

2005 LSBC 37

Report issued: September 9, 2005

Oral Reasons: August 24, 2005

Citation issued: January 11, 2005

The Law Society of British Columbia
In the matter of the *Legal Profession Act*, SBC 1998, c.9
and a hearing concerning

Sanjeev Sanj Rai

Respondent

Decision of the Hearing Panel

Hearing date: August 24, 2005

Panel: Robert W. McDiarmid, Q.C., Chair, Robert C. Brun, Q.C., G. Glen Ridgway, Q.C.

Counsel for the Law Society: Stuart Cameron

Counsel for the Respondent: William Clark

Background

[1] On January 11, 2005 a citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rule 4-13 of the Law Society Rules by the Executive Director of the Law Society of British Columbia pursuant to the direction of the Chair of the Discipline Committee. The Schedule to citation reads:

1. That you failed to serve your client, CMI, in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to that which would be expected of a competent lawyer in a similar situation contrary to Chapter 3, Rule 3 of the *Professional Conduct Handbook*. This failure occurred in connection with the placing of a mortgage on lands owned by GG and KG, the preparation and filing of documents in connection with that mortgage, and the payment of funds advanced by CMI in connection with that mortgage.

2. That you failed to cease to act for your clients, CMI, and PG and SG, when a conflict arose in connection with the placing of a mortgage from CMI, contrary to Chapter 6, Rule 5 of the *Professional Conduct Handbook*.

[2] Service of the citation was admitted by the Respondent; the requirements of Rule 4– 15 were waived by the Respondent.

[3] This citation comes before this Panel as a conditional admission of a disciplinary violation and a consent to specified disciplinary action pursuant to Rule 4-22.

Agreed Statement of Facts

[4] An Agreed Statement of Facts was filed as Exhibit 2 in this proceedings. The facts are as follows:

1. Sanjeev S. Rai was called to the bar in British Columbia on May 23 rd, 2001.

2. Mr. Rai practiced law as an associate with Russell Chamberlain, Q.C. at SRC Law Corporation from May 23 rd, 2001 until July 5 th, 2002. He practiced as a sole practitioner from July 6 th, 2002 until June 30 th, 2003. From August 18 th, 2003 until present, he has practiced as a sole practitioner at Rai and Company Law Corporation in Surrey, B.C.

3. On December 11 th, 2003, Mr. Rai received instructions from C.I.B.C. Mortgages Inc. ("CMI") to act for them in a residential mortgage transaction involving a property in Pitt Meadows, B.C. and two applicants: PG and SG. A Revised Mortgage Approval form was attached to the retainer letter. It indicated that the mortgage amount was \$300,000.00 and the date the funds were required was December 16 th, 2003.

4. On December 17 th, 2003, Rai and Company caused a title search print to be made from the New Westminster Land Title Office. The printout indicated that the registered owners of the subject property were GG and KG, the parents of PG and SG. The printout also indicated that the property was subject to two mortgages, a first mortgage in favour of Maple Ridge Community Savings and a second mortgage in favour of Westminster Savings Credit Union.

5. On December 18 th, 2003, a letter was sent to Mr. Rai from CMI. It outlined changes to the mortgage, including a new closing date of December 30 th, 2003.

6. PG and SG attended at Mr. Rai's law office on December 29 th, 2003 and signed the Revised Mortgage Approval form and an Acknowledgement of Legal Representation form.

7. On December 29 th, 2003, Rai and Company sent letters by facsimile to Westminster Savings Credit Union and to Maple Ridge Community Savings requesting payout statements for their respective mortgages.

8. On December 29 th, 2003, Rai and Company received a copy of a payout letter by facsimile from Westminster Savings Credit Union advising that they would discharge the mortgage they held on the subject property upon receipt of \$253,499.09 as of December 29 th, 2003.

9. On December 29 th, 2003, at 4:57 p.m., CMI received a copy of the second page of a document entitled "Solicitor's Interim Report/Requisition for Funds" by facsimile from Rai and Company. It was dated December 29 th, 2003 and set out \$252,704.18 as the mortgage amount. The document was signed by one of Mr. Rai's staff members who was not a lawyer.

10. On December 30 th, 2003, at 10:32 a.m. and again at 12:10 pm, CMI received a revised version of the second page of the document entitled "Solicitor's Interim Report/Requisition for Funds" by facsimile from Rai and Company. That version was also dated December 29 th, 2003, but it had been revised to set out \$300,000.00 as the mortgage amount. The document was signed by one of Mr. Rai's staff members who was not a lawyer.

11. PG and SG met with Mr. Rai on December 30 th, 2003. They executed a Form B Mortgage document.

12. A copy of the first page of the document entitled "Solicitor's Interim Report/Requisition for Payment" was sent to CMI from Rai and Company by facsimile transmission on January 9 th, 2004. It contains the following:

"THE UNDERSIGNED HEREBY CERTIFIES THAT WHEN THIS ADVANCE IS MADE ...

When the above monies are disbursed the Mortgagor will have a good and marketable title, free and clear of all judgments, executions, charges and other liens except for the above Mortgage and

you will have a **valid first charge** against the property mortgaged.

13. On December 30th, 2003, CMI advanced \$300,000.00 to Mr. Rai by depositing the funds into his trust account.
14. On December 30 th, 2003, Rai and Company submitted the Form B Mortgage to the Land Title Office in New Westminster for registration.
15. On December 31 st, 2003, Rai and Company forwarded a trust cheque to Westminster Savings Credit Union in the amount of \$253,597.14 on the trust condition that they would execute an enclosed Discharge of Mortgage and Assignment of Rents.
16. On December 31 st, 2003, Rai and Company received a copy of a mortgage discharge statement by facsimile from Maple Ridge Community Savings Credit Union advising that they would discharge their mortgage on the subject property upon receipt of \$118,867.01.
17. The first mortgage in favour of Maple Ridge Community Savings Credit Union was not paid out with the funds advanced by CMI. Mr. Rai's office received the mortgage discharge statement after the second mortgage had been paid out. When it became apparent that the funds advanced were insufficient to pay out the first mortgage, his office forwarded a copy of the mortgage discharge statement to SG and advised SG that more funds were necessary to discharge the first mortgage. Mr. Rai's office was advised by SG that SG and his family were discussing the issue with C.I.B.C. during the month of January 2004.
18. On January 28 th, 2004, the Land Title Office in New Westminster declined to register the CMI mortgage on the basis that "the mortgagors have no registered interest in the land described in item 2." The Notice Declining to Register from the Land Title Office was received by Rai and Company on February 5 th, 2004
19. Mr. Rai was away from his office from the beginning of February 2004 until the end of February 2004. His staff maintained care of his office in his absence. Mr. Rai did not make any arrangements for another lawyer to supervise his office staff in his absence.
20. Mr. Rai acknowledges that he alone was completely responsible for all business entrusted to him as a lawyer and that he was responsible to maintain personal and actual control and management of his office. He acknowledges that while tasks and functions may be delegated to staff and assistants, he was responsible for direct supervision over each non-lawyer staff member.
21. On February 13 th, 2004, a member of the CIBC legal department wrote a letter to Mr. Rai and copied that letter to The Law Society. The writer complained that Mr. Rai had disbursed the funds advanced without ensuring that the borrowers had good and marketable title and that CMI would have a valid first charge registered against the property. The writer demanded an immediate return of the \$300,000 advanced plus accrued interest before February 18 th, 2004.
22. On Mr. Rai's return to the office in March 2004, he spoke to SG and his family, and with a C.I.B.C. representative in Abbotsford. On March 11 th, 2004, Mr. Rai released the remaining funds he was holding by trust cheque in the amount of \$46,008.11 to SG. Mr. Rai discussed the matter with a representative at the Abbotsford branch of the C.I.B.C with a proposal to rectify the situation by adding the parents of SG and PG to the mortgage and to have SG and PG sign as guarantors, if necessary.
23. A Land Title search of October 5 th, 2004 indicated that GG and KG were still the registered owners, and CMI had registered a first charge mortgage on the property on July 13 th, 2004.

24. The mortgage registered in favour of CMI on July 13 th, 2004 was for \$410,000, and named GG and KG as mortgagors, with SG and PG as guarantors.

25. Mr. Rai admits that his conduct in failing to ensure that his clients SG and PG had a valid registered interest in the property, free and clear of all judgments, executions, charges and liens and in failing to ensure that his client CMI would have a valid first charge against the property before he allowed the advanced proceeds to be released was a failure to serve his client CMI in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to that which would be expected of a competent lawyer in a similar situation, contrary to Chapter 3, Rule 3 of the *Professional Conduct Handbook*.

26. Mr. Rai admits that his conduct outlined in paragraph 25 above constitutes professional misconduct.

27. When he first became aware that the advanced funds were insufficient to discharge the existing first mortgage, Mr. Rai did not thoroughly advise either CMI or SG and PG of the fact that he was in a conflict of interest and, therefore, he would no longer be in a position to advise either CMI or SG and PC concerning the discharge of the first mortgage.

28. Mr. Rai admits that his conduct in attempting to resolve the conflict between his client CMI and his clients SG and PG after he became aware of the conflict without first obtaining their informed consent to continue to act for them was contrary to Chapter 6, Rule 5 of the *Professional Conduct Handbook*.

29. Mr. Rai admits that his conduct outlined in paragraphs 27 and 28 above constitutes professional misconduct.

30. On October 28 th, 2004 the Discipline Committee resolved to recommend to the Chair of the Discipline Committee that there be a direction to issue a citation against Mr. Rai. The Chair so directed, and a citation was issued on January 11 th, 2005. Mr. Rai acknowledges that he was served with a copy of the citation on January 11 th, 2005 and that his counsel waived the requirement for service under Rule 4-15 of the Law Society Rules .

31. On October 28 th, 2004, the Discipline Committee also resolved that Mr. Rai appear before three Benchers pursuant to section 39 of the *Legal Profession Act* and to refer the matter to the Practice Standards Committee.

32. On November 29 th, 2004, a panel of three Benchers held a hearing pursuant to section 39 of the *Legal Profession Act* and imposed the following conditions:

"1. We order that the Respondent from and after December 6, 2004, and until relieved of this condition by the Practice Standards Committee, be required to conduct his real estate practice under the supervision of a practice supervisor who must be approved by the Practice Standards Committee and who must supervise the Respondent's practice pursuant to the terms and conditions of a Practice Supervision Agreement in the form of Exhibit 2 to these proceedings, as that Exhibit has been amended. We note that Mr. Ravinder Binpal is approved as a practice supervisor on an interim basis subject to the approval by the Practice Standards Committee in the normal course of its deliberations.

2. It is a further consent condition of the Respondent's continued practice that he submit to the jurisdiction of the Practice Standards Committee for a practice review or such other process as that Committee may decide."

33. On December 2nd, 2004, the Practice Standards Committee met and ordered a practice review of

Mr. Rai. They also ratified Mr. Rai's Practice Supervision Agreement with Mr. Binpal.

34. Mr. Rai entered into a Practice Supervision Agreement with Rand Buckley for the supervision of his real estate practice. The Agreement was made as of December 6 th, 2004.

35. On February 3 rd, 2005, the Practice Standards Committee met and approved Mr. Buckley as Mr. Rai's practice supervisor, with some amendments to the agreement, including a requirement for monthly reports from the practice supervisor for the first 6 months. Mr. Rai and Mr. Buckley entered into the amended agreement as of February 28 th, 2005.

36. On February 17 th, 2005 Mr. Gounden and Mr. Ganapathi conducted a practice review of Mr. Rai's practice. Mr. Gounden's March 16 th, 2005 report and recommendations, as well as Mr. Rai's response, has been considered at the last meeting of the Practice Standards Committee on May 5 th, 2005. The recommendations were adopted and a follow-up practice review will be scheduled in the future.

[5] In addition to the facts placed before the Panel in the Agreed Statement of Facts, the Respondent, through counsel, advised the Panel that he had paid approximately \$5,000 to the Law Society for costs relating to the Respondent's Practice Review. Further, we were advised that the Respondent personally reimbursed CMI for its legal expenses and other expenses. The amount of such reimbursement was \$7,000.

[6] Mr. Rai articulated and then practised as an associate with a law firm whose primary work consisted of criminal defence and plaintiffs' personal injury litigation. Mr. Rai had very little background in real estate transaction legal work. When he commenced practice on his own in the summer of 2003, he was unfamiliar with real estate practice. He took courses to try to familiarize himself with that aspect of the practice of law but was inexperienced in the area of law which was about to form the bulk of his practice. The Panel was troubled by the fact that the Respondent chose to go into an area of law for which his articles and past experience offered little preparation. No doubt as a result of this lack of familiarity, compounded with staffing problems and other difficulties which are all too common with practitioners who are just setting up shop early in their careers, Mr. Rai ran afoul of ethical obligations.

[7] The other troubling aspect of this case is that Mr. Rai did not appear to recognize that CMI was his client. The Panel found it particularly troubling that after Mr. Rai was aware of the problems as described in the Agreed Statement of Facts, he still paid out \$46,008.11 to S.G. This, of course, had the potential of increasing the financial exposure to himself and to his insurers.

[8] Fortunately, matters were eventually straightened out, with the result that the client did not suffer any financial loss.

[9] The Panel is asked to consider the recommendations for penalty by counsel for the Law Society, on the instructions of the Discipline Committee. The proposed penalty is as follows:

(a) a fine of \$3,000;

(b) costs of \$4,000;

(c) an order that the Respondent, until relieved of this condition by the Practice Standards Committee, be required to conduct his real estate practice under supervision of a Practice Supervisor;

(d) the Respondent is to remain under the jurisdiction of the Practice Standards Committee so long as that Committee deems it is appropriate; and

(e) publication to occur in the ordinary manner.

[10] After hearing submissions, including submissions that the Respondent has had no further problems, that he is adhering to a Practice Agreement under the supervision of Rand Buckley, a senior conveyancing lawyer, the Respondent has wholly borne the financial cost of making right the situation caused by his failure to supervise, and recognizing that the conduct set out in the citation constitutes professional misconduct, this misconduct was not done with motive of profit or gain, nor was it done dishonestly, but rather as a result of an inexperienced lawyer failing to properly supervise what was becoming a busy conveyancing practice.

Decision

[11] After considering the circumstances as set out the Agreed Statement of Facts, and after hearing the submissions of counsel, the Panel finds that the Respondent professionally misconducted himself.

[12] The Panel further finds the penalty proposed is appropriate in all of the circumstances.

[13] It is accordingly ordered that the Respondent:

- a) pay a fine of \$3,000;
- b) pay costs of \$4,000;
- c) until relieved of this condition by the Practice Standards Committee, is required to conduct his real estate practice under the supervision of a Practice Supervisor (Rand Buckley or any other Practice Supervisor approved by the Practice Standards Committee) who must supervise the Respondent's practice pursuant to the terms and conditions of a Practice Supervision Agreement in the form of the interim Supervision Agreement already executed by the Respondent;
- d) until relieved of this condition by the Practice Standards Committee, remain under the direction of the Practice Standards Committee;
- e) publication of this decision to be made to the profession in the normal course; and
- f) the Respondent shall have until February 28, 2006 to pay the fine and costs.