2023 LSBC 03R
Hearing File No.: HE20200095
Decision Issued: June 26, 2023
Citation Issued: November 26, 2020
Citation Amended: May 10, 2022

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL

HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

RONALD NORMAN PELLETIER

RESPONDENT

DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION

Hearing dates:	April 25, 26, 27, 28 and 29, 2022 May 2, 3, 9, 10, 2022 June 27, 2022
Panel:	Geoffrey McDonald, Chair Douglas Chiu, Lawyer Michael Dungey, Public representative
Discipline Counsel:	William B. Smart, KC Susan Humphrey
Appearing on his own behalf:	Ronald Norman Pelletier
Written reasons of the Panel by:	Geoffrey McDonald

INTRODUCTION AND OVERVIEW

[1] Ronald Norman Pelletier (the "Respondent") is before the Panel regarding a citation authorized by the Discipline Committee on November 12, 2020 and issued on November 26, 2020 (the "Citation"). The Citation sets out six allegations. Allegations 3 and 4 were withdrawn by the Law Society on June 27, 2022 and April 11, 2023, respectively. The Law Society argues the Respondent's conduct set out in allegations 1, 2, 5 and 6 is professional misconduct. Allegation 1 relates to the use of the Respondent's trust accounts for the receipt, disbursement or both, of millions of dollars, on behalf of clients, which the Respondent knew were proceeds of a securities fraud being investigated by US authorities. Allegation 2 addresses the same transactions as allegation 1, but allegation 2 alleges that the Respondent received and disbursed the funds without providing substantial legal services or making reasonable inquiries about the funds. The Law Society argues that in engaging in the conduct alleged in allegation 1, the Respondent assisted in or encouraged dishonesty, crime or fraud. Allegation 5 sets out failures to comply with the client identification provisions of the Law Society Rules. Allegation 6 alleges improper withdrawal, transfer or payment of disbursements from trust.

[2] The Respondent agreed that the Citation had been properly issued and served. He also agreed that he had been properly served with the Law Society's notice to admit (the "NTA"). The Respondent advised the Panel at the outset of the Hearing that he agrees that the facts described in the NTA occurred. However, he argues the Panel should not conclude that the allegations have been made out and/or that he committed professional misconduct.

[3] For the reasons that follow, the Panel finds that the Law Society has proven that the Respondent committed all acts alleged in allegations 1, 2, 5 and 6 in the Citation. Moreover, we find that those acts amount to professional misconduct. The Panel also finds that in relation to allegation 1, the Respondent did assist with and encourage dishonesty, crime or fraud. At the time of these events, the Respondent knew those funds were the proceeds of fraud and he received them for the purpose of hiding the funds from the American authorities behind the shield of solicitor client privilege. The Panel also agrees with the Law Society's submissions that allegation 2 should be conditionally stayed in accordance with the principles in *Kienapple v. R.*, 1974 CanLII 14, [1975] 1 SCR 729.

ONUS AND STANDARD OF PROOF

[4] At all times the Law Society bears the onus of proving every element of allegations 1, 2, 5 and 6, set out in the Citation. Each element must be proven on a balance of probabilities.

EVIDENCE

[5] The Law Society relies on the NTA to prove its case. The NTA is very comprehensive, containing forensic audit reports, emails, notes, Law Society interview transcripts, and other related documents.

[6] The Respondent testified seeking to explain the events, documents and transcripts included in the NTA. Unfortunately, the Respondent is suffering from some serious health problems, which he advised affects his ability to remember. The Respondent attempted to use some documents as an *aide-mémoire* to little effect. The Respondent clearly had genuine difficulty recalling the events at issue. The Respondent struggled in cross-examination and for the most part was unable to answer or credibly answer the Law Society's questions. In many instances it was clear that the Respondent simply could not recall or explain what had happened. In one instance, the Respondent claimed he was holding funds originating from the securities fraud to hide them from the American authorities for "settlement" purposes. He seemed unaware that his answers were not an excuse or a defence but actually supported the Law Society's allegations. As a result, where the Respondent's evidence deviates from the information contained in the NTA, the Panel cannot give it any weight.

ALLEGATION 1

[7] Allegation 1 alleges that the Respondent committed professional misconduct between September 2014 and May 2018 by:

> … [engaging] in activities that assisted in or encouraged dishonesty, crime or fraud, contrary to one or both of rules 3.2-7 and 3.2-8 of the *Code of Professional Conduct for British Columbia.* In particular, you used or permitted the use of your firm's trust accounts to receive or disburse, or both, some or all of approximately $24,092,710.37 CAD and $5,360,839.11 USD, on behalf of one or more of your clients [WW], [NW], [KM], [A Corp.], [S Ltd.] and [V Inc.], when you knew that one or both of [WW] and [KM] were being investigated for securities fraud by

the US Securities and Exchange Commission and that some or all of the funds received or disbursed were proceeds of that securities fraud.

[8] This allegation has three elements:

(a) the Respondent knew that his clients WW and/or KM were being investigated for securities fraud by the American authorities;

(b) the Respondent received and/or disbursed funds that he knew to be from the securities fraud; and

(c) the Respondent assisted in or encouraged dishonesty, crime or fraud by receiving and/or disbursing the funds.

[9] The Respondent acknowledged that he was aware by early October 2014 that WW and KM were being investigated by the Securities and Exchange Commission (the "SEC"). The Respondent had knowledge of an indictment for securities fraud, an American prosecution of several individuals and "unindicted co-conspirators" (the "Indictment"). WW retained the Respondent for, amongst other things, advice about the Indictment. It is apparent from their communications that WW feared he could be one of the unindicted co-conspirators. The Respondent was also aware of a SEC complaint (the "SEC Complaint") naming WW, KM and other individuals as taking part in a securities fraud scheme (the "Scheme").

[10] The Scheme involved individuals secretly gaining control of millions of shares of a shell company, ("X Corp."). Those shares were distributed to offshore companies, some of which were controlled by WW and KM. The distribution kept the ownership of any one company below 5 per cent to avoid SEC reporting requirements. The Respondent's clients and others were able to artificially drive up the share price of X Corp. by orchestrating a sham financing arrangement that gave the false appearance of a legitimate third-party investor. Because the value went up, WW, KM, and others made large trading profits when they dumped their X Corp. stock. The investor did not actually exist, and the stock value crashed dramatically. By that time the Respondent's clients had made millions of dollars from the Scheme and, from the evidence available to the Panel, appeared intent on trying to retain their illicit and dishonest gains.

[11] The Respondent agreed in his testimony that he was aware of the SEC Complaint, the SEC's investigations into his clients' activities, and the Indictment. He also agreed that he received funds, millions of dollars, into his trust account that he knew or suspected were proceeds from the Scheme. The Respondent testified that he held those funds for the purpose of "settlement" with the American authorities.

He testified that it would not be in his clients' interest for the American authorities to know what amount of money was available for a settlement. The Respondent testified that he hoped, if the American authorities did not know how much money was available, he might be able to get a more favourable settlement for his clients.

[12] There are two difficulties with the Respondent's position regarding these funds. The first difficulty is that the Respondent is freely admitting to possessing illicit funds in his trust account for the purpose of hiding those funds from the authorities. The Respondent was aiding and abetting his clients in their securities fraud. The only logical inference from his evidence is that the Respondent hoped to obtain a settlement for less than the remaining funds thereby enabling his clients to profit from the securities fraud. Even if the Respondent did not intend to assist his clients in receiving illicit profits, he was knowingly possessing the proceeds of securities fraud. It is not acceptable for a lawyer to knowingly accept or possess stolen, fraudulent or otherwise illicit funds from a client. In this case, the Respondent knowingly possessed the proceeds of securities fraud and purposely continued to do so for an extended period.

[13] The second difficulty with the Respondent's position is that there is no evidence that the Respondent ever attempted to reach a settlement with the American authorities. Despite charging his clients substantial billings, the Respondent did not provide any substantive legal services. Instead, he treated his trust account as a bank. He moved the funds in and out as directed by his clients. The funds were used to purchase a Vancouver property, renovate a different property, purchase a car in Toronto and a ring from Tiffany & Co. The Respondent placed some of the funds in term deposits thereby earning interest on the illicit funds. While some funds were used to retain other lawyers, allegedly to address the SEC Complaint, there is insufficient evidence to determine what those lawyers were retained to do. A July 12, 2017, email from the Respondent to WW clearly shows that the Respondent's true purpose was to enable his clients to use their illicit funds while relying on solicitor client privilege to protect those funds from the American authorities. In that email the Respondent wrote:

> I also hesitated to invest these funds because, initially, you were thinking of investing in something which would earn better interest and then I started to worry whether it's possible if the funds can be traced going into my account. At this point, moving any significant amount of the funds is not an option because, while I can assert solicitor client privilege as to the identity of my client, given the sums involved, it would be an easy inference to make if I was to move a significant sum of money to some asset or other bank account. Remember that transactions in my pooled

> trust account are not privileged, only the identities of my clients. … So let's put these funds in a series of term deposits for the time being, and roll over the term deposits until we need access to more funds. (NTA Tab 11, Interview Document 14, pages 71 to 72)

[14] The Respondent was purposely abusing solicitor client privilege to hide illegal funds and enable his clients to profit from them.

[15] Further, the Respondent went to great lengths to protect his clients and their illegal money. He purchased 20 burner phones over an 18-month period out of fear the American authorities might tap his regular phone lines. He regularly used inaccurate descriptions in his trust ledger. These descriptions included "payment of retainer", "possible investment", "payment of settlement", and "settlement funds". Anonymous email addresses and nicknames were used to try to obscure communications should they be found by the authorities. When the Respondent learned on April 12, 2016, that Law Society auditors would select and audit eight of his client files, the Respondent directed his office manager to ensure the invoices on one file were altered so they only referenced a corporate entity and not his client AK. The Respondent wrote,

> If I were them I would select [V Inc.], [WW], and [AK/A Corp.] to review. If they select [AK] they will go through the file and see his name all over it. Have we redone all of the invoices on that file into the name of [A Corp.]? If we [*sic*] not then that is our top priority right now. I can explain away [AK] as my business associate who is my main contact and instructing attorney (which also explains why he personally received funds). (NTA, Tab 9, pages 85 to 87)

[16] This behaviour is clear evidence that the Respondent was actively assisting his clients to hide and benefit from their ill-gotten gains. The Respondent was going so far as to fabricate invoices to mislead Law Society auditors into believing the funds and activities in his trust account were legitimate.

[17] By actively assisting his clients to hide, use and benefit from funds that he knew to be the proceeds of a securities fraud, the Respondent made himself a party to that conduct. He assisted and encouraged dishonesty, crime or fraud. The role of a lawyer is to provide good legal advice and representation. It is never a lawyer's role to hide evidence or illegal assets. The Law Society has proven all factual elements of allegation 1.

ALLEGATION 2

[18] Allegation 2 alleges the following:

> Between approximately September 2014 and May 2018, on behalf of one or more of your clients [WW], [NW], [KM], [A Corp.], [S Ltd.] and [V Inc.], you used or permitted the use of your firm's trust accounts to receive or disburse, or both, some or all of approximately $24,092,710.37 CAD and $5,360,839.11 USD, (the "Transactions"), and failed to do one or more of the following in connection with the Transactions:
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> (a) provide any substantial legal services;
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> (b) make reasonable inquiries about the circumstances, including, but not limited to:
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> > (i) the subject matter and objectives of your retainer;
> >
> > (ii) the source of the funds;
> >
> > (iii) the purpose of the payment of the funds; or
> >
> > (iv) the reason for the payment of the funds to or through your firm's trust accounts; and
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> c) make a record of the results of any inquiries about the circumstances.

[19] Allegation 2 is another aspect of and is subsumed by the facts in allegation 1. The evidence contained in the NTA is overwhelming. It is clear that the Respondent was not providing legitimate legal services. Rather, he was assisting his clients in hiding the funds from the securities fraud from the American authorities. The Respondent did not make reasonable inquiries about the source of the funds he was receiving into trust or their ultimate purpose. In some instances, he had actual knowledge that the funds were from X Corp. For example, on September 24, 2014, the Respondent made handwritten notes indicating that money from X Corp. was used for a loan and private placement in a corporation named V Inc. The Respondent would later receive share certificates for V Inc. On December 8, 2016, he received $1,772,122.52 US dollars into trust from a corporate entity called R Inc. R Inc. is one of the specific corporate entities named in the SEC Complaint with which the Respondent was familiar. Despite that, the Respondent received the funds and described them in his trust ledger as "Investment in Real State [*sic*]". In a December 5, 2016, email with WW, the Respondent commented about funds he had in trust that needed to be "… accounted for in due course if it is [X Corp.]

money."
(NTA, Tab 10, page 120)

[20] The Panel agrees with the Law Society that allegation 2 should be stayed pursuant to the principles in *Kienapple*. Allegation 2 sets out a number of ways that the Respondent assisted in or encouraged the dishonesty, crime or fraud of his clients. There is a clear factual and legal nexus between all the elements of allegation 1 and allegation 2. Accordingly, the Law Society has proven allegation 2, but that allegation is conditionally stayed in accordance with *Kienapple*.

ALLEGATION 5

[21] The client identification and verification rules are intended "… to ensure that the legal profession does not become an inadvertent participant in the improper processing of laundered money and that the fraud of identity theft is not aided and abetted by lawyers" (*Law Society of BC v. Wilson*, 2019 LSBC 25 at para. 21). Subject to a few very specific exemptions, lawyers are required to comply with the client identification rules every time the lawyer carries out a financial transaction. A financial transaction is defined as "… the receipt, payment or transfer of money on behalf of a client or giving instructions on behalf of a client in respect of the receipt, payment or transfer of money" (Rule 3-98(1)).

[22] The evidence set out in the NTA overwhelmingly demonstrates that the Respondent failed to comply with the client identification rules. When interviewed by Law Society investigators the Respondent described a complete lack of understanding of the client identification rules. Despite regularly receiving, transferring and paying money on behalf of his clients, the Respondent told Law Society investigators that he believed he was not doing financial transactions (NTA, Tab 11, August 23, 2018, page 18, lines 1 to 3). He also expressed the mistaken belief that the client identification rules did not apply if he received funds for a retainer (NTA, Tab 11, August 23, 2018, page 18, lines 13 to 17). Rule 3-100 requires lawyers to obtain and record client information whenever they are retained to perform legal services. The Respondent clearly did not have any meaningful understanding of his obligations under the client identification rules and did not comply with them.

[23] Specific to this allegation, the Respondent breached the client identification rules as follows:

(a) Client WW – The Respondent was retained by WW in July 2013. The Respondent had previously acted for WW at a previous firm and relied on prior copies of his client's passport with an attestation from a Channel

Islands notary dated September 12, 2012. The Respondent did not contact the notary who attested to the true copy of WW's passport. He told Law Society investigators that he "… didn't really care about the notarization part" (NTA, Tab 11, August 23, 2018, page 84, lines 14 and 15). Rule 3-104(6) required the Respondent to either obtain a copy of WW's passport directly or, if relying on a foreign notary or lawyer, to personally retain the foreign notary or lawyer. The Respondent took the position that WW did not require client identification because, despite receiving, holding and disbursing millions of dollars on WW's behalf (the very definition of a financial transaction under Rule 3-98), he did not believe he had performed any financial transactions for his client (NTA, Tab 10, page 345).

(b) Client NW – The Respondent stated that he had met NW on a few occasions prior to November 2015 when he was retained. NW is the spouse of WW. He did not obtain any client identification and verification documentation for NW. When interviewed by Law Society investigators, the Respondent advised that he did not believe he was required to comply with the client identification rules for NW. He argued that because he had a good working relationship with her spouse and that he had met NW several times before being retained he was certain of her identity and did not require a copy of her passport or other identification (NTA, Tab 11, January 18, 2019, page 546, lines 12 to 19). The Respondent performed multiple financial transactions on NW's behalf without complying with the client identification rules.

(c) Client KM – KM was a foreign national named in the SEC Complaint described in allegation 1. The Respondent received over $4 million in trust under the description "[KM] re: General Advice". Despite receiving such large sums and performing financial transactions with the money, the Respondent did not comply with the client identification rules. He never met KM in person and most of the required information was absent. The little information recorded on his computer, KM's home address and business phone number, the Respondent received in an email. He also claimed to have received a notarized copy of a passport by email, but auditors could not find any record of it.

(d) Client BW – Despite performing financial transactions for BW the Respondent did not obtain any client identification and verification documentation as required by the Rules. Further, even though the Respondent knew that BW was the subject of a criminal indictment by

American authorities for securities fraud, tax evasion and money laundering, he did not take any steps to verify and record the source of BW's funds as required by Rule 3-102. There is no evidence of any attempts to obtain the required information and copies of the required identification. The Respondent merely recorded a home address and a cellphone for BW. It is unknown if the home address and cellphone number recorded by the Respondent were accurate.

(e) Client A Corp. – This corporation was the Respondent's client starting in approximately July 2014. It was registered in Belize. WW was the sole director and shareholder. Though acting as counsel for the corporation for some time, the Respondent did not attempt to collect any of the required client identification documents until January 2018 when he learned that he would be subject to a Law Society compliance audit. These documents were assembled well after the corporation had been voluntarily dissolved in November 2017.

(f) Client S Ltd. - The Law Society could not identify any legitimate client identification with S Ltd., and it is unclear whether the Respondent ever verified the corporation's identity. In a November 2, 2016 instructing email to his assistant, the Respondent directed that the company's address was to be listed as care of a law firm in Belize. That law firm was not the corporate office, but rather a law firm seeking client identification information from the Respondent regarding the company's beneficial owners.

(g) Client V Inc. – No documents were retained by the Respondent regarding the identification of the corporation and its directors. Some minimal information was kept on the Respondent's computer system, but far short of what the Rules require. There is no record or mention of the company's business phone number, type of business engaged in, incorporation number or place of issue.

[24] The Law Society has proven all factual elements of allegation 5

ALLEGATION 6

[25] The duty and requirements for the withdrawal and transfer of funds from a trust account are set out in Rules 3-64, 3-64.1, 3-65, 3-66, 3-67, 3-68 and 3-71. Lawyers are required to properly record all trust account transactions, only make withdrawals if sufficient funds are present, ensure withdrawals are not duplicated,

and only withdraw money for payment of fees after a bill has been prepared and delivered to the client. The Respondent's trust account and file records show that the Respondent breached all four of these requirements. The specific instances relevant to this allegation are as follows:

(a) On August 31, 2015, the withdrawal of trust funds totaling $19,398.40 on behalf of the Respondent's client, SB, when the Respondent held insufficient funds on deposit to the credit of the client.

(b) On September 19, 2015, the Respondent transferred funds between client ledgers A Corp – Corporate Matters and his client SB without proper records. Rule 3-68(c) requires lawyers to record the transfer of funds between clients, an explanation for the reason for the transfer, and written approval from the lawyer authorizing the transfer. The Respondent failed to issue a written approval for this transfer as required by the Rule.

(c) On November 27, 2014, the Respondent withdrew trust funds totalling $4,035.33 in purported payment of specific disbursements: a hotel bill and an airline flight. However, the Respondent had previously withdrawn $2,099.86 on November 12, 2014 for the hotel and $1,935.37 on November 19, 2014 for the flight. The November 27, 2014 withdrawal was a duplicated payment contrary to Rule 3-64(1)(a).

(d) In six instances, between September 2014 and March 2015, the Respondent withdrew some or all of trust funds totalling $33,900 in purported payment of the Respondent's fees and disbursements when he had not prepared or delivered a bill for his fees. They are as follows:

    (i) On September 30, 2014 and October 1, 2014, the Respondent withdrew $5,500 from trust without preparing an invoice for his client WW.

    (ii) On January 6, 2015, the Respondent withdrew $5,700 to pay an invoice dated January 12, 2015 addressed to A Corp. The invoice was hand delivered to A Corp. six days after the withdrawal on January 12, 2015.

    (iii) On January 23, 2015, the Respondent withdrew $5,500 from trust regarding professional fees. No bills were prepared before or after the trust withdrawal. No bill was prepared or delivered to a client.

(iv) On February 27, 2015, the Respondent withdrew $11,200 from trust regarding professional fees. No bills were prepared before or after the trust withdrawal. No bill was prepared or delivered to a client.

(v) On March 16, 2015, the Respondent transferred $6,000 from a corporate client's funds in trust to his general account. The Respondent moved the funds via electronic transfer, instead of withdrawing with a cheque payable to the general account. No bills were prepared before or after the trust withdrawal. Instead, the Respondent relied on an "Irrevocable Direction re Funds" authorized by AK, a different client. It is unclear why the Respondent disbursed the corporate client's trust funds at the direction of AK.

[26] Accordingly, the Law Society has proven all factual elements of allegation 6.

PROFESSIONAL MISCONDUCT

[27] Having found that the factual elements of allegations 1, 2, 5 and 6 have been proven, the Panel must determine whether those acts amount to professional misconduct. *Law Society of BC v. Kim,* 2019 LSBC 43, considered the meaning of professional misconduct stating at paras. 43 to 45:

> [43] Professional misconduct is not defined in the *Act*, the Rules or the *Code of Professional Conduct for British Columbia* (the "*Code*"). Hearing panels instead assess a lawyer's conduct in specific circumstances to determine if there is "a marked departure from that conduct the Law Society expects of its members": *Law Society of BC v. Martin*, 2005 LSBC 16 at paragraph 171….
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> [44] In *Re: Lawyer 12*, 2011 LSBC 11 at paragraph 14, the hearing panel summarized previous applications of the *Martin* test as follows:
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> > In my view, the pith and substance of these various decisions displays a consistent application of a clear principle. The focus must be on the circumstances of the Respondent's conduct and whether that conduct falls markedly below the standard expected of its members.
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> [45] The Martin test is not a subjective test. A panel must consider the appropriate standard of conduct expected of a lawyer, and then determine

> if the lawyer falls markedly below that standard. In determining the appropriate standard, a panel must bear in mind the requirements of the *Act*, the Rules and the *Code*, and then consider the duties and obligations that a lawyer owes to a client, to the court, to other lawyers and to the public in the administration of justice. Each case will turn on its particular facts.

[28] This case revolves around the Respondent's use of his trust account. *Law Society of BC v Gurney*, 2017 LSBC 15 at paras. 79 and 80, sets out a lawyer's obligations with their trust account.

> [79] We find lawyers' duties with regard to the use of their trust accounts are contained in the *Code* provisions that were set out above as part of the Law Society submission, and more particularly encompass the case law cited by the Law Society in its submissions. They are:
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> (a) A lawyer's trust accounts are to be used for legitimate commercial purposes for which they are established, the completion of a transaction, where the lawyer plays the role of legal advisor *and* facilitator. They are not to be used as a convenient conduit.[37] Even where other authorities, such as FINTRAC, may be aware of the source of the funds entering an account, the effect of solicitor-client privilege is that the parties to whom the funds are disbursed and the purpose for which the funds are disbursed are shielded by the privilege. It is for this reason that a lawyer's trust account cannot be used only for the purpose of facilitating the completion of a transaction, but the lawyer must also play a role as a legal advisor with regard to the transaction. This is the requirement to provide legal services.
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> (b) The Court of Appeal in *Elias*, quoted the Bencher review decision at para. 9: '"where the circumstances of a proposed transaction are such that a member should reasonably be suspicious that there are illegal activities involved under Canadian law or laws of other jurisdictions, it is professional misconduct to become involved until such time as inquiries have been made to satisfy the member on an *objective* test that the transaction is legitimate." [emphasis added]. It is clear that the duty to make inquiries is triggered prior to the lawyer becoming involved in the transaction, and the lawyer must be satisfied on an objective basis that the transaction is legitimate.
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> (c) The lawyer's duty to investigate arises when, on an objective basis, he becomes suspicious that the transaction is illegitimate. Professional

> misconduct can be found even if the underlying transaction cannot be proved to be illegitimate. A lawyer cannot delegate the duty to inquire to a third party such as a client and rely upon the client's assurance as to the legitimacy of the transaction.[38]
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> [80] A lawyer has a gatekeeper function with regard to trust accounts. This function arises, in part, from the fact that transactions that occur through a lawyer's trust account are protected by solicitor-client privilege. The privilege means that, while the authorities may be aware of the source of funds entering into the trust account, the facts regarding to whom funds are disbursed, the amounts and the purposes are shielded from the authorities by the privilege. The purpose of the privilege is to allow open and candid communications between a lawyer and client. The purpose of the privilege is not to facilitate suspicious transactions. The gatekeeper function requires a lawyer to use trust accounts for legitimate commercial purposes for which the lawyer is a legal advisor and facilitator. Prior to the lawyer becoming involved in a transaction, if there is a reasonable suspicion that the transaction may involve illegal activities in Canada or abroad the lawyer has a duty to make reasonable inquires [*sic*]. An objective test is applied to the lawyer's conduct. In order for professional misconduct to be found, illegal activities do not have to be proved.

[29] *Gurney* at para. 80 is particularly relevant to the facts of this case. The Respondent was required to perform a gatekeeper function to ensure his trust account was not used to launder illicit funds. Instead, he chose to deliberately receive, hold, transfer and disburse funds from dubious sources with little or no attempts to determine their source. The Respondent knew that some of the money was the illegal proceeds of the securities fraud. The Respondent purposely and knowingly abused solicitor client privilege to facilitate suspicious transactions for his clients' benefit.

[30] Further, these transactions were not ones in which a lawyer should have ever been involved. Trust accounts are intended to be used for legitimate commercial purposes in which the lawyer is the legal advisor and the facilitator. None of the transactions in this case were made for legitimate purposes. The Respondent received large sums in trust but provided little or no legal advice. The transactions carried out by the Respondent were intended to prevent the American authorities from detecting and/or seizing the illegal funds from the tax and securities frauds described in the SEC Complaint and the Indictment. The Respondent treated his trust account as though he were a conventional bank; receiving, holding and

disbursing funds as his clients directed with no regard to his duties as a lawyer to ensure his trust account was not used inappropriately.

[31] The Respondent's actions are a profound and marked departure from the standard of conduct that the Law Society and the public expect of a lawyer. More than that, the Respondent knowingly assisted individuals to hide and use funds from securities and tax fraud. The Respondent's claim that he was holding the funds in the hope that by preventing the American authorities from knowing how much money was still available from the securities fraud he could negotiate a better settlement, is inappropriate and unethical. Lawyers provide legal advice and legal services. They do not hide illegal proceeds from government authorities. Doing so makes a lawyer a party after the fact.

[32] The Respondent knowingly facilitated, assisted and encouraged dishonesty, crime or fraud. The Respondent's actions are a complete abdication of the ethical standards to which lawyers are expected to adhere. The Law Society has proven professional misconduct with respect to allegation 1. As noted above, the Panel is directing a conditional stay on allegation 2 pursuant to the principles in *Kienapple*.

[33] Allegations 5 and 6 relate to breaches of the client identification rules and trust accounting rules respectively. These are not inadvertent breaches of these rules, but deliberate and repeated breaches. In this case the Respondent showed a complete disregard for the client identification rules. The breaches of the trust accounting rules were flagrant. Further, the breaches in allegations 5 and 6 appear to be a part of the Respondent's ongoing scheme to assist his clients hide and benefit from their illegal funds. This is a marked departure from the conduct the Law Society expects of lawyers. The Law Society has proven professional misconduct with respect to allegations 5 and 6.

CONCLUSION

[34] The Panel makes the following findings:

(a) The Law Society has proven that the Respondent committed the acts set out in allegations 1, 2, 5, and 6 and those acts are professional misconduct.

(b) With respect to allegation 1, the Respondent knowingly assisted or encouraged dishonesty, crime or fraud.

(c) Pursuant to the principles in *Kienapple*, a conditional stay is entered with respect to allegation 2 due to its factual and legal nexus with allegation 1.

[35] A decision was issued to the parties on February 14, 2023. This decision corrects and replaces the original decision.