

2010 LSBC 31

Report issued: December 22, 2010

Citation issued: August 5, 2010

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

Clayton Bruce Williams

Respondent

Decision of the Hearing Panel

Hearing date: November 8, 2010

Panel: Gavin Hume, QC, Chair, Haydn Acheson, Thelma O'Grady

Counsel for the Law Society: Maureen Boyd

Counsel for the Respondent: Henry Wood, QC

Background

[1] On August 5, 2010, a citation in this matter was issued to the Respondent pursuant to the *Legal Professions Act* and the Rules of the Law Society. The citation, amended on October 25, 2010, directed that there be an inquiry into the conduct of the Respondent regarding the following:

In the course of representing your client R Co., you incorporated your electronic signature into an electronic instrument, namely a Form C (Section 233) Release document under the *Land Title Act*, and caused the Release to be filed electronically with the Land Title Office, even though you knew that the Release had not been properly commissioned and that you applied your electronic signature contrary to the requirements set out in section 168.3 of the *Land Title Act*.

[2] The citation came before this Panel and was heard on November 8, 2010.

[3] Through his counsel, the Respondent admitted that the citation was properly issued and served and waived the requirements of Law Society Rule 4-15.

[4] Counsel for the Law Society and the Respondent both noted that the incorporation of electronic signatures into electronic instruments for Land Title purposes is a relatively recent phenomenon that does not appear to have previously been the subject of a discipline hearing.

Agreed Statement of Facts

[5] Counsel for the Law Society submitted an Agreed Statement of Facts, which included an admission by the Respondent that his conduct constituted professional misconduct. This Agreed Statement of Facts set out:

1. The Respondent and his firm have represented the " Client" for many years. In or about 2008, the

Client entered into a contract to sell certain land, on which was situated a commercial property and, as a part of that agreement, covenanted to complete an expansion of the casino. The sale of the Property completed in or about August 2008.

2. The Respondent became involved in this matter to deal with issues arising from the expansion of the commercial property, and in particular related to builders lien claims and other matters. The Respondent took instructions from a Principal of the Client. That Principal resides in Halifax.

3. On September 4, 2009, the Principal instructed the Respondent to immediately prepare and file a claim of builders lien on the Property. Due to the differences in time zones between Halifax and Kelowna, there was some time pressure on the Respondent to complete the filing of the claim of builders lien on the Property.

4. That day, the Respondent caused a lien to be registered against title to the Property.

5. On September 9, 2009, the Principal, by email, instructed the Respondent to remove the lien immediately. On the morning of September 10, 2009, the Respondent spoke by telephone with the Principal, and told him that he would prepare and email a form of release, which the Principal would need to sign and then return. The Respondent also told the Principal that he would file an electronic release of the lien on the Principal's agreement to send the original to him. The Respondent does not recall whether he advised the Principal that his signature on the release had to be witnessed and verified by a lawyer or another person authorized to take an affidavit.

6. On September 10, the Respondent instructed his assistant to prepare a Form C release of the lien and send it by email to the Principal, which she did. The Respondent did not review his assistant's email prior to sending, nor did he specifically instruct her to include in the email that the Principal's signature on the Form C release had to be properly commissioned.

7. Later that day, the Respondent received by email a copy of the Form C release of the lien, which was signed by the Principal but his signature was not properly executed and witnessed.

8. The Respondent knew that the release did not satisfy the requirements of Part 5 of the *Land Title Act* because execution by the Principal was not witnessed by a person who was an officer within the meaning of that *Act*.

9. However, the Respondent incorporated his electronic signature into an electronic Form C release to release the lien and submitted it electronically to the Land Title Office through BC Online.

10. On October 20, 2009, the Respondent wrote to the Law Society and self-reported his conduct. He admitted that he had applied his electronic signature contrary to the requirements set out in section 168.3 of the *Land Title Act*. During the Law Society's investigation of this matter, the Respondent cooperated fully.

Discussion

[6] In *Law Society of BC v. Martin*, 2005 LSBC 16 at para. [140], professional misconduct was described as follows:

The real question is whether on the facts before us, it can be found that the Respondent, in reviewing and approving the Reyat Children's accounts, acted in a manner that was a marked departure from the standard expected of a competent solicitor acting in the course of his

profession, and therefore amounted to professional misconduct.

In paragraph [154] the panel said, in part, as follows:

... 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.

[7] The Respondent admits that he incorporated his electronic signature into an electronic document for filing in the Land Title Office when he knew a true copy of the document had not been properly executed and witnessed in accordance with Part 5 of the *Land Title Act*, and that his conduct constitutes professional misconduct.

[8] The Panel agrees that the activities admitted by the Respondent constitute professional misconduct.

[9] This was a marked departure from the standard expected of a competent solicitor and gross culpable neglect of the duties of a conveyancing lawyer.

[10] Therefore, the central issue facing the Panel in this case is balancing the role of the importance of general deterrence to the profession with the mitigating factors in this Respondent's circumstances.

[11] The primary purpose of disciplinary proceedings is the fulfillment of the Law Society's mandate, set out in s. 3 of the *Legal Profession Act*, to uphold and protect the public interest in the administration of justice. This purpose is recognized in the following often-cited passage from McKenzie, *Lawyers and Ethics: Professional Regulation and Discipline* at p. 26-1:

The purpose of law society discipline proceedings are not to punish offenders and exact retribution, but rather to protect the public, maintain high professional standards, and preserve the public confidence in the legal profession. In cases in which professional misconduct is either admitted or proven, the penalty should be determined by reference to these purposes.

[12] 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.

[13] 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.

[14] 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.

[15] To his credit, the Respondent self-reported his misconduct.

[16] The Respondent's explanation in that report is:

I registered the document to avoid dealing with [the client] on the issue even though I believe that I had previously advised him that his signature would have to be commissioned. I understand that I should have emailed him and told him that I could not register the document unless he had his signature commissioned and/or continued to try and reach him. However, I did not do those things. I recognize that this was an incredibly stupid thing to do, and I have spent a lot of time wondering why I did this.

[17] The Client was difficult, and there was time pressure. Notwithstanding, as an experienced lawyer, the Respondent could and should have been able to deal appropriately with this situation. He permitted his client's convenience to take precedence over his duties as a lawyer and as an officer within the meaning of the *Land Title Act*.

[18] The seriousness of this conduct must be weighed against any mitigating factors. This Panel, through the lens of *Law Society of BC v. Ogilvie* [1999] LSBC 17, which sets out a list of factors that may be considered by a hearing panel in determining the appropriate penalty, considers the following factors relating to this Respondent on this set of facts:

(a) Most importantly, the Respondent recognized his own error and self-reported to the Law Society. In his self-report, he wrote:

I fully recognize the seriousness of my actions and the importance of the integrity of the Land Title system and that I failed in my professional responsibilities.

(b) While a self-report should not amount to a "pass" on a disciplinary action, in this case, it is unlikely that the Law Society would ever have become aware of the misconduct if the Respondent had not reported it. He self-reported in a timely and candid way, and cooperated fully in the investigation.

(c) One of the factors set out in the *Ogilvie* case is:

(i) the need to ensure the public's confidence in the integrity of the profession.

The Panel is cognizant that the Respondent exercised integrity in the way he dealt with his own serious misconduct. While he could have "let sleeping dogs lie" and escaped detection for his act of professional misconduct, he drew it to the attention of the Law Society and is prepared to suffer the consequences. By so doing, he provides himself both as an example of a lawyer who has made an error, and as an example of how to deal with such a mistake through candour and professional integrity.

[19] Other mitigating factors include:

(a) the Respondent has been practising law since 1994 and has a clean conduct record extending over 16 years;

(b) the misconduct occurred once;

(c) there was no issue of personal gain resulting from this action;

(d) the client did not receive any financial benefit as the document was a release of its builders lien claim;

(e) no harm resulted to any party;

(f) the situation arose of urgency, exacerbated by the client being in Halifax. The Respondent has since stated that he recognizes that urgency is not an excuse, but in fact, the reality of the practice of law; and

(g) the Respondent had extensive contact with his client and had absolute assurance of the validity of both the signature and the authority of his consent. Therefore there are no issues of improper alteration of a document, substantive inaccuracy or false verification of an endorsement.

Disciplinary Action

[20] The Law Society seeks a fine of \$2,000, arguing that it is necessary to meet the goals of both specific and general deterrence. In doing so, it acknowledges the Respondent's recognition of the impropriety of his actions and his prompt self-report. If not for those factors, the Law Society would have sought a significant fine in the range of \$5,000 to \$10,000.

[21] The Law Society also seeks costs of \$2,000. It is not seeking recovery of costs on a full indemnity basis in this case and recognizes that, due to the Respondent's cooperation throughout, the hearing was similar to a "summary hearing" .

[22] The Respondent argues for a reprimand plus costs. He argues that, on these particular facts, a reprimand need not be feared as communicating a message to the profession that is incompatible with the primary goal of general deterrence. The objective of general deterrence is already well served by the issuance of a citation, the finding of professional misconduct and the consequential traumatic and humiliating experience resulting for any practitioner.

Conclusion

[23] The Respondent made a grave error. Lawyers have a crucial and trusted role to play in the use of electronic documents. As such, he is an example of a lawyer making a bad decision on the basis of expediency and client pressures.

[24] But after sober second thought, he became an example of how a lawyer can exercise integrity and professionalism to take ownership of a mistake. Rather than leave his error buried in the dark, he has shed a light on it.

[25] The Panel finds that the Respondent's candid acceptance of responsibility, his self-reporting and his acceptance of the consequences to his professional reputation, demonstrate a high level of integrity.

[26] As such the Panel orders that the Respondent:

1. be reprimanded for professional misconduct; and
2. pay the costs of the Law Society in the amount of \$2,000 by April 30, 2011.

[27] The Panel further instructs the Executive Director to record this decision on the Respondent's Professional Conduct Record.