

2021 LSBC 03
Decision issued: January 26, 2021
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 DISCIPLINARY ACTION**

Written materials: November 2, 2020

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

INTRODUCTION

- [1] The hearing on facts and determination proceeded in writing. The Respondent admitted, and this Panel confirmed, that the Respondent committed professional misconduct in relation to four allegations (2020 LSBC 03).
- [2] The Respondent’s misconduct is as follows:
- (a) 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”);

- (b) 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*;
- (c) Representing to 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*;
- (d) Representing his client KG in a real estate matter, the Respondent falsely represented to the Land Title Office that he 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*.

[3] Each allegation constituted professional misconduct, pursuant to section 38(4) of the *Legal Profession Act*.

[4] The Law Society made an application that the Disciplinary Action phase proceed by way of written materials. The Respondent consented to the application. Having reviewed the materials, we are satisfied that it is appropriate to proceed by way of written materials and have marked the Exhibits accordingly.

POSITION OF THE PARTIES

[5] The Law Society submits that the appropriate discipline includes the Respondent paying a global fine of \$15,000 plus costs in the amount of \$3,500. In addition, the Law Society seeks an order pursuant to section 38(5)(c) of the *Legal Profession Act* that the Respondent be prohibited from engaging in any capacity with files involving the purchase, sale or financing of real estate until relieved of that condition by the Discipline Committee. Finally, the Law Society seeks an order pursuant to Law Society Rule 5-8(2) that any exhibits relating to the citation proceeding that contain client information or solicitor-client privileged information

not be disclosed and that if a disclosure request is made that all privileged and confidential information be redacted from the exhibits.

- [6] The Respondent submits that the appropriate discipline is a global fine of \$5,000, which the Respondent states is in line with the relevant case law. The Respondent agrees that costs in the amount of \$3,500 be payable by the Respondent and consents to the Law Society's non-disclosure requests. The Respondent opposes the Law Society's request to impose conditions on the Respondent's practice, stating that no case law has been provided in support of such relief and that the Respondent is already subject to an order made by the Practice Standards Committee of the Law Society on September 20, 2018 not to practise real estate law until the order is rescinded by that Committee.

DECISION

- [7] The primary purpose of disciplinary proceedings is the fulfilment of the Law Society's mandate set out in section 3 of the *Legal Profession Act*, namely, to uphold and protect the public interest in the administration of justice. This requires maintaining high professional and ethical standards for lawyers. As stated in *Law Society of BC v. Nguyen*, 2016 LSBC 21 at para. 36:

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 the public confidence in the profession must prevail, but in many instances the same disciplinary action will further both purposes.*

[emphasis added]

- [8] It is open to the panel to assess the disciplinary action on a global basis, and we find it is appropriate to do so in this case. While there are four separate allegations that arise from conduct in relation to four separate files, the conduct is similar in each instance, and all relate to inappropriate filings and inaccurate representations to the Land Title Office.

[9] *Law Society of BC v. Ogilvie*, 1999 LSBC 17, set out at para. 10 a non-exhaustive list of factors to be considered in deciding on the appropriate discipline:

- (a) the nature and gravity of the conduct proven;
- (b) the age and experience of the Respondent;
- (c) the previous character of the Respondent, including details of prior discipline;
- (d) the impact upon the victim;
- (e) the advantage gained, or to be gained, by the Respondent;
- (f) the number of times the offending conduct occurred;
- (g) whether the Respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;
- (h) the possibility of remediating or rehabilitating the Respondent;
- (i) the impact upon the Respondent of criminal or other sanctions or penalties;
- (j) the impact of the proposed penalty on the Respondent;
- (k) the need for specific and general deterrence;
- (l) the need to ensure the public's confidence in the integrity of the profession; and
- (m) the range of penalties imposed in similar cases.

[10] The hearing panel in *Law Society of BC v. Dent*, 2016 LSBC 05, consolidated the *Ogilvie* factors as:

- (a) nature, gravity and consequences of conduct;
- (b) character and professional record of the Respondent;
- (c) acknowledgement of the conduct and remedial action;
- (d) public confidence in the profession including public confidence in the disciplinary process.

[11] We will address each of the four consolidated *Ogilvie* factors.

Nature, gravity and consequences of the misconduct

[12] The Respondent's conduct in each allegation was very serious, even absent any intention to defraud or deceive anyone. The land title system depends on the accuracy of the documents and the integrity of those entrusted with the ability to electronically file such documents in protecting the public and preventing fraud. In *Law Society of BC v. Williams*, 2010 LSBC 31, the hearing panel found, at paras. 12 through 14, that the electronic submissions 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. ...

... [T]he 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.

[13] The Respondent's conduct occurred over a period spanning approximately one year and, as indicated, involved four separate files. Fortunately, none of the sellers or purchasers was harmed in this case. However, the public's confidence in lawyers is negatively affected by conduct of this nature.

Character and Professional Conduct Record of the Respondent

[14] The Respondent was called to the bar in Ontario in June 2015 and called to the BC bar on October 1, 2015. Three of the subject real estate transactions occurred in 2016 and one in June of 2017, all of which occurred when the Respondent was a newly-called lawyer. The Respondent was not experienced in real estate transactions and was the only lawyer in his small firm to practice real estate law. He had no mentorship from senior practitioners at the time.

- [15] At approximately the same time as the last transaction at hand, on June 8, 2017, the Respondent was ordered by the Law Society Practice Standards Committee to undergo a practice review. Since then, the Practice Standards department and Committee have been significantly involved with the Respondent in assisting him deal with issues in his practice. On October 26, 2017, the Practice Standards Committee made orders that flowed from the practice review, including that the Respondent enter into a practice supervision agreement with an experienced real estate lawyer and that a follow-up review occur after six months. On September 20, 2018, after the follow-up review, the Committee made further orders, including an order that the Respondent not practise real estate law until such order was rescinded by the Practice Standards Committee. The Committee ordered a second follow-up practice review on September 26, 2019, which resulted in a series of further orders being made by that Committee on January 30, 2020, including that the Respondent enter into a practice supervision agreement with an experienced lawyer to improve all areas of his practice.
- [16] In addition to his engagement with the Practice Standards Committee, the Respondent was ordered by the Discipline Committee to attend a conduct review for a complaint made by a client in a real estate transaction that took place in 2018, during a period of time in which the Respondent was supposed to be supervised while practising but apparently was not. A client complained that the Respondent had consented to a request by the opposing lawyer to continue to hold hold-back funds of \$4,550 in his trust account. The client said that this was without her instructions and she wanted the funds released to her pursuant to the agreement for purchase and sale. The Respondent also failed to keep the client informed as to the status of the land transfer in question. In their report dated April 3, 2019, the Conduct Review Subcommittee reviewed the Respondent's conduct and discussed certain practice recommendations, including in relation to proper documentation of instructions. The Subcommittee recommended that the Discipline Committee take no further action against the Respondent in regard to the matter based on the Respondent acknowledging his inappropriate conduct and steps that the Respondent had or would take in the future to prevent reoccurrences.

Acknowledgement of the conduct and remedial action

- [17] The Respondent agreed to an extensive Agreed Statement of Facts in the facts and determination phase of this proceeding, which included admissions that his conduct in each of the four allegations constituted professional misconduct.
- [18] The Respondent has also provided a letter dated October 29, 2020 from his practice supervisor stating that the Respondent has shown marked improvement in his

practice over the last several months and is genuinely committing significant time and effort to follow proper procedure and not repeat his mistakes of the past. The supervisor indicates that the Respondent has acknowledged his mistakes and taken active steps to better his practice.

Public confidence in the legal profession including public confidence in the disciplinary process

- [19] In order for the public to remain confident in the disciplinary process, there must be sufficient specific and general deterrent value in the disciplinary action. As well, while no two cases are the same, the disciplinary action should be consistent with similar cases.
- [20] Counsel referred us to several prior cases. We will address the three cases that we find are most similar in fact and nature of misconduct. In *Law Society of BC v. Milne*, 2004 LSBC 19, in the midst of a complex transaction the lawyer unilaterally altered a land title Form C so that it would be accepted by the Land Title Office. As in the Respondent's case, there was no harm done to purchasers or sellers and no benefit gained by the lawyer other than convenience. The Respondent in *Milne* was a very experienced senior solicitor, unlike Mr. Sangha. The lawyer in *Milne* had no prior conduct record in all his years of practice. He was ordered to pay a fine of \$3,500.
- [21] In *Williams*, the lawyer unilaterally altered a Form C release of lien document. The alteration was not substantive but was made because the original had not been properly executed before a witness and would have been rejected by the Land Title Office based on the form. As in *Milne*, there was no harm to the purchaser or seller and no benefit gained by the lawyer other than convenience. As in *Milne*, the lawyer in *Williams* was well experienced and ought to have known better. The lawyer also had no prior conduct record. In *Williams*, the panel was impressed by the fact that the lawyer had self-reported his misconduct, which would otherwise have likely never been discovered. That is, the lawyer in *Williams* fully acknowledged his conduct at the very earliest opportunity, right after the conduct. The Law Society sought a \$2,000 fine. The panel agreed with the lawyer that a reprimand was sufficient in the circumstances.
- [22] Much more recently, in *Law Society of BC v. King*, 2019 LSBC 07, a lawyer unilaterally altered a release of certificate of pending litigation document before submitting it electronically because she noticed that she had forgotten to add her officer certification when she witnessed the releaser's signature. The lawyer had previously acted for the releaser, but in this instance he was self-represented and

incarcerated. Despite the fact she was not acting as his lawyer, she took his signature on the release document. She also did not make it clear to the releaser that she was not his lawyer and only representing the interests of the seller(s). She did not advise the releaser to obtain independent legal advice. The lawyer in *King* was a nine-year call at the time who had no professional conduct record. There is no mention of harm to the clients or the releaser in the decision. The releaser had requested that his mother receive \$40,000 from the sale of the property which occurred. The lawyer and the Law Society made a joint proposal for an \$8,000 fine, which the panel accepted.

ANALYSIS AND CONCLUSION

- [23] In Mr. Sangha's case, unlike *Milne*, *Williams* and *King*, there were four separate real estate transactions involving altered documents, and the conduct occurred over a time frame of approximately one year. *Milne*, *Williams* and *King* involved isolated transactions. However, in *King*, the lawyer not only altered a document but also did not recommend that a self-represented person obtain independent legal advice. In the Respondent's case, he was a newly-called lawyer who had not had the benefit of experience or mentorship. As well, although there were multiple transactions, the Respondent's conduct was essentially the same in each of the four transactions: altering documents.
- [24] Unlike *Milne*, *King* and *Williams*, the Respondent has a professional conduct record, and the Law Society urges we take that into account and impose progressive discipline. At the same time, notably, the Respondent's professional conduct record all arose after the real estate transactions that are the subject of these proceedings, not before. As well, the report of the Conduct Review Subcommittee and the Respondent's practice supervisor's letter provide evidence that the fine need not be as large as requested by the Law Society in order to address specific deterrence in this case. Both instead seem to indicate that the Respondent now understands the seriousness of these past mistakes and has made genuine attempts to improve his practice generally. At the same time, altering land title documents is serious, and general deterrence requires a significant fine in all the circumstances. We find that a global fine of \$7,500 is the appropriate disciplinary action.
- [25] We dismiss the Law Society's request that further practice restrictions be imposed in addition to the orders made already by the Practice Standards Committee. The Respondent is already subject to an order of the Practice Standards Committee not to practise real estate law until that Committee rescinds such order. The Practice Standards Committee has reviewed the Respondent's practice on three occasions and has made orders. For us to make such orders would be duplicative. We do not

want to impose a requirement that the Respondent must apply to both the Discipline Committee and the Practice Standards Committee in order to alter practice restrictions. We want to avoid the potential for two different Law Society committees to make two different decisions in terms of practice restrictions in this case. Further, the Practice Standards Committee currently appears to be in the best position to assess what practice restrictions, and conditions should remain in place in the Respondent's case in order to protect the public.

COSTS

- [26] The Law Society seeks costs pursuant to s. 46 of the *Legal Profession Act* in the amount of \$3,500 inclusive of fees and disbursements. The costs are calculated in accordance with the tariff.
- [27] We agree with both counsel for the Law Society and counsel for the Respondent that the amount sought is reasonable and appropriate.

NON-DISCLOSURE ORDER

- [28] The Law Society also seeks an order under Rule 5-8(2) of the Law Society Rules that portions of the exhibits that contain confidential client information or privileged information not be disclosed to members of the public. As explained in *Law Society of BC v. Edwards*, 2020 LSBC 57 at paras. 118 to 121, recent amendments to Rules 5-8 and 5-9, in particular Rule 5-9(3), have made such an order unnecessary, and the issue is now moot. As the panel in *Edwards* did, we decline to make the order sought.

SUMMARY OF ORDERS MADE

- [29] The Panel makes the following orders:
- (a) the Respondent shall pay a global fine of \$7,500 by December 31, 2021 unless either party wishes to make further submissions regarding time to pay;
 - (b) the Law Society's request to restrict the Respondent's practice is dismissed for the reasons outlined above; and
 - (c) the Respondent shall pay costs of \$3,500 the Law Society by December 31, 2021 unless either party wishes to make further submissions regarding time to pay.