

2015 LSBC 50
Decision issued: November 12, 2015
Oral reasons on Facts and Determination: October 19, 2015
Citation issued: October 9, 2014

THE LAW SOCIETY OF BRITISH COLUMBIA

In the matter of the *Legal Profession Act*, SBC 1998, c. 9

and a hearing concerning

IAN DAVID REITH

RESPONDENT

**DECISION OF THE HEARING PANEL
ON FACTS, DETERMINATION AND DISCIPLINARY ACTION**

Hearing date: October 19, 2015

Panel: David W. Mossop, QC, Chair
Carol Gibson, Public representative
Peter D. Warner, QC, Lawyer

Discipline Counsel: Patrick M. McGowan
Appearing on his own behalf: Ian D. Reith

INTRODUCTION

- [1] On October 9, 2014, a citation was issued alleging professional misconduct on the part of the Respondent, arising from his involvement in the transfer of an interest in a time-share property.
- [2] In the Agreed Statement of Facts and admission of misconduct (the “ASF”) the Respondent admits the conduct alleged in paragraphs 1, 2(a), (c) and (d), 3 and 5 of the citation and admits that this conduct amounts to professional misconduct. Those admissions appear at paragraph 27 below. The Law Society did not proceed with allegations 2(b) and 4, which are accordingly dismissed. The Panel thanks

both counsel for their efforts and work involved in creating the ASF and thus shortening this hearing to less than two hours.

- [3] The Respondent also admitted that all administrative and procedural requirements for this hearing had been met including issuance and service of the citation.
- [4] The Panel accepted the said admissions and proceeded with the disciplinary action phase of the hearing.
- [5] After hearing submissions, and for the reasons set out below, the Panel decided that the appropriate disciplinary action for this professional misconduct is a fine of \$3,000.
- [6] After hearing submissions, and for the reasons set out below, the Panel has agreed that the Law Society is entitled to its costs and has set those costs at \$2,000.
- [7] The Respondent will have until December 31, 2016 to pay this fine and costs. If further time to pay is required, the Respondent may apply under Rule 5-12.

FACTS

- [8] The following is a brief summary of relevant and admitted facts. The Agreed Statement of Facts provides a more detailed recitation of the facts.

Respondent's background

- [9] The Respondent has practised law in British Columbia since 1989. For the first 21 years of his practice he was employed by X Ltd., a company engaged primarily in the sale of time-sharing properties in Whistler, BC. The Respondent left his position at X Ltd. on January 31, 2010, following which he has maintained a private, solo practice primarily focused on real estate conveyancing. After leaving X Ltd., the Respondent from time to time continued to assist in the transfer of X Ltd. time-share units.
- [10] X Ltd. acquired strata lot properties in Whistler and resold them as time-shares in the form of fractional fee simple interests (typically divided into 51 fractional interests). A head lease to a homeowner association and sublease to the buyer were always employed and registered to control access and management of the time-shares.

The J Ltd. interest

[11] In 1986, J Ltd., a Washington State company acquired a 2/51 interest in an X Ltd. time-share (the “J Ltd. Interest”). In 1997, AB, President of J Ltd., died, following which his widow, BB, wrote to X Ltd., to the attention of the Respondent, advising him of AB’s death and inquiring if there was “anything further [she] needed to do.” Subsequently, in 1997, a memorandum from the X Ltd. legal department was issued directing that ownership of the J Ltd. Interest be transferred into BB’s name. No such transfer occurred in 1997. The fractional interest remained in J Ltd.’s name until 2011.

The transfer of the J Ltd. Interest

- [12] On January 15, 2010, BB telephoned X Ltd. and spoke with the Respondent and advised that she wished to transfer the J Ltd. Interest to her two nephews, CC and DO. The Respondent then sent to BB two land title documents (a Form C General Instrument and a Form A Freehold Transfer) to be executed, along with a document titled “Instructions for Signing.”
- [13] The “Instruction for Signing” document included a request that a cashier’s cheque or bank draft in the amount of \$556.85, payable to “Ian Reith - In Trust” be provided. The Instructions for Signing broke that sum down into Property Purchase Tax, fees and disbursements.
- [14] On February 5, 2010, BB executed the two land title documents before a notary public in Washington State and subsequently returned these documents to the Respondent along with a cheque in the amount of \$556.85 payable to “Ian Reith - In trust.” On March 22, 2010, BB’s cheque was deposited into a lawyer’s trust account in the Respondent’s name.
- [15] On May 20, 2010, the Respondent received an email from a X Ltd. employee (“EE”) which referred to J Ltd. as a defunct company, and on that day the Respondent replied as follows:

Hi EE,

You’ll recall we spoke to each other before I left for England, and advised you of the title issues and defunct company, etc. I also told you we’d file it regardless, and see if it “slips” past the Land Title Office examiners, or gets rejected. ...

- [16] On July 29, 2010, following communication between DO and EE, the Respondent wrote an email to DO (BB's nephew), and to EE and one other X Ltd. employee:

You'll recall this has been an ongoing issue for years. The problem has always been that J Ltd., the registered owner of the week, is a defunct company, and has been for some time. In order to transfer title, the company would have to be reinstated, and then a new signing officer appointed to legitimately sign transfer papers. A review of the file shows this was pointed out to AB numerous times over the years.

For this latest round, she signed on behalf of J Ltd., and I told her we'd submit the Transfer to Land Title Office and see if it "sneaks" through the examiners. Docs were prepared, she signed, and we submitted with the supporting paperwork. I'll contact the examiner and see where it is at, without alerting them to the fact that all is not in order.

- [17] The Respondent had not filed any documents related to the J Ltd. Interest with the Land Title Office as of July 29, 2010 and did not do so until January 27, 2011.

- [18] On January 20, 2011, the Respondent again wrote to nephew DO saying, inter alia:

This has been ongoing since 1997, and numerous correspondence back and forth. A review of the file indicates many times it was explained that the weeks and title are NOT registered to BB, but to a defunct WA company named "J Ltd."

It was also explained that to register a transfer to CC and DO, the defunct WA company would need to be reinstated with the WA state Dept of Licensing, and then an authorized signatory of the company sign the transfer papers.

In March of 2010, we prepared another set of transfer papers and sent them to BB, who signed on behalf of J Ltd. and returned the papers with transfer costs. However, at that time, it was made clear that the transfer may be rejected by the BC Land Title Office, owing to the dissolution of J Ltd., but that we would try submitting anyways and hope it "slipped thru".

The final note though says that we are waiting for BB, CC and/or DO to confirm how they want the new ownership to show, i.e. CC & DO only, or BB as well. To date we have not received confirmation of how you would like ownership to show.

If you advise me promptly that title is to be in CC & DOs' names, we can proceed and submit for registration.

Looking forward to completing this long outstanding matter.

- [19] On January 20, 2011, nephew DO emailed the Respondent and instructed that the J Ltd. Interest be transferred solely to BB, and the next day the Respondent responded, confirming that he would do so.
- [20] The Respondent took no steps to confirm nephew DO's instructions with BB. At no time did BB advise the Respondent that she had authorized her nephew to instruct the Respondent on her behalf, nor did she independently communicate to the Respondent that she wished to have the J Ltd. Interest transferred into her own name.
- [21] On January 27, 2011, the Respondent filed the transfer and lease documents in the Land Title Office.
- [22] At the time he filed these forms in the Land Title Office, the Respondent believed that J Ltd. was a defunct company and that J Ltd. was incapable of transferring an interest in real property or surrendering its sublease.
- [23] Neither the Form C sublease to BB, nor the associated sublease was signed by BB. The Respondent did not advise BB of the obligations the sublease would impose on her, including financial obligations such as the obligation to pay annual fees.
- [24] As a result of these filings, the J Ltd. Interest was transferred to BB. As a result, financial obligations arising from the sublease attached to her.

Transfer of BB's trust funds

- [25] The money deposited on March 22, 2010, was transferred from the Respondent's trust account to his non-trust account to pay conveyance costs, Property Transfer Tax and fees and disbursements (the latter being \$295.71) in two separate transfers, one on January 24, 2011 and the other on May 5, 2011.
- [26] The Respondent did not prepare or deliver a bill to BB in relation to this matter.

ADMISSION OF MISCONDUCT

- [27] The Respondent makes the following admission of professional misconduct:

1. The Respondent admits that, on or about January 27, 2011, in the course of providing legal services in connection with the transfer of a fractional interest in a time-share property located in Whistler, British Columbia, he engaged in questionable conduct that casts doubt on his professional integrity contrary to Chapter 2, Rule 1 of the *Professional Conduct Handbook* then in force, by filing, or causing to be filed at the New Westminster Land Title Office:
 - (a) A Form A Freehold Transfer transferring a fractional interest in the property from J Ltd. to BB;
 - (b) A Form C General Instrument surrendering to X Ltd., a sublease of the property granted to J Ltd.; and
 - (c) A Form C General Instrument granting to BB, a sublease of the property by X Ltd.,

when he believed that J Ltd. no longer had the capacity to transfer the property or surrender its sublease.

2. The conduct described in the preceding paragraph constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.
3. The Respondent admits that between January 2010 and March 2011, in the course of providing legal services in connection with the transfer of a fractional interest in a time-share property located in Whistler, British Columbia, he failed to serve his client(s) 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, Rules 3 and 5 of the *Professional Conduct Handbook* then in force, by failing to do the following:
 - (a) properly consider, determine or understand who his client(s) were;
 - (b) take reasonable steps to determine whether BB had the authority to sign documents on behalf of J Ltd.;
 - (c) take reasonable steps to determine whether nephew DO had the authority to provide instructions on behalf of BB or J Ltd. prior to acting on his instructions.
4. This conduct described in paragraph 3 constitutes professional misconduct, pursuant to section 38(4) of the *Legal Profession Act*.

5. The Respondent admits that between January 2010 and March 2011, he acted in a conflict of interest when he acted for two or more of BB, J Ltd., CC, DO and X Ltd. in connection with the transfer of a fractional interest in a time-share property located in Whistler, British Columbia, contrary to Chapter 1, Rule 3(2), Chapter 6, Rules 1 and 10, and Appendix 3, Rules 2 and 2.1 of the *Professional Conduct Handbook* then in force.
6. The conduct described in paragraph 5 constitutes professional misconduct pursuant to section 38(4) of the *Legal Profession Act*.
7. The Respondent admits that on or about May 5, 2011, he withdrew from his trust account \$295.71 of the \$556.85 trust funds he received from BB in connection with a real estate matter, purportedly in payment of his fees and/or disbursements without first preparing a bill and immediately delivering the bill to BB, contrary to Rule 3-56 and Rule 3-57(2) of the Law Society Rules.
8. The conduct described in paragraph 7 constitutes professional misconduct, pursuant to section 38(4) of the *Legal Profession Act*.

PROFESSIONAL MISCONDUCT

[28] In accepting the Respondent's general admission of professional misconduct, the Panel also notes that the conduct specifically breached the following provisions of the *Professional Conduct Handbook* (the "Handbook"), in force at the time, subsequently replaced by the *Code of Professional Conduct for British Columbia* (the "Code"):

Canon 1(1): A lawyer owes a duty to the state, to maintain its integrity and its law. A lawyer should not aid, counsel or assist any person to act in any way contrary to the law. (Now Code rule 2.1-1(a)).

Canon 3(5): A lawyer should endeavour by all fair and honourable means to obtain for a client the benefit of any and every remedy and defence that is authorized by law. The lawyer must, however, steadfastly bear in mind that this great trust is to be performed within and not without the bounds of the law. The office of the lawyer does not permit, much less demand, for any client, violation of law or any manner of fraud or chicanery. No client has a right to demand that the lawyer be illiberal or do anything repugnant to the lawyer's own sense of honour and propriety. (Now Code rule 2.1-3(e)).

Ch. 2, R. 1: A lawyer must not, in private life, extra-professional activities or professional practice, engage in dishonorable or questionable conduct that casts doubt on the lawyer's professional integrity or competence, or reflects adversely on the integrity of the legal profession or the administration of justice. (Now Code rules 2.2-1 and 2.2-2).

Ch. 4, R. 6: A lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud. (Now Code rule 3.2-7).

[29] The Panel wishes to emphasize the important role played by lawyers in ensuring the integrity of the Land Title system in British Columbia and the key role they play in safeguarding the system against fraud. The electronic document execution and submission provisions are important safeguards of the integrity of the system that must be strictly followed and honoured by lawyers, which the Respondent intentionally failed to follow in this case.

REASONS FOR THE DISCIPLINARY ACTION IMPOSED

[30] The primary purpose of disciplinary proceedings is to fulfill the Law Society's mandate to uphold and protect the public interest in the administration of justice by ensuring the independence, integrity, honour and competence of lawyers (s. 3 of the *Legal Profession Act*).

[31] In assessing a penalty of a fine of \$3,000 in this case, and setting costs at \$2,000 when the Tariff in this case works out to about \$4,700, the Panel considered the many precedent cases provided by Law Society counsel and noted that the fines in similar cases in BC and other provinces ranged between zero (a reprimand) and \$3,500. There were a few cases where a one-month suspension was imposed. However, in this case the Law Society was not seeking a suspension.

[32] The cases cited by Law Society counsel were: *Law Society of BC v. Milne*, 2004 LSBC 19, 2004 CanLII 54284 and 2005 LSBC 14; *Law Society of BC v. Ebrahim*, 2010 LSBC 14; *Law Society of BC v. Williams*, 2010 LSBC 31; *Law Society of BC v. Batchelor*, 2014 LSBC 11; *Law Society of BC v. Walters*, 2005 LSBC 39; *Law Society of BC v. Hart*, 2007 LSBC 50; *Law Society of BC v. Uzelac*, 2013 LSBC 11; *Law Society of BC v. Culos*, 2013 LSBC 19; *Law Society of Upper Canada v. Watkin*, 2005 CanLII 50679 (ONLSHP); *Law Society of Alberta v. Stewart*, 2007 LSA 23; and *Law Society of Alberta v. Juneja*, 2011 ABL 1.

[33] In *Law Society of BC v. Ogilvie*, [1999] LSBC 17, the panel identified the following non-exhaustive list of factors as “worthy of general consideration in disciplinary dispositions”:

- (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 factors;
- (h) The possibility of remediating or rehabilitating the respondent;
- (i) The impact on the respondent of criminal or other sanctions;
- (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;
- (m) The range of penalties imposed in similar cases.

[34] The Panel notes that not all of these listed factors are applicable in every case, and in this case we considered the following facts to be aggravating factors in assessing a penalty:

- (a) The Respondent revealed his disregard for the integrity of the Land Title system. His successful attempt to “slip through” a document that was not legally executed or acceptable for registration was done deliberately, and he published his intention to do so in several emails to clients and others. This conduct erodes the public’s confidence in our profession and the Land Title system;

- (b) While lawyers are permitted to represent more than one client in a “simple conveyance,” the transaction here was not a simple conveyance because it involved a lease and lease back.

We also considered the following mitigating factors:

- (a) The Respondent was genuinely trying to help the elderly widow BB get the title transferred;
- (b) The market value of the time-share interest was said to be around \$8,000 at the time of purchase and was said to be nearly worthless at the time of AB’s death when BB asked for title to be transferred so she could sell it and avoid paying monthly fees. The two weeks J Ltd. owned were in October when there is no skiing at Whistler;
- (c) The Respondent did not gain anything personally by his misconduct;
- (d) The widow BB was put through much delay and stress over the years, but we were told that her civil action against the Respondent was successful and she was awarded damages and costs. Much of her loss was due more to the defunct status of her husband’s company than the misconduct of the Respondent;
- (e) The Respondent has had to pay a \$5,000 insurance deductible payment and will pay \$5,000 in premium surcharges over the next five years, which he is having trouble paying off because his professional income is quite modest. He said he had to borrow the said \$5,000 on his credit line and will have to borrow to pay the fine and costs we are imposing;
- (f) While ignorance of our professional and, in particular, ethical obligations is no excuse for breaches thereof, we note that this Respondent began working for X Ltd. as in-house counsel just after his call to the bar and he has practised by himself since he left X Ltd. in 2010;
- (g) The Respondent admitted his wrongdoing and cooperated fully with the Law Society in its investigation and in the steps leading up to this hearing, including the agreement on facts and admitting professional conduct, with the result that the hearing took less than two hours;
- (h) The Respondent’s Professional Conduct Record is nearly without blemish since his call to the bar in 1989. There was a conduct review conducted in June 2004, but the reviewers concluded that it should not have taken place as the complaint was unfounded. There was a practice

review conducted in December 2011. A number of practice and accounting procedures were ordered to be implemented by the Respondent, and compliance reports submitted, all of which appear to have been done to the satisfaction of the Practice Standards Committee;

- (i) The misconduct occurred just once.

THE POSITION OF THE PARTIES ON DISCIPLINARY ACTION AND COSTS

[35] Counsel for the Law Society sought a fine of \$5,000 and costs, based on the Tariff totaling \$4,792.

[36] The Respondent initially suggested a brief suspension of a week or so, without any fine, and a reduction of the Tariff costs based on his modest income, but after reconsideration he submitted that a fine of \$1,000 and costs of \$2,000 would be appropriate.

ORDER

[37] The Panel orders that the Respondent pay the following by December 31, 2016:

- (a) a fine of \$3,000; and
- (b) costs in the sum of \$2,000.