2020 LSBC 13
Decision issued: March 3, 2020
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

DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION

Hearing date:	January 8, 2020
Panel:	Michelle D. Stanford, QC, Chair Brendan Matthews, Public representative Herman Van Ommen, QC, Lawyer
Discipline Counsel:	Ilana Teicher
Counsel for the Respondent:	Duncan Magnus

INTRODUCTION

[1] The Respondent was found to have committed professional misconduct by this Panel in a decision issued March 25, 2019 (2019 LSBC 11). A summary of that decision is set out below and then our reasons for the disciplinary action we will impose.

[2] For a period of over three years, from approximately January 2012 to March 2015, the Respondent, having disclosed his Juricert password, permitted his staff to affix his electronic signature to documents filed with the Land Title Office.

[3] CW estimated that she used his Juricert password on approximately ten files per month. There were two or three documents to be electronically signed on each file.

She worked for the Respondent for more than three years. KS estimated that she used his password on about 15 files per month between at least December 2013 and November 2014. Both testified that, to their knowledge, other conveyancers also used his Juricert password routinely.

[4] Although estimates given for conduct some years ago that spanned over a long period of time must be used cautiously, there is no doubt that the Respondent's staff used his Juricert password several hundred to a thousand times from early 2012 to early 2015.

[5] We note also that, in this hearing on disciplinary action, the Respondent testified that, as a result of the hearing in this matter, he had changed his Juricert password and had not shared it with anyone.

[6] The Respondent had denied that he had given his Juricert password to anyone and stated that he was not aware that his staff had it and were using it. He acknowledged that he knew throughout this period of time that it was wrong to do so.

[7] He testified that, when he was out of the office, staff would either contact him when documents need to be Juricerted, and he would log in remotely to Juricert the document, or staff could ask another lawyer in the office to do so. We did not accept his evidence.

POSITION OF THE PARTIES

[8] The Law Society seeks a suspension ranging from three to five months plus costs in the amount of $17,886.83. The risk to the public arising from the frequency of the use of the Respondent's Juricert password over approximately three years while he knew this was not permitted, is urged as an aggravating factor.

[9] The Respondent suggests a fine of $10,000 would be appropriate.

GENERAL PRINCIPLES

[10] The primary purpose of disciplinary proceedings is the fulfillment of the Law Society's mandate, set out in section 3 of the *Legal Profession Act*, to uphold and protect the public interest in the administration of justice. The sanction to be imposed at the disciplinary action phase of the hearing should be determined by reference to this purpose.

[11] The purpose and goal of disciplinary proceedings were succinctly set out by a review board in *Law Society of BC v. Nguyen*, 2016 LSBC 21, at para. 36 as follows:

> Still, the disciplinary action chosen, whether a single option from s. 38(5) or a combination of more than one of the options listed, must fulfill the two main purposes of the discipline process. The first and overriding purpose is to ensure the public is protected from acts of professional misconduct, and to maintain public confidence in the legal profession generally. The second purpose is to promote the rehabilitation of the respondent lawyer. If there is conflict between these two purposes, the protection of the public and the maintenance of public confidence in the profession must prevail, but in many instances the same disciplinary action will further both purposes.

[12] The starting point for the factors to be considered in determining the appropriate disciplinary action is *Law Society of BC v. Ogilvie*, 1999 LSBC 17. A non-exhaustive list of factors is set out in that decision. Not all the factors need be considered in each case.

[13] The hearing panel in *Law Society of BC v. Dent*, 2016 LSBC 05, confirmed that it was not necessary to go over each and every *Ogilvie* factor and proposed instead that, generally, these factors could be consolidated into four main headings:

(a) nature, gravity and consequences of conduct;

(b) character and professional conduct record of the respondent;

(c) acknowledgement of the misconduct and remedial action; and

(d) public confidence in the legal profession, including public confidence in the disciplinary process.

[14] We will follow generally the organization proposed in *Dent.*

Nature and gravity of the misconduct

[15] In our earlier decision we noted at paras. 61 to 63:

> 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.

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.

…

(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.

[16] Paragraph 14 from *Williams* is also worth noting:

> No financial harm ensued because the document was a release of a builders lien claim and was apparently properly authorized by the corporate claimant. *However, 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.*
>
> [emphasis added]

[17] We also noted in our reasons several publications from the Law Society pointing out that it was an offence to disclose ones Juricert password and that the integrity of the Land Title registration system depended on lawyers not sharing their password.

[18] This is the first time, though, that a discipline panel has dealt with a citation concerning the wrongful sharing of a Juricert password. *Williams*, while helpful and similar, does not involve the sharing of a Juricert password.

[19] The Respondent points out that, between late 2012 and the end of 2019, Law Society publications show that 15 lawyers found to have shared their Juricert password had been dealt with by way of a conduct review. This, he submits, shows that the conduct is not so serious as to warrant a lengthy suspension.

[20] While a conduct review is a less serious form of discipline that does not involve publication of the lawyer's name, it is utilized when there is an admission of the wrongful conduct involved. It is also typically utilized when the lawyer does not have a significant professional conduct record. In this case, the Respondent did not

admit sharing his Juricert password and has a significant professional conduct record, which we will deal with later.

[21] In our view, sharing a Juricert password is a significant wrong creating a risk that the Land Title registration system can be misused. This is especially so in this case where the wrongful conduct occurred so frequently over such a long period of time. The fact that no specific harm occurred in this case is relevant, but does not diminish the risk created by his wrongful conduct.

Character and professional conduct record

[22] At the penalty phase of the hearing the Respondent called Eleanor MacDonald, a lawyer who now practises with the Respondent. She testified that she had no concerns with his professionalism. She did not address his prior discipline.

[23] He also tendered a reference letter in support of his good character from JB, a lawyer. JB was not called to testify. His letter states that he has not hesitated to refer work to the Respondent and has not had a problem working with him. It is not clear what JB knows about the Respondent's disciplinary history with the Law Society. It seems likely that he was aware of our earlier reasons, but more than that was not referred to. In the absence of specific reference of his factual knowledge of the Respondent's prior dealings with the Law Society, we decline to give any weight to his letter.

[24] The Respondent has a significant Professional Conduct Record described in the Law Society submissions as follows:

1. **Conduct Review 2009:** On March 16, 2009, the Respondent attended a conduct review in respect of a breach of undertaking complaint in a real estate transaction where the Respondent acted for the sellers. The Respondent had undertaken to pay the outstanding property taxes and provide the seller's lawyer with proof of payment; however, he disbursed the sale proceeds without first confirming that the property taxes had been paid. At the conduct review, the Respondent presented the Conduct Review Subcommittee with a document entitled "Lessons Learned", which detailed that he had failed in his professional responsibilities by failing to properly supervise staff. The document also compared the failings with the Respondent's current practices and noted he now "meticulously review[s] conveyancing files before completion" and that he had advised staff to bring any problems to his attention immediately so they could be resolved.

2. **Conduct Review 2009:** On March 18, 2009, the Respondent attended a conduct review to address the importance of adhering to the strict requirements for taking oaths on affidavits, after a complainant alleged that the Respondent was not present at the time she and her nephew signed affidavits purported to be sworn before him. The Respondent's explanation to the Conduct Review Subcommittee was that he was present when the deponents signed the affidavits, but had secretly observed them providing their oaths to an immigration consultant. As he did with the previous conduct review, the Respondent presented the Subcommittee with a document entitled "Lessons Learned" setting out the Respondent's acknowledged failures and the current practices adopted to avoid future difficulties.

3. **Practice Standards Recommendations 2009**: Recommendations in an April 2009 Practice Review Report and accepted by the Practice Standards Committee included that the Respondent should personally review every undertaking and should implement a system to reflect when the Respondent had reviewed, accepted and complied with undertakings, and that the Respondent should review real estate files within 30 days of completion to ensure that undertakings had been fulfilled. Another recommendation was that the Respondent ensure his staff complied with the rules regarding reporting of mortgages that had not been discharged within 60 days of payout. The Practice Standards file was closed in July 2010, after the Respondent completed various recommendations of the Practice Standards Committee regarding the implementation of systems to ensure fulfillment of undertakings.

4. **Conduct Review 2013:** In April 2013, the Respondent attended a conduct review to discuss his misconduct in putting his female legal assistant in a chokehold at the office. The Respondent was charged with assault, but the charge was stayed. The conduct review took place in July 2013, and the Respondent explained his conduct was intended to be playful. He acknowledged his behaviour was unacceptable and unprofessional and assured the Conduct Review Subcommittee he was addressing it by his intention to contact the Law Society's Equity Ombudsperson for guidance and support in addressing his behaviour, and to consult with the Lawyer's Assistance Plan and the Law Society's Personal Performance Consultants.

5. **Citation 2013:** In April 2014, a hearing panel accepted the Respondent's Rule 4-22 [now Rule 4-30] proposal under which the Respondent admitted professional misconduct and consented to a fine of $5,000. The

Respondent had breached undertakings given in a real estate matter by failing to provide opposing counsel with a copy of his letter to the bank enclosing payout monies and failing to use diligent and commercially reasonable efforts to obtain a discharge of a mortgage and assignment of rents. He had also failed to report to the Executive Director of the Law Society about his failure to obtain discharges from a lender within 60 days of closing, and had failed to maintain responsibility for the file, improperly delegated tasks to his staff, and failed to adequately supervise his staff.

6. **Citation 2017:** In February 2019, a hearing panel found that the Respondent committed professional misconduct by acting in a conflict of interest by acting for his client and one or more of 93 end purchasers in connection with the purchase and sale of lots in a developmental property, and by failing to honour various trust conditions in relation to the transactions. There were four proven allegations of misconduct in total. At the hearing, the Respondent's evidence was, in part, that he had given instructions to a staff member that were not followed, but the panel found that "it is not, however, acceptable or possible to relieve oneself of the responsibility for an undertaking simply because the execution of the undertaking was delegated to an assistant or paralegal. The ultimate responsibility for ensuring all accepted undertakings are fulfilled rests with the lawyer." The panel rejected the Respondent's submission for a fine and ordered a suspension of seven weeks, plus costs and disbursements in the amount of $14,648.34. In doing so, the panel focused on the need for public confidence in the legal profession and on the fact that the Respondent's PCR referenced similar misconduct.

[25] The 2017 citation decision is under review and the penalty has been stayed pending that review. However, until it is overturned we accept that decision and the penalty imposed to be valid and in force.

[26] The Law Society argues that the Respondent's Professional Conduct Record is an aggravating factor and the principle of progressive discipline should be applied. Whether the 2017 citation ought to be considered is disputed. The conduct in that case occurred during July 2014 and May 2015, a period of time overlapping the conduct in this matter. The decision on the 2017 citation was issued in February 2019, which is after the conduct in this matter. It cannot be said that he failed to learn from the prior discipline, i.e., the 2017 citation, and thus requires greater punishment this time. This of course does not apply to the rest of his Professional Conduct Record, which in itself justifies progressive discipline.

[27] The 2017 citation proceeding is relevant to determining the appropriate penalty in the sense that it reveals his conduct during the same period of time but does not on its own justify a greater penalty. A penalty has been imposed for that conduct already.

[28] We are of the view that his Professional Conduct Record, not including the 2017 citation, shows that a suspension is required in this case, firstly to ensure specific deterrence for the Respondent and secondly, in the public interest, to ensure the integrity of the Land Title registration system.

Acknowledgement of the misconduct and remedial action

[29] The Respondent has not acknowledged his misconduct. This is an important distinction from other cases, not because it is an aggravating factor, but because he cannot rely on acknowledgement of wrongdoing and rehabilitative steps as a mitigating factor. A timely and sincere acknowledgement of wrongdoing coupled with an assurance that the behaviour will not be repeated can be given some weight when determining whether specific deterrence is required.

[30] In this case the Respondent's assurance that he will not continue this conduct cannot be given much weight. He has in the past given similar assurances but continued to act inappropriately. In addition, in this case we did not believe him when he said that he had not shared his Juricert password. Specific deterrence is a significant and necessary factor in determining the appropriate penalty that will also promote rehabilitation.

Ensuring public confidence

[31] Our primary focus must be on our obligation to regulate the profession in the public interest. We must not merely consider the individual respondent and the aggravating and mitigating factors relevant to that respondent, but we must focus on the public interest and the collective reputation of the legal profession. As stated by the Saskatchewan Court of Appeal in *Merchant v. Law Society of Saskatchewan*, 2014 SKCA 56, [2014] 6 WWR 643, at para. 119:

> The general approach to sentencing in disciplinary proceedings was explained by Wilkinson J.A. in *Merchant v. Law Society of Saskatchewan, 2009 SKCA 33*, [2009] 5 W.W.R. 478:
>
> 98 However, the sentencing approach in disciplinary proceedings is different than in criminal courts. In *Law Society of Upper Canada v. Kazman*, 2008 ONLSAP 7, the Law Society Appeal Panel

considered the philosophy of sentencing in disciplinary matters and its unique considerations. The panel quoted extensively from *Bolton v. Law Society*, [1994] 2 All ER 486, [1994] 1 WLR 512 (CA). The critical distinction between sentencing in criminal matters and sentencing in disciplinary matters is highlighted in this paragraph:

> [74] A criminal court judge … is rarely concerned with the collective reputation of an accused's peer group but is free to focus instead on the individual accused to the exclusion of most other considerations. On the other hand, law society discipline panelists must always take into account the collective reputation of the accused licensee's peer group – the legal profession. According to *Bolton,* it is the most fundamental purpose of a panel's order. This is a major difference between the criminal court process and a law society's discipline process. It is largely this difference that causes many principles of criminal law, such as mitigation, to have less effect on the deliberations of law society discipline panels. It is a difference easy to lose sight of, but one that should be ever in mind.

[32] We have noted above the importance the profession plays in the use of electronic documents. As gatekeepers of the land title electronic registration system, lawyers must use that authority ethically and responsibly. The public depends on the profession to ensure the reliability and authenticity of electronically filed documents.

[33] The public depends on the Law Society to regulate and supervise its members to ensure they carry out their duties ethically and responsibly. It is only by maintaining the public's confidence in the integrity of the profession that the self-regulatory role of the Law Society can be justified and maintained.

[34] The public interest requires a significant suspension in this case.

[35] We will also consider specifically the benefit obtained by the wrongdoing, the potential impact on the Respondent of a suspension, and prior relevant cases.

Benefit from the wrongful conduct

[36] The Respondent carried on a very busy conveyancing practice during the period of 2012 to 2105. As noted above, several hundred, and up to a thousand, electronic

documents were filed by his staff using his Juricert password during that period. As a result of this practice, he did not have to be in the office when those transactions closed and was able to maintain his busy conveyancing practice without spending the time required in the office.

[37] While we do not have the evidence to show a direct pecuniary benefit from his wrongdoing, his personal workload was decreased by having his paralegals do work that he was obliged to do himself.

Impact on the Respondent

[38] The Respondent testified that these proceedings have had an impact on his practice already. He testified that certain financial institutions will not send documents to him and that he is no longer on their approved lawyer list. He has experienced a decline in business. Further, he has experienced difficulty finding new staff because of these proceedings and is now short staffed.

[39] There is no doubt that a suspension of some months will cause the Respondent hardship. Although he is not a sole practitioner, he is the primary lawyer at the firm. We have no evidence to determine the extent to which he could regain business after a suspension. We also have no evidence that any clients might be prejudiced by a suspension.

[40] In *Bolton*, the English Court of Appeal commented on the purpose of discipline proceedings:

> Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the Tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. *Thus it can never be an objection to*

> *an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely to be, so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make suspension the wrong order it if is otherwise right. The reputation of the profession is more important than the fortunes of any individual member.* Membership of a profession brings many benefits, but that is a part of the price.
>
> [emphasis added]

[41] *Bolton* has been relied upon extensively by hearing panels of various Canadian law societies. In *Peddle, Re,* 2011 CanLII 21502 (ON LST), the hearing panel relied on *Bolton* and held at para. 6:

> It is argued (though not proven) that a lengthy suspension will destroy Mr. Peddle's practice since he is a sole practitioner. The Hearing Panel will take into account the effect of any penalty on a lawyer's practice and in particular his/her clients and staff. Yet, it must be remembered that the vast majority of lawyers in this Province are sole practitioners. Lawyers throughout the Province are held to the same standards of ethical practice, and abide by them. Lawyers who commit professional misconduct can expect penalties that may affect their practices. Accordingly, the effect of a penalty on a lawyer's practice, while a consideration, cannot disproportionately mitigate the need for general deterrence.

[42] That position applies more strongly when specific deterrence is required. While punishment is not the aim of this penalty, any hardship the Respondent might suffer is, in our view, a consequence of a penalty necessary to ensure that he practices appropriately in the future.

PRIOR CASES

[43] As noted previously, this is a case of first instance.

[44] The case most similar at first glance is *Williams* in which the Law Society sought a fine of $2,000, but the panel imposed a reprimand and costs of $2,000. However, on the details important to penalty there is no similarity. *Williams* acknowledged his error and self-reported. It involved one instance of wrongdoing and no professional conduct record was referred to. In this case, the Respondent has not acknowledged wrongdoing, and the wrongdoing occurred several hundred times

over the course of three years. The Respondent also has a significant Professional Conduct Record.

[45] The Respondent referred to *Law Society of BC v King*, 2019 LSBC 07, and several cases, including *Williams*, referred to in it. In all those cases the penalty was a reprimand or a fine ranging from $3,000 to $8,000. None of those cases, though, involved wrongdoing that occurred as frequently for over such a long period as considered here. As well, except for *Dent*, wrongdoing was acknowledged and there was no significant Professional Conduct Record. They are not helpful.

[46] The Respondent referred to *Sood v. The Society of Notaries Public*, 2017 BCSC 409, in which a penalty of a one-month suspension was upheld. That case involved the unauthorized alteration of a Power of Attorney that was then registered in the Land Title Office. This case is somewhat helpful. Although it involves one instance and no significant prior disciplinary record, a suspension of one month was upheld.

[47] The Respondent also referred to the many conduct reviews involving sharing Juricert passwords, but those are also not helpful because of the particular facts of this case.

[48] The Law Society referred to two Ontario cases that involved suspensions of 20 months and six months. In *Law Society of Upper Canada v. Puskas*, 2013 ONLSTA 12, the lawyer failed to properly supervise a non-lawyer and *provided a non-lawyer with his Teraview access and pass code information.* Throughout the material time, the lawyer did not regularly review any bank statement, deposit slips or reconciliations for his trust accounts, nor did he properly maintain his books and records as required. He admitted to abdicating his professional responsibility in operating his law practice and failing to supervise the employee in question, which enabled that employee to divert $893,000 of trust money to her own use by forging his signature on trust cheques and closing real estate transactions without his knowledge, using his pass code.

[49] We consider that case to be more serious than the one before us. It involved the lawyer's wholesale failure to manage his practice properly, and there was a significant financial loss, which did not occur in this case. As a result, the suspension should be significantly less.

[50] In *Law Society of Upper Canada v. Ortega*, 2013 ONLSHP 91, the lawyer was found to have committed professional misconduct in connection with fraudulent mortgage transactions regarding nine properties. Among other allegations, the lawyer had improperly delegated tasks to non-lawyers, failed to supervise non-

lawyers in connection with the transactions in issue, permitted non-lawyer employees to use his electronic registration diskette and disclosed his pass phrase to others. The lawyer admitted to his misconduct and received a six-month suspension, following which his practice of real estate law was supervised for a period of two years.

[51] Although *Ortega* involves fraudulent mortgage transactions, the lawyer was found to have been a dupe, so his honesty was not in question. He had no prior discipline record and took responsibility for his conduct. The Respondent cannot claim those mitigating factors. As a result, *Ortega* with a suspension of six months is of some guidance to us.

CONCLUSION

[52] In our view a significant suspension is required in this case because the wrongdoing occurred so often over such a long period of time. The penalty must contain a significant element of specific deterrence because of the Respondent's Professional Conduct Record and because we have no confidence that he will change his behaviour unless he experiences a significant suspension.

[53] In our view a suspension of four months is necessary and appropriate.

COSTS

[54] Hearing costs are addressed in section 46 of the *Act* and Rule 5-11.

[55] The Law Society provided a draft bill of costs at the hearing claiming $13,400 under the tariff and disbursements of $4,486.83.

[56] The Respondent submitted that the Law Society should only receive half the amount claimed because one of the two allegations of the citation was dismissed. The Law Society decided not to proceed with the second allegation because a necessary witness did not attend as required. No time was taken up at the hearing on the second allegation although no doubt the Respondent wasted some time preparing needlessly for that issue.

[57] We will reduce the Law Society's claims for work prior to the hearing by half. That is, items 1, 3, 9, and 12 will be reduced from a total of $2,900 to $1,450.

[58] We find that, with that adjustment, all the amounts claimed are reasonable, appropriate and in accordance with Rule 5-11. The total amount of the costs is $16,436.83.

NON-DISCLOSURE ORDER

[59] The Law Society seeks an order under Rule 5-8(2) of the Rules that portions of the transcript and exhibits that contain confidential client information or privileged information not be disclosed to members of the public.

[60] The Respondent agrees as the exhibits and transcripts contain privileged information including the names of clients.

ORDERS

[61] We make the following orders:

(a) the Respondent is suspended for a period of four months, commencing April 1, 2020;

(b) the Respondent must pay costs in the amount of $16,436.83 on or before May 1, 2020; and

(c) pursuant to Rule 5-8(2)(a) of the Rules, if any person other than a party seeks to obtain a copy of a transcript of the proceedings or any exhibit filed in these proceedings, client names, identifying information, and any information protected by solicitor-client privilege must be redacted from the exhibit or transcript before it is disclosed to that person.