2.2-1 of the *Code*.
- [4] Allegation 3 of the Citation provides:
3. On approximately September 29, 2016, in the course of representing his clients AS, RS, PS and SK in a real estate matter, the Respondent falsely represented to the Land Title Office that he had applied his electronic signature to a Form A Transfer in accordance with section 168.3(3) of the *Land Title Act* and that he had a true copy of the Form A Transfer in his possession, contrary to rule 2.2-1 of the *Code*.
- [5] Allegation 4 of the Citation provides:
4. On approximately June 22, 2017, in the course of representing his client KG in a real estate matter, the Respondent falsely represented to the Land Title Office that he had applied his electronic signature to a Form A Transfer in accordance with section 168.3(3) of the *Land Title Act* and that he had a true copy of the Form A Transfer in his possession, contrary to rule 2.2-1 of the *Code*.
- [6] The conduct alleged in each allegation was stated to constitute professional misconduct, pursuant to section 38(4) of the *Legal Profession Act*.
- [7] The Respondent admitted that he was served with the Citation on July 30, 2018, and he waived the requirements of Rule 4-19 of the Rules.
- [8] The Law Society applied, and the Respondent consented, to have the Facts and Determination phase of the hearing proceed before the Hearing Panel on the basis of the written record in accordance with the Law Society Tribunal Practice Direction issued April 6, 2018. All of the facts before the Panel were submitted by way of an Agreed Statement of Facts (“ASF”) and a joint book of exhibits. The ASF addresses all the relevant facts, and there are no issues of credibility.
- [9] Having reviewed the written materials including, in particular, the ASF, we agreed that it was appropriate to proceed to conduct the Facts and Determination phase of the hearing based on written materials alone and so marked the exhibits submitted.

- [10] The Panel received the benefit of written submissions from both counsel, certain excerpts of which are included and/or paraphrased in this decision. While we have borrowed phrasing from counsel's submissions, the findings are those of the Panel.

ISSUE

- [11] The issue is whether the Respondent has committed professional misconduct in respect of each of the improper *Land Title Act* filings alleged in the Citation.

FACTS

- [12] The Respondent was called to the Bar of Ontario on June 24, 2015 and became a member of the Law Society of British Columbia on October 1, 2015.
- [13] Since being called to the Bar in British Columbia, the Respondent has practised with a small law firm in Surrey involving the Respondent and two other lawyers called in 2008 and in 2016. Until September 20, 2018, a significant portion of the Respondent's practice involved residential real estate.
- [14] The Respondent was the only member of his firm practising in the area of residential real estate. The Respondent was self-taught with respect to this area of practice. As the other two lawyers in his firm had no knowledge or practice experience in this area, the Respondent did not receive any mentoring. During the period the Respondent practised real estate law, he did not have a legal assistant, and he prepared and filed the real estate documents himself.
- [15] On September 20, 2018, the Respondent acknowledged that he should no longer practise real estate law and the Law Society's Practice Standards Committee made the following Order:

Mr. Sangha must not practise real estate law. This Order is effective immediately, and continues until rescinded by the Practice Standards Committee. Mr. Sangha may complete all outstanding tasks on real estate files having a completion date before September 22, 2018, under the supervision of a lawyer approved by the Committee.

Allegation 1: KH and RS - July, 2016

- [16] In July, 2016, the Respondent represented KH, a lawyer of his firm, and RS, a relative of that lawyer, as purchasers in a real estate transaction relating to property in Creston, BC (the "Creston Property").

- [17] The Respondent understood that a numbered company (the “Numbered Company”) would be the registered purchaser and mortgagor on the Creston Property. A Form A Transfer was executed by the vendors on July 11, 2016 transferring the Creston Property to the Numbered Company. A Form B Mortgage, which identifies the borrower/mortgagor as the Numbered Company, was executed by KH and RS and witnessed by the Respondent on July 13, 2016. That Form B Mortgage, under the signature portion, manually crossed out the Numbered Company as borrower and identified as borrowers KH and RS.
- [18] The transaction closed on July 15, 2016. On that date, the Respondent electronically filed a copy of the executed Form A Transfer. The Form A Transfer identified the Numbered Company as the new owner and borrower.
- [19] On August 11, 2016, the Respondent realized that KH and RS ought to have been named as the owners and borrowers as opposed to the Numbered Company. The Respondent attempted to amend the registrations submitted on July 15, 2016 by way of a statutory declaration. The Land Title Office did not permit the attempted amendment and advised the Respondent to withdraw and then resubmit the amended executed Forms.
- [20] The Respondent electronically filed a Form A Transfer with the Land Title Office on August 12, 2016. Under the heading “Transferee(s)” it said “see schedule”. The attached schedule listed KH and RS as joint tenants.
- [21] The Respondent did not have the Form A Transfer re-executed by the vendors after withdrawing the original Form A Transfer, amending its contents and electronically resubmitting the amended version to the Land Title Office on August 12, 2016.
- [22] The Respondent did not have the Form B Mortgage re-executed by KH and RS after withdrawing the original Form B, amending its contents and resubmitting the amended version to the Land Title Office on August 12, 2016.
- [23] The Respondent did not obtain the consent of the vendors to the changes prior to electronically filing the amended Form A, nor did he at any time advise the vendors about the changes.
- [24] The Respondent also did not advise RS about the amendments to and re-filing of the revised Form A Transfer and Form B Mortgage.
- [25] The Respondent did not have in his possession a true copy of either of an executed Form A Transfer or executed Form B Mortgage that matched the copies he electronically filed with the Land Title Office on August 12, 2016.

[26] The Respondent admits that his conduct was in breach of the electronic filing requirements under the *Land Title Act*.

Allegation 2: BS and BM - August, 2016

[27] In August, 2016, the Respondent represented BS and BM as purchasers in a real estate transaction relating to a property in New Westminster, BC.

[28] The Form A Transfer executed by the vendor on August 10, 2016 named BS and BM as joint tenants but incorrectly stated BM's first name. A Form B Mortgage was executed by BS and BM on August 12, 2016.

[29] The transaction closed on August 12, 2016. The Respondent electronically filed a Form A Transfer that corrected BM's first name but omitted the reference to BS and BM as joint tenants. The Form A Transfer had not been re-executed by the vendors to permit the changes.

[30] The Respondent did not have a true copy of an executed Form A Transfer in his possession that matched the copy he electronically filed with the Land Title Office on August 12, 2016.

[31] The Respondent did not obtain the consent of the vendor before electronically filing the amended Form A Transfer, nor did he contact or notify the vendor about the changes.

[32] The Form B Mortgage that was electronically filed by the Respondent on August 12, 2016 differs from the executed version and does not list BS and BM as joint tenants. The Respondent did not have a true copy of an executed Form B Mortgage in his possession that matched the copy he electronically filed with the Land Title Office on August 12, 2016.

[33] The Respondent admits that his conduct was in breach of the electronic filing requirements under the *Land Title Act*.

Allegation 3: AS, RS, PS and SK - September 2016

[34] In September 2016, the Respondent represented AS, RS, PS and SK as purchasers in a real estate transaction relating to property in Langley, BC.

[35] The vendors and AS entered into a contract of purchase and sale on July 14, 2016. A Form A Transfer was executed by the vendors on August 27, 2016 naming AS as the purchaser, consistent with the contract of purchase and sale.

- [36] The transaction closed on September 28, 2016. The next day the Respondent electronically filed a Form A Transfer on September 29, 2016 listing AS, RS, PS and SK as owners. The vendors had not re-executed the Form A Transfer to permit the additional three owners.
- [37] The Respondent did not have a true copy of an executed Form A Transfer in his possession that matched the copy he electronically filed with the Land Title Office on September 29, 2016.
- [38] The Respondent did not have authorization from the vendors' notary to the changes prior to electronically filing the amended Form A Transfer, and had not advised them of the changes prior to filing.
- [39] After the closing date, the Respondent wrote to the vendors' notary to advise that the Form A Transfer had been accepted and that AS and his other three clients were all listed as owners.
- [40] The Respondent admits that his conduct was in breach of the electronic filing requirements under the *Land Title Act*.

Allegation 4: KG - June 2017

- [41] In June 2017, the Respondent represented KG as purchaser in a real estate transaction relating to property in Maple Ridge, BC.
- [42] A contract of purchase and sale was entered into on April 12, 2017 between the vendors and a numbered company ("123 B.C. Ltd."). The vendors executed a Form A Transfer transferring the property to a different numbered company ("456 BC Ltd.") on June 8, 2017.
- [43] On June 19, 2017, the Respondent emailed the vendors' lawyer to say that he had just been informed that KG, the director of 456 BC Ltd., would be "completing in his personal name and his mother's name, BG." The vendors' lawyer emailed his consent to the change and asked to be provided with a signed Assignment of the Contract of Purchase and Sale from the company to KG and BG.
- [44] A Contract of Purchase and Sale Addendum dated June 19, 2017 was signed on behalf of 123 BC Ltd., which agreed that the "Buyer reserves the right to register the property in the name of the director's personal name and his mother [sic] name being KG and BG and not 123 BC Ltd."
- [45] KG and BG executed a Form B Mortgage on June 21, 2017.

- [46] On June 22, 2017, the Respondent electronically filed a Form A Transfer naming only KG as purchaser.
- [47] At the time of filing, the Respondent did not have a true copy of an executed Form A Transfer that matched the copy he electronically filed with the Land Title Office.
- [48] The Respondent admits that his conduct was in breach of the electronic filing requirements under the *Land Title Act*.

ADMISSIONS

- [49] The Respondent admits that, on approximately July 15, 2016, while representing clients KH and RS in a real estate matter, he applied his electronic signature to a Form A Transfer and Form B Mortgage in accordance with section 168.3(3) of the *Land Title Act* and that, in doing so, he falsely represented to the Land Title Office that he had true copies of those forms in his possession, contrary to Rule 2.2-1 of the *Code*.
- [50] The Respondent admits that, on approximately August 12, 2016, while representing clients BS and BM in a real estate matter, he applied his electronic signature to a Form A Transfer in accordance with section 168.3(3) of the *Land Title Act* and that, in doing so, he falsely represented to the Land Title Office that he had a true copy of the Form A Transfer in his possession, contrary to Rule 2.2-1 of the *Code*.
- [51] The Respondent admits that, on approximately September 29, 2016, while representing clients AS, RS, PS and SK in a real estate matter, he applied his electronic signature to a Form A Transfer in accordance with section 168.3(3) of the *Land Title Act* and that, in doing so, he falsely represented to the Land Title Office that he had a true copy of the Form A Transfer in his possession, contrary to Rule 2.2-1 of the *Code*.
- [52] The Respondent admits that, on approximately June 22, 2017, while representing client KG in a real estate matter, he applied his electronic signature to a Form A Transfer in accordance with section 168.3(3) of the *Land Title Act* and that, in doing so, he falsely represented to the Land Title Office that he had a true copy of the Form A Transfer in his possession, contrary to Rule 2.2-1 of the *Code*.
- [53] The Respondent admits that his conduct in each of the four allegations in the Citation constitutes professional misconduct pursuant to section 38(4) of the *Legal Profession Act*.

LEGAL ANALYSIS

[54] We must determine whether the Respondent's conduct in relation to each of the four allegations constitutes professional misconduct. Does the evidence before us support the Respondent's admissions?

[55] The Law Society has the onus of demonstrating on a balance of probabilities that the Respondent's conduct constitutes professional misconduct.

[56] Rule 2.2-1 of the *Code* sets out:

A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity.

[57] Commentaries 1 and 2 to that rule provide that:

Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. If a client has any doubt about his or her lawyer's trustworthiness, the essential element in the true lawyer-client relationship will be missing. If integrity is lacking, the lawyer's usefulness to the client and reputation within the profession will be destroyed, regardless of how competent the lawyer may be.

Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer's irresponsible conduct. Accordingly, a lawyer's conduct should reflect favourably on the legal profession, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety.

[58] Section 168.3(3) of the *Land Title Act* provides:

- (3) A subscriber must not incorporate his or her electronic signature into an electronic instrument unless
 - (a) if Part 5 applies in relation to the electronic instrument, a true copy of the electronic instrument has been executed and witnessed in accordance with Part 5, and otherwise, a true copy of the electronic instrument has been executed in accordance with the enactment that applies in relation to the electronic instrument, and,
 - (b) the true copy referred to in paragraph (a), or a copy of that true copy, is in the possession of the subscriber.

- [59] The *Land Title Act* Forms A and B, immediately to the left of the box for an electronic signature reads: “Your electronic signature is a representation that you are a subscriber as defined by the *Land Title Act*, RSBC 1996, c. 250, and a true copy, or a copy of that true copy, is in your possession.”
- [60] A “true copy” is defined in section 1 of the *Land Title Act* as, “in relation to a paper document, an exact copy of the document.” Section 168.9(a) makes it an offence to incorporate an electronic signature into an application, electronic plan application or electronic plan without first complying with the provisions of Part 10.1.
- [61] In 2011, the Law Society issued a Notice to the Profession, “Protocol for land title electronic instruments,” setting out what steps a lawyer should take if an amendment is required to a Land Title form after it has been executed. It provides in part:

Where an electronic instrument is to be filed under the *Land Title Act*, and an amendment is required after execution of the true copy but before the subscriber digitally signs the instrument, the following protocol applies:

Except as set out below, the legal representatives for the parties, or if there are no legal representatives for one or more of the parties that party or parties, must consent to the amendment before it can be made.

In certain circumstances the amendment may be made without consent provided that advice of the change is given to the other party or their legal representative. The determination as to whether advice to the other party is sufficient or whether consent must be obtained will be governed by the materiality of the amendment to be made. A change to correct a spelling or typographical error may only require advice, but not consent. Amendments to the substance of the document will require consent.

A subscriber must not affix his or her digital signature to an electronic instrument that has been amended until the true copy or a copy of the true copy of the instrument that is in the possession of the subscriber has first been amended.

Once the amendment has been made, a copy of the amended paper document or the electronic instrument that shows the amendment must be provided to the legal representatives for the parties, or if there are no legal representatives for one or more of the parties to that party or parties.

Changes to the application section of the instrument to suit the circumstances are permitted without advice or consent.

- [62] The Respondent breached the *Land Title Act* in relation to each of the four allegations. On each occasion, the Respondent’s electronic signature constituted a representation that he had complied with section 168.3, Part 10.1 of the *Land Title Act* and that he possessed a true copy, or a copy of a true copy, of the electronic version of the document submitted. The Respondent in each case made what was clearly a false representation. Non-compliance with the requirements of Part 10.1 is serious and constitutes an offence under the Land Title Act.
- [63] We find that the Respondent’s breaches of the *Land Title Act* electronic filing provisions violate rule 2.2-1 of the *Code*. The Land Title System and its use of electronic filing rely on lawyers being careful and accurate. Lawyers must act with integrity themselves and uphold the integrity of the electronic filing system. The Respondent failed to act with honour and integrity in exercising his responsibilities in the practice of real estate law in each of the four allegations.
- [64] The question is whether the Respondent’s breaches of rule 2.2-1 of the *Code* constitute professional misconduct. Not all rule breaches constitute misconduct. The test for “professional misconduct” was addressed in the leading case of *Law Society of BC v. Martin*, 2005 LSBC 16.
- [65] As the hearing panel in *Martin* stated 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.
- [66] At paragraph 171 of the *Martin* decision, the panel sets out the test for whether the Respondent engaged in professional misconduct:
- ... 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.
- [67] There was some suggestion by the hearing panel in a more recent decision, *Law Society of BC v. Kaminski*, 2018 LSBC 14, at paragraph 43, that the *Martin* “marked departure” test is a subjective, rather than an objective, one. We disagree. *Martin* continues to be the leading case on the test for professional misconduct, and the test in *Martin* is an objective one. We note that *Kaminski* was a decision

considering a joint Rule 4-30 proposal, and as no issue was raised about the test for professional misconduct, the panel's remarks were obiter.

- [68] As set out by the Review Panel in *Law Society of BC v. Vlug*, 2018 LSBC 26, at paragraphs 115 and 120:

The determination of whether certain conduct, rule breach or not, constitutes professional misconduct is based on a number of factors. The factors that may be appropriate to consider, depending on the particular case, include the gravity of the misconduct, its duration, the number of breaches, the presence or absence of *mala fides*, and the harm caused by the misconduct: *Lyons*, 2008 LSBC 09.

... In *Boles*, 2016 LSBC 48, the all-Bencher panel emphasized a case by case approach and confirmed that no single factor is necessarily determinative to the determination of what constitutes a marked departure in any given case.

- [69] One of the *Lyons* factors to consider is the gravity of the misconduct. We find that the Respondent's breaches of Rule 2.2-1 by making false representations to the land title office are very serious.

- [70] We agree with the hearing panel in *Law Society of BC v. Williams*, 2010 LSBC 31, at paragraphs 12 to 14, in that the electronic submission provisions found in Part 10.1 of the *Land Title Act*:

... 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.

[71] In terms of the number of breaches, the Respondent made false representations on four separate occasions involving four separate files. The Respondent's conduct was not confined to a brief duration of time but spanned almost one year from July 15, 2016 in relation to allegation 1 through June 22, 2019 in relation to allegation 4.

[72] Another of the *Lyons* factors to consider is the presence or absence of *mala fides*. Here, counsel for the Respondent points out that there is no evidence that the Respondent intended to deceive the Land Title Office or anyone else. Counsel for the Respondent refers to the Respondent's correspondence to the Law Society. In the Respondent's letter to the Law Society, dated July 31, 2017, he stated the following about the KH and RS transaction (ASF, Tab 21):

I received the executed forms back from the notary and completed the necessary documents for the purchasers so that the property would be conveyed to the numbered company. Both RS and KH executed the Form B at my office in my presence on July 13, 2016. The closing was to take place two days later (the Law Society is aware of the issues that subsequently arose with respect to the deposits).

As far as I was aware, at that point the necessary forms were filed with the Land Title Office and that was the end of the matter.

...

When I realized what had occurred, I was concerned that the mortgage had been registered in the name of the company and not KH and RS personally. To remedy the issue, I filed new Forms A and B with the Land Title Office, reflecting that the property had been purchased by KH and RS and registering the Vancity mortgage in their names. I talked to KH and he advised me that I should immediately correct the issue by changing the name on title from the numbered company to their personal names, based on the instructions from Vancity.

At the time, I did not turn my mind to the fact that in filing the new forms I was not complying with the provisions of the *Act*. This was the first time that this type of mistake had been made on one of my conveyancing matters and, in looking back, I see now that my solution was not appropriate. When I caused the new Forms A and B to be registered in August 2016, I was not trying to flaunt [sic] the requirements for electronic filing. It is hard for me to explain my thought process, but at the time I thought my solution to the issue made sense given that I had properly executed Forms A and B relating to the transfer. I simply did not

turn my mind to the provisions of the *Act* and how they would apply to the filing of the August Forms. It was a matter of serious inattention on my part. ...

- [73] Furthermore, when the other file issues came to light during the subsequent practice standards review, the Respondent again immediately accepted responsibility for what had occurred and acknowledged that he had fallen short with respect to his obligations, stating in his letter of March 9, 2018 to the Law Society (ASF, Tab 22):

As the Law Society will hopefully appreciate from the manner in which I have responded to the previous complaint – coupled with my active participation in the Practice Standards process – I certainly made some errors with my Land Title filings. Looking back, I believe it is fair to say that I had not yet appreciated the meticulous manner in which documents had to be filed with the Land Title Office. As you can see in File no. 17-1066, which completed in June of 2017, I have learned from my earlier mistakes and now ensure that we obtain consent from the other side if such circumstances now arise. Combined with my Practice Supervision Arrangement, I have made it a part of my practice to either have the document re-executed or seek approval of the other party before amending the document.

- [74] We agree that there is no evidence to suggest that the Respondent intended to defraud the Land Title Office or intended to be deceptive.
- [75] However, neither the *Martin* nor the *Lyons* decision requires that professional misconduct involve *mala fides* or intentionally deceptive behaviour. In this case, the Respondent was grossly irresponsible in respect of his duties regarding the electronic filing system of the Land Title Office. He breached the rules repeatedly, on four separate occasions over the course of nearly a year. Most importantly, the Respondent's conduct in this case was very serious. The very integrity of the Land Title System depends on lawyers complying with their responsibilities. The rules relating to the Land Title System are prescriptive for good reason. They exist and are expected to be followed carefully to prevent fraud and to protect the public. Lawyers are expected and trusted by all to follow such rules with precision. The Respondent's failure to follow such rules, albeit without intention to defraud or deceive, represented a marked departure from the standard expected of lawyers. We therefore find that the Respondent's behaviour in relation to all four of the allegations constitutes professional misconduct.

DECISION

[76] We find that, with respect to each of the four allegations contained in the Citation, the Respondent has committed professional misconduct.