

2013 : No. 01 Spring

Nathan Richard Bauder

Fort Nelson, BC

Called to the bar: May 8, 2002

**Discipline hearing** : December 22, 2011 and November 8, 2012

**Panel** : Leon Getz, QC, Chair, Jan Lindsay, QC and David Renwick, QC

**Report issued** : April 26, 2012 (2012 LSBC 13) and February 13, 2013 (2013 LSBC 07)

**Counsel** : Jaia Rai for the Law Society; Richard Gibbs, QC for Nathan Richard Bauder

## Facts

In September 2008, Nathan Richard Bauder, through his law corporation, entered into an agreement for the purchase of property for \$350,000. Under the terms of the agreement for sale, he made a \$10,000 deposit and agreed to make monthly payments until the completion date in September 2010. However, in the spring of 2010, he was approached by the vendor who wanted to advance the completion date to May 2010.

Bauder was unable to find lenders willing to provide funding on an unregistered agreement for sale. As the property had increased in value, he prepared a false contract of purchase and sale with an increased purchase price of \$450,000, not \$350,000, and a deposit of \$100,000, not \$10,000.

In addition to preparing the documents, Bauder kept the vendor away from the vendor's lawyer so that the deception would not be found out. He told the vendor that he "would take care of all the paperwork and look after everything" and had the vendor sign the false document.

Bauder then obtained financing from a mortgage broker and was approved for a mortgage in the amount of \$350,000 based on false representations.

## Admission and disciplinary action

Bauder and counsel for the Law Society submitted that, by attempting to fraudulently obtain mortgage financing contrary to the Professional Conduct Handbook, Bauder's actions constituted conduct unbecoming a lawyer.

The panel was not satisfied that this case amounted to conduct unbecoming. It asked counsel for further written submissions so it could determine whether Bauder's conduct amounted to professional misconduct or conduct unbecoming. In the panel's view, conduct in a lawyer's personal or private capacity that brings discredit upon the legal community is appropriately dealt with as conduct unbecoming, whereas professional misconduct arises from conduct that occurs in a lawyer's professional capacity.

The panel found that Bauder had committed professional misconduct.

Bauder acknowledged that he knew it was dishonest to prepare the false documents. He recognized that, notwithstanding the property had increased in value, it did not have the value stated in the false documents and, therefore, there was a risk of loss to the lending institution.

Letters of support attested to Bauder's ongoing integrity and professionalism. The letters also provided some insight into the lack of legal representation in northern BC, particularly in Fort Nelson, where Bauder

is the only lawyer. However, the panel was of the view that the public, including the citizens of Fort Nelson, needed to be assured that they were protected from unscrupulous conduct, even if this resulted in the loss to them, temporarily, of their only local legal representation.

Bauder's lawyer submitted that the consequences of Bauder's actions had already been felt. A financial institution terminated his services and another chartered bank no longer allows him to do their work. He has lost friends, been shunned by the legal community, lost his esteem within the legal profession, is no longer able to pursue a political career, and has absented himself from community and from provincial boards.

Although Bauder had no prior discipline history and this was a single transaction that occurred over a very short period of time, the panel found that the seriousness of the misconduct and the need for general deterrence required a suspension. Bauder deliberately engaged in dishonest and fraudulent conduct for personal gain, and any sanction imposed must send a message that this type of behaviour will attract significant disciplinary consequences.

The panel ordered that Bauder:

1. be suspended for four months; and
2. pay \$10,000 in costs.