2021 LSBC 55
Decision Issued: December 17, 2021
Hearing File No.: HE20200034
Citation Issued: May 12, 2020
Hearing File No.: HE20200040
Citation Issued: June 8, 2020
Citation Amended: August 23, 2021

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL

HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

SUNEIL KYLE SANGHA

RESPONDENT

DECISION OF THE HEARING PANEL

Hearing date:	August 31, 2021
Panel:	Christopher A. McPherson, QC, Chair Karen Kesteloo, Public Representative Lindsay R. LeBlanc, Lawyer
Discipline Counsel:	Kathleen Bradley
Counsel for the Respondent:	Michael D. Shirreff and Jennifer Millerd
Written reasons of the Panel by:	Lindsay R. LeBlanc

BACKGROUND

[1] This matter comes before the Panel as a joint submission pursuant to the recent March 2021 amendment to Rule 4-30 of the Law Society Rules that now states:

> **4-30** (1) Discipline counsel and the respondent may jointly submit to the hearing panel an agreed statement of facts and the respondent's admission of a discipline violation and consent to a specified disciplinary action.
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> …
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> (5) If the panel accepts the agreed statement of facts and the respondent's admission of a discipline violation
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> > (a) the admission forms part of the respondent's professional conduct record,
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> > (b) the panel must find that the respondent has committed the discipline violation and impose disciplinary action, and
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> > (c) the Executive Director must notify the respondent and the complainant of the disposition.
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> (6) The panel must not impose disciplinary action under subrule (5) (b) that is different from the specified disciplinary action consented to by the respondent unless
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> > (a) the respondent and discipline counsel have been given the opportunity to make submissions respecting the disciplinary action to be substituted, and
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> > (b) imposing the specified disciplinary action consented to by the respondent would be contrary to the public interest in the administration of justice.
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> (7) An admission of conduct tendered in good faith by a lawyer during negotiation that does not result in a joint submission under subrule (1) is not admissible in a hearing of the citation.

[2] The first citation was issued on May 12, 2020 ("Citation No. 1"). It contains two allegations:

1. In approximately February 2017, in the course of acting for your client JN in connection with the purchase of a residential development unit, you failed to provide your client with the quality of service required of a competent lawyer, contrary to rules 3.1-2 and 3.2-1 of the *Code of Professional Conduct for British Columbia*, by doing one or more of the following:

(a) failing to acquire the necessary knowledge of the substantive law relating to the marketing of residential development units (the "Regulatory Requirements") and the practices and procedures by which the Regulatory Requirements are properly applied;

(b) failing to ensure that your client had been provided with a copy of a disclosure statement that complied with the Regulatory Requirements;

(c) failing to ensure that the deposit was paid out to the developer or its trustee in compliance with the Regulatory Requirements;

(d) failing to ensure that your client was aware of his rights regarding the holding of deposits under the *Real Estate Development Marketing Act*, SBC 2004, c. 41;

(e) failing to adequately explain the risks associated with the purchase of a residential development unit to your client;

(f) failing to perform a title search; and

(g) failing to perform a corporate search.

This conduct constitutes professional misconduct or incompetent performance of duties undertaken in the capacity of a lawyer, pursuant to s. 38(4) of the *Legal Profession Act*.

2. On or about February 10, 2017, you received trust funds of $500.00 in cash on behalf of your client JN, and you failed to do one or more of the following:

(a) make a receipt in a cash receipt book for the cash received as required by Rule 3-70 of the Law Society Rules (the "Rules");

(b) deposit the trust funds into a pooled trust account as required by Rule 3-58 of the Rules;

(c) record the receipt of the cash as required by Rule 3-72(1) of the Rules; and

(d) issue a bill or receipt to your client as required by Rule 3-72(3) of the Rules.

This conduct constitutes professional misconduct or a breach of the Act or rules, pursuant to s. 38(4) of the *Legal Profession Act*.

[3] The second citation was issued on June 8, 2020, was amended on August 23, 2021 ("Citation No. 2") and contains one allegation as follows:

> 1. In or about August 2016, you withdrew some or all of $149,500 held in trust on behalf of your client RT, by way of trust cheques made payable to or on behalf of RS, when you had not obtained written authorization from your client to do so, or you had not appropriately documented verbal instructions that you believed you had obtained from your client, or both, contrary to rule 3.2-1 of the *Code of Professional Conduct for British Columbia*.
>
> This conduct constitutes professional misconduct or a breach of the Act and rules, pursuant to s. 38(4) of the *Legal Profession Act.*

[4] The Respondent has admitted that his conduct amounts to professional misconduct with respect to the two citations. He has also consented to a suspension of two and a half months and the parties jointly submit that this is the appropriate sanction in this case. In addition, the Respondent has agreed to pay $3,000 in costs.

[5] Joint submissions are to be accepted unless the proposed penalty would be contrary to the public interest. For the reasons that follow, the proposed penalty has been accepted as falling within the range of reasonable outcomes and would not be contrary to the public interest.

FACTUAL OVERVIEW

Background

[6] An Agreed Statement of Facts dated August 18, 2021 was provided to the Panel and the relevant portions are summarized below.

[7] On June 24, 2015, the Respondent was called and admitted as a member of the Law Society of Ontario. On October 1, 2015, the Respondent was called and admitted as a member of the Law Society of British Columbia.

[8] The Respondent had a broad practice, which included civil litigation, corporate law, motor vehicle law and wills and estates law.

[9] On January 1, 2021, the Respondent became a former member of the Law Society for non-payment of fees. At the time of this hearing, he was seeking to be reinstated as a full-time practising member of the Law Society.

Citation No. 1

[10] In February 2017, the Respondent was retained by JN to provide advice with respect to JN's purchase of a unit in a 92-lot strata property located in Langley, British Columbia (the "M House").

[11] The Respondent's position is that he was only retained to provide legal advice to JN regarding an agreement of purchase and sale, and that he was not retained to represent JN in the completion of his purchase of the unit at the M House.

[12] JN's position is that he retained the Respondent in relation to the completion of his purchase of a unit at the M House.

[13] The Respondent did not confirm anything in writing with JN with respect to the scope of his retainer or the services he was providing.

[14] On February 10, 2017, the Respondent reviewed an unexecuted agreement for the purchase and sale of a unit at the M House. This agreement was not drafted by the Respondent and he considered it to be a standard form agreement for a purchase of a new strata property. However, the $260,000 deposit, being a large portion of the $300,000 purchase price for the property, stood out to the Respondent as being unusual. This caused the Respondent to advise JN that "it was not a good idea to do this."

[15] The Respondent understood from JN that JN believed he was paying $260,000 for a unit valued at $300,000.

[16] The Respondent's position is that JN was very keen to execute the agreement for purchase and sale on February 10, 2017 as he wanted to take advantage of what he perceived to be an economic opportunity. The Respondent understood that was why JN was focused on obtaining quick legal advice on the agreement at the meeting on February 10, 2017.

[17] The Respondent did not make any revisions to the agreement for purchase and sale.

[18] During the meeting, JN signed the agreement for purchase and sale and a promissory note in relation to his purchase of the unit.

[19] The Respondent also witnessed JN's signature on an acknowledgement and receipt, pursuant to the *Real Estate Development Marketing Act* ("*REDMA*"), stating that JN had received a copy of the disclosure statement for the M House. The Respondent did not provide JN with a copy of the disclosure statement for the M

House, or otherwise ensure that JN had a copy of the disclosure statement for the M House.

[20] At the time of his meeting with JN, the Respondent was not familiar with the deposit provisions of *REDMA* or with *REDMA* generally. The Respondent had not reviewed *REDMA* before meeting with JN. The Respondent did not advise JN of any of JN's rights under *REDMA*. Section 18 of *REDMA* provides that deposits received by a developer must be held in trust, subject to certain conditions or exceptions:

> 18 (1) A developer who receives a deposit from a purchaser in relation to a development unit must promptly place the deposit with a brokerage, lawyer, notary public or prescribed person who must hold the deposit as trustee in a trust account in a savings institution in British Columbia.

[21] During the meeting, the Respondent called in Mr. Kanwar Herr in order to have a more experienced lawyer involved in advising JN. Both the Respondent and Mr. Herr told JN that the deal was not a good idea. Specifically, the Respondent and Mr. Herr told JN that there were "huge risks".

[22] The Respondent did not record in writing the instructions that he received from JN or the advice that he gave to JN during the course of this meeting. The Respondent did not prepare any letter following the meeting confirming JN's written instructions to proceed with the contract.

[23] After a review of the contract, the Respondent determined that an addendum to the agreement of purchase and sale could be prepared in order to better protect JN's interests, given the large amount of the deposit.

[24] At one point during the meeting, the Respondent left the meeting room to prepare a draft addendum while JN and his son waited in his boardroom. After Mr. Herr edited the document, and the Respondent explained it to JN, JN signed it.

[25] The addendum included the following provisions:

(a) an "Initial Deposit" in the amount of $260,000 was to be paid to the developer by way of a solicitor's trust cheque on or before February 11, 2017;

(b) the Initial Deposit was to be credited against the $300,000 purchase price;

(c) on completion of the agreement of purchase and sale, the developer would credit $40,000 to the purchaser (the "N Fee"), which would be set off against the purchase price; and

(d) the Initial Deposit and the N Fee would be secured by a promissory note.

[26] The promissory note that the Respondent attached to the addendum was provided to him by the developer directly. The Respondent did not draft or amend the promissory note.

[27] The Respondent appreciated at the material time that a promissory note did not offer much further security for JN. During an interview with the Law Society on September 6, 2018, the Respondent described such promissory notes as being "worthless most of the time" and "not really enforceable half the time."

[28] Although the promissory note stated that it was a "secured promissory note", there was no security in the form of mortgage security, *Personal Property Security Act* security or any other collateral security agreement to protect JN's investment. The only security that JN received was the promissory note itself.

[29] The Respondent believes that he advised JN that the promissory note could be difficult to enforce, but such advice was not given to JN in writing.

[30] JN had brought a $260,000 bank draft when he met with the Respondent. The bank draft was made payable to the Respondent, in trust. The Respondent says that JN's instructions to him were to pay the whole amount of the deposit to the developer. The Respondent arranged for the $260,000 bank draft to be deposited into the firm's trust account that afternoon. Later that day, the Respondent issued a $260,000 trust cheque to the developer. The Respondent received an email from the developer asking him to provide the deposit to MV. The Respondent did so. The Respondent received $500 in cash from JN for his legal services. The Respondent did not deposit the cash payment from JN into his general account or obtain a cash receipt signed by JN. The Respondent split the cash 50/50 with Mr. Herr.

[31] The Respondent did not provide JN with a receipt or an invoice on the day he received the cash payment from JN. He sent an invoice to JN for the $500 payment in 2018 during the Law Society investigation.

[32] By the fall of 2017, JN had not obtained title to the unit at the M House. In the fall of 2017, foreclosure proceedings were commenced against the developer. A Receiver's Report dated November 16, 2017 indicated that the developer had sold some apartment units in the M House to multiple purchasers.

[33] JN was among dozens of purchasers that paid large deposits to the developer and never received the property that they intended to purchase.

[34] During his interview with the Law Society on September 6, 2018, the Respondent acknowledged that this file could have been his first time being involved with a pre-sale condo agreement.

[35] When asked what steps the Respondent took to ensure that he had sufficient knowledge and understanding of the applicable law to handle this file, the Respondent explained:

> I mean, at that time I didn't really – I didn't really turn my mind to it. We gave – we told him the risks about giving money directly to somebody directly in terms – I mean, that was just common sense at the end of the day, right, but in terms of after or anything, it wasn't really something that we were –

[36] The Respondent did not obtain a corporate search of the developer (a numbered company) or an officer's certificate for the developer. As such, at the time the Respondent forwarded JN's $260,000 to MV (on behalf of the developer), the Respondent would not have known whether or not the developer's documents were duly executed.

[37] The Respondent did not obtain a title search for the property development. A title search could have been used to confirm that the developer owned the property that it purported to sell to JN.

[38] JN participated in a class action lawsuit against the developer and received a settlement in the amount of $105,892.74 in November 2018. JN was subsequently able to recover a further $13,517.57 in December 2018, for a total recovery from the developer of $119,410.31.

[39] In September 2018, JN commenced a lawsuit against the Respondent, Mr. Herr and Herr Law Group.

[40] On November 28, 2019, the parties settled the matter at mediation, with the Lawyer's Indemnity Fund paying $100,000 to JN.

[41] In total, JN recovered $219,410.32, less legal fees and expenses.

[42] The Respondent admits that in approximately February 2017, in the course of acting for his client JN in connection with the purchase of a residential development unit, he failed to provide his client with the quality of service required of a competent lawyer, contrary to rules 3.1-2 and 3.2-1 of the *Code of Professional Conduct for British Columbia*, by doing the following:

(a) failing to acquire the necessary knowledge of the substantive law relating to the marketing of residential development units (the "Regulatory Requirements") and the practices and procedures by which the Regulatory Requirements are properly applied;

(b) failing to ensure that his client had been provided with a copy of a disclosure statement that complied with the Regulatory Requirements;

(c) failing to ensure that the deposit was paid out to the developer or its trustee in compliance with the Regulatory Requirements;

(d) failing to ensure that his client was aware of his rights regarding the holding of deposits under the *Real Estate Development Marketing Act*, SBC 2004, c. 41;

(e) failing to adequately explain the risks associated with the purchase of a residential development unit to his client;

(f) failing to perform a title search; and

(g) failing to perform a corporate search.

[43] The Respondent further admits that this conduct constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act.*

[44] The Respondent admits that on or about February 10, 2017, he received trust funds of $500 in cash on behalf of his client JN, and failed to do the following:

(a) make a receipt in a cash receipt book for the cash received as required by Rule 3-70 of the Rules;

(b) deposit the trust funds into a pooled trust account as required by Rule 3-58 of the Rules;

(c) record the receipt of the cash as required by Rule 3-72(1) of the Rules; and

(d) issue a bill or receipt to his client as required by Rule 3-72(3) of the Rules.

[45] The Respondent further admits that this conduct constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act.*

Citation No. 2

[46] In approximately August 2016, the Respondent was retained by RT in relation to the sale of RT's home in Delta, British Columbia.

[47] Prior to the transaction closing on August 8, 2016, RT and the Respondent spoke with each other once to arrange a time for RT to attend to sign the closing documents. On August 8, 2016, RT attended at the firm to sign the closing documents. The Respondent was not in the office on August 8, 2016. RT's signatures were witnessed by another lawyer, who met with RT at that time.

[48] On August 8, 2016, RT did not sign any direction or order to pay to authorize the payout of the sale proceeds.

[49] The transaction closed on August 8, 2016, with sale proceeds in the amount of $739,580.96 being deposited to the Respondent's firm's trust account.

[50] On August 10, 2016, two days after the transaction closed, the Respondent received a phone call from RS, who advised the Respondent that he was owed a significant amount of RT's sale proceeds. The Respondent told RS that, as RS was not his client, he would need to speak with RT to confirm how the sale proceeds were to be distributed. The Respondent did not take any notes of his phone call with RS on August 10, 2016.

[51] After his phone call with RS on August 10, 2016, the Respondent placed a telephone call to the phone number he had for RT and spoke to a person whom he understood to be RT. The Respondent says that during this phone call, the person he understood to be RT confirmed that RS was entitled to a portion of the sale proceeds and gave him instructions to pay money to RS.

[52] On August 10, 2016, the Respondent arranged for a trust cheque in the amount of $110,000 to be made payable to RS.

[53] On August 12, 2016, the Respondent emailed RT a copy of his client trust ledger, showing all of the payments made out of trust, including the payments made to and on behalf of RS.

[54] The Respondent did not receive a response from RT about the email.

[55] RT advised the Law Society that he may have received an email from the Respondent on August 12, 2016, but he does not always check his emails and it may have gone into his junk mail. RT said that if he did receive the email and client ledger, he did not look at it.

[56] On August 29, 2016, the Respondent arranged for a payment of $500 from funds held in trust for RT to be paid to Herr Law Group on account of fees and disbursements for the file, bringing the client trust ledger to zero.

[57] When RT picked up his cheque for $111,468 from the firm's reception desk, he did not meet with the Respondent and he was not provided with any other documents regarding the sale transaction. RT did not raise any complaints at that time about the amount of his cheque, which represented the net sale proceeds after payment of the funds as per the client trust ledger.

[58] In the summer of 2017, almost a full year later, RT contacted the Respondent to request his client file.

[59] RT attended at the firm to pick up his client file from the Respondent.

[60] This was the first time RT met the Respondent in person.

[61] The Respondent's client file contained an unsigned Order to Pay dated August 12, 2017. The Respondent says that he cannot recall when this Order to Pay was prepared or when it was provided to RT. The Respondent acknowledges that the Order to Pay was never signed. The Respondent says that the Order to Pay should be dated 2016 and that the 2017 date was a typo.

[62] After receiving his client file from the Respondent, RT complained for the first time about the payment of his monies to RS and on behalf of RS. RT has since taken the position that he never authorized the payment of his sale proceeds to anyone else.

[63] With regard to the payment to Basra Law Group, RT's position is that he did not know who Basra Law Group was, he did not have any business with them and he was not sure why any of the sale proceeds were paid to them.

[64] In late 2017, RT attended the firm to ask the Respondent about the monies that had been paid to RS and Basra Law Group. The Respondent was "shocked" when RT told him that he was missing funds and he told RT that he would need to review the file before responding to him.

[65] The Respondent says that after he reviewed the client file, he "kind of panicked and got nervous" and he told RT "you know, if you're willing … I don't have that much money, but I can give you, you know, maybe 40 grand", hoping that RT would sign a release to settle the issue.

[66] The Respondent says that he did not specifically offer to repay RT for his losses, but discussed investing some money in a company that RT was starting.

[67] The Respondent says that he was not actually interested in investing in RT's business, but was continuing to communicate with him because he was "nervous as to what he may try to do to [him] professionally and personally."

[68] The Respondent acknowledged that, at one point, he told RT that he was looking at different loan options to obtain the money.

[69] Subsequent to their meeting in late 2017, RT exchanged correspondence with the Respondent, in which he asked the Respondent for payment and updates.

[70] The Respondent responded by describing his efforts to obtain a loan, which RT understood would be used to repay him.

[71] The Respondent says that he eventually sought advice from Mr. Herr who told him to stop communicating with RT. On February 14, 2018, the Respondent requested that RT no longer email him.

[72] On August 2, 2018, RT commenced a civil action against the Respondent and Herr Law Group claiming damages for negligence, breach of contract and breach of duty. On January 18, 2019, the Respondent filed a response to the Notice of Civil Claim. The civil action is ongoing.

[73] The Respondent's position is that RT's assertions that he never authorized the payments out of trust to and on behalf of RS and that he never received the Respondent's email dated August 12, 2016 detailing those payments, are false.

[74] The Respondent admits that in August 2016, he withdrew $149,500 held in trust on behalf of his client RT, by way of trust cheques made payable to or on behalf of RS, without obtaining written authorization from his client to do so, or without appropriately documenting verbal instructions that he believed he had obtained from his client, contrary to rule 3.2-1 of the *Code of Professional Conduct for British Columbia*.

[75] The Respondent further admits that this conduct constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.

ONUS AND STANDARD OF PROOF

[76] The Law Society has the onus of proving the allegations in Citation No. 1 and Citation No. 2, and must prove the allegations on a balance of probabilities. The Panel notes the cautions expressed in *F.H. v. McDougall*, 2008 SCC 53 and *Law Society of BC v. Schauble*, 2009 LSBC 11 that the evidence must be scrutinized with care and must be sufficiently clear, convincing and cogent.

PROFESSIONAL MISCONDUCT TEST

[77] The current test for professional misconduct has been clearly developed in *Law Society of BC v. Martin*, 2005 LSBC 16, *Re: Lawyer 12*, 2011 LSBC 35 and subsequent decisions providing further clarifications. The test can be summarized as whether the conduct in question exhibited a marked departure from the standard of conduct expected of lawyers, having regard to all the circumstances.

DETERMINATION

[78] Lawyers are expected to provide a competent quality of service, which requires them to gain knowledge of the laws applicable to the practice areas that they may engage in and to properly document important instructions.

[79] Rule 3.1-2 of the *Code* states:

> 3.1-2 A lawyer must perform all legal services undertaken on a client's behalf to the standard of a competent lawyer.

[80] The commentary to this rule adds:

> **[1]** As a member of the legal profession, a lawyer is held out as knowledgeable, skilled and capable in the practice of law. Accordingly, the client is entitled to assume that the lawyer has the ability and capacity to deal adequately with all legal matters to be undertaken on the client's behalf.
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> …
>
> **[3]** In deciding whether the lawyer has employed the requisite degree of knowledge and skill in a particular matter, relevant factors will include:
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> (a) the complexity and specialized nature of the matter;
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> (b) the lawyer's general experience;

(c) the lawyer's training and experience in the field;

(d) the preparation and study the lawyer is able to give the matter; and

(e) whether it is appropriate or feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question.

…

[6] A lawyer must recognize a task for which the lawyer lacks competence and the disservice that would be done to the client by undertaking that task. If consulted about such a task, the lawyer should:

(a) decline to act;

(b) obtain the client's instructions to retain, consult or collaborate with a lawyer who is competent for that task; or

(c) obtain the client's consent for the lawyer to become competent without undue delay, risk or expense to the client.

…

[14] A lawyer who is incompetent does the client a disservice, brings discredit to the profession and may bring the administration of justice into disrepute. In addition to damaging the lawyer's own reputation and practice, incompetence may also injure the lawyer's partners and associates.

[81] A basic expectation of any lawyer is that they are aware of the law directly applicable to the matter they are handling. In this case, the Respondent has admitted that he was not familiar with the provisions of *REDMA* when advising on an investment in a real estate development. He took no steps to learn about the applicable law in advance.

[82] Another basic expectation in a real estate transaction is for a lawyer to conduct relevant searches to confirm that (i) the person who is purporting to sell real estate actually owns it; and (ii) if the seller is a company, the person signing on behalf of the company has the authority to do so. These are basic principles that any competent lawyer in a like situation would have understood. The Respondent has acknowledged that he did not take these steps.

[83] The Respondent did not obtain instructions from his client at any time before the transaction completed and he disbursed trust funds without adequate instructions. It is expected that a lawyer will adequately communicate with their clients in order to obtain instructions, particularly instructions relating to the disbursement of client funds.

[84] If a lawyer does obtain verbal instructions to pay out client funds, it is prudent to confirm those instructions either by obtaining an order to pay signed by the client (as is common in real estate transactions) or, at the very least, to confirm the client's instructions in writing by follow-up letter or email. The Respondent did not take those steps.

[85] Lawyers are expected to comply with all relevant accounting rules, including rules regarding the receipt of cash payments, depositing funds into trust, recording payments into a firm's trust ledger, issuing cash receipts and invoicing clients.

[86] The relevant rules include:

> **3-58** (1) Subject to subrule (2) and Rule 3-62 *[Cheque endorsed over]*, a lawyer who receives trust funds must deposit the funds into a pooled trust account as soon as practicable.
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> ...
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> **3-70** (1) A lawyer who receives any amount of cash for a client must maintain a cash receipt book of duplicate receipts and make a receipt in the cash receipt book for any amount of cash received.
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> (2) Each receipt in the cash receipt book must
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> (a) be signed by:
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> (i) the lawyer who receives the cash or an individual authorized by that lawyer to sign the receipt on the lawyer's behalf, and
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> (ii) the person from whom the cash is received,
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> (b) identify each of the following:
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> (i) the date on which cash is received;
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> (ii) the person from whom cash is received;

(iii) the amount of cash received;

(iv) the client for whom cash is received;

(v) the number of the file in respect of which cash is received; and

(c) indicate all dates on which the receipt was created or modified.

…

3-72 (1) A lawyer must record each trust or general transaction promptly, and in any event not more than

(a) 7 days after a trust transaction, or

(b) 30 days after a general transaction.

(2) A lawyer must record in general account records all funds

(a) received by the lawyer expressly on account of fees earned and billed or disbursements made by the day the funds are received,

…

(3) A lawyer who receives funds to which subrule (2) applies must immediately deliver a bill or issue to the client a receipt for the funds received, containing sufficient particulars to identify the services performed and disbursements incurred.

[87] The Respondent admitted that he obtained $500 in cash from his client, he did not deposit the funds into trust, he did not issue a cash receipt, he did not issue an invoice until after the complaint investigation commenced and he did not record the cash payment to the firm's trust account ledger. The Respondent also acknowledged advising his accountant of the cash payment only after the Law Society's investigation commenced.

[88] Applying the test for professional misconduct as stated in *Martin* and *King*, and noting the admissions of the Respondent, the Panel finds that the allegations of professional misconduct in Citation No. 1 and Citation No. 2 are properly founded.

[89] The conduct of the Respondent constitutes a marked departure from that conduct the Law Society expects of lawyers.

[90] We have accepted the admissions of the Respondent and confirm a determination that, on Citation No. 1 and Citation No. 2, the Respondent has committed professional misconduct.

DISCIPLINARY ACTION

[91] The Law Society and the Respondent jointly submit that a suspension of two and a half months in respect of both Citation No. 1 and Citation No. 2 is appropriate.

[92] Section 38 of the *Act* states that, where a hearing panel finds, as this Panel has, that a respondent's actions constitute professional misconduct, the panel must do one or more of the following:

(a) reprimand the respondent;

(b) fine the respondent;

(c) impose conditions or limitations on the respondent's practice;

(d) suspend the respondent for a period of time or till any conditions or requirements imposed by the panel are met;

(e) disbar the respondent; or

(f) require the respondent to do one or more remedial actions or make submissions respecting their competence to practise law.

[93] The purpose of disciplinary proceedings is the fulfillment of the Law Society's mandate to uphold and protect the public interest in the administration of justice and to fulfil its regulatory role in ensuring the general integrity and competence of lawyers.

[94] In *Law Society of BC v. Lessing*, 2013 LSBC 29, the review panel confirmed that the " … objects and duties set out in section 3 of the *Act* are reflected in the following factors set out in *Law Society of BC v. Ogilvie*, [1999] LSBC 17 … ":

(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 circumstances;

(h) the possibility of remediating or rehabilitating the respondent;

(i) the impact on the respondent of criminal or other sanctions or penalties;

(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; and

(m) the range of penalties imposed in similar cases.

[95] In *Ogilvie*, the panel set out 13 factors that, while not exhaustive, might be said to be worthy of general consideration in disciplinary dispositions.

[96] In *Law Society of BC v. Dent*, 2016 LSBC 05 at para. 16, the panel stated:

> … It is not necessary for a hearing panel to go over each and every *Ogilvie* factor. Instead, all that is necessary for the hearing panel to do is to go over those factors that it considers relevant to or determinative of the final outcome of the disciplinary action (primary factors). This approach flows from *Lessing*, which talks about different factors having different weight.

[97] The parties are generally in agreement that the emphasis ought to be placed on the following factors:

(a) the nature and gravity of the conduct proven;

(b) the character and professional conduct and record of the respondent;

(c) the respondent's acknowledgement of the misconduct;

(d) the need to ensure the public's confidence in the integrity of the profession; and

(e) the range of penalties imposed in similar cases.

The nature and gravity of the conduct proven

[98] In *Law Society of BC v. Gellert,* 2014 LSBC 05 at para. 39, the panel stated that:

> … the nature and gravity of the misconduct will usually be of special importance … not only because this factor in a sense encompasses several of the others, but also because it represents a principal benchmark against which to gauge how best to achieve the key objective of protecting the public and preserving confidence in the legal profession. Indeed, this key objective is the prism through which all of the *Ogilvie* factors must be applied, a message that shines through clearly in the discussion in *Ogilvie* itself at paras. 9 and 10, and has since been affirmed in other decisions such as *Lessing* …

[99] Citation No. 1 concerns "quality of service" and competency issues arising from legal services, and the failure to adhere to a number of Law Society accounting rules.

[100] Citation No. 2 also concerns "quality of service" issues.

[101] The totality of the misconduct is serious as it demonstrates a disregard for the Respondent's basic obligations as a lawyer.

The previous character of the respondent, including details of prior discipline

[102] At the time of the misconduct, the Respondent was a one to two year call – the Panel accepts this to be a mitigating factor.

[103] Considering that the Respondent was called to the British Columbia bar relatively recently in 2015, he has a significant professional record ("PCR"); however, the PCR which is summarized below post-dates the conduct alleged in Citation No. 1 and Citation No. 2.

[104] With respect to the treatment of the PCR, the Law Society referred the Panel to *Law Society of BC v. Mansfield,* 2019 LSBC 27, where the hearing panel found that the post-dating PCR should not be an factor requiring a harsher sentence applying the principles of progressive discipline; however, it may be relevant to the lawyer's character, the prospects for rehabilitation and the risk of reoffending.

[105] The Respondent referred the Panel to *Law Society of BC v. Batchelor,* 2013 LSBC 09, which summarizes the purpose of progressive discipline as sending "a clear message to the public and the legal profession that the Law Society will not tolerate lawyers who repeatedly ignore their professional responsibilities." The Respondent

submits that he has accepted responsibility for his mistakes and shown a willingness to cooperate with the Law Society to improve his conduct.

[106] With consideration to the legal authorities relied on by the parties, the Panel finds that we can consider the PCR of the Respondent as it concerns the prospects for rehabilitation and protection of the public. Where, in this case, there is a significant PCR compiled over a short period of time, we find it necessary to consider the PCR to consider whether the penalty imposed is sufficient to protect the public. While the Law Society and the Respondent differ in how the PCR ought to be treated, it is apparent to the Panel that the joint proposal considered the PCR as an aggravating factor without imposing progressive discipline like penalties.

[107] The PCR is summarized as follows:

(a) From November 2017 to March 2018, a practice supervision agreement was entered into. However, in May 2018, the Respondent dismissed his practice supervisor and terminated his practice supervision agreement. He then continued to practise real estate law unsupervised, contrary to the Practice Standards Committee's recommendations.

(b) On September 20, 2018, following a follow-up practice review, the Practice Standards Committee made a series of recommendations related to the Respondent's file management, including that he properly document his files.

(c) The Practice Standards Committee also made the following order on September 20, 2018:

> Mr. Sangha must not practise real estate law. This Order is effective immediately, and continues until rescinded by the Practice Standards Committee. Mr. Sangha may complete all outstanding tasks on real estate files having a completion date before September 22, 2018, under the supervision of a lawyer approved by the Committee.

This order remains in place to date.

(d) On January 30, 2020, following a second follow-up practice review, the Practice Standards Committee rescinded the following recommendation that had been made in September 2018:

> To ensure your file is properly documented, promptly confirm in writing any conversation with clients or opposing parties in which you gave advice or took instructions or reached any agreement. **To be implemented immediately.**

[emphasis in original]

(e) On January 30, 2020, the Practice Standards Committee made a number of recommendations, including that the Respondent enter into a practice supervision agreement in relation to all of his legal work; complete 24 additional continuing professional development hours in order to address his shortcomings in his substantive legal knowledge; complete and obtain a 100 per cent score for the small claims module of the practice refresher course; prepare a written litigation case plan for all litigation files; set up a "bring forward" system; obtain a 100 per cent score for the communications toolkit course; transfer a specific file to a senior lawyer; take specific steps in relation to two files; and provide monthly compliance reports starting February 2020.

(f) In May 2020, the Practice Standards Committee amended the wording of a recommendation that they had made previously so that it read:

> To improve the quality of your legal work in your litigation and representation grant practice, enter into a Practice Supervision Agreement in a form and with a lawyer approved by the Practice Standards Department. The lawyer you pick must be a practicing member of and be in good standing with the Law Society, having several years of experience in your practice area(s). To be implemented within 30 days of approval by the Committee.

(g) On April 3, 2019, the Respondent attended a conduct review that had been ordered to discuss his conduct in failing to obtain, confirm and record client instructions, and failing to keep his client informed of a title transfer in circumstances where the Respondent had had a dispute with that client. The complainant had retained the Respondent to assist a corporate buyer in the purchase of a new residential property. The seller of the property was also the developer. As there were deficiencies that needed to be corrected, the purchaser was entitled to a $4,550 holdback and the purchaser was entitled to those funds if the deficiencies were not corrected within ten days. After ten days had passed, the complainant asked the Respondent to release the funds to her, but he refused. The Respondent told the complainant that he had entered into an agreement with the seller that he would not release the funds to either party until there was an agreement reached between the parties. In addition, the complainant had learned that the company was not the registered owner of the property and that the title had not been transferred. The

Respondent had not advised his client that there had been a delay in the completion of the transfer for almost two months.

(h) In a report dated May 3, 2019, the Conduct Review Subcommittee noted that the Respondent was very responsive to the discussion the Subcommittee had with him about his conduct and that he acknowledged his shortcomings. The Subcommittee recommended that the Respondent join Canadian Bar Association subsections in areas in which he practised and that he continue to seek advice from senior counsel. The Subcommittee strongly emphasized the importance of ensuring that the Respondent had clear written instructions from clients before acting and that he send correspondence to confirm conversations where clients have given him verbal instructions. Based on the Respondent's acknowledgment of his misconduct and the steps he had taken or would take, the Subcommittee recommended that no further disciplinary action be taken.

(i) In July 2018, the Discipline Committee issued a citation against the Respondent. The citation included four allegations that between July 2016 and June 2017, the Respondent made false representations to the Land Title Office that he had true copies of certain real estate conveyancing forms in his possession when he applied his electronic signature.

(j) In its facts and determination decision issued on January 30, 2020, the hearing panel noted that at the time of the misconduct, the Respondent was the only member of his firm practising in the area of residential real estate. He was self-taught and because the two other lawyers at his firm had no knowledge or practice experience in this area, he did not receive any mentoring. The Respondent admitted his misconduct and the hearing panel determined that it amounted to professional misconduct.

(k) In its disciplinary action decision issued on January 26, 2021, the hearing panel imposed a fine of $7,500 and declined to impose a condition on the Respondent's practice that he be prohibited from engaging in any capacity with files involving the purchase, sale or financing of real estate until relieved of that condition by the Discipline Committee. The hearing panel felt that the condition would be duplicative, given that the Respondent was already subject to an order of the Practice Standards Committee not to practise real estate law until that Committee rescinded such order.

Whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances

[108] The Respondent has admitted his professional misconduct and agrees with the Law Society that a two and a half month suspension is appropriate. The Respondent has provided a letter acknowledging his misconduct and explaining how he has learned from his mistakes.

The need to ensure the public's confidence in the integrity of the profession and range of penalties imposed in similar cases

[109] In *Dent*, the panel found that the specific item at issue with respect to public confidence is whether the public will have confidence in the proposed disciplinary action when comparing it to similar cases.

[110] The parties submit that, of the range of available outcomes under s. 38 of the *Act*, a suspension of two and a half months would provide the public with confidence that the Law Society is fulfilling its regulatory role.

[111] The Law Society referred the Panel to *Law Society of BC v. Hsu,* 2019 LSBC 29 where a junior lawyer was disciplined for failing to perform legal services to the standards of a competent lawyer. The lawyer failed to acquire relevant knowledge in security law which facilitated a fraudulent scheme involving $5 million dollars. A three-month suspension was imposed.

[112] The Respondent referred the Panel to three prior decisions:

Law Society of BC v. Uzelac, 2013 LSBC 11;

Law Society of BC v. Sahota, 2019 LSBC 08; and

Law Society of BC v. Chiasson, 2020 LSBC 32.

The range of penalties in these cases was six weeks, one month and a $10,000 fine.

[113] As stated above, having reviewed the range of penalties in similar cases, the joint proposal falls within the range of acceptable outcomes and would provide the public with confidence that the regulatory role is being fulfilled.

TIMING OF SUSPENSION

[114] The Respondent asked that the Panel accept the joint proposal and impose the suspension immediately following the Hearing. The Respondent submitted that having a suspension commence on September 1, 2021 was critical to the Respondent agreeing to the joint proposal. When questioned by the Panel, the Respondent confirmed that he was still prepared to proceed with the joint proposal if the Panel was unwilling to make orders on the day of the hearing.

[115] In this case, the Panel was not prepared to make any orders on the day of the hearing and, accordingly, the timeline sought by the Respondent was not achievable. The Panel cautions all participants when bringing forward a joint proposal. It ought not be assumed that a panel will either be in a position or be willing to make orders on the timelines imposed by the participants.

SUMMARY OF ORDERS MADE

[116] The Panel makes the following orders:

(a) the Respondent has committed professional misconduct in relation to each allegation contained in Citation No. 1 and Citation No. 2;

(b) the Respondent is suspended from the practice of law for two and a half months commencing January 1, 2022, or such other date as may be agreed to between the Law Society and the Respondent, provided the date is not later than March 1, 2022; and

(c) the Respondent pay costs of $3,000 on or before November 30, 2022.