

2014 : No. 02 Summer

Roger Dwight Batchelor

Victoria, BC

Called to the bar: September 21, 2005 (BC); October 4, 2002 (Ontario)

**Discipline hearing** : January 28, 2014

**Panel** : Lee Ongman, Chair, Dr. Gail Bellward and Carol Hickman, QC

**Decision issued** : March 4, 2014 (2014 LSBC 11)

**Counsel** : Patrick McGowan for the Law Society; Roger Dwight Batchelor on his own behalf

## Facts

Roger Dwight Batchelor represented the defendant in an estate action in the Supreme Court of BC. In January 2012, he provided an affidavit to his client, to be commissioned before a notary in Hawaii, having already signed the exhibits to that affidavit. He did not possess the original affidavit, as required by Supreme Court rules, when he caused a copy to be filed electronically. Further, he did not compare the signature on the copy of the affidavit to the original prior to electronic filing, as he indicated on the electronic filing statement.

Batchelor did not respond to or address concerns raised by opposing counsel in a letter regarding the commissioning of the affidavit.

In August 2012, when Batchelor provided an affidavit to his client to be commissioned before a lawyer in Winnipeg, he did not provide copies of the exhibits with the affidavit, nor did he instruct her that the affidavit must be commissioned together with the exhibits to the affidavit.

When he received the sworn affidavit back from his client without exhibits, he attached and signed the exhibits to the affidavit in the absence of his client, who had previously sworn the affidavit before the Winnipeg lawyer. Again, Batchelor filed an affidavit electronically without complying with Supreme Court rules.

In August 2013, Batchelor made representations to the court to the effect that the exhibits to the affidavit of his client, filed in August 2012, were commissioned by the lawyer before whom his client swore the affidavit. These representations were false. Batchelor had signed the exhibits himself five days earlier in the absence of his client.

## Admission and disciplinary action

Batchelor admitted that his actions constituted professional misconduct. In the course of representing his client, he relied on two affidavits that he knew were improperly commissioned and that he knew were filed electronically without compliance with the court's electronic filing rules.

He further made a representation to the court that the exhibits to the affidavit of his client were commissioned by the lawyer before whom the client swore the affidavit, when he knew or ought to have known that this was false because he had signed the exhibit pages in the client's absence.

The panel noted that Batchelor is an experienced practitioner and has a significant disciplinary history in

only eight years of practice in BC.

Batchelor's conduct was a marked departure from the standards that the Law Society expects of lawyers. Confidence in the court's ability to fairly and judiciously view and receive evidence is eroded when sworn affidavits are falsified.

In the panel's view, the seriousness of Batchelor's misconduct cannot be overstated. He prepared affidavits for his client to sign, he received the signed affidavits, and he knew the exhibits were not properly signed by the lawyer who commissioned the affidavit because he was the lawyer whose signature was on the exhibits. He represented to the court, upon questioning by the judge, that the exhibits were sworn in front of the lawyer who commissioned the affidavit. In addition, he proceeded to file the documents electronically for court use, and in the filing is an inherent undertaking to the court and court registry that the lawyer has complied with the rules in the documents being filed in the proper format.

Batchelor's behaviour in wilfully filing improperly sworn affidavits and representing to the court otherwise is one of the most serious transgressions that can be committed by a lawyer. It goes to the heart of the legal process before our courts.

The panel accepted Batchelor's admission of professional misconduct and ordered that he:

1. be suspended from the practice of law for one month; and
2. pay \$2,000 in costs.