2023 LSBC 39
Hearing File No.: HE20200064
Decision Issued: September 15, 2023
Citation Issued: September 1, 2020

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL

HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

LINDSAY ADAM CHRISTOPHER ROSS

RESPONDENT

DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION

Hearing dates:	December 12 to 16, 19 to 23, 2022 and March 13, 2023
Panel:	Gillian M. Dougans, Chair Linda Berg, Public representative Gavin Hume, KC, Bencher
Discipline Counsel:	David A. Jardine, KC
Appearing on his own behalf:	Lindsay Adam Christopher Ross
Written reasons of the Panel by:	Gillian M. Dougans

INTRODUCTION

[1] The citation issued against Lindsay Ross (the "Respondent") on September 1, 2020 (the "Citation") alleges professional misconduct or conduct unbecoming in respect of two events. These events will be referred to as "MT Funds" and "Sproat Lake Properties".

[2] The MT Funds event involves the sum of $100,000 given by a client, MT, to the Respondent on May 31, 2012. MT says this money was a deposit towards the purchase of a hotel. The Respondent says it was a loan.

[3] The Sproat Lake Properties event involves the purchase and sale of recreational property on Sproat Lake by the Respondent, his wife and family friends, AH and his wife MQ. AH says the Respondent was acting as their lawyer. The Respondent says he was not.

CITATION

[4] The Citation alleges that the Respondent engaged in professional misconduct or conduct unbecoming as follows:

> **Misappropriations – Re: MT**
>
> 1. On or about May 31, 2012, in relation to a real estate investment matter involving the purchase of the S property and your client MT, you misappropriated or improperly handled $100,000 in funds received from MT, contrary to one or both of Rules 3-51 and 3-55 of the Law Society Rules then in force, and your fiduciary duties.
>
> …
>
> 2. In the alternative to allegation 1, on or about May 31, 2012, you borrowed $100,000 from your client MT, contrary to Chapter 7, Rule 4 of the *Professional Conduct Handbook* then in force.
>
> …
>
> 3. On or about June 21, 2012, in relation to a real estate investment matter involving the purchase of the P Hotel property and your clients MT and GP, you misappropriated, or improperly authorized the withdrawal from trust of $100,000 in funds received from GP by distributing the funds to MT when you were not entitled or authorized to do so, contrary to Rule 3-56 of the Law Society Rules then in force.

…

Misleading – MT Funds

4. Between approximately May 2012 and July 2013, in relation to $100,000 you received from MT on or about May 31, 2012, you made representations to MT about the reasons the $100,000 was required, when you knew or ought to have known that the representations were false or misleading.

…

5. Between approximately April 2013 and June 2013, in relation to $100,000 you received from MT on or about May 31, 2012, you made representations to an accountant, AH, about the true nature of the $100,000 provided by MT, and the location of the funds, when you knew or ought to have known that the representations were false or misleading.

…

6. On or about June 21, 2012, in relation to $100,000 disbursed to MT, you made representations to another lawyer, KJ, about the true nature of the funds, when you knew or ought to have known that the representations were false or misleading.

…

7. Between approximately April 2015 and February 2020, in relation to $100,000 you received from your client MT on or about May 31, 2012, you made one or both of the following representations to the Law Society of British Columbia that you knew or ought to have known were false or misleading:

(a) that the $100,000 was a loan to your law corporation; and

(b) that MT had agreed that you could repay the $100,000 to him by making a direct payment on a real estate investment matter on his behalf.

…

8. In the alternative to allegation 7, on or about November 29, 2012, in relation to $100,000 you borrowed from MT on or about May 31, 2012, you made a representation to the Law Society of British Columbia in your

Trust Report for the reporting period ending August 2012, that you or your firm were not directly or indirectly indebted to a client at any time during the reporting period, when you knew or ought to have known that this representation was not true.

…

Conflict of Interest: Sproat Lake Properties

9. Between approximately 2002 to November 2012, in relation to two real estate purchases and sales in Sproat Lake, British Columbia, and the drafting and execution of a trust agreement dated September 27, 2005 (the "Trust Agreement"), you jointly represented two or more clients, including your wife JR, MQ, and AH, when you were in a conflict of interest, contrary to one or more of Chapter 6, Rules 1 and 4 of the *Professional Conduct Handbook* then in force (the *"PCH"*), Chapter 7 of the *PCH,* and your fiduciary duties to your clients, by doing one or more of the following:

(a) jointly representing two or more clients where you had not done, at the commencement of the retainer, one or more of the following:

i. explained to each client the principle of undivided loyalty;

ii. advised each client that no information received from one of them as part of the joint representation can be treated as confidential as between them;

iii. received from all clients the fully informed consent to the course of action to be followed in the event you received from one client, in your separate representation of that client, information relevant to the joint representation; and

iv. secured the informed consent of each client (with independent legal advice, if necessary) as to the course of action that will be followed if a conflict arises between them;

(b) performing legal services for your clients when you had a direct or indirect financial interest in the subject matter of the legal services;

(c) carrying on in a business other than the practice of law in such a way that one might reasonably expect that in the carrying on of that business

you would be exercising legal judgment or skill for the protection of your clients;

(d) investing your clients' funds, and advising your clients to invest in something in which you and your wife had a personal interest, where that interest would reasonably be expected to affect your professional judgment;

(e) failing to advise MQ and AH that JR had obtained a mortgage and line of credit on a property, contrary to the Trust Agreement;

(f) continuing to act for all clients in circumstances where you knew that JR had breached her duties as a trustee to MQ and AH; and

(g) distributing the sale proceeds entirely to JR when you knew or ought to have known that the net funds of the sale were not enough to pay MQ and AH their share of the sale proceeds.

…

Facilitating a Breach of Trust

10. On or about December 21, 2005, in relation to a property in Sproat Lake, British Columbia, and a trust agreement that you drafted and witnessed on September 27, 2005 (the "Trust Agreement"), you facilitated a breach of the Trust Agreement by your wife JR, by signing, as a personal covenantor, a mortgage obtained on the property by JR, when you knew or ought to have known that the Trust Agreement required the written consent of MQ and AH in order to charge their half of the property by way of mortgage or debenture, and when you knew or ought to have known that neither MQ nor AH had provided such consent to JR.

…

Misleading – AH and MQ

11. Between approximately June 2005 and September 2014, in relation to a real estate purchase in Sproat Lake, British Columbia, involving JR, AH, and MQ, you made representations to AH and MQ, or failed to correct misinformation provided to them by JR, about the true purchase price of the property.

…

SERVICE OF CITATION

[5] The Citation was properly served on the Respondent.

EVIDENCE

[6] At the hearing, the Law Society relied on the Notice to Admit ("NTA") dated April 27, 2022 and the Respondent's Response to the NTA dated July 5, 2022. In particular, the Law Society relied on two letters the Respondent wrote to the Law Society dated March 3, 2015 and April 14, 2015 and an affidavit sworn by MT on January 16, 2019.

[7] The Law Society also called five witnesses:

(a) AH – complainant and former friend of the Respondent, and his wife, and current CFO of the PS and TL hotels. At material times to the Citation, AH was the controller and accountant for both the PS and TL projects. The PS project is identified in the published Citation as "a real estate investment matter involving the purchase of the P Hotel property", but will be referred to as "PS project" in this decision. Also, in this decision "PS" will be used to identify the hotel or the property that was the subject of the PS project. The TL project is identified in the published Citation as "a real estate investment matter involving the purchase of S property", but will be referred to as "TL project" in this decision. Also, in this decision "TL" will be used to identify the hotel or the property that was the subject of the TL project.

(b) MT – complainant and a client of the Respondent and investor in the PS and TL projects. MT gave the Respondent a cheque for $100,000 on May 31, 2012. MT says this money was a deposit towards the TL project. The Respondent says it was a loan.

(c) BG – the Respondent's former paralegal.

(d) SD – the Respondent's former legal assistant.

(e) KJ – a lawyer who formerly shared office space with the Respondent and provided limited legal services to the PS and TL projects.

[8] The Respondent testified on his own behalf and cross-examined the witnesses called by the Law Society in a manner that was often mixed evidence and argument. He also called his wife, JR, as a witness and tendered various documents.

[9] There are a number of other persons who did not testify but are mentioned in these reasons in relation to the MT Funds event or the Sproat Lake Properties event. These persons are as follows:

(a) NS – the Respondent's articled student.

(b) CL – an investor in the PS and TL projects. He was the largest shareholder in the PS project.

(c) GP – an investor in the PS project. GP made a $100,000 deposit for the PS project, but as the deposit on the project had already been made the funds were not needed. GP's $100,000 deposit was refunded to MT on the Respondent's instructions.

(d) BD – a client and friend of the Respondent who needed funds to complete a purchase of a Whistler property. BD was $100,000 short on funds and the Respondent agreed to find money for BD that was necessary to close the purchase of the Whistler property. The Respondent used the $100,000 received from MT to close BD's Whistler transaction.

(e) LF – the Respondent's accountant.

(f) MQ – AH's wife and the Respondent's cousin. The Respondent and his wife, JR, with MQ and AH, sequentially purchased and sold two recreational properties referred to in the decision as Sproat Lake #1 and Sproat Lake #2. MQ and AH were close family friends of the Respondent and his wife, JR, from 2000 until the relationship broke down and ended on or before June 2014. MQ died in October 2021.

(g) JS and MS – owners of a lot that was subdivided and one of the subdivided properties became Sproat Lake #2.

(h) DA – a lawyer for the subdivision for the sale of Sproat Lake #2.

(i) C - JR's banker at HSBC.

(j) GJB - a lawyer in the UK.

(k) DC - a notary public who represented the purchaser when JR sold Sproat Lake #2.

(l) CM – the Respondent's conveyancer who prepared the documents for JR to sign for the sale of Sproat Lake #2.

ISSUES

[10] The Panel must determine:

(a) if the Respondent engaged in the conduct as alleged in the Citation; and

(b) if so, whether that conduct amounts to professional misconduct or conduct unbecoming a lawyer pursuant to s. 38(4) of the *Legal Profession Act,* SBC 1998 c. 9 (the "*Act*").

ONUS AND BURDEN OF PROOF

[11] There is no dispute that the onus is on the Law Society to prove either professional misconduct or conduct unbecoming a lawyer on a balance of probabilities. This was confirmed by the British Columbia Court of Appeal in *Foo v. Law Society of BC,* 2017 BCCA 151, at para. 63.

[12] This Panel adopts the following from *Law Society of BC v. Schauble*, 2009 LSBC 11, at para. 43, as a succinct description of the onus and standard of proof:

> The onus of proof is on the Law Society, and the standard of proof is a balance of probabilities: "… evidence must be scrutinized with care" and "must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But ... there is no objective standard to measure sufficiency." (*F.H. v. McDougall*, 2008 SCC 53, 297 DLR (4th) 193).

[13] The standard of proof does not change depending on the seriousness of the allegations against the lawyer. There is only one standard of proof.

MEANING OF PROFESSIONAL MISCONDUCT

[14] "Professional misconduct" is conduct by a lawyer that relates to the practice of law. "Conduct unbecoming" is conduct by a lawyer that relates to behaviour outside the practice of law.

[15] Professional misconduct is described by the frequently cited case of *Law Society of BC v. Martin*, 2005 LSBC 16, at para. 151 to 154 and 171, as "whether the facts as made

out disclose a marked departure from that conduct the Law Society expects of its members." The conduct does not need to be disgraceful or dishonourable to amount to a "marked departure". The *Martin* test is objective, meaning that a panel must consider the standard of conduct expected of all lawyers and then determine if the Respondent falls markedly below that standard. In order to determine the appropriate standard, this Panel will consider the *Act*, the Rules, the *Professional Conduct Handbook* (the "*Handbook*"), and the *Code of Professional Conduct for British Columbia* (the "*Code*") which replaced the *Handbook* in January 2013.

MEANING OF CONDUCT UNBECOMING THE PROFESSION

[16] Conduct unbecoming the profession is defined in section 1 of the *Act* as follows:

> "conduct unbecoming the profession" includes a matter, conduct, or thing that is considered, in the judgment of the benchers, a panel or a review board, to be contrary to the best interest of the public or of the legal profession, or to harm the standing of the legal profession."

[17] The Law Society regulates lawyers in order to protect the public. Lawyers are expected to be responsible members of the community generally.

APPLICATION TO INTRODUCE NEW EVIDENCE

[18] After the close of the evidence on December 23, 2022, the Respondent applied to introduce further evidence in the form of minutes from the January 14, 2015 meeting of the PS and TL Hotel Board of Directors. The minutes sought to be introduced were attached to the application.

[19] The basis for this application was that at this January 14, 2015 meeting the Directors were discussing a litigation strategy for a civil action that was eventually filed against the Respondent and that there was also a comment that complaints to the Law Society could help by putting pressure on the Respondent. Both MT and AH were present at this meeting. The comment about Law Society complaints was not made by either MT or AH.

[20] The Respondent argued that this evidence was relevant since both MT and AH had denied having a strategy to make complaints to the Law Society in order to gain an advantage in the civil action against the Respondent. He argued that this evidence would impeach the credibility of MT and AH in this hearing.

[21] This Panel dismissed the Respondent's application to introduce new evidence with reasons to follow. These are the reasons.

[22] The motive for making a complaint to the Law Society is not relevant in this hearing. The Law Society is required to investigate all complaints thoroughly and to pursue the discipline process, if appropriate. This Panel is required to determine the merits of the allegations in the Citation and whether the Law Society has proven them on a balance of probabilities.

[23] The statement in the minutes was not made by either AH or MT. The statement, made by a lawyer at the Board meeting and as quoted by the Respondent, contains only an observation about the effect of filing the Law Society complaints. It could not form the basis for an attack on the credibility of MT or AH. The attached minutes showed that this comment alone was the only reference to Law Society complaints.

[24] Given that this Panel has dismissed the application on the basis of relevancy, we do not need to consider other arguments made by the parties.

BACKGROUND

[25] The Respondent majored in accounting in university and passed the CPA exam in the USA. He moved to Canada to work as a Chartered Accountant ("CA") but was offered an opportunity to do an MBA. He abandoned his efforts to become a CA in Canada and did an MBA, partly in Japan. When he returned to Canada, he completed his law degree. He articled with a large firm in Calgary and stayed on as an associate in the tax department. He worked there for two years before he moved to BC. He worked with a firm of solicitors that merged with a larger firm in Vancouver. He was asked to start the tax department. Next, he was seconded to a major accounting firm. After that, he moved to Vancouver Island when he saw that there were no tax lawyers on the Island. He was a partner with a large Victoria law firm for 8 years and he hired KJ while he was there. In 2015, he and KJ left this firm and set up as an apparent partnership in Victoria.

[26] The Respondent was called to the bar in BC in 1989 and he practised tax and corporate law throughout his career. He retired on June 5, 2020. On July 13, 2020, he was suspended from practice and on January 1, 2021, he became a former member of the Law Society.

[27] Even though the Respondent is no longer a member of the Law Society, the Law Society has the authority and responsibility to investigate complaints and pursue the disciplinary process. This Panel agrees with the panel in *Law Society of BC v. McLean*, 2015 LSBC 47 at para. 42, which stated:

> While a lawyer may shed his or her privilege to practise law by voluntarily (e.g. resigning, not paying annual practising and insurance fees), or involuntarily (e.g. disbarment) withdrawing from membership, the lawyer remains accountable for any breach of any obligation or responsibility imposed by the Law Society Rules or *Code of Conduct* when the lawyer was a member of the Law Society. In short, when a person accepts the benefit of membership in the Law Society (to practise law), they also accept the responsibilities (to practise law competently and ethically) imposed by the Law Society. Non-membership in the Law Society does not relieve a person from that person's obligation to comply with the Law Society Rules or ethical *Code of Conduct* during the time a person was a member.

[28] From 2001 to November 2015, the Respondent practised law in a firm called Ross Johnson and Associates in Victoria. This was what is known as an apparent partnership that was made up of two lawyers, the Respondent as LAC Ross Law Corporation and KJ as KEJ Law Corporation. The two firms had separate staff, separate bank accounts and kept separate records. Many lawyers practice in apparent partnerships.

MT FUNDS

[29] MT was a client of the Respondent's since 2010. MT was in the restaurant business and the Respondent did general corporate work and tax restructuring for him. By 2012, they had a friendly, personal relationship as well.

[30] In 2011, the Respondent invited MT to participate in the purchase of a hotel, TL. In 2012, the Respondent invited MT to participate in the purchase of a second hotel, PS. The Respondent had identified both hotel opportunities and was putting together a group of investors for each project. MT was interested in the potential of these projects and impressed with the high calibre of the other investors. It was clear from his evidence that he was pleased to be an investor in both of these projects.

[31] On May 31, 2012, the Respondent received $100,000 from MT.

[32] The Respondent wrote a letter to the Law Society dated April 14, 2015 responding to a number of questions concerning a complaint made by MT. The paragraphs relevant to this Citation are in response to question 2 of the Law Society's letter. The Respondent responded as follows (errors in original):

> A. In the morning of May 31, 2012 I contacted [MT] by telephone. I had been working steadily on two transactions the acquisition of the [TL]

property and the [PS] property. I had been in discussions almost daily with [MT] and others about these transactions. Available cash flow at L.A.C. Ross Law Corp had diminished as a result of this and two large accounts receivable from clients that were having difficulty paying. I called [MT] if he could lend L.A.C. Ross Law Corp $100,000.

B. It was quite clear to [MT] that this was a Loan and not a required deposit or contribution for the [PS project] or [TL project] transactions.

C. [MT] agreed to the loan and said he would drop off a cheque later that day, which he did. He called me to confirm that the draft should be made payable to L.A.C. Ross Law Corporation versus made out to Lindsay Ross personally and that it should not have the words "in trust" on it. I confirmed that this was correct as it was a loan going to L.A.C. Ross Law Corporation and would be deposited into its general account.

…

J. For the Mid-June required deposit to the [PS project] receiver the requisite funds were $750,000. There was excess funds deposited and with no need to retain these extra funds in trust [MT's] deposit (a separate $100,000) originally deposited by [MT] was refunded to him by KEJ Law Corporation. These funds were not deposited, transferred to nor refunded by L.A.C. Ross Law Corporation.

K. At the beginning of 2013 when it became clear that the [PS project] transaction was closing a memo went to all investors setting out each investor's required contribution.

L. Prior to the contributions, I contracted [MT] and explained that L.A.C. Ross Law Corp would be repaying the Loan directly to [PS project] on his behalf and that his required contribution should be as laid out in the memo despite his receiving a refund of $100,000.

…

O. Following the [PS project] transaction's closing [AH], who was asked to reconcile funds received and paid, in order to track available funds for [PS project]'s use and help [PS project]'s accountants establish an opening balance sheet, produced a memo or spreadsheet outlining each

> investor's contribution. At this stage, the Loan had not been repaid via [PS project] on behalf of [MT] by L.A.C. Ross Law Corporation. I understand that [MT] was contacted by [AH] or [CL], to inform him that he was $100,000 short in his contributions. [MT] contacted our office and spoke to [BG]. Subsequently, I communicated with [MT] and reminded him that the Loan would be repaid by L.A.C. Ross Law Corporation by direct contribution to [PS project] on his behalf. This payment was made on July 2, 2013. Please find attached the L.A.C. Ross Law Corporation general bank statement showing this bank draft.
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> …
>
> Q. …Subsequent discussions with [MT] confirmed that the Loan would be repaid by L.A.C. Ross Law Corporation to make up the balance of his [PS project] contributions. [MT] acted accordingly only depositing $641,888.33 with [KEJ] Law Corporation being $100,000 short of his required contribution despite having received a refund of $100,000 from [KEJ] Law Corporation.

MT

[33] MT recalled getting a call from the Respondent on May 31, 2012. The Respondent told MT that he needed $100,000 from each investor to show the seller on the TL project that "we were real players. Think it was called good faith money". MT was at home at the time but he said he jumped on his motorcycle and went to the bank. He got a draft for $100,000 payable to LAC Ross Law Corp. As he left the bank, he realized that the draft did not say "In Trust". He called the Respondent and was told that was not a problem and that he could still put the cheque in trust. MT went to the Respondent's office and gave the cheque to BG, the Respondent's paralegal. He said that if he saw the Respondent at the time, he would just have given him a wave and gone home. He was not given any paperwork for this bank draft.

[34] MT testified that it was about an hour from the time of the Respondent's call asking for $100,000 to delivering the bank draft to his office. His recollection was that the money was needed that day and that it would be repaid to him in a couple of weeks. He could not recall any further communication with the Respondent that day but said he probably talked to him later to say that he had brought the cheque in and that everything was "OK".

[35] In his affidavit, which was attached to the NTA and accepted as authentic in the Respondent's Response, MT stated that the Respondent, "always gave me the impression

that he was well to do and financially flush. He never stated to me that his law firm was having any cash flow problems or was short of funds." MT confirmed these statements in his testimony when he was asked what his response would have been if the Respondent had asked him for a loan at that time. MT said that the Respondent never asked him for a loan. If he had, he would have been very concerned. He said the Respondent presented himself as very well off with vehicles and a beautiful home.

[36] MT said that he asked the Respondent for the return of his good faith money. He thought he asked a couple of weeks later and that the Respondent told him the return of his money was imminent, by the end of the month.

[37] MT identified a second bank draft from him for $100,000 payable to KEJ Law Corporation on June 12, 2012. This was a deposit on the PS project. He said he would have delivered that cheque in person because he never used couriers. He was shown a receipt for this deposit but said he did not recall getting a receipt.

[38] MT next identified a letter from KJ dated June 21, 2012 enclosing a cheque for $100,000. MT agreed that he received this cheque but said that he did not read the letter. He believed the $100,000 cheque was the return of his good faith money on the TL project. He said he picked up this letter and cheque from the Respondent's office.

[39] MT said he did not read the letter from KJ saying that he was being refunded his $100,000 deposit on the PS project. He said he did not ask for his deposit on the PS project to be refunded.

[40] MT identified an email from a paralegal in the Respondent's office, SD, dated August 23, 2012 to the investors in the TL project which said that MT's share in the TL project was $650,000. He agreed that $650,000 was his "share".

[41] MT testified that he knew GP as an investor in the PS project and that GP came to the investor meetings. MT said he was never told that he was receiving money from GP on the PS project. MT identified an email from SD dated August 24, 2012 to MT only that confirmed he had a $100,000 deposit to the credit of the PS project and no monies credited to the TL project.

[42] In his affidavit sworn January 16, 2019, MT stated the following:

> 25. It was my clear and express agreement with Lindsay that my money would be placed in trust. Our discussion was that the money was to be good-faith money placed in the trust account to be able to show to or talk to the vendors or their solicitors about the [TL project] or perhaps the

> [PS] deal or to the lenders on [the PS project], to ensure that our offer had credibility backed up by that money in trust.
>
> …
>
> 32 I had no discussion with Lindsay about a loan or about me making a $100,000.00 loan or any other loan to him or to his law firm. Lindsay never disclosed to me that he or his law firm was in any financial difficulty or in need of any loan.
>
> 33 Lindsay many months later in June or July of 2013 admitted that he had deposited my $100,000.00 to his general account. That was done without my knowledge and consent.
>
> 34. Lindsay has never disclosed to me that the money may have been used to repay a borrowing from another client or that it was put to personal or other corporate use.
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> …
>
> 122. I was told by Lindsay Ross directly in about June of 2013, that the law firm had to put it into the general account first because it was made out to the law firm and not payable "in trust". That is what I recall being told by Lindsay Ross. That was the excuse he gave to me as to how it got into that account. I believe he said words to the effect that "because it did not say "in trust" we had to put it into general first." He implied that the last step was overlooked, but I am not sure he actually said that. That version of the set of rules for handling a draft payable to a law firm was directly contrary to what Lindsay Ross told me on the date of the draft, a year earlier, but it did make sense to me, because that had been what I had suggested to him before. On May 31, 2012, the date of the draft, he had told me that it does not have to say "in trust" to go into trust. The story he told me in about June of 2013 was exactly the opposite.

[43] In cross-examination, MT agreed that the TL project closed on August 31, 2012.

[44] MT testified that the PS project closed on February 5, 2013. He was advised after the closing that he was $100,000 short by CL. CL was a long time family friend of MT's that he had introduced to the Respondent for tax planning and who also participated in the two hotel projects. CL was a small investor in the TL project and a much larger investor in the PS project.

[45] MT testified that he was very distraught to be told he was $100,000 short on the PS project. He called the Respondent who told him not to worry, that he did remember he

had made his deposit, and that he would "find it". MT testified that he was very stressed about this.

[46] MT said that no one knew where his money was and that BG could not find it. Then he was told, probably by BG, that it was found.

[47] MT was asked if he asked the Respondent to pay $100,000 to the PS project on his behalf and he said no, he did not.

[48] MT was shown a TD Bank draft dated August 29, 2013 for $100,000 to the PS project and asked if he requested this to be paid to the PS project as repayment of a loan he had made to the Respondent on May 31, 2012 and he said no.

[49] MT was cross-examined by the Respondent. The Respondent put it to MT that on May 31, 2012 he called him and asked him for a loan to LAC Ross and that it would be put in general so do not put "in trust" on the cheque. MT denied this.

[50] MT agreed he called from the bank to confirm that normally the cheque would be marked "in trust".

[51] The Respondent put it to MT that he called him a second time from the bank and asked if the cheque should be "in trust" and the Respondent told him it should not be "in trust" because it was going to be put in his general account. MT denied this.

[52] The Respondent suggested that MT called him a third time to ask if the cheque should not say "in trust" and MT said that he only called once on the way to his office.

[53] MT agreed that he gave the cheque to BG. He was asked if he got a receipt and he said that he did not recall and that he was not expecting one.

[54] The Respondent asked MT if he recalled him saying that they would meet the next day and talk about the cheque. MT was shown a copy of a page from the Respondent's daytime for June 1, 2012 that showed an appointment to meet with him at 10:30 but MT said he did not recall such a meeting.

[55] The Respondent questioned MT about the letter from KJ dated June 21, 2012 that says it is returning MT's PS project deposit of $100,000. MT agreed that is what the letter says but that he did not remember reading it and that it did not make sense. He had no idea why KJ would return his PS project deposit and that he was told it was the good faith money. He was expecting a return of his good faith money and he said he had never seen the letter from KJ. He agreed that he deposited this cheque and that it cleared.

[56] The Respondent showed MT a memo from the Respondent's articled student NS to all of the PS project investors dated December 24, 2012. MT agreed that this memo shows a credit to him for a $100,000 deposit. The Respondent asked him to agree that was wrong since his deposit had been returned by KJ in June. MT disagreed because the refund in June was for the TL project, not the PS project.

[57] The Respondent asked MT if he recalled him saying that his PS project money had been refunded and the only outstanding money was the loan made to the Respondent on May 31st and that he would repay that amount to the PS project. MT denied this.

[58] The Respondent showed MT a receipt dated May 31, 2012 for a CIBC Bank Draft for $100,000. The receipt says "re Loan from [MT]". MT said he did not recognize the receipt or know anything about it.

[59] The Respondent asked MT if he had received phone calls from AH looking for his $100,000. MT said no, that AH was an accountant and he did not know why he would be looking for the money when it should be the Respondent who was looking for the $100,000.

[60] The Respondent showed MT an email from SD dated August 24, 2012. This email states that MT made a deposit to the PS project on May 31st and a second deposit on June 12 and that he was refunded $100,000 from the PS project on June 21. MT said this memo was wrong because the $100,000 he received on June 21st was the return of the good faith money on the TL project.

[61] The Respondent showed MT a spreadsheet for the PS project showing how much each investor needed to deposit with KJ by January 15, 2013. The spreadsheet shows a $100,000 deposit credited to MT. The Respondent put it to MT that this spreadsheet was wrong because MT's deposit on the PS project had been refunded to him. MT disagreed and said that it was the TL project deposit that was refunded to him.

[62] The Respondent asked MT about the call from CL to say he was short $100,000 on the PS project. MT stated his recollection that he called the Respondent to ask what was going on and that the Respondent told him that he was paid up and that he would find the money.

[63] The Respondent put it to MT that he told him his PS project money had been refunded and that the only outstanding money was the loan made to him on May 31, 2012 and that he would repay that loan to the PS project. MT denied this.

[64] MT said he did not recall discussing the missing PS project money with AH and did not recall AH coming to his home. He did recall discussions with BG on the phone

and that she was assisting to find his money. He testified that he believed all the people in the Respondent's office were looking for his money.

[65] The Respondent asked MT if he had shown CL the letter from KJ returning his $100,000 deposit on the PS project and MT said no because he did not even remember getting that letter.

[66] MT agreed that there were excess funds on the closing of the PS project that could be used for operating expenses.

[67] The Respondent asked MT about his complaint to the Law Society and suggested a "symmetry" between his complaint and the other complaints. The Respondent asked if there was a plan to make the complaints together. MT denied such a plan.

SD

[68] SD was a lawyer in Portugal. She came to Canada in 2009 and began working for the Respondent as a legal assistant in 2010. She would draft documents for his tax and estate planning practice. Sometimes she would fill out receipts. The receipt for the MT funds on May 31, 2012 is not her handwriting. She knew MT as a client of the Respondent's. She remembers the draft that MT brought in on May 31, 2012 because it was deposited to the general account, which she thought was unusual. She recalls asking a couple of times about depositing this cheque into general and she was told not to worry, "so I did what I was told". She would have asked the Respondent or maybe BG. She said her own understanding was that this cheque should have gone into trust and when she did not get an answer, she asked the Respondent.

[69] SD said that she did not have access to KJ's trust account.

[70] She was asked about an email from her dated August 23, 2012 to all of the investors in the TL project. The email is signed by SD "[o]n behalf of Lindsay Ross." SD testified that she must have gotten the information in this email from the Respondent. This email stated that the closing date for the TL project would be August 31, 2012 and that the amounts listed below needed to be delivered by August 27, 2012. The amount owing for MT was $650,000.

[71] SD was asked about an email she sent to only MT on August 24, 2012. She assumed she wrote that email in response to an enquiry from MT. She further assumed that she must have gotten the information from notes that she kept on the file. She said there would be a Word document on the file with the "ins and outs" on the trust account that she would have updated. She does not think that she relied on a conversation. She said that was unlikely and that it makes sense she would have looked at records. She

agreed on cross-examination that her email is not cc'd or bcc'd to the Respondent and it is possible that he did not see this. She also said on cross that she believed that the money put into the general account had to be moved to the trust account.

[72] The email from SD to MT on August 24, 2012 states the following:

> You delivered a cheque of $100,000 on May 31 credited to the [PS project] file.
> You delivered a second cheque of $100,000 on June 12 also credited to the [PS project] file.
> [KJ] wrote you a cheque of $100,000 on June 21 from the [PS project] file.
>
> So, you have $100,000 paid on [PS project]. This money was used to pay the [PS project] deposit.
>
> You have no monies credited to the [TL project] file.

[73] On cross-examination, SD said her understanding at the time was that the May 31, 2012 cheque from MT was for the PS project. She could not say why she knew that. She also said she knew that cheque went into the general account and not into trust and she asked the Respondent several times but never got a satisfactory answer. She stated that the Respondent "probably said 'do not worry.'"

BG

[74] BG was the Respondent's paralegal at the time of the MT cheque for $100,000 on May 31, 2012. She worked for the Respondent from 1993 to July 2014.

[75] BG recalled MT bringing in the CIBC draft for $100,000 on May 31, 2012. She identified her handwriting in the receipt book. She could not remember if MT gave the cheque to her or to SD. She remembers that MT said that the Respondent was on the phone and his door was closed and that he was waiting for or looking for this money. BG testified that she was aware that the Respondent had to pay money back to their client BD who needed the funds that day to buy a property in Whistler. She recalled that BD had called her several times the previous week because he was stressed about needing the $100,000 to complete his Whistler deal.

[76] BG testified that initially she thought the funds from MT were for the PS or TL project. When she went to receipt them she noticed that the cheque was made out to LAC Ross and did not say "in trust". She said the Respondent came out of his office and told her it was fine and that it was a loan from MT to him. MT had left the office by this

time. BG wrote "re loan from [MT]" on the receipt and agreed that information came from the Respondent. She agreed that she wrote down the reference to BD then scribbled it out. She said she thought she should note that but since these funds were not actually on the BD file she crossed it out. She assumes she was advised that the Respondent was going to use these funds to repay BD. She could not remember if she wrote the reference to BD first and then the phrase "Loan from MT". She did not remember giving this receipt to MT.

[77] BG identified a statement for the general account dated May 31, 2012 showing an opening balance of $10,827.64 and a deposit of $109,824.24. She also identified the deposit book showing MT's CIBC draft for $100,000 on May 31, 2012.

[78] BG identified an email that she received from AH dated June 10, 2013, just over a year after the MT funds of May 31, 2012. The subject line says "MT $100k" and states:

> [BG]
> I just had another shareholder email on the trust account funds not reconciling. Can you scan Lindsay's general tomorrow to see if it went in there and where thereafter, failing that I will speck to [MT]. Let me know a soon as you can as its [*sic*] becoming an issue!
> Thanks for your help earlier.
> A.

[79] BG testified that AH was the controller and accountant for both the TL project and the PS project.

[80] BG identified her response to AH, an email from her dated June 11, 2013:

> Hey [AH],
> I'm going to have to get Lindsay involved to explain the $100k – he did before to MT (although who knows how he explained it.) Am I ok to say that you asked me to look into it b/c [MT] insisted he'd put money in and now there's another shareholder questioning it? I don't want to get anyone in trouble but I know Lindsay, if its [*sic*] just you (one person), he won't make it a priority to call…just let me know what I'm SUPPOSED to know…!
> B.

[81] BG identified the email response from AH dated June 11, 2013:

> [BG]
> Leave it to me, I will speak to [MT] and get the date of the transaction to

> follow through from that side…but are you saying to me that this money is not in Lindsay's general account either!

[82] BG identified her reply to AH dated June 11, 2013:

> Hi,
> The money is certainly not in the general account. Lindsay did have an explanation before and spoke to [MT] about it. I'm not sure what it was tho. I 'left it with him'.
>
> [MT] brought the cheque in on May 31, 2012.
>
> [AH], now I'm really not feeling good about this.
>
> You know, just to cover my butt…if you have any queries that concern Lindsay, etc., from now on would u email me at [redacted]. That's my personal email address which will not b [*sic*] monitored by anyone but me. ☺. It does go to my blackberry so i'll [*sic*] get it just as quickly but it will avoid the work server.
>
> I'll ask him to explain what happened with the $100k again, indicating that you're having problems reconciling the accounts and that it all stems from the $100k that [MT] put in. I'll let u know his answer. We'll at least then see where he's at.
>
> I'll let u know.

[83] BG testified that in order to see if these funds were in the general account, she checked the general account on line. She could see that the funds had been there and been moved out. She was asked, why she did not tell AH that. She said that she was afraid of having issues with the Respondent and that AH needed to talk to the Respondent because she was "not going to get into it." She wanted AH to hear the explanation from the Respondent.

[84] BG testified that the Respondent did not tell her what he had said to MT about his $100,000 from May 31, 2012. She could not remember if she had a discussion with the Respondent on June 11, 2013 about the funds not being in the general account. She could not remember if she asked the Respondent to explain what had happened to MT's $100,000. She testified that she probably just told the Respondent to call MT or AH and explain.

[85] On cross-examination, BG agreed that she first thought the $100,000 from MT on May 31, 2012 was a deposit on the PS project. She said she went to give it to KJ but

noticed the draft was made out to LAC Ross and was not "in trust". She spoke to SD and they thought of calling MT because they assumed the funds would be for either the PS project or the TL project. However, the Respondent came out of his office shortly after MT had left and told her that the funds were a loan and to deposit them into the general account. She recalled the Respondent telling her to write "loan from MT" on the receipt. She said that she would not have given MT a copy of the receipt.

[86] BG testified on cross-examination that she had been called by BD about a $100,000 deposit that he needed for his Whistler purchase. She was told by BD that he had loaned the Respondent excess funds for "something in California" and that the Respondent was to repay that as part of BG's Whistler property purchase. BG agreed that she had never seen any documents regarding a loan to BD and she was only relying on what BD had told her.

[87] With respect to the string of emails between AH and BG on June 10 and 11, 2013 the Respondent asked BG on cross-examination why she assumed that AH was talking about MT's $100,000 paid on May 31, 2012. BG said she made that assumption because AH was asking her to look in the general account and MT's $100,000 paid on May 31, 2012 had gone into the general account. She said that the money paid by MT on May 31, 2012 was the only money that went into the general account. She also agreed that she knew those funds were being used for the BD closing. She agreed this was unusual.

[88] BG testified on cross-examination that there were a "bunch of calls" to sort out the trust funds for the PS project. She said that AH and MT were trying to locate this money, starting in October 2012.

[89] The Respondent asked why BG did not just give AH the simple explanation that MT's $100,000 was a loan deposited to the general account and used for the BD transaction. BG replied that she believed that both AH and MT had been calling the Respondent and that he had not responded to them. She said she did not know what the Respondent had said to MT or to BD about these funds and she did not want to get into a discussion with them.

[90] The Respondent asked BG about the reference in her email of "not feeling good". She said that she was worried that MT may have thought that he put more money into the TL project or the PS project than he had; that he may have thought his money was going into the TL project or the PS project and that it was not the loan that the Respondent said it was. She recalled that MT was trying to figure out why he had made deposits and was not getting credit. She said it was looking like MT did not know that a deposit for the PS project had gone into the general account.

[91] The Respondent asked BG if she was aware that $100,000 had been refunded to MT and she agreed she was not and that she could have missed that repayment. She was asked if that might have been relevant to tell AH. BG said that AH was only asking her about the general account.

KJ

[92] KJ testified that his role for the PS and TL projects was "superficial" and "peripheral". His role was to assemble the funds and close the transaction with the lawyer on the other side using undertakings. He would make sure the investors got their share certificates. His total account for services rendered for the PS project was $7,615.78 and $5,241.08 for the TL project.

[93] KJ testified that in June 2012 the Respondent and his group of investors were making a bid to buy the PS hotel out of receivership. The Respondent and his investors needed to make a refundable deposit of $750,000 good faith, earnest money to the receiver who would review the bids and choose the winner. KJ collected the funds for this deposit and paid the $750,000 to the receiver. He identified his Statement of Trust Monies for June 12, 2012 showing the funds collected and paid out.

[94] KJ testified that one of the PS project investors, GP, made a $100,000 deposit to his trust account on June 21, 2012. Since the PS project deposit had already been paid, these funds were not needed. KJ testified that he refunded $100,000 to MT using the funds deposited by GP. He believed that MT was having a "cash crunch" whereas GP was "more liquid". KJ was asked what he based his understanding on and he said it would have been a based on a conversation with BG or the Respondent himself. KJ identified the cheque to MT refunding his $100,000 deposit to the PS project. He said that the Respondent was the "directing mind" and that since KJ's books balanced he was happy.

[95] KJ was asked why the GP money was not refunded to GP. KJ testified that MT was short of funds and that GP "took MT's spot". It was to help MT out. It was not based on a conversation with either MT or GP. KJ stated that "at a high level, the instructions came from the Respondent. He was the directing mind and will." KJ said that he acted for the company through which the PS hotel was being purchased and not for any individual investor.

[96] KJ also testified that the Respondent was the "operating mind" for the TL project. He said the Respondent was a director for the company and the lawyer for the investor group. He said that no one else, other than the Respondent, was giving instructions.

[97] On cross-examination, KJ agreed that the Respondent was effectively his client as the directing mind of both projects. KJ was not advising any particular shareholder (investor). KJ agreed that the PS project was very complicated as it involved strata owners and fractional ownership interests as small as 1/12th to 1/16th. At the other end of the scale, the TL project was a "monolith" or one owner.

[98] The Respondent asked KJ if it was possible that he asked an assistant, A, what to do with the extra $100,000 deposit on the PS project and KJ said no, that was not plausible. His instructions would have come from "the top down" meaning from the Respondent. Although the Respondent and his staff did not have access to KJ's trust account KJ would print a summary of the trust account and leave it on top of the file.

[99] KJ agreed that the $100,000 cheque to MT on June 21, 2012 was clearly a refund of a deposit on the PS project. KJ said that was the only deposit of which he was aware. It was unambiguous to him.

[100] KJ agreed that "good faith deposits" were not unusual to show a receiver or seller that the investors were serious.

AH

[101] At the Respondent's invitation AH began working on the TL and PS projects in the Spring of 2012. AH testified that the Respondent had pulled together a group of high net-worth investors for each project. AH put together cash flow projections for each group. He was not an investor. In the beginning, he was just doing this work as a favour for the Respondent. In December of 2012, he was approved by the Board of Directors as the CFO of the TL PS Hotel Group. He was paid for this work. He is still working in that role.

[102] The issue concerning MT's $100,000 came to AH's attention in March 2013. He had analyzed the documents from KJ's law firm and found that MT was $100,000 short compared to the other investors on the PS project. This was after PS had closed.

[103] AH went over the entries on the TL project and they looked fine. He could see a refund on the PS project. He was initially suspicious of MT and that "something" was going on between MT and the Respondent. He asked CL, the largest shareholder in the PS project, to call MT and advise him that he was $100,000 short on the PS project.

[104] AH said that he then received a call from MT to say he could not be short because he took the money to the law firm himself. AH met with MT and looked at his documents and his bank account. They went to the CIBC office in Oak Bay and got copies. He asked MT about the refund in June 2012. MT told him that the Respondent

had called him on May 31 and told him that the vendor on the TL project was "getting antsy" about whether the Respondent's group could complete the deal. The Respondent told him that to show the vendor good faith and that they were serious he needed to deposit these funds in trust and that it would only be for a few days. MT told AH that is why he got the refund in June.

[105] Next AH called the Respondent's office and spoke to BG. They ticked off the cheques against the trust account. AH asked BG if the $100,000 was in the general account and if so, could it be moved over to the trust account. AH said there was silence from BG and she quickly got off the call. He had an email from her that night asking AH to use her private email.

[106] AH identified the email exchange with BG that BG referred to in her direct testimony.

[107] As a result of this email exchange AH testified that he "smelled a rat". He called the Respondent's wife, JR, and asked her to try to find MT's $100,000. The next morning the Respondent told AH that the money was in his general account for holdbacks on the PS project for utilities and taxes. However, AH testified that there were no holdbacks. He knew this cheque should not be in the general account. At this point, he believed that the Respondent had taken this money. The Respondent did not tell him that MT had loaned him $100,000.

[108] AH testified that he called CL and advised that the $100,000 needed to be put back in the PS project or the Respondent would be in serious trouble. He also advised LF, the Respondent's accountant, that this money needed to be repaid to the PS project.

[109] AH testified that after this a bank draft for $100,000 was left under his doormat. There was no cover letter. The bank draft was dated June 29 2013 and payable to PS project management. Once this draft was deposited AH could reconcile the books on the PS project and MT was no longer short.

[110] AH stated that JR told him in a phone call or a text that she had put this bank draft under his doormat.

[111] On cross-examination, AH admitted that he had not been a party to any communications between the Respondent and MT regarding the $100,000 deposit on May 31, 2012. He also agreed that the letter from KJ to MT on June 21, 2012 clearly said it was a return of MT's deposit on the PS project. However, that is not what MT told him.

[112] AH was cross-examined about the emails with BG. He confirmed that he was concerned about MT's $100,000 since it was not in the trust account and BG said it was not in the general account. It had to be somewhere, that is why he asked JR to go through the accounts. Then he had a call from the Respondent saying the $100,000 was in the general account for holdbacks on the PS project. AH testified that he knew that was not true.

THE RESPONDENT

[113] The Respondent testified generally about the structure of the PS and TL projects. The PS project arose from the receivership of a major hotel. It included towers, restaurants, parking and residential condominiums that had been sold in fractions as small as 1/16th in order to be affordable. In addition to the receiver, there was a strata council and a homeowner's association to deal with. The project was encumbered by mortgages and liens. The Respondent worked on this project from 2011 to 2013 and came up with a structure, a group of investors and an offer that would keep the project together. Other offers would break up the project and sell if for parts. The Respondent's offer was accepted. There is no doubt that the PS project involved considerable skill and effort on the Respondent's part.

[114] The TL project was much simpler, involving a hotel and some attached businesses including a restaurant with a long lease. The Respondent considered this to be a good opportunity as he was aware of changes to the Community Plan that would significantly increase density. Again, this project came together as a result of the Respondent's effort and skill.

[115] The Respondent testified that on May 31, 2012 he called MT at 9:30 or 10:00 a.m. and asked him for a loan for his law firm, LAC Ross, because some receivables had not come in that he was expecting. He said that was the reason he gave MT. He did not mention the PS or TL projects because monies were not due on those projects.

[116] The Respondent testified that MT "happily and based on our friendship" said that he would go to his bank immediately. The Respondent testified that MT called him from the bank and asked if the draft should be made out to LAC Ross and not "in trust". The Respondent testified that he told MT that this draft was not "in trust" and that it was going into his general account. The Respondent said that MT called him again to confirm that this draft was not going into trust but to LAC Ross.

[117] The Respondent testified that a short time later MT was in his office. He was on the phone. He told MT to give the draft to BG. As MT was at the elevator the Respondent said he opened the door and thanked MT and asked if they could get together

for coffee to go over the loan and MT said "great". The Respondent said that he had a discussion with MT the next day about the loan and that he told him he was appreciative of it.

[118] The Respondent testified that BG asked him what to do with MT's draft as she was filling out the receipt. He said he gave her specific instructions that it was a loan and it was to go in the general account for the BD closing.

[119] The Respondent testified that the draft from MT went into the general account and "found its way" to the BD file. He said he might have signed something to do this but that he left it to BG to handle.

[120] The Respondent explained the reason he needed MT's funds to close the BD transaction on May 31, 2012. He said that his wife, JR, and BD had invested in a US company that owned property in California. Two shareholder loans were set up. BD contributed more than JR did. BD took the Respondent out for coffee and said that he wanted to buy a property in Whistler but he was $100,000 short. He asked the Respondent if JR could put more money into the US deal to equalize the contributions. The Respondent said yes because he had some receivables coming in. Those receivables did not come in so he tried to borrow the money from JR's father but he could not provide it. The Respondent said he intended to make a few calls and MT was the first person he called. He said that MT "put up his hand to help". He said that he did not tell MT that the money was for BD because they were all friends.

[121] The Respondent confirmed that KJ was retained to do the closings on the TL and PS projects. He testified that TL closed in August 2012 without any issues. One investor pulled out at the end but that share was split pro rata with the investor group.

[122] The Respondent recalled that on the PS project, MT was asked for a $100,000 deposit. The total needed was $750,000 and the project had more investors than it needed. The Respondent said he did not remember but either KJ or his assistant would have told him that the deposits from the investors were in and they were able to make the $750,000 deposit to the receiver. The Respondent said that he learned from the staff that there was an excess of $100,000 on deposit in KJ's trust account. He said he did not look at KJ's books. He testified that he likely had a conversation with KJ about this but he did not remember. KJ may have asked him what to do with the excess but he did not remember. He said he may have said to refund it to MT and that he may have mentioned this to BG.

[123] The Respondent said that he never saw the cheque and cover letter that KJ prepared. He does not know if it was mailed to MT or picked up. He said that all he knew was that MT got a refund and that this would have to be "shored up". There would

be a call for monies to complete the PS project. He did not have a discussion with MT about this refund until June 2013.

[124] The Respondent testified that from the closing on the PS project in February 2013 until June 2013 he saw MT and his wife frequently and on a friendly basis. He said he did not recall a specific discussion of the $100,000 loan but he was sure that they did discuss it. He said that MT never badgered him in any way about that loan because he knew he was going to get it back.

[125] The Respondent recalled that BG asked him to talk to MT about the $100,000 that was "missing". The Respondent said that he remembered saying to MT that he will come up with the 100,000 loan and use it for MT's PS project contribution which he had not "shored up".

[126] The Respondent said that he had one conversation with AH about the shortage on the PS project. He said that he never told AH that it was part of a holdback. He said he told AH it was the $100,000 refunded to MT that had never been put back in by MT.

[127] The Respondent testified that there was an excess of funds at the closing of the PS project and that is why that transaction was able to close despite the shortage on MT's contribution. The Respondent testified that this was not an issue until AH made it one.

[128] The Respondent said that by June 2013 he or his wife, JR, had organized MT's money and it was contributed to the PS project. He said he did not know how this money got into AH's possession. He said that this was the repayment of MT's loan and it was used to "shore up" MT's contribution to the PS project. He said this was never an issue with MT, only with CL and AH.

[129] The Respondent testified that there were no issues with MT about the projects or the loan until two years after the closing on the PS project. He referred to other litigation concerning an office building (the "Office Building"). He said he believed the complaints to the Law Society by AH and MT were part of a strategy to use the Law Society complaints process to assist in a civil action regarding a "reorganization squeeze out" and litigation concerning the Office Building. He accused AH of making slanderous comments in the Victoria legal community about $100,000 taken from trust fraudulently. He testified that the law firm in Victoria that he had referred AH to and who did the Sproat Lake and the Office Building financing is the only firm that implemented a policy of not dealing with the Respondent or accepting an undertaking from him. He said that in 30 years of practising law he has never had a problem with his trust account.

[130] On cross-examination, the Respondent said that the meeting with BD was in May 2012. He said that BD told him he had sold one property in Whistler and bought another

so he was “in a pinch”. He asked the Respondent to equalize the equity in the US project so that he could use the funds to purchase the Whistler property. The Respondent said there was no debt and no obligation to repay BG, just an imbalance in the equity. He said that BD asked him and JR, as a favour, to ante up $100,000 which would equalize the shareholder loans. He said he would do his best. He did not draw up an agreement for this as he called it an accounting entry. The Respondent agreed that he had this conversation with BD on the street after having coffee or lunch. JR was not part of this conversation but he discussed it with her later and she agreed.

[131] The Respondent agreed that on May 31, 2012 he needed money because some receivables had not come in. He did not know if they came in, or when. He said receivables were coming in all the time. Sometimes they were large and sometimes they collected them months or years later. He said they collected 90 per cent of the receivables. The Respondent said that he did not keep large sums of money in his general account and had a line of credit for only $5,000 to $10,000. He said it was JR’s responsibility to put funds in the general account, for example, for payroll.

[132] The Respondent said that he wanted to find this money for BD because he was an important client as well as a friend. He insisted that he was doing this as a favour and not because he would have any legal liability if he could not come up with $100,000 in time for the closing on the Whistler property.

[133] On cross-examination, the Respondent said that he spoke to one or two people before calling MT. He testified that the money from MT on May 31, 2012 was used for BD to purchase his property in Whistler on the same day.

[134] The Respondent was asked about a statement he gave to the Law Society in an interview on February 13, 2020. On page 221 at line 15 he was asked the following question and gave the following answer:

> 401 Q …So just going back to the -- so May 2012, you need to borrow a short-term loan from [MT], and can you recall why? What did you need the money for?
>
> A I can’t. But it would have been to pay another debt of some sort. So I think that – but you can follow it. You can see where the money went out …, and you’d be able to find that --

[135] The Respondent agreed that he was asked that question and he gave that answer. He said that since he gave that answer he has had time to figure out where the money went, he had refreshed his memory, and that he was not detailed in his answer to the Law

Society in 2020 but that he had offered to show the interviewer where the money went. Although he called it a debt in 2020 he testified in this hearing that he was mistaken to call it a debt because he did not owe money to BD.

[136] The Respondent was asked in cross-examination if he had any documents to show that the $100,000 was used to equalize equity in the US property. The Respondent said he could not produce documents because he has a confidentiality agreement with BD and he is under advice from counsel not to breach it.

[137] The Respondent agreed there was no debt instrument between him and MT regarding the May 31, 2012 loan.

[138] The Respondent was asked about a letter he wrote to the Law Society dated April 14, 2015. This letter was in response to a letter from the Law Society setting out questions for the Respondent to answer. The second question stated "[MT] has provided proof that he provided LAC Ross Law Corporation with a $100,000 on May 31, 2012. He alleges that this money was intended to be held in your Trust Account but it was never deposited in your Trust Account. Further, he alleges that you provided him a refund of $100,000 comprised of other investors' trust funds." The Respondent was asked why he did not tell the Law Society about needing this money for the BD transaction. The response in the April 14, 2015 letter was 17 paragraphs long and did not mention the BD transaction. The reason given for needing the loan was that available cash flow at LAC Ross Law Corp had diminished as a result of the Respondent working on the PS and TL projects and two large accounts receivable from clients that the clients were having difficulty paying.

[139] The Respondent testified that he was not asked what the money was used for and that it was irrelevant that it was used for BD's transaction. He said the issue was whether it was a loan and whether the funds should have gone into trust.

[140] The Respondent was asked if he instructed KJ to refund MT's deposit on the PS project in June 2012. The Respondent said he did not recall giving those instructions to KJ. He said he did not know what order the funds came in and he had no discussion that the funds being refunded were GP's funds. He said he had a discussion with BG and KJ or his assistant. He said it might have been KJ's assistant who said there was extra money. He admitted that he might have suggested that MT get his money back. He then agreed it was possible he had this conversation with KJ.

[141] The Respondent identified the email from SD on August 24, 2012 that incorrectly set out the deposits that MT had made on the PS project. He said that he would not have left notes on the file and that he thought she had reviewed her own notes.

[142] The Respondent was shown the email from his articled student, NS, dated December 24, 2012 to all the PS project investors that included a memo of the funds that each investor needed to contribute for the closing. This memo included a $100,000 deposit from MT. The Respondent was asked if this memo was prepared on his instructions. He testified that these memos were updated regularly by KJ, NS and SD. He said he probably had not seen it before it went out or he would have noticed the error about MT having a $100,000 deposit on the PS project. He was asked why this error had shown up a number of times and he said it was probably due to SD's email. He said that "at the end of the day" it was KJ who was responsible for keeping track of the deposits and monies owed.

[143] On cross-examination, Law Society counsel suggested that the Respondent was the source of the mistake in SD's email and the subsequent memo from NS. The Respondent denied this. He was shown his letter to the Law Society dated April 14, 2015 and paragraphs K and L which state:

> K. At the beginning of 2013 when it became clear that the [PS project] transaction was closing a memo went to all investors setting out each investor's required contribution.
>
> L. Prior to the contributions, I contacted [MT] and explained that LAC Ross Law Corp would be repaying the Loan directly to [the PS project] on his behalf and that his required contribution should be as laid out in the memo despite his receiving a refund of $100,000.

[144] At the hearing, the Respondent testified that what his letter is saying is that he told MT he would repay his shortfall sometime in 2013 to make him whole on the PS project. He said it has nothing to do with the mistake in the memo. He would not admit that his letter acknowledges that the memo will show a deposit for MT. The Respondent repeated that he advised MT he would repay the loan to the PS project to make him whole. He said that is exactly what he did in June 2013.

[145] The Respondent was asked why he did not repay the loan to MT when he got the receivables. The Respondent said that the matter did not come up. There was no demand from MT and no pressure to pay it back. He said it did not become an issue for him until it became an issue between BG and AH.

[146] The Respondent was asked about a call from MT when he learned that he was short on his PS project contribution. MT's evidence was that the Respondent told him he was not short and that he knew he had paid. The Respondent said that conversation was in June 2013 at BG's request.

[147] The Respondent was asked about AH's evidence that he told AH the $100,000 was in holdbacks. The Respondent said that he did not discuss the loan from MT with AH because it was none of his business. He told AH that they would make up MT's shortfall and they did.

[148] The Respondent was asked about an email exchange between JR and AH dated June 12, 2013. The email from AH says: "[JR]/[BG] Linds just called to say that the $100, [*sic*] was in the general and that [the PS project] could get a cheque, so no need to go digging. [BG], thanks for your help thus far. [AH]." The reply from JR says, "I told him it came in as a draft and then I think he figured it out. Glad it's figured out. Saves me time too."

[149] The Respondent said that they deposited money into the general account and then wrote a cheque to the PS project. He denied that he had a conversation with AH and told him that the money was in the general account. He said his conversation with AH came about when BG had a discussion with JR and so he called AH directly and told him that MT's money was going to be paid back. He did not discuss the loan from MT because it was embarrassing that his firm needed to borrow money and he thought MT would not want him to discuss it. He said that AH was not favourable to him and he did not want to go into details with AH and that it was none of his business. He said that he did not trust AH at this stage.

[150] The Respondent was asked why not just clear up the confusion by saying it was a loan from MT. The Respondent said that it was not a problem until BG and AH made it a problem over a year later. He said that BG could have cleared it up in her emails with AH instead of saying that she did not know. He denied a suggestion from Law Society counsel that BG was trying to protect him by saying she did not know where MT's $100,000 had gone.

[151] The Respondent was shown a bank draft drawn on the TD Bank and dated June 29, 2013 to PS Hotel Management Ltd. This draft was identified by AH as the one left under his doormat. The Respondent said he did not know how this draft came into existence. He said that maybe JR had arranged it. He would have said to JR that they had to pay this money to the PS project so she should arrange it. He agreed there was nothing on the face of this draft to indicate it was related to LAC Ross Law Corp.

[152] The Respondent agreed that the first mention of the BD shareholder equalizing evidence is in the Response to the NTA dated July 5, 2022. The Respondent said this was the first time he was asked what he had used MT's money for. The NTA and the Response to NTA state the following respectively:

> NTA para. 126: "The Respondent needed the $100,000 to pay back another debt."
>
> Response para. 82: "The Respondent does not admit the truth of the facts in para 126. The Respondent says that the $100,000 was used to equalize [JR's] equity in another property that she was investing in with [BD]."

[153] The Respondent admitted in the Response to the NTA that his law firm, LAC Ross Law Corporation filed two trust reports with the Law Society for the periods of September 11, 2011 to August 31, 2012 and September 1, 2012 to August 31,2013 answering "no" to the following question:

> At any time during the reporting period, was (or is) the practice or lawyers(s) in the practice or law corporations, indebted either directly or indirectly, to a client or person who at the time of borrowing was, is, or had been your client or a client of the firm of which you were a member?

JR

[154] JR testified that she knew BD and that he was a client of the Respondent's for years and that they did lots of stuff with BD and his wife. She said they had "so much fun."

[155] JR testified that she and BD purchased a property in Palm Desert on a 50/50 basis but BD had a much larger shareholder loan.

[156] JR said that she did not know in May 2012 why the Respondent needed to borrow money from MT. She now knows that it was for BD to purchase his property at Whistler. She does recall trying to help the Respondent put together the money he needed. She knew there were outstanding receivables. She asked her father and the bank.

[157] JR testified that she was not involved in the repayment of the loan to MT. She said she recalls AH asking her about MT's money and she referred him to BG. She said she had nothing to do with the repayment. She does not know where the money came from or who got the bank draft. She assumes it was BG. She said she did not remember dropping off a draft with AH.

[158] On cross-examination, JR was asked about her email to AH dated June 12, 2013 in which she states "I told him it came in as a draft and then I think he figured it out. Glad it's figured out. Saves me time too." She said that she might be referring to a conversation with the Respondent. KJ was the only other person on the file. She agreed she could be referring to the Respondent. She denied delivering a draft to AH for

$100,000 to the PS project. She denied leaving the draft under AH's doormat. She said she did not and that she thought she would remember something like that.

SPROAT LAKE PROPERTIES

[159] The background to the complaints regarding Sproat Lake is not in issue.

[160] The Respondent's family and the AH-MQ family had been friends for many years. MQ was a cousin of the Respondent. In the beginning, the AH-MQ family lived in Scotland. The two families would visit and travel together. AH and MQ's three daughters were bridesmaids when the Respondent and JR were married. The AH-MQ family stayed with the Respondent for several months in 2000 when they were visiting Victoria and on sabbatical. In 2001, AH and MQ bought a house in Victoria and rented it out until 2008 when they immigrated to Canada.

[161] In 2002, the two families decided to buy a recreational property at Sproat Lake on Vancouver Island (Sproat Lake #1). At the time, the AH-MQ family was still living in Scotland. They decided to put the title of the property into the names of JR and MQ. Each family had a 50 per cent interest and JR kept track of capital and other expenses and periodically she and AH would reconcile this account. From 2003 to 2005, there were no issues with Sproat Lake #1.

[162] The purchase price of Sproat Lake #1 was $343,000 and there was a mortgage registered against the property.

[163] In 2005 the Respondent and his wife learned of another property near Sproat Lake #1 that they thought was a better cabin for the two families and that was tied up in a stalled or distressed subdivision that represented a good opportunity (Sproat Lake #2).

[164] AH and MQ agreed to sell Sproat Lake #1 and apply the proceeds to the purchase of Sproat Lake #2. Sproat Lake #1 was sold for $540,000 on June 30, 2005. Since MQ was still living in Scotland she was subject to a withholding tax. Because of this complication the parties agreed that Sproat Lake #2 would be put into JR's name only. AH and MQ were not given any documentation regarding the purchase of Sproat Lake #2 at the time of the purchase.

[165] Prior to the purchase of Sproat Lake #2, JR emailed AH on June 17, 2005 to advise them that the purchase price was $360,000 and that she and the Respondent had put down a $30,000 deposit. The net proceeds from Sproat Lake #1 were $288,000. The email from JR noted other expenses and requested $54,750 from each couple to close on Sproat Lake #2. This email ("June 17, 2005 Email") stated (errors in original):

Hello,
Well we are just on our way up to the cottage as w only have two weekends left before posession! where did the time go (not able to think of holiday quite yet...soon!)

Anyways, because we aren't able to get title on the property for 3-4 weeks after the close on the sale we will have to put up the money up front. Therefore we will have to incrue all the costs right now and have no mortgage on it for the first little while. Once we get title we can figure out how much mortgage we want to put on it to pay for the renos, garage and to put some money back in our pockets. So here is a list of all the things we need to pay for now (without ,mortage)... brace yourselves!

1- We need $42,000 to close the deal
Sale of our place $540,00 *minus* Mortgage on current property to be paid off $246,000 and $6000 to one of the purchasers realtors (we have arranged to pay Dave's fee directly to him for the sale as well as introduction to the new propety when we get the mortgage)
Leaves us with net= $288,000

Purchase of new place $330,000 Lindsay and I already put down 30,00 deposit) minus the $288,000 net proceeds leaves us owing $42,000 to close. **(Each to pay $21,000)**

2- We have already paid the $30,000 deposit as the actual sale price is $360,000 - **(each to pay $15,000)**

3- Property taxes on closing will be approximately $3600 **(each to pay $1800)**

4- Transfer taxes on closing approximately $6500. **(each to pay $3250)**

5- The cost of the new dock and it's fitting and pylons is approx. $14,500 - **(Each to pay $7,250)**

6- Month of June mortage payment and utilities (because we are even for payments up to this month) $1900
(each to pay $950)

7- Cost to finish the existing cottage (carpentry, bathroom fixtures and plumber, banisters, deck, railings.eaves, etc) $5400
(each to pay $2700)

8- Cost of new mattresses (2 queen mattresses and boxsprings on sale at Costco last week in June) being delivered July 2nd
$1400 **(each to pay $700)**

9- Cost of new appliances for the new cottage (it has none!) bought at the Bay to be delivered on July 6th -
$4200
(each to pay $2100)

TOTAL: Each need to pay $54,750

Lindsay is anticipating putting a mortgage on the proper for between $100,000 and $150,000. $50,00 of which would go to renos and the new garage and landscaping. The othe $100,000 would be divided 50/50 to come back into our pockets; effectively replacing the fifty thousand that we are each putting out now. We'll discuss it all later...

Call us at the lake....
[JR]

[166] A few months after the purchase of Sproat Lake #2, the two families were vacationing together in Scotland and Spain. While the Respondent's family was staying with the AH-MQ family in Scotland, the parties signed a trust agreement which stated that JR would hold the legal title in her name and hold an undivided, one-half interest in trust for MQ and AH. This trust agreement was signed by JR, AH and MQ and witnessed by the Respondent on September 27, 2005 (the "Trust Agreement").

[167] On December 21, 2005, JR registered a mortgage against the title to Sproat Lake #2. The Respondent signed as a covenantor. They did not obtain the consent of, or advise, AH and MQ that they were doing this.

[168] On April 23, 2007, JR obtained a line of credit for $160,000 from HSBC. The document she signed showed Sproat Lake #2 as security for the line of credit. Neither she nor the Respondent advised AH or MQ that they were doing this.

[169] Sproat Lake #2 was sold in November 2012. The net sale proceeds of $655,421.67 were paid to the Respondent's law firm, in trust.

[170] Each couple was entitled to receive $327,710.83 from the sale of Sproat Lake #2.

[171] From the net sale proceeds, the Respondent paid $389,167.18 to HSBC, which reflected $221,425.91 to pay off JR's mortgage and $161,741.27 to pay off JR's line of credit.

[172] The Respondent distributed the net sale proceeds, $262,247.34 to JR.

Respondent's letter to the Law Society dated March 3, 2015

[173] One of the documents included in the NTA, the authenticity of which was admitted by the Respondent, was a letter from the Respondent to the Law Society dated March 3, 2015. It was written in response to a letter from the Law Society dated January 28, 2015. The Respondent admitted that he had asked for an extension to the deadline to respond to this letter.

[174] The Respondent was asked whom he was acting for in respect of the Sproat Lake transactions and he gave the following answers (spelling and grammar as in original):

> 1(a) [DC], a Notary Public, represented the purchaser and I represented [JR] and [MQ] regarding the sale of [Sproat Lake #2]. Please find attached documentation relating to this transaction.
>
> 1(b) [AH] was not my client nor was he a party to this transaction [the sale of Sproat Lake #1]. This was a simple conveyance. [JR], my spouse

and [MQ] my cousin, were both aware that I was acting for both of them. I felt, as did they, that given the circumstances there was no conflict of interest. In addition to my acting, I believe [MQ], who was resident in the UK, had her lawyer [GJB] (please see attached Form A), either advise her or at least witnessed her signature.

…

2(a) [DA] was the conveyance lawyer for the subdivision. The acquisition was by [JR] owing the legal and half the beneficial interest in [Sproat Lake #2] and MQ and AH owning a one-half beneficial interest. [JR] was acting as Trustee. This property was part of three-lot strata subdivision, one of the strata's being [Sproat Lake #2]. Please see attached correspondence and related documentation.

2(b) I did advise [MQ, AH and JR] regarding this transaction but [DA] performed the actual conveyance. At the point when the subdivision was approved, the conveyance was straightforward.

2(c) As above, this was a property to be shared by both families and hence there were many discussions about the property and as discussed above discussions regarding the conveyance were increased in scope. The property was acquired out of a distressed subdivision. I worked with the distressed developer and [the vendor] to complete the subdivision. The property was acquired for approximately $306,000 and shortly after the subdivision and acquisition, the property was worth approximately $700,000. Later, the assessed value was between $750,000 and $800,000. This resulted in a significant benefit to the [MQ/AH] Trust given that they had very little effort into the redevelopment and consequent increase in value.

…

3(a) [MQ] (as advised by [AH]) were still UK residents and were accordingly concerned about holding this property legally in [MQ's] name. [JR] agreed to act as Trustee, holding their half of the property legally until they became residents in Canada and thereafter.

3(a,b) I drafted the Trust Agreement and witnessed its execution. I acted for the Trustee and the [AH/MQs]. I drafted the Trust Deed as a favour at the request of [MQ and AH].

> 3(c) The Trust and its' applicability to their situation was been explained to [MQ and AH]. This Trust was provided to [MQ] for her review, no file was opened and no fees, disbursements or taxes were ever billed to anyone. I have no recollection as to whether [MQ or AH] had the Trust deed reviewed by their legal counsel in the UK. The parties were advised as to the benefits and disadvantages of the Trust and they were sophisticated with respect to its' use.
>
> …
>
> 5(a) I acted for [JR] both in her personal capacity and as the Trustee of the Trust as well as [MQ and AH]. There was no apparent conflict in that all parties agreed to sell [Sproat Lake #2]. All parties expected me to do the conveyance as it was a simple conveyance. [AH] on behalf of he and [MQ] had discussed the receipt of proceeds with [JR]. The funds were distributed through [JR] as Trustee and legal owner.
>
> I was not party to the distribution of funds to [AH and MQ] but have enclosed a letter from [JR] outlining her agreement with [AH].
>
> 5(b) [JR, MQ and AH] were my clients in this matter. No fees, disbursements or taxes were billed.
>
> 5(c) The sale was discussed thoroughly with [AH and JR]. They both dealt directly with the realtor on the sale.
>
> …

[175] The letter from the Law Society dated January 28, 2015 also asked the Respondent to respond to the following: "As you know, the *Code of Professional Conduct for British Columbia* ["*BC Code*"] came into effect on January 1, 2013. As some of [AH's] allegations took place prior to 2013, those actions were governed by the *Professional Conduct Handbook*. In providing your response, please refer to the following [*Code* and *Handbook* provisions]". The Respondent provided the following responses in his letter of March 3, 2015:

> …
>
> 1. Regarding Chapter 2, Rule1 of the Code of Preferred Conduct for B.C. ('Code") (Rule 2.2 B.C. Code), I did my best to assist [MQ and AH] and did so without cost, helping to facilitate their non-residency circumstance. It is evident that I should have exercised a more formal approach to dealing with [MQ and AH]. The nature of our relationship with the

> [AH/MQ's] was one of family and friend. In no way was my assistance to [AH] dishonourable.
>
> 2. With respect to the Chapter 4, Rule 1 of the Code, [MQ and AH] were represented by myself, or their UK solicitor, or both in all of the transactions discussed above, with the possible exception of the conveyance performed by [DA].
>
> 3. Chapter 6 of the Code. As discussed, where I acted for two or more clients I did so when a simple conveyance was involved and the client's goals were aligned.
>
> 4. Chapter 7 of the Code (Rule 1 & 2). A conflict may have arisen regarding the sale of [Sproat Lake #2] however this conflict was removed when [AH] agreed with [JR] to the distribution. [AH and MQ's] issues relating to the loan arose years later.
>
> 5. Appendix 3, Rule 2 of the Code. A simple conveyance where the parties' interests are aligned is an exception to this rule and as discussed above I believe these conveyances were of this nature.

[176] The evidence of the witnesses called by the Law Society was as described below.

AH

[177] AH advised that his wife, MQ, died in October 2021. He and MQ were both accountants in Scotland since the mid-1980s. He testified that neither of them were tax specialists. His understanding of the Respondent's specialization as a lawyer was that he was a tax lawyer who worked with high-net-worth clients doing tax planning and trusts.

[178] AH confirmed that his family and the Respondent's family were close friends since about 2000 although they had met the Respondent's parents about a decade earlier, in Scotland.

[179] AH testified that it was the Respondent who contacted him and MQ to split the purchase of a lake house in 2003. The price seemed cheap compared to prices in Glasgow. The purchase was handled by the Respondent and JR. AH and MQ did not see Sproat Lake #1 until after it was purchased. It was the Respondent's idea to put this property in the names of JR and MQ.

[180] AH said he and his family were happy with Sproat Lake #1. When the Respondent contacted them to say he had found a better property AH testified that he and MQ decided that since they were not there to take care of this property then they should not

stand in the way. AH testified that the Respondent negotiated with the builder of Sproat Lake #2 and said it was a good property and that they should go ahead.

[181] The sale of Sproat Lake #1 caused an issue because he and MQ were non-residents. This created an issue for JR, too. The Respondent told AH and MQ that they could avoid that issue for Sproat Lake #2 and that he would take care of all the paperwork. AH did not get a copy of the Trust Agreement when it was signed. He first got a copy of it several years after the sale of this property in 2012.

[182] AH confirmed receiving the June 17, 2005 Email from JR stating that the purchase price for Sproat Lake #2 was $360,000 less the $30,000 deposit she and the Respondent had paid. He sent the Respondent the amount requested and was told that the transaction went through. He and MQ were not sent any documents related to this purchase. This email suggested putting a mortgage on Sproat Lake #2 but AH said that he advised JR that he did not think they needed a mortgage and she agreed. AH said it was more convenient not to have to convert pounds to Canadian dollars.

[183] AH identified the Trust Agreement that was signed September 27, 2005 for Sproat Lake #2. He could not remember much about the circumstances around signing it. He said they were just asked to sign it.

[184] AH denied that he ever gave permission for a mortgage on Sproat Lake #2. He said they were never asked.

[185] AH denied that they were told to get independent legal advice by the Respondent. He said it was never suggested and that the Respondent told them that he would look after their interests. AH said they trusted him.

[186] AH said they were never sent a bill by the Respondent.

[187] AH testified that Sproat Lake #2 was a great property. Before they moved to Victoria, his family would visit the property once or twice a year. When they moved in 2008, they would go every weekend or every other weekend. By this time, the Respondent and JR had children as well. AH described them all as one big happy family.

[188] AH said that by 2012 their children were older and less interested in going to Sproat Lake #2. He and MQ talked to the Respondent and JR about selling Sproat Lake #2.

[189] AH was asked about the letter the Respondent wrote to the Law Society dated March 3, 2015.

[190] Paragraph 2(c) states, in part, that Sproat Lake #2 was acquired out of a distressed subdivision and that the Respondent worked with the distressed developer and the vendor to complete the subdivision. The purchase price of Sproat Lake #2 was $306,000 and shortly after the subdivision, the property was worth approximately $700,000 and later the assessed value was between $750,000 and $800,000. This resulted in a significant benefit to AH and MQ given that they had put very little effort into the redevelopment and consequent increase in value.

[191] AH said that the Respondent "represented to us the purchase price was $360,000" so JR made a profit of $30,000 from them. He called this "shocking and disgraceful."

[192] Paragraph 3(c) states that "The Trust Agreement and its' applicability to their situation was been [*sic*] explained to [MQ] and [AH]. This Trust was provided to [MQ] for her review, no file was opened and no fees, disbursements or taxes were ever billed to anyone. I have no recollection as to whether [MQ] or [AH] had the Trust deed reviewed by their legal counsel in the UK. The parties were advised as to the benefits and disadvantages of the Trust and they were sophisticated with respect to its use."

[193] AH called this a complete fabrication. The Respondent did not explain the Trust Agreement to them and there was no discussion of the benefits other than that JR would hold the title. He and MQ were not asked if they had legal counsel in the UK. He said he did not need a lawyer in the UK because the Respondent was acting for them.

[194] Paragraph 4(a) states, in part, that a mortgage was put on Sproat Lake #2 in December 2005. The Respondent says that JR discussed this mortgage with AH. The Respondent says that he and JR's intention was not to borrow more than their half of the property value. He said that JR spoke to AH about this.

[195] AH testified that it was not true that the mortgage was discussed with him. He called this a complete fabrication as well. He said there was also never a discussion of a line of credit against Sproat Lake #2. As far as he and MQ were concerned Sproat Lake #2 was mortgage free.

[196] AH was shown a document entitled "Purchase Summary" which set out a breakdown of the purchase of the property that was the "distressed subdivision" and showed that JR paid $300,000 for her share which was one of the three properties in the subdivision and which became Sproat Lake #2. AH said that he was not shown this document at the time Sproat Lake #2 was purchased. He was shown it much later by an investigator with the Law Society. He said they were stupid not to ask for documents at the time but we trusted our lawyer, meaning the Respondent.

[197] AH testified that it was a day or two after the sale of Sproat Lake #2 on November 20, 2012, that he found out about the mortgage. He was looking forward to getting their half of the sale proceeds which he needed to pay down a line of credit. He had not heard from JR so he went to the Respondent's office. He was told he had to speak to JR.

[198] AH testified that he met JR outside the office. She was in tears. She told him there was a misunderstanding and that she and the Respondent had mortgaged their own property and she needed to borrow a portion of their share to pay her own contractors and that she could only give him $200,000. AH said he was shown the documents showing a mortgage on Sproat Lake #2 and he was "flabbergasted". He did get a cheque from JR for $200,000.

[199] AH was asked if he had his own lawyer for the sale of Sproat Lake #2. He said no because the Respondent would protect their interests.

[200] AH testified that JR told him the shortfall would be sorted out in a few days or weeks and that she and the Respondent would get a line of credit. Later she told him that the bank refused a line of credit.

[201] AH identified a Promissory Note dated November 29, 2014 signed by JR for $126,422.24. This amount represented the balance of the sale proceeds owed to AH and MQ after deducting certain expenses and adding 4.5 per cent interest that AH and MQ were paying on their line of credit. The Promissory Note stated that it would be paid in full by June 30, 2015.

[202] AH testified that JR's Promissory Note was not paid by June 30, 2015. He hired a lawyer to sue and get a default judgment then garnish the Respondent's law firm and the Respondent and JR's TD Bank Account. The Respondent and JR had sold their house in July 2015 so there was money in the account and AH and MQ were paid.

The Respondent

[203] The Respondent testified that when he was married and had his first child, he called a realtor because he was interested in buying a lake property. In 2002 or 2003, a property at Sproat Lake became available and the Respondent and JR agreed to buy it. They signed a contract of purchase and sale and paid a deposit.

[204] The AH-MQ family came to visit and stayed with the Respondent's family. They thought it was a good idea to have a lake property and asked if they could participate in the purchase. The Respondent said yes. AH and MQ sent money. The sale closed using a Notary Public in Port Alberni. All of the money was dealt with between JR and AH. The families used Sproat Lake #1 for the next 2.5 to 3 years. The Respondent testified

that he and JR renovated the cabin with the help of a carpenter friend. They framed and drywalled the first floor. They did the landscaping with help from JR's father. They built a lower deck, a pathway and fixed the dock. The AH-MQ family would come in the summers and they would all go to Sproat Lake #1 together. Occasionally they would go at New Years' as well.

[205] In 2005, while the Respondent and JR were out for a walk near Sproat Lake #1 they met JS and MS who owned a large lot with an old house. The S's were retired and wanted to sell their property and move to Port Alberni. The property was in the process of being subdivided into three lots but the developer was "in trouble" and needed someone to do the project with him. The developer had a contract of purchase and sale to buy the S's property for $700,000. The developer needed help with what the Respondent called normal subdivision issues. If the Respondent and JR could help the developer, they could end up with a much more functional property that would include the old house that they could renovate.

[206] The Respondent testified that he discussed this plan with AH and MQ. They were not interested.

[207] The Respondent said that he and JR did $50,000 to $60,000 of work with the developer to get the property ready for subdivision. Then they asked AH and MQ if they would be interested in selling Sproat Lake #1 to buy Sproat Lake #2 if the subdivision was approved. The Respondent said that the whole property would be purchased for $700,000 by the developer but would be worth much more with the subdivision. AH and MQ agreed.

[208] The Respondent said that an allocated purchase price for what would eventually be Sproat Lake #2 was agreed with the developer. However, the Respondent said that the actual purchase price for AH and MQ was the price of the lot plus his and JR's costs for the subdivision because the value of the lot would be more after the subdivision. The Respondent said that Sproat Lake #2 was worth $600,000 to $700,000 or as high as $800,000 after the subdivision. Then the market dropped in 2008.

[209] The Respondent testified regarding the "Purchase Summary" which shows the purchase price of Sproat Lake #2 as $300,000 allocated to JR. He said that the property purchase tax would have been higher if the purchase price had included the developer's costs. The costs for the Respondent and JR to help get the subdivision is the difference between the allocated purchase price in the Purchase Summary and the purchase price given to AH and MQ. The Respondent said it was absolutely clear to AH and MQ that there were other costs involved. AH's complaint to the Law Society was made 10 years after this event and AH would be aware that it would be impossible to get an accounting of these costs.

[210] The Respondent said that AH and MQ did not participate in any of the work to get the subdivision approved. They made a late decision to join in the purchase of Sproat Lake #2. The Respondent said he had to scramble to get Sproat Lake #1 sold in time so that the proceeds from Sproat Lake #1 could be used to purchase Sproat Lake #2.

[211] The Respondent testified that Sproat Lake #2 was put into JR's name and she had legal title and one-half of the beneficial title. She held one-half of the beneficial title for AH and MQ. This was because there was a concern about withholding taxes raised by MQ. He thought that the withholding taxes on Sproat Lake #1 were paid by JR and reimbursed by AH and MQ.

[212] The Respondent testified that after the purchase of Sproat Lake #2 he and his family were in Scotland to visit the AH-MQ family. The two families travelled together to Spain and stayed with AH and MQ in Scotland. The Respondent said he was not "incredibly clear" on how it came about but they discussed the withholding taxes and that it would be beneficial to AH and MQ to have a trust agreement in place.

[213] The Respondent testified that they discussed how AH and MQ wanted to hold Sproat Lake #2. The Respondent said AH and MQ had their own concerns, their own views and their own lawyers. The Respondent said he had no ability to advise them on United Kingdom taxes.

[214] The Respondent said he "believed" a precedent for a trust agreement was sent to AH and MQ and "worked" on by them. He believed they were sophisticated and had their own lawyers in Canada and the UK. They knew what "independent legal advice" was. Later in his testimony, he said that he got hold of his office and had them send the precedent. He called it a straightforward precedent and the only specific information is the reference to the property, the legal description for Sproat Lake #2. He said there were no other changes to the precedent except for the signature blocks.

[215] The Respondent said the wording of the Trust Agreement was a group effort. He said that he did not do the typing because he had no skills. The Trust Agreement was produced and the Respondent witnessed the signatures of JR, AH and MQ. This was done in Scotland in AH and MQ's living room.

[216] The Respondent said that in respect of the Trust Agreement he did not open a file, take a retainer or take any instructions. He was not a party to the Trust Agreement. It was produced by the group and he witnessed the signatures.

[217] The Respondent testified that in 2005 he and JR discussed putting a mortgage on Sproat Lake #2 to use the funds for other reasons. JR organized this financing but they discussed that she would only mortgage half of the property.

[218] The Respondent testified that he received a call from JR to say that she had arranged a mortgage on Sproat Lake #2 on their half and that the bank wanted him to sign a covenant. The Respondent went to the lawyer's office and signed where he was told to sign. JR was present. He did not review these documents or talk to anyone about them. He said that was his involvement with the bank.

[219] Sproat Lake #2 needed renovations when it was purchased. The AH-MQ family had not yet immigrated to Canada. The Respondent and JR did a lot of the work and AH and MQ helped when they visited and more after they moved to Victoria. All financial matters were handled by JR with AH.

[220] In the fall of 2012, the Respondent said that he did not want to sell Sproat Lake #2 but the others did. He said they had a pool at home and his children were not interested in making the trek to Sproat Lake #2. He was going up alone to maintain the cabin.

[221] Sproat Lake #2 was sold for $680,000 and the Respondent said that he was able to negotiate a reduction of the commission. The transaction was handled through the Respondent's law firm. He said the documents were prepared by the purchaser's lawyer as is the "custom". There was nothing for AH or MQ to sign so they did not come to his office. The Respondent said that his conveyancer, CM, prepared the documents for JR to sign and issued the cheque to JR for the sale proceeds. The Respondent said that he did not review the Statement of Adjustments as he would normally.

[222] The Respondent said that he acted for JR as legal owner of Sproat Lake #2 and as the trustee for a beneficial half interest. She was the only person he could take instructions from and who could sign documents. He said that she had a responsibility to deal with the beneficial owners, AH and MQ. The Respondent said that under no circumstances did he represent AH or MQ. There was no retainer, no fees charged and no communications with them because that was JR's responsibility as the trustee. The Respondent said that he advised AH and MQ many times over many years to get independent legal advice. He said that they "arrogantly" waived their right to get legal advice because they were getting a "freebie" from the Respondent.

[223] The Respondent heard from JR that there was an issue that the amount owed to AH and MQ was not going to them because the bank was insisting that her line of credit be paid out from the Sproat Lake #2 proceeds even though they had other properties securing the line of credit. He thought the amount to pay the line of credit was $150,000.

[224] The Respondent testified that JR told him that she was very upset with the bank. She said that she and AH came to an arrangement. He said he was not drawn into this discussion because JR was upset and embarrassed. He said JR dealt with this issue, not particularly well, but she "handled it".

[225] The Respondent testified that he was familiar with the language of the Trust Agreement because it was a precedent from his firm. He said the Trust Agreement required the trustee to get consent of AH and MQ to mortgage their interest. He said that JR told him that she did not understand that the mortgage on Sproat Lake #2 was going over the whole property. Her intention was to never draw over her equity. The Respondent said that circumstances occurred that "buggered this up."

[226] The Respondent said that those "circumstances" were a breakdown between the two families that occurred in 2013. He said that certain issues became prominent that were not prominent before. He said that AH tried to damage his reputation.

[227] On cross-examination, the Respondent was shown a letter he was sent by the Law Society dated January 28, 2015 asking him about the Sproat Lake Properties and his response dated March 3, 2015. He agreed that he had asked for an extension to March 3, 2015 to respond because the Law Society's letter came during tax season.

[228] The Law Society's question 2(b) asked "Later in 2005, [AH] states that you acted for him in the purchase and conveyance of a property [Sproat Lake #2]. This property was put into [JR's]name. If [AH] was not your client, did you inform him that you were not protecting his interests?" and the Respondent's answer was "I did advise [MQ, AH and JR] regarding this transaction but Mr. A performed the actual conveyance. At the point when the subdivision was approved, the conveyance was straight forward."

[229] Law Society counsel put it to the Respondent that he had admitted he had acted for the three parties. The Respondent disagreed and said that he advised them but did not act for them.

[230] The Respondent's letter of March 3, 2015 says at paragraph 2(c) that the purchase price of Sproat Lake #2 was $306,000. He said that the developer had an agreement to buy 7.5 acres subject to getting subdivision approval. The Respondent said that they had an assignment of rights under that contract to get the middle lot if they helped the developer with the costs and the work to get the subdivision approved. He confirmed that he could not produce a copy of that contract or documentary proof of any of the costs or work done for the developer. The Respondent testified that he does not know if the agreement with the developer was in writing. He said it was an understanding and that it is clear "we" had a right to the center lot because it is evident in the closing documents meaning the Purchase Summary.

[231] Law Society counsel asked the Respondent about his interview with the Law Society on February 12, 2020. The Respondent agreed that while he was not under oath in this interview, he had a duty to cooperate and give truthful answers. The Respondent agreed that as set out in the Purchase Summary, the allocated price for Sproat Lake #2

from the developer was $300,000. He also agreed that the Purchase Summary says that JR had made a deposit of $7,000. He was shown the June 17, 2005 Email from JR to AH stating that she and the Respondent had made a $30,000 deposit. He was asked if he had given false information to AH. The Respondent said no, that was not his email and that JR could give evidence. He went on to say that he thought the figure of $30,000 was an estimate of what he and JR had spent on the subdivision. He said that their money was spent on the subdivision and that JR was "not going to not recover the money that they had spent."

[232] The Respondent insisted that the purchase of Sproat Lake #2 was all JR's and not a joint project with him. He said it was "her property and her money" and that she did all the banking. Her references to "we" and "Lindsay and I" were just the way she talks. The Respondent said he did not have any specific information as to where the money came from for Sproat Lake #2. He said he just went up there and did the work. When it was pointed out that he had also signed as the covenantor on the mortgage his response was that JR would give evidence on that.

[233] The Respondent was asked on cross-examination about the Trust Agreement and his response to the Law Society in his letter of March 3, 2015 where at paragraph 3(a,b) he states "I drafted the Trust Agreement and witnessed its execution. I acted for the trustee and [AH and MQ]. I drafted the Trust Deed as a favour and at the request of [MQ and AH]." He was asked if his answer were true and he said it was not true. The Respondent said that he "drafted" the Trust Agreement in that he provided a precedent that was sent from his office to JR's computer or AH's computer. He said he provided this precedent thinking it was the appropriate one to use. He said if that was giving advice or acting for AH and MQ then "he did not know".

[234] The Respondent was asked about his answer in paragraph 3(c) where he states: "The Trust and its applicability to their situation was been [*sic*] explained to [MQ and AH]. This Trust was provided to [MQ] for her review, no file was opened and no fees, disbursements or taxes were ever billed to anyone. I have no recollection as to whether [MQ or AH] had the Trust deed reviewed by their legal counsel in the UK. The parties were advised as to the benefits and disadvantages of the Trust and they were sophisticated with respect to its use." He was asked if he advised AH and MQ that he was not protecting their interests. His answer was that there was no file and no retainer and that this was just a family discussion. He said that MQ and AH were advised to get counsel and that they had a lawyer in Canada and in the UK. They had asked the Respondent and JR to do them a favour.

[235] The Respondent was asked about his statement on page 5 of his March 3, 2015 letter which states "2. With respect to the Chapter 4 Rule 1d of the Code [MQ and AH]

were represented by myself, or their UK solicitor, or both in all of the transactions discussed above, with the possible exception of the conveyance performed by [DA].” He was asked to agree that AH and MQ were his clients and remained so until the sale of Sproat Lake #2. The Respondent said he did not agree and, as he had already explained, all he did was provide the Trust Agreement that MQ asked for.

[236] The Respondent was asked about his statement that “the parties were advised of the benefits and disadvantages of the Trust” and to admit that was legal advice. He said that there was no doubt they had all reviewed the document together and that he would have said “we’re all in this together” and that AH and MQ have the right and responsibility to get independent legal advice. They had a lawyer in Victoria and the Respondent had no idea if they reviewed the Trust Agreement with their solicitor in the UK. He called AH and MQ “very sophisticated”.

[237] The Respondent agreed that until this Trust Agreement was signed, the only documents showing AH and MQ’s interest in Sproat Lake #2 were the bank records showing the proceeds of Sproat Lake #1 being used to purchase Sproat Lake #2. He was asked on cross-examination if the Trust Agreement was to document their interest in Sproat Lake #2 and the Respondent said yes and also to protect their tax circumstances. He agreed that he knew this at the time but said he was not acting for them.

[238] The Respondent agreed that getting legal title to Sproat Lake #2 in JR’s name gave his family the ability to borrow against that property. He corrected himself and said it gave JR the ability to borrow but she had obligations under the Trust Agreement.

[239] The Respondent was asked about signing the Sproat Lake #2 mortgage in December 2005 as Covenantor. He agreed that this meant that he would be responsible if his wife could not pay this debt.

[240] The Respondent agreed that the mortgage charged the property for the principal amount of $675,000 and that the amount available for advance was $260,000. He admitted that the bank was protecting its interests up to $675,000 and that amount went against the beneficial interest. He denied knowing that AH and MQ had not consented to this. He testified that he was told by JR that she had organized a mortgage against their half of the property, that the bank would advance $260,000 and that he would be asked to be the Covenantor. He assumed she had discussed this with AH.

[241] The Respondent testified that it was not his job to take any steps regarding this mortgage that impaired the interests of AH and MQ. It was JR’s responsibility as the trustee and she had always acted in the best interests of AH and MQ. He stated that JR had discussions with AH and MQ about a mortgage and that there was no way she would harm or encumber the interests of AH or MQ.

[242] The Respondent was asked about a line of credit dated April 23, 2007 in which JR was the borrower and he was the Covenantor. This document was entitled Equity Power Facility Letter in the amount of $160,000. The exhibit shows the Respondent listed as the Covenantor but there are no signature pages. It shows the Property that provides security for this agreement as Sproat Lake #2. The Respondent said that he recalled absolutely nothing about this document. He said he was not a party to arranging a line of credit. He agreed that when Sproat Lake #2 was sold there was a line of credit paid out.

[243] The Respondent was cross-examined about the sale of Sproat Lake #2 on November 30, 2012. He agreed that of the sale proceeds of $655,421.67 AH and MQ would be entitled to half. He identified a letter to JR signed by his conveyancer, on his behalf setting out the payment from trust to HSBC of $389,167.18 for the mortgage and the line of credit and payment of taxes to the Minister of Finance and the balance paid to JR. The Respondent said the letter looked like something his conveyancer would prepare. He said his client was JR, not the beneficiaries AH and MQ so he would not deal with the beneficiaries. He said that AH and MQ were aware there was a conflict and that they needed to get independent legal advice and they chose not to.

[244] The Respondent said he did not know about the line of credit until he was told about it afterwards. JR told him that she was upset that the line of credit was assigned against Sproat Lake #2 and that the bank was insisting on payment. She told him she had made an arrangement with AH.

[245] The Respondent was shown another letter from his office to HSBC dated November 20, 2012 signed by his conveyancer, CM, that says:

> It is our understanding that [JR] also has a second loan with HSBC in the approximate amount of $167,000.00 which she would like to payout. Please provide both payouts effective for November 30, 2012.

[246] The Respondent said this letter did not jog his memory and that it was usual for his assistant to do the work of getting the file ready and dealing with payouts on her own. He said he would not have seen this letter.

[247] The Respondent also denied that he would have taken instructions from JR to pay out the line of credit. He said the conveyancer would organize “everything”. CM was very capable so he left it to her. Normally, he would not see this letter until he reviewed it with [JR] but he does not recall doing that. He agreed he was CM’s employer and responsible for the transaction.

[248] The Respondent agreed that he and JR had to provide net worth statements for the PS project closing. He was shown a document entitled "Personal Financial Statement Schedules" for JR and the Respondent ("Net Worth Statement(s)"). The authenticity of the document had been admitted by the Respondent in the NTA. It stated that it showed the "Financial Condition" as at June 27, 2012. It was signed by JR and the Respondent on January 28, 2012. This document showed, among other assets, real estate (Sproat Lake #2) with a present value of $800,000, a mortgage and/or LOC (line of credit) of $380,000, monthly payments of $1,580, the percentage of ownership was stated to be100 per cent and a "Personal Net Asset Value" for Sproat Lake #2 of $420,000.

[249] The Respondent said that JR filled out this form and that it only "appeared" to be his signature. He said that the document was filled out with JR and her banker and that it had been "repurposed" from the TL project so he did not think that he had signed it. In addition, that he had not "turned his mind to it". He also said that there was a panic to get this Net Worth Statement to the bank for the PS project closing and suggested that AH had "redacted" the TL document. When asked if he had signed this document for the TL project he would only say "potentially". When asked why the ownership per centage was 100 per cent, he said counsel would have to ask JR. He agreed that the asset value at the time was only $20,000 to them. The Respondent appeared to calculate this using an estimated value of $800,000 for Sproat Lake #2, of which half belonged to JR, $400,000, less $380,000 for the mortgage and the line of credit.

[250] On cross-examination, the Respondent claimed that the amount owed to HSBC of $389,165.18 was still less than half the value of the property. When it was pointed out to him that the value of the property was the actual sale price, $682,500, the Respondent said it was less than half of the amount for appraisal purposes at the time the loans were made. He said that property prices had dropped since then and that he had told the others it was the wrong time to sell.

[251] The Respondent was shown his letter to the Law Society dated March 3, 2015 and his answer at paragraphs 5(a) to 5(c), asking who he acted for in respect of the sale of Sproat Lake #2:

> 5(a) I acted for [JR] both in her personal capacity and as the Trustee of the Trust as well as [MQ and AH]. There was no apparent conflict in that all parties agreed to sell [Sproat Lake #2]. All parties expected me to do the conveyance, as it was a simple conveyance. [AH] on behalf of he and [MQ] had discussed the receipt of proceeds with [JR]. The funds were distributed through [JR] as Trustee and legal owner.
>
> …

> 5(b) [JR, MQ and AH] were my clients in this matter. No fees, disbursements or taxes were billed.
>
> 5(c) The sale was discussed thoroughly with [AH and JR]. The both dealt directly with the realtor on the sale.

[252] The Respondent said that after thinking about his response and consulting with counsel he decided he was not acting for AH and MQ. In his Response to the NTA dated July 5, 2022, at paragraph 24, he stated:

> The Respondent admits the truth of the facts in para 43, but says that he had no obligation to provide any documents to [MQ or AH]. He was not acting for [AH or MQ] in the transaction for the Second Property. The Respondent was responsible to [JR] who was Trustee and owner. The Respondent acknowledges that in a letter to the Law Society dated March 3, 2015 (the "2015 Letter"), he indicated that he was acting for [JR, AH and MQ] in respect of the Trust Agreement. Upon careful reflection and having had a chance to review the documents contemporaneous with events that took place in 2005, the Respondent now realizes that he was in fact, acting only for [JR] as Trustee and as owner of the property, and only taking instructions from [JR]. In the 2015 Letter, the Respondent was mistaken or was unable to accurately recall the events of 2005. The Respondent is regretful and remorseful that he did not fully inform himself before sending the 2015 Letter to the Law Society.

[253] The Respondent was asked if he had answered the Law Society truthfully in his March 2015 letter and he replied that he did his best to answer at the time. He said he did not give sufficient detail and there was no follow up from the Law Society. As this became an issue, he reflected more closely on the documents and what he did in the circumstances. Then he clarified those circumstances and tried to be more detailed. He said the difference between now and March 3, 2015 is that he sat down with his lawyer and as carefully as he could has now described the circumstances.

[254] On cross-examination, the Respondent insisted that he was only aware of the mortgage on their half of the property and that he was entitled to do this under the terms of the Trust Agreement. He said that if there was a problem then JR was responsible under the terms of the Trust and she came to an agreement with AH that he, the Respondent, was not a party to and did not orchestrate.

[255] The Respondent said on cross-examination that the reference to the sale being discussed thoroughly with JR and MQ was a reference to the decision to sell and not to the closing in November 2012.

JR

[256] JR confirmed that from about 2000 the two families were very close and that their children grew up together. Even before the purchase of Sproat Lake #1 she kept track of expenses between the families and dealt with AH.

[257] JR testified that as between her and the Respondent she did all the banking and investments for the family. She also did the banking for the Office Building and for AH and MQ until they moved to Victoria.

[258] She recalled that in 2005, the cottage that would become Sproat Lake #2 was about eight doors down from #1 and she and the Respondent would walk by it and talk to the owners. They met the developer who was working on a potential subdivision and they became interested that a lot might come available. There was already an offer in place for one of the three subdivided lots and they decided the center lot with the cottage or the vacant lot to the right would be good for them. The developer was in trouble so they "jumped" in to help him. JR said the developer was $50,000 to $60,000 short to put in a large, modern septic field. In addition, the lot lines were not set and something on the shoreline needed to be arranged with British Columbia Fisheries.

[259] At first, this subdivision project was something that JR and the Respondent were going to do. Then AH and MQ thought it would be a good next investment. They had not done anything like this before. She and the Respondent did not expect to be reimbursed for their work if the subdivision did not go through. She said "we took that risk on our own."

[260] JR said they gave the developer $50,000 to $60,000. In return, they would have the choice of lot 2 or 3.

[261] The funds for the purchase of Sproat Lake #2 came from the sale of Sproat Lake #1. There was talk of a mortgage with AH and MQ but they did not put one on.

[262] JR said that the June 17, 2005 Email she sent to AH was from her own email and that the Respondent had his own email. This email was organized by her and not with the Respondent's assistance. She sent this email to show a breakdown of what they owed and what AH owed. She said that the deposit was half of the money they had given the developer, $30,000. She was asked why this email did not say $50,000 to $60,000 and her answer was that they were trying to reduce the purchase price to reduce the property purchase tax. Then she said she did not know if the $30,000 was a deposit or if it was their contribution to the subdivision costs. She said since it is 10 per cent then she thought it must be a deposit.

[263] JR was asked about the Trust Agreement signed September 27, 2005. She said that she had to be the trustee because AH and MQ did not want to own Sproat Lake #2 in their own names because they did not want to have to disclose it on their UK taxes. She said she was not asked, she was told she had to be the trustee. They were in Scotland at the time and MQ was adamant that this document be done. JR said the Trust Agreement was to help AH and MQ avoid paying taxes in the UK. JR said that she and MQ had been the owners of Sproat Lake #1 and they did not want to do it again.

[264] JR said the Trust Agreement was a precedent from LAC Ross Law Corporation. She thought that their names and addresses were added. She thought it might have been sent to AH's computer because she did not travel with a laptop at that time. The four of them were together in the family room in AH and MQ's home in Scotland. She could not remember if she made the changes to the precedent or AH. They all read it over together to "be on the same page."

[265] JR said she had no specific recollection of the Respondent telling AH and MQ to get independent legal advice but that it was something the Respondent "always did."

[266] JR was asked by the Respondent if the Trust Agreement was something that they urged on AH and MQ and JR said no because the Trust Agreement was of no benefit to them (JR and the Respondent).

[267] JR testified that the proceeds to close on Sproat Lake #2 came in the large majority from the sale of Sproat Lake #1 and AH sent funds. She said there was no discussion with AH and MQ about contributing half of the cost for Sproat Lake #2 without an agreement because they were like a family, there was trust and they would figure it out when they went to Scotland.

[268] JR was shown the Purchase Summary for the subdivision. The developer was purchasing the undivided property from the owners for $775,000. There was a deposit for $7,000 listed under the heading "Credits" that JR said she knew nothing about. She identified her name and that $300,000 was allocated for Lot 2. She agreed that the subdivision costs that she and the Respondent contributed were not on this summary. She said they were out of pocket $50,000 to $60,000. She could not recall tallying the expenses to have an exact figure but said she must have done that.

[269] JR testified that the purchase price in the June 17, 2005 Email did not include the money they had paid to the developer. The allocated purchase price on the Purchase Summary did not include the money paid to the developer in order to keep property purchase taxes down. JR testified that the June 17, 2005 Email was done so that AH would have a rough number. JR testified that the purchase price in the June 17, 2005 Email was $360,000 including the money they gave to the developer. She said that in the

June 17, 2005 Email she should have said that if they paid a $30,000 deposit then AH and MQ should pay a $30,000 deposit but instead she wrote it as $15,000 each which now does not make sense to her. She said that in reality AH and MQ owed an additional $15,000. She was asked if she got that sorted out and she said she did not know because she did not keep track of the running account.

[270] JR was asked about the mortgage she placed on Sproat Lake #2. She said that she had told AH they would probably get a mortgage for renovations in the June 17, 2005 Email but they did not need it at that time. She confirmed that she put a mortgage on Sproat Lake #2 in December 2005.

[271] She described the process to get this mortgage: She went to see her banker, C, at HSBC. She told her that she was a half owner but on title for the whole property. She said the appraisal was in the high $800,000s to $900,000 and C said she could borrow $675,000. JR told her she did not need that much. C asked if they were planning renovations and JR said "yes". C said it was best to ask for more in case she needed it. She said this is the best route if you want to borrow more. JR said she did not talk to AH or MQ about this mortgage because she was only borrowing on her half of the property and it was not for renovations on Sproat Lake #2. The bank arranged for her to sign documents. JR said the Respondent was not involved except that she needed him to co-sign because she was on maternity leave and her income was less.

[272] JR identified the mortgage that she and the Respondent signed. She testified that $260,000 was the amount that she actually borrowed and in her view that was less than half the value of Sproat Lake #2. She said she did not charge AH and MQ any costs or interest because this money was for her. She said she was careful to only borrow $260,000 and she never thought the mortgage was for $675,000. She assumes that she told the Respondent that she was borrowing this money for "the house and renovations" but when she was asked what she used the proceeds for she could not recall. She testified that there was no need to discuss this with AH or MQ because she was borrowing less than half the value of Sproat Lake #2.

[273] JR identified the line of credit dated April 23, 2007 that she arranged. She went to see C at HSBC again and asked for $160,000. She recalls that C said "no problem, you have lots of assets" and JR signed the paperwork and it was done. She did not recall that the line of credit was secured against Sproat Lake #2. She agreed it says that on the document, but there was no discussion with C. JR testified that they had other assets at the time including another house they were building. She said she assumed this $160,000 was part of that line of credit. She did not see a lawyer and signed at the bank. She said the Respondent was not involved.

[274] JR testified that she and AH were interested in selling Sproat Lake #2 because they both needed the funds from the sale of Sproat Lake #2. She said that the Respondent did not want to sell because he really liked the property and had done a lot of work on it. JR said the government assessed value of the property was always in the mid $700,000s to as high as $800,000. She said they listed Sproat Lake #2 for $750,000. Property prices had come down and they were selling after the summer but they wanted to sell quickly.

[275] JR testified that she did not know the $160,000 line of credit was registered against Sproat Lake #2 until she picked up the cheque from the Respondent's office after the sale. She called the bank and they told her she knew it was registered against Sproat Lake #2. She asked C to move the line of credit to another property but C said no because that is where it is registered.

[276] JR testified that the Respondent was not involved with the sale. She dealt with the realtor and all of the documents were sent to the conveyancer at the Respondent's office, CM. She did not talk to the Respondent about it.

[277] After she called the bank and was told the line of credit was registered against Sproat Lake #2 and had to be paid out, JR testified that she knew she would be short. She said she was embarrassed and frustrated.

[278] JR testified that she spoke to AH about the line of credit before she told the Respondent. She told AH there had been a big mistake and she was crying. AH told her they would work it out and gave her a hug. She told him that she had already allocated her portion of the money and that it would leave him short. She said she would get the money to AH as soon as she could. She offered to write a promissory note. She testified that their families were so close that AH was not upset. AH said he would tell MQ.

[279] JR testified that she tried to borrow the money she owed to AH and MQ from her father. She testified that she provided a promissory note to AH by using a precedent from the Respondent's office when she could not borrow from her father. She said she hoped to pay it off sooner but AH and MQ were not pushing for it to be paid. She said AH knew they were doing a costly renovation on another house. When the relationship between the families fell apart AH started to push for repayment. JR told him they were selling their house and she would pay him out of that sale.

[280] JR said that the relationship between the families started to turn in the spring of 2014. She said it was very sad. The Respondent and AH were not happy with each other. She and MQ were not talking and the kids were unhappy. The last straw was that the Respondent threw her a 40th birthday party and did not invite AH and MQ. They were very hurt but by then they were bad mouthing JR and the Respondent. JR testified that the relationship did not deteriorate because of the outstanding promissory note

because she stayed in communication with AH for over a year and he knew she would pay it back. She said he was "OK with it."

[281] JR agreed that she got a letter from AH's lawyer saying she had to pay the promissory note but she did not pay any attention to the letter because the house was for sale and AH would get paid. She saw the judgment against her and assumed the money would just be taken so she did nothing. After this, the relationship between the two families did not exist.

[282] JR was asked about her Net Worth Statement for the PS project. She told AH that she did not have time to do another one. She said he advised her to just change the date on the first one she had done (presumably for the TL project). She said no changes were made but it was signed and redated. She was not asked for a current statement. She put $800,000 in the Net Worth Statement as the value for Sproat Lake #2 because that was the assessed value with BC Assessment and that was also the amount she and AH were thinking of listing it for. She called C at HSBC who told her she was on title so JR should put 100 per cent ownership. C told her what numbers to write in. When JR was asked if the net value of Sproat Lake #2 to her and the Respondent was $420,000, she said she would do the statement differently now. She was asked about the mortgage/line of credit total of $380,000 and JR agreed that the amount was much higher than $260,000, the amount she had testified she had borrowed against Sproat Lake #2, and JR said she would fill the Net Worth Statement out differently now. She could not explain why it was dated January, 2013 but sent in April.

[283] On cross-examination, JR said that the agreement with the developer for Sproat Lake #2 was just between her and the developer, not the Respondent. She was asked for a copy of the written agreement and she testified that she did not know if it was finalized. She was asked if she had any records of the $50,000 to $60,000 given to the developer. She said she did not.

[284] JR said she did not know when Sproat Lake #2 was listed for sale.

[285] JR said on cross-examination that the Trust Agreement was signed just before they went home from Scotland. She said that the Respondent did not explain her duties as a trustee because she knew what her duties were under the Trust Agreement, she had done this before. He also did not explain the Trust Agreement to AH and MQ because everyone knew what trusts were and they had seen them before. They were educated. JR said she got zero benefit from the trust because the property was already in her name. The Trust Agreement was to benefit AH and MQ and JR said she only meant to mortgage her half.

[286] JR said that she asked C at HSBC to only borrow against her half of the property and C told her she cannot do that. JR said that C was the one who said she should get the mortgage for up to $675,000. JR said she would only borrow $260,000.

[287] JR said that when the Respondent came to the lawyer's office to sign as covenantor the lawyer asked him if he wanted to go over the document and he said no, signed and left.

[288] JR was asked about her June 17, 2005 Email to AH and whether she was trying to slip the development costs past AH by not referring to them. JR said she called the $30,000 a deposit because, in her view, they had to pay the development costs to secure the property. She said AH knew about the development costs because they had discussed it.

[289] JR was asked about the Purchase Summary document. She said she must have forgotten about the $7,000 deposit so that resulted in a total benefit to AH and MQ of $18,500 ($3,500 for half the $7,000 deposit and $15,000 that she erroneously did not claim in her June 17, 2005 Email). Law Society counsel suggested that maybe JR did not pay the developer $50,000 to $60,000 at all but only $7,000. JR said the $7,000 was paid to the purchaser (we assume she meant the vendor), not the developer. JR said that AH and MQ benefitted from her and the Respondent's work "as usual". She said that AH and MQ knew about all of this and to bring it up years later was "ridiculous".

[290] On cross-examination, JR stated that with respect to the Net Worth Statement she knew that "LOC" meant line of credit. She said that C told her to write $380,000 under the heading "Mortgage And/or LOC" and JR agreed. When JR was asked to admit that she must have known as of June 27, 2012 that the line of credit was registered against Sproat Lake #2. She agreed that is what the Net Worth Statement says but she was not thinking about that. She said she had never seen a form like this and she did the best she could.

[291] JR was asked about the line of credit document that says at the top that the property to be charged is Sproat Lake #2. Again, she agreed that is what the document says but that she just ran in and signed the document knowing that it was for $160,000. She said she did not get copies but they might have been mailed to her. She said she just signed what C told her to sign and did not pay attention to what she was signing. JR said she had no idea the line of credit was registered against the Sproat Lake #2.

[292] JR agreed she was the general contractor for the new house they were building but that she did not pay attention to these details on the line of credit. She said it was just normal paper work to her.

[293] JR said she could not recall when she gave AH the promissory note. She said it was sometime later because she was trying "every avenue" to cover what she owed. She said at the time the relationship between the families was good and AH was "nice" about it.

[294] JR identified the promissory note that she gave to AH and agreed it was dated November 29, 2014. She agreed that was two years less one day after the sale of Sproat Lake #2. She said she did not know that the Statute of Limitations for debt in BC is two years. She said she was not trying to get off the hook by waiting until the limitation period ran out. She said she knew she owed this money and that it was her idea to pay interest.

[295] JR agreed that when she told AH that she had allocated funds from the sale proceeds to her own renovations she made a choice about that. She said AH was fine with this, that he was as kind as could be; that she was upset and he was gracious.

[296] JR was asked if the Respondent talked to her about her obligations to pay AH on the sale of Sproat Lake #2. She said no. She said she was not thinking about her role as the Trustee but that AH and MQ were friends and she had let them down. This was really upsetting for her.

[297] JR said that her 40th birthday was June 2014 and not inviting AH and MQ was a reason the relationship deteriorated even more.

[298] JR was asked about the letter from the Respondent's firm to HSBC dated November 20, 2012 in which CM asks for a pay out of the second loan from HSBC in the amount of $167,000. She was asked to admit that she must have known about the line of credit. JR said she did not and she assumed that CM had spoken to C at HSBC.

CREDIBILITY AND FINDINGS OF FACT

[299] Contradictory evidence has been led in respect of both the MT Funds and the Sproat Lake Properties events and this Panel must assess the credibility of the witnesses in order to make findings of fact. In *Bradshaw v. Stenner*, 2010 BCSC 1398, at para. 186, affirmed 2012 BCCA, Justice Dillon summarized the key elements involved in assessing credibility as follows:

> [186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)*, 1919 CanLII 11, 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors

> such as the ability and opportunity to observe events, the firmness of [their] memory, the ability to resist the influence of interest to modify [their] recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes [their] testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Farnya v. Chorny*, [1952] 2 D.L.R. 152 (B.C.C.A.) [*Farnya*]; R. v. S.(R.D.), 1997 CanLII 324 (SCC), [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Farnya* at para. 356).

[300] Credibility and reliability are two different concepts. Credibility is about truthfulness; reliability is about accuracy. A witness can be credible but not reliable if, for example, their memory is poor.

[301] The Respondent is not a reliable witness and he is not a credible witness. His evidence was largely a self-serving recreation of events. At this hearing, he even contradicted his own evidence given earlier to the Law Society.

[302] The Respondent took no responsibility for any of the events leading to the Citation and blamed others:

(a) AH and MT were mistaken in their recollections and motivated to advance a civil suit;

(b) BG was conspiring with AH;

(c) SD was mistaken and NS relied on SD's mistake;

(d) KJ was responsible for the payment out of trust of GP's funds to MT and for keeping track of MT's deposits; and

(e) JR was responsible for all communications and financial matters in relation to the Sproat Lake properties event including the mortgage, the line of credit, the Trust Agreement and the shortfall on the sale of Sproat Lake #2.

[303] This Panel finds that on May 31, 2012 the Respondent clearly deceived MT in order to secure the $100,000 that he needed to use for BD to complete his purchase of a

property in Whistler. We find that the Respondent told MT that the money was needed as a good faith deposit on the TL project and that it would be repaid within weeks.

[304] The $100,000 received from MT on May 31, 2012 should have been deposited in trust but the Respondent directed that it be deposited into his general account and used to close BD's purchase of property in Whistler.

[305] MT made a second payment of $100,000 to KJ in trust for the PS project. This payment was required so that the PS project investors could make a $750,000 deposit with the receiver. That deposit was made on June 12, 2012. Nine days later on June 21, 2012 a cheque from GP, a PS project investor, was deposited to KJ's trust account. These funds were not needed because the deposit had already been made. This Panel finds that KJ asked the Respondent what to do with the excess funds and the Respondent instructed KJ to refund them to MT because he was tight for funds. This Panel finds that KJ would not have paid those funds to MT without the Respondent's instructions because he was the controlling mind of the project.

[306] The Respondent's instructions to KJ on June 21, 2012 to refund the PS deposit of GP to MT, saying that MT needed the funds, had the effect of leading MT to believe that his good faith deposit on the TL project had been returned. Until July 2, 2013 the Respondent made no further efforts to repay to MT the purported "loan". The PS project was able to close due to an excess of funds available. There was an amount of $100,000 missing but between MT thinking that his good faith money had been returned and the Respondent telling him that he was not short on the PS project, the Respondent might have never have had to account for the missing $100,000.

[307] In his letter to the Law Society dated April 14, 2015, the Respondent advised the Law Society that he told MT that he would repay the loan with a contribution to the PS project and that MT should make the PS project deposit as set out in the memo (from the articled student NS) yet in this hearing the Respondent testified that NS was mistaken to say that MT had a deposit on the PS project since it clearly had been refunded by KJ in June 2021. The Respondent said NS's memo went out without his knowledge and that she had likely relied on SD's error. The Respondent's evidence is wholly unreliable.

[308] It was not until AH noticed the missing $100,000 in March 2013 and began making enquiries that the Respondent finally made arrangements to pay $100,000 to the PS project to make up the difference. This was by way of a bank draft dated June 29, 2013, a full 13 months after he had mislead MT into giving him the funds.

[309] The Respondent's version of events is not consistent with the evidence:

(a) If he had asked MT for a loan, a lawyer with as much corporate and tax experience as the Respondent would have had no trouble drawing up a simple agreement documenting the loan. He would have known to include an interest rate or a reference to interest being waived and the terms and a date for repayment. The Respondent provided no documentation at all to MT, not even a receipt.

(b) It makes no sense that the Respondent would expect a client, to whom he gave corporate and tax advice, to loan him the substantial sum of $100,000 for no interest and no repayment terms and nothing in writing.

(c) MT denied that he met with the Respondent on June 1, 2012, to discuss the loan. The Respondent says that he did meet with MT and as proof he produced an entry in his daytimer showing a meeting with MT on June 1, 2012. Since there were no terms to discuss, no interest, no repayment and no explanation of what the funds were being used for, the Respondent is not believable when he says that such a meeting took place. The entry in his daytimer is not proof of anything.

(d) If this was truly a short-term loan because the Respondent had some receivables that were overdue, then he would have repaid it when those receivables came in. He did not.

(e) If this was truly a loan from MT that he was embarrassed about, then he would have made an effort to repay it as quickly as possible. He did not. In fact, if AH had not made efforts to locate the missing PS project deposit for MT over a year later, there is no way to know when, or if, the Respondent was going to pay it back since the PS project had closed in February 2013 and AH was making enquiries in June 2013.

(f) If this was truly a loan from MT, then the Respondent would have advised his staff. Other than BG, no one else appeared to know about this loan. KJ did not, SD did not and NS did not. SD testified that she asked the Respondent about this deposit and that she never got a satisfactory answer. BG was clearly uncomfortable with AH's enquiries but tried to direct him to the Respondent in order to not get in the middle of what had transpired between MT and the Respondent.

(g) If MT was supposedly financially able to loan the Respondent $100,000 as a good friend in May 2012, then it makes no sense for the Respondent to tell KJ that he should refund MT's PS project deposit on June 21, 2012 because MT needed the money.

(h) The Respondent is not believable when he says he does not know how a bank draft for $100,000 payable to the PS project showed up under AH's doormat on June 29, 2013. Yet he relies on this payment as proof that he repaid his loan from MT.

(i) The Respondent gave more than one explanation of why he needed to borrow $100,000 on May 31, 2012 and what he used that money for:

(i) He says he told MT on May 31, 2012, that he needed a short-term loan because two large receivables had not been paid to his firm.

(ii) He told BG on May 31, 2012, that it was to be used to close the BD transaction that day.

(iii) He told the Law Society in his letter dated April 14, 2015 that "I had been working steadily on two transactions the acquisition of the [TL] property and the [PS] property. I had been in discussions almost daily with [MT] and others about these transactions. Available cash flow at LAC Ross Law Corp had diminished as a result of this and two large accounts receivable from clients that were having difficulty paying. I called [MT] if he could lend LAC Ross Law Corp. $100,000."

(iv) He told the Law Society in his interview on February 13, 2020 that he could not recall what he needed the money for but that it would have been to pay "another debt of some sort". On cross-examination at the hearing, the Respondent said it was a mistake to call it a debt.

(v) He stated in his Response to NTA filed on July 5, 2022 that the $100,000 was needed to "equalize equity in another investment."

(vi) He told this hearing that JR had invested in property in California with BD and that BD had invested more money than JR and had asked the Respondent to equalize the equity by contributing $100,000 towards BD's purchase of property at Whistler that was closing on May 31, 2012. The Respondent said this was not a debt owed to BD and there was no obligation to repay him and that he only offered to do his best.

(j) He told the Law Society in his letter dated April 16, 2015 that he contacted MT before the PS project contributions were due in early 2013

> and advised him that his loan would be repaid directly to the PS project on his behalf and that MT's PS project contribution would be as laid out in the memo (from NS on January 16, 2013) despite his receiving a refund of $100,000. On cross-examination at the hearing, the Respondent did not refer to this alleged discussion with MT but testified that the memos from his articled student, NS, were wrong to say that MT had a $100,000 deposit on PS project and that the error was not picked up by KJ, SD or MT. The Respondent said that he probably did not see the memos from NS or he would have noticed this error. He also said that "at the end of the day, KJ was responsible."

[310] This Panel accepts the evidence of MT in this hearing. His evidence was clear and consistent. His recollection of events more than 10 years ago was not perfect, as would be expected after so much time. He was clear on the main issue, that at no time did he believe he had loaned the Respondent $100,000. He said he would have remembered such a request and would have been surprised because he believed the Respondent to be financially successful and secure. His evidence is that he would not have agreed to loan the Respondent $100,000.

[311] It is true that MT believed the cheque from KJ on June 21, 2012 was the repayment of his good faith deposit on TL project when the cover letter said it was the return of his PS project deposit. However, his evidence was that he did not recall seeing that letter or noting that the cheque was from KJ, not LAC Ross Law Corp. He was expecting $100,000 as the return of his good faith deposit and he got $100,000. Because he believed he had been repaid his good faith deposit, he did not ask the Respondent any further for its return. His belief that he still had a $100,000 deposit on the PS project was confirmed by the email from SD on August 24, 2012 and the memo from NS on December 24, 2012. Even after he was told by CL that he was short $100,000 on the PS project, he called the Respondent and was told that he was not short and that the Respondent remembered his deposit.

[312] The Panel accepts the evidence of BG. Her evidence was that the Respondent told her on May 31, 2012 that the funds from MT were a loan to be deposited into the general account and used to close the BD purchase of property in Whistler.

[313] The Panel accepts the evidence of SD that she asked the Respondent about the $100,000 from MT and was never given a satisfactory answer.

[314] The Panel accepts the evidence of AH. He was clearly angry with the Respondent in his testimony, but his evidence was clear and consistent and supported by the documents. He found that MT's deposits for the PS project were short by $100,000 even though the transaction had closed in February 2013. AH made enquiries with MT who

said he had paid in full. AH made enquiries with BG who told him the money was not in the general account and that he should talk to the Respondent. AH made enquiries with the Respondent who told him the money was in the general account for holdbacks which AH knew was not true. A bank draft showed up under his doormat on June 29, 2013 for $100,000 payable to the PS project and since that balanced the books from AH's perspective, he made no further enquiries.

Sproat Lake Properties

[315] This Panel accepts the evidence of AH wherever it conflicts with the evidence of the Respondent or JR. Their evidence was self-serving and unreliable. The Respondent and JR had good recall of evidence that supported their version of events and no memory or documents when presented with conflicting evidence.

[316] This Panel does not accept the evidence of the Respondent or JR when they say the Respondent had no knowledge of any of the financial issues related to the purchase and sale of Sproat Lake #2, the Trust Agreement, the mortgage and the line of credit. Both gave their evidence frequently referring to "we" and "us" and it is clear they were acting together in respect to these events.

[317] This Panel finds that in 2005 the Respondent and JR were interested in assisting a developer finish a subdivision project at Sproat Lake with a view to purchasing one of the newly subdivided properties. To do this, they needed the proceeds of Sproat Lake #1 which JR owned with MQ.

[318] AH and MQ were happy with Sproat Lake #1 and not interested in working with the developer. The Respondent and JR both testified to helping the developer with various projects such as the septic system, foreshore leases with the Fisheries department and drawing lot lines. They also said that they gave the developer cash. It was not clear if they gave the developer $50,000 to $60,000 cash in addition to the work they did or if they valued their own work at $50,000 to $60,000 or some combination of both. Neither the Respondent nor JR produced any documents to show cash or services given to the developer or how they arrived at the figure of $50,000 to $60,000.

[319] Once the subdivision was close to complete, the Respondent and JR asked AH and MQ to sell Sproat Lake #1 and put the funds into the purchase of a newly subdivided property that would become Sproat Lake #2. AH and MQ agreed. JR sent the June 17, 2005 Email setting out the purchase price and other expenses and asking for the funds required over the sale proceeds of Sproat Lake #1. This email clearly says that the purchase price for Sproat Lake #2 was $360,000. It was not until after the sale of Sproat Lake #2 in November 2012 that AH learned that the purchase price was actually

$300,000. The Respondent and JR both testified that the additional $60,000 was for the work and cash they gave the developer to get the subdivision approved.

[320] The Respondent tried to distance himself from JR's June 17, 2005 Email by saying that JR would have to explain the figures. However, he also said that her figures included an estimate of what they had spent on the subdivision and that JR was "not going to not recover the money" spent and that was what she was referring to when she said the purchase price was $360,000.

[321] AH says he and MQ were never told any of this at the time Sproat Lake #2 was purchased. AH did not find out the true purchase price of Sproat Lake #2 until long after it was sold.

[322] Sproat Lake #2 was purchased using all of the proceeds from Sproat Lake #1 and cash from both parties. It was put in JR's name alone with the consent of AH and MQ. This was to avoid an issue with withholding taxes because AH and MQ did not reside in Canada at the time. A week after the purchase of Sproat Lake #2 the Respondent, JR and their children went to visit and travel with AH, MQ and children for several months.

[323] At the end of September 2005, and while at the home of AH and MQ, the parties decided to execute a trust agreement setting out that Sproat Lake #2 was owned legally by JR and that she held an undivided one-half interest in trust for AH and MQ. They used a precedent from the Respondent's office which was modified only to include a description of the property and the names and addresses of JR as trustee, and AH and MQ as beneficiaries. The language of the trust provisions themselves were not modified. The Respondent witnessed everyone's signature. The Trust Agreement was dated September 27, 2005.

[324] Nothing turns on who requested this document. Until it was executed, there was nothing in writing to document the one-half interest of AH and MQ except the money trail showing the proceeds of Sproat Lake #1 being used to purchase Sproat Lake #2. This document would not change the long-standing practice of these two families whereby JR would keep track of expenses and settle up with AH from time to time. The June 17, 2005 Email from JR had suggested a mortgage for renovations and to put money back in their pockets but AH had said he did not want a mortgage and JR agreed.

[325] The Trust Agreement contained the following clauses:

> 3. *…provided that the Trustee shall not deal with the Property in any manner except as the Trustee is herein specifically empowered, except with the consent and direction of the Beneficiary from time to time obtained.*

> *4. Subject to the receipt of the written consent of the Beneficiary, the Trustee shall have the following powers:*
>
> > (a) *to borrow any monies required for the Property* and for such purpose to charge the Property by way of mortgage or debenture to lenders and grant charges over the Property and to submit and process all claims for draws under the loans and to do all such further acts and things as maybe necessary to borrow the said funds and secure the repayment thereof and to refinance the said borrowings and grant such additional security as may be necessary with respect thereto;
>
> [emphasis added]

[326] JR placed a mortgage on Sproat Lake #2 in December 2005 for $675,000 with $260,000 to be advanced. She testified both that she had discussed getting a mortgage with AH and that she did not need the consent of AH and MQ because the mortgage was only on her half or for less than half the value of the property. In fact, she was told by her banker that she could not mortgage only her half of the property and that she should take out a mortgage of $675,000 in case she needed more than $260,000.

[327] AH denied any discussion about placing a mortgage on Sproat Lake #2 other than his reply to the June 17, 2005 Email in which he said he did not think they needed a mortgage for renos and to put money back in their pockets.

[328] The Respondent made the same assertion in his evidence, that JR was entitled to place a mortgage on her half of Sproat Lake without the consent of AH or MQ.

[329] The amount of JR's mortgage, at $675,000, was well in excess of half the value of the property even if she only had $260,000 advanced. She knew from talking to her banker that she was not just mortgaging her half of the property.

[330] The Respondent was also aware of the amount of this mortgage and that AH and MQ had not consented and that it was a breach of the terms of the Trust Agreement that he had provided and witnessed. The Respondent signed this mortgage as a covenantor and his evidence that he did not read what he signed is not credible.

[331] AH's evidence is that he and MQ did not find out about this mortgage until Sproat Lake #2 was sold in November 2012. The Panel accepts this evidence.

[332] JR took out a line of credit in April 2007 for $160,000. This line of credit was secured against Sproat Lake #2 and no other properties. This document also says that the Respondent is the covenantor but the copy of the line of credit in evidence does not show

any signatures and the Respondent says he does not think he signed it. JR testified that she thought this line of credit was secured against other properties that she and the Respondent had at the time but neither led evidence of any other properties that might have secured this line of credit.

[333] JR's version of events, that she did not know that the line of credit was secured by Sproat Lake #2, was not credible in light of the following evidence:

(a) The line of credit, called an Equity Power Facility Letter, clearly states "[p]roperty that provides security for this agreement: [Sprout Lake #2]."

(b) JR signed two statements of net worth showing the amount charged against Sproat Lake #2 to be $380,000 as of June 2012, which was clearly more than the $240,000 mortgage and was approximately the amount required to pay out the mortgage and the line of credit in November 2012, of $389,167.18.

[334] When Sproat Lake #2 was sold in November 2012, the Respondent's firm handled the conveyance. He says he did not review any documents or read any of the letters that went out under his name. He said he was aware there was a mortgage to pay out but that he was not aware of the line of credit. JR said the same thing. However, there is a letter from the Respondent's firm, under his name but signed by his conveyancer asking HSBC for payout statements for both the mortgage and the line of credit. This Panel finds that both the Respondent and JR knew there was a mortgage and a line of credit to be paid out of the proceeds from the sale of Sproat Lake #2.

[335] JR testified that she was surprised and upset to discover that the line of credit was secured against Sproat Lake #2 and that the bank insisted that it be paid out. She knew that from the sale proceeds half the amount, $327,710.83 was payable to AH and MQ but the net sale proceeds paid to her were only $262,247.34. When she told AH that there had been a mix up and that the bank was forcing her to pay off her line of credit she only offered him $200,000 of the funds paid to her by the Respondent. She cried and told AH that she would sort this out in a few weeks. She said AH was very gracious and gave her a hug and told her they would work this out.

[336] In giving her evidence, JR tried to paint herself as mortified that there was a shortfall and that she made every effort to repay AH and MQ as quickly as possible. In fact, once she had AH's agreement to only take $200,000 and work something out for the remainder, she put almost no effort into paying them back. AH had to hire a lawyer and get a promissory note before the two year limitation period expired. JR defaulted on the promissory note and AH had to sue her and garnish her bank account to be repaid in July 2015. This was more than two and a half years after the sale of Sproat Lake #2.

[337] The Respondent also took no steps to make up the shortfall or repay AH and MQ, who were his clients. He took no steps to protect their interest at all over the next two and a half years while he and JR enjoyed the use of AH and MQ's money.

ANAYLSIS

MT FUNDS

[338] Lawyers in BC are governed by a code of conduct in addition to the *Act* and Rules. Until January 1, 2013, that code was found in the *Handbook*. As of January 1, 2013, the *Handbook* was updated and replaced by the *Code*. The *Handbook* and the *Code* set out the expectations for a lawyer's conduct in dealing with clients, the courts, other lawyers, the Law Society, the state and the general public.

[339] The Introduction to the *Code* sets out the purpose for the *Code* as follows (emphasis added):

> (1) One of the hallmarks of civilized society is the rule of law. Its importance is reflected in every legal activity in which citizens engage. As participants in a justice system that advances the rule of law, lawyers hold a unique and important role in society. *Self-regulatory powers have been granted to the legal profession in Canada on the understanding that the profession will exercise those powers in the public interest. Part of that responsibility is ensuring the appropriate regulation of the professional conduct of lawyers.* Members of the legal profession who draft, argue, interpret and challenge the law of the land can attest to Canada's robust legal system. They also acknowledge the public's reliance on the integrity of the people who work within the legal system and the authority exercised by the governing bodies of the profession. While lawyers are consulted for their knowledge and abilities, more than mere technical proficiency is expected of them. *A special ethical responsibility comes with membership in the legal profession.* This *Code of Professional Conduct for British Columbia* attempts to define and illustrate that responsibility in terms of a lawyer's professional relationships with clients, the justice system and other members of the profession.
>
> (2) The *Legal Profession Act* provides that it is the object and duty of the Law Society of British Columbia to uphold and protect the public interest in the administration of justice. A central feature of that duty is to ensure that lawyers can identify and maintain the highest standards of ethical conduct. This Code attempts to assist lawyers to achieve that goal. While

> the Code should be considered a reliable and instructive guide for lawyers, the obligations it identifies are only the minimum standards of professional conduct expected of members of the profession. *Lawyers are encouraged to aspire to the highest standards of competence, integrity and honour in the practice of their profession, whether or not such standards are formally addressed in the Code.*

[340] Dishonourable conduct was defined in the *Handbook* at Chapter 2:

> 1. A lawyer must not, in private life, extra-professional activities or professional practice, engage in dishonourable 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.

[341] The *Code* describes Integrity in rule 2.2-1:

> A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity.

[342] The Commentary to rule 2.2-1 in the *Code* expands on this as follows:

> [1] Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. If clients have any doubt about their lawyers' trustworthiness, the essential element in the true lawyer-client relationship will be missing. If integrity is lacking, the lawyer's usefulness to the client and reputation within the profession will be destroyed, regardless of how competent the lawyer may be.
>
> [2] Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer's irresponsible conduct. Accordingly, a lawyer's conduct should reflect favourably on the legal profession, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety.
>
> [3] Dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice. Whether within or outside the professional sphere, if the conduct is such that knowledge of it would be likely to impair a client's trust in the lawyer, the Society may be justified in taking disciplinary action.

[343] The *Code* sets out the requirement for honesty and candour at rule 3.2-2 as follows:

> When advising a client, a lawyer must be honest and candid and must inform the client of all information known to the lawyer that may affect the interests of the client in the matter.

[344] The *Code* also sets out the expectations for lawyers conduct in Law Society investigations. Lawyers being investigated by the Law Society are required to cooperate with the investigation. The *Code* provides that:

> 7.1-1 A lawyer must
>
> (a) reply promptly and completely to any communication from the Society;
>
> (b) provide documents as required to the Law Society;
>
> (c) not improperly obstruct or delay Law Society investigations, audits and inquiries;
>
> (d) cooperate with Law Society investigations, audits and inquiries involving the lawyer or a member of the lawyer's firm;
>
> (e) comply with orders made under the *Legal Profession Act* or Law Society Rules; and
>
> (f) otherwise comply with the Law Society's regulation of the lawyer's practice.

[345] Misappropriation of client monies was described by the hearing panel in *Law Society of BC v. Ali*, 2007 LSBC 18, as follows, citing the definition in Black's Law Dictionary, 6 th Edition:

> [79] …
>
> > The unauthorized, improper, or unlawful use of funds or other property for purposes other than that for which intended. Misappropriation of a client's funds is any unauthorized use of clients funds entrusted to an attorney, including not only stealing but also unauthorized temporary use for lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom . . .

[346] The Respondent deceived MT in order to obtain $100,000 to be used to assist BD to purchase a property in Whistler. He continued to mislead MT as to the status of these funds and MT's deposits in the PS project until AH began to make enquiries in his role as the accountant for the project. Thirteen months after obtaining the funds from MT, the Respondent arranged for $100,000 to be paid into the PS project by leaving a bank draft under AH's doormat.

[347] All funds received from a client, except for the payment of legal fees, must be deposited into a lawyer's trust account. Misappropriation of client funds is any unauthorized use of those funds. The Respondent clearly misappropriated $100,000 from MT on May 31, 2012 and the misappropriation continued until June 2013.

[348] The Respondent also misappropriated the $100,000 deposited by GP on June 21, 2012 and paid out to MT on June 21, 2012. The Respondent did not have instructions from either GP or MT to perform this transaction.

[349] The Respondent misled his staff, KJ, AH and the Law Society as to the nature of the $100,000 he received from MT on May 31, 2012, the use he made of those funds, the PS refund on June 21, 2012, the status of MT's PS deposits and the payment to be used for the PS project that appeared under AH's doormat in June 2013. If he genuinely believed that he had simply borrowed $100,000 from MT he could have offered that explanation to everyone involved. Instead, he told different things to different people and hid behind the confusion. It took a concerted effort on the part of AH to track the missing deposit on the PS project which forced the Respondent to finally replace those funds 13 months later.

[350] The Respondent misled the Law Society in his letter of April 14, 2015 and following that date by maintaining the fiction that MT had agreed to loan his law firm $100,000 and that it could be paid back with a contribution to the PS project.

[351] The Respondent failed to act with honesty, candour or integrity by taking $100,000 from MT by deceit and deliberately misleading MT and others, including the Law Society. His conduct fell well short of the conduct expected of lawyers in BC.

SPROAT LAKE

[352] The *Handbook* sets out the "Canons of Legal Ethics" which include a lawyer's duty to be faithful to clients and includes the following:

> 3 (2) A lawyer should disclose to the client all the circumstances of the lawyer's relations to the parties and interest in or connection with the controversy, if any, which might influence whether the client selects or

> continues to retain the lawyer. A lawyer shall not act where there is a conflict of interests between the lawyer and a client or between clients.

[353] Chapter 6 of the *Handbook* states: "As a general principle, a lawyer has a duty to give undivided loyalty to every client."

[354] The *Handbook* sets out the following guidelines for jointly representing two or more clients:

> 4. A lawyer may jointly represent two or more clients if, at the commencement of the retainer, the lawyer:
>
> (a) explains to each client the principle of undivided loyalty,
>
> (b) advises each client that no information received from one of them as a part of the joint representation can be treated as confidential as between them,
>
> (c) receives from all clients the fully informed consent to one of the following courses of action to be followed in the event the lawyer receives from one client, in the lawyer's separate representation of that client, information relevant to the joint representation:
>
> > (i) the information must not be disclosed to the other jointly represented clients, and the lawyer must withdraw from the joint representation;
> >
> > (ii) the information must be disclosed to all other jointly represented clients, and the lawyer may continue to act for the clients jointly, and
>
> (d) secures the informed consent of each client (with independent legal advice, if necessary) as to the course of action that will be followed if a conflict arises between them.
>
> 5. If a lawyer jointly represents two or more clients, and a conflict arises between any of them, the lawyer must cease representing all the clients, unless all of the clients:
>
> (a) consented, under paragraph 4(d), to the lawyer continuing to represent one of them or a group of clients that have an identity of interests, or

> (b) give informed consent to the lawyer assisting all of them to resolve the conflict.

[355] The *Code* defines a "client" and "conflict of interest" as follows at rule 1.1-1 with commentary:

> "client" means a person who:
>
> (a) consults a lawyer and on whose behalf the lawyer renders or agrees to render legal services; or
>
> (b) having consulted the lawyer, reasonably concludes that the lawyer has agreed to render legal services on his or her behalf.
>
> Commentary
>
> [1] A lawyer-client relationship may be established without formality.
>
> …
>
> [3] For greater clarity, a client does not include a near-client, such as an affiliated entity, director, shareholder, employee or family member, unless there is objective evidence to demonstrate that such an individual had a reasonable expectation that a lawyer-client relationship would be established.
>
> "conflict of interest" means the existence of a substantial risk that a lawyer's loyalty to or representation of a client would be materially and adversely affected by the lawyer's own interest or the lawyer's duties to another client, a former client, or a third person.

[356] The Respondent's involvement with the Sproat Lake properties started as an arrangement to share a recreational property with close family friends. The Respondent clearly acted for JR, MQ and AH in respect of the purchase of Sproat Lake #1. He did not follow the requirements in the *Handbook* for jointly representing more than one client in a transaction.

[357] The *Handbook*, up to January 2013, and now the *Code* provide guidelines for lawyers who act for more than one client or who enter into business or financial transactions in situations where it is not clear whether they are acting as a lawyer or a friend. The new guidelines in the *Code* are consistent with the old guidelines in the *Handbook*. They are essentially the same. If the Respondent was not acting as the lawyer for AH and MQ, he had a duty to advise them and ensure that they were not under

any misapprehension as to his role. He also needed to advise them to get independent legal advice. Introducing them to various lawyers in the Victoria community was not sufficient. The Respondent had introduced AH and MQ to other lawyers in Victoria for conveyancing work so they did know other lawyers but that is not the same as advising them to get independent legal advice in respect of the Sproat Lake transactions. AH and MQ reasonably believed that the Respondent was acting for them and would protect their interests.

[358] This Panel finds that AH and MQ were the Respondent's clients for the purchase and sale of Sproat Lake#1 and #2 and the execution and administration of the Trust Agreement. The Respondent argued that since he never sent AH and MQ a retainer agreement or charged them a fee then they could not be his clients. The absence of a retainer agreement is not determinative. The fact that the Respondent did not charge fees for legal services does not mean that AH and MQ were not clients. Lawyers do not escape their professional obligations by acting pro bono. Nevertheless, in fact, the Respondent and JR did gain a benefit from investing in Sproat Lake #1 and #2 with AH and MQ in that each family was able to share the expense of owning and operating recreational property. The Respondent and JR could not have purchased Sproat Lake #2 without AH and MQ's funds from Sproat Lake #1.

[359] The admission by the Respondent in his letter to the Law Society of March 3, 2015, when he advised the Law Society, in writing, that he was acting for JR, AH and MQ in respect of the purchase and sale of Sproat Lake #2 and the Trust Agreement, is consistent with our findings. He therefore owed a duty of "undivided loyalty" to each of them.

[360] The duty of undivided loyalty also means that the Respondent was responsible to see that AH and MQ had the same information that he and JR did when investing in Sproat Lake #2. The Respondent cannot say that the whole of that responsibility was JR's because she was the Trustee under the Trust Agreement. In any event, in June 2005 when Sproat Lake #2 was purchased, the Trust Agreement had not yet been executed.

[361] The Respondent breached his duty to AH and MQ by providing them with misleading information in the June 17, 2005 Email from JR with respect to the purchase price of Sproat Lake #2. His evidence that the email came from JR and not from him and that JR was responsible for all financial matters between the two families is not an excuse, and this Panel has already found that the Respondent and JR acted together in their financial and real estate endeavours. If he did not actually know the contents of the June 17, 2005 Email, he still had a duty to ensure that AH and MQ were given accurate information before investing their share of the sale proceeds of Sproat Lake #1 into Sproat Lake #2. This was especially true since the title to Sproat Lake #2 was going into JR's name alone. The Trust Agreement was executed three months later.

[362] The Respondent breached his duty to AH and MQ, and facilitated a breach of the Trust Agreement, by allowing a mortgage to be placed against Sproat Lake #2 in 2005 without their consent. He was in a clear conflict of interest that was exacerbated by his signing that mortgage as covenantor. The Respondent and JR are wrong to say that they could take out a mortgage on Sproat Lake #2 without the consent of AH and MQ as long as they borrowed no more than half the value of the property. That is not what the Trust Agreement says. They were required to get the written consent of AH and MQ for a mortgage of any amount. The only type of mortgage contemplated by the Trust Agreement was for monies required for the property and the Respondent and JR did not use the money they borrowed in the mortgage and line of credit for Sproat Lake #2. Even a mortgage required for renovations for Sproat Lake #2 would have required written consent from AH and MQ.

[363] The Respondent also breached his duty to AH and MQ, and facilitated a breach of the Trust Agreement, by allowing a line of credit to be secured against Sproat Lake #2 in 2007 without their consent. This Panel does not accept the evidence of the Respondent and JR when they say that all of the financial transactions were handled by JR and that the Respondent had no knowledge. The Respondent and JR were clearly acting together in all of the investment and financial dealings concerning Sproat Lake #2: both consistently referred to "us and we" in their testimony and in the documents; the line of credit stated that the Respondent would be the covenantor; and the Respondent and JR signed Net Worth Statements referring to the line of credit secured against Sproat Lake #2.

[364] The Respondent breached his duty to AH and MQ, and facilitated a breach of the Trust Agreement, by failing to advise them of the shortfall of funds owed to them on the sale of Sproat Lake #2 and by paying those funds to JR when he knew she was in breach of her duties as Trustee. The Trust Agreement states that until the Beneficiary demands the transfer of its one-half interest "the Trustee shall account to the Beneficiary for all profits and advantages realized by the Trustee from the Property, and all income and losses therefrom shall be for the benefit of the Beneficiary…."

[365] The Respondent did not simply fail to recognize a conflict, he actively created a conflict knowing that AH and MQ were relying on him as their lawyer in the Sproat Lake #2 transactions and actively withholding information from them in order to obtain the mortgage and later the line of credit.

[366] The Respondent's attitude towards this conflict seemed to be that AH and MQ took advantage of him by "flagrantly" waiving their right to independent legal advice and relying on him to do the legal work for free. As well, he pointed out that AH and MQ made a profit on Sproat Lake #2. None of that excuses the Respondent from his

responsibility to make it clear at the outset if he was not acting for AH and MQ, or to follow the requirements of the *Handbook* for jointly representing clients and to give each client the duty of his undivided loyalty. If a conflict arose, he had a duty to cease acting for any parties without the fully informed consent of each of them. He certainly had a duty not to create a conflict by borrowing money with one client against property held in trust for his other clients.

[367] The conflict avoidance provisions of the *Handbook* and now the *Code*, are designed to prevent lawyers from acting in conflict in the first place. Part of the duty of loyalty that a lawyer owes to each client, is the duty to avoid conflicts of interest. The duty is ongoing and not limited to the beginning of the retainer. The Respondent had a duty to identify the potential conflict of acting as counsel for all three parties where he was married to one of them and investing in the Sproat Lake properties himself and benefitting personally from the mortgage and line of credit secured against Sproat Lake #2. It was his responsibility to avoid the conflict of interest or obtain informed consent with independent legal advice, if needed.

[368] Since the Respondent acted for all three parties, he owed all of them the same duty of candour, honesty and integrity discussed above. He also had a duty to disclose all relevant information to each party. He clearly acted against AH and MQ's interests by misleading them as to the purchase price of Sproat Lake #2, obtaining a secret mortgage and line of credit secured against Sproat Lake #2, facilitating a breach of the Trust Agreement and paying out the funds to JR alone knowing they were insufficient to pay to AH and MQ.

DISPOSITION AND RESULT

Allegation 1 – Misappropriation of trust funds from MT

[369] The Respondent says the $100,000 he received from MT was a loan and therefore he was not required to put it in his trust account. We have found that the Respondent deceived MT by telling him that the $100,000 was good faith money for the TL project. Those funds should have been deposited to the Respondent's trust account and to the credit of MT for the TL project. Instead, the Respondent deposited these funds to his general account and used them to close a transaction for another client. The Respondent's conduct in taking MT's money by deceit and using it for a purpose that MT did not authorize is a clear misappropriation and it amounts to a marked departure from a lawyer's fiduciary duty. This is professional misconduct.

Alternate Allegation 2 – Loan from MT

[370] Given that this Panel has found that the funds from MT on May 31, 2012 were not a loan then allegation 2, in the alternative, is not proven and is dismissed. We note however, that if the Respondent truly believed that he had borrowed these funds from MT then he misled the Law Society on his Annual Practice Declarations in 2012 and 2013 and he misled whoever would rely on his Net Worth Statements by not disclosing this loan.

Allegation 3 – Misappropriation of trust funds from GP and MT

[371] The Respondent did not have instructions from GP or MT to use GP's funds in trust to refund MT's PS project deposit on June 21, 2012. The Respondent misled KJ by advising him to use GP's funds to return the deposit to MT when he did not have instructions. This is a misappropriation of trust funds and it amounts to a marked departure from the conduct expected of lawyers and is professional misconduct.

Allegation 4 – Misleading MT

[372] The Respondent knowingly made false and misleading representations to MT in relation to the $100,000 received on May 31, 2012 by telling him it was needed as a good faith deposit on the TL project when in fact the Respondent needed the funds to assist BD to purchase property in Whistler. The Respondent was knowingly deceitful with MT and this represents a marked departure of the conduct expected of lawyers and is professional misconduct.

Allegation 5 – Misleading AH

[373] The Respondent knowingly made false and misleading representations to AH about the true nature of the $100,000 received from MT on May 31, 2012. The Respondent told AH that MT was not short $100,000 on his contributions to the PS project and that MT's funds were being held in the general account for holdbacks. This was not true. The Respondent knew that the accounting showed that MT was short $100,000 on his PS project deposits even though the transaction had closed in February 2013. The Respondent was knowingly deceitful with AH. This represents a marked departure of the conduct expected of lawyers and is professional misconduct.

Allegation 6 – Misleading KJ

[374] The Respondent knowingly made false and misleading representations to KJ, the lawyer he practiced with in an apparent partnership. He advised KJ to refund $100,000

to MT from the funds deposited by GP on the PS project. He advised KJ that MT was short of funds and needed the money. KJ reasonably relied on these instructions from the Respondent as he was the directing mind of the PS project. The Respondent did not have instructions from GP to use his trust funds to reimburse MT and he did not have MT's instructions to refund his deposit on the PS project. The Respondent knowingly misled KJ and this represents a marked departure from the conduct expected of lawyers and is professional misconduct.

Allegation 7 – Misleading the Law Society

[375] The Respondent knowingly made false and misleading representations to the Law Society between April 2015 and February 2020 in relation to the $100,000 received from MT on May 31, 2012. The Respondent advised the Law Society that the funds were loaned to him by MT. We have found that this was not true. The Respondent also advised the Law Society that MT agreed he could repay this loan by making a payment on his behalf on a real estate investment (the PS project) and we have found that MT did not agree because he never believed he had made a loan in the first place. The Respondent knowingly misled the Law Society and this represents a marked departure of the conduct expected of lawyers and is professional misconduct.

Alternate Allegation 8 – Misleading the Law Society

[376] In light of our finding that the Respondent did not borrow the $100,000 from MT on May 31, 2012, then he was correct to report to the Law Society that he was not indebted to a client during the reporting period in 2012. This further confirms that the Respondent knew he had not borrowed the funds from MT. This Panel finds that allegation 8, in the alternative, has not been proven and is dismissed.

Allegation 9 – Conflict of Interest: Sproat Lake Properties

[377] The Respondent was clearly acting for JR, AH and MQ in relation to the purchase and sale of Sproat Lake #1 and #2 and in the drafting and execution of the Trust Agreement. The testimony of AH is accepted when he says that he and MQ relied on the Respondent to protect their interests. The Respondent himself admitted that he acted for all parties in his letter to the Law Society dated March 3, 2015. His attempt to withdraw those admissions now is not convincing and is not accepted.

[378] At the time of the Sproat Lake transactions, the Respondent failed to comply with his obligations as set out in the *Handbook* and the *Code* starting on January 1, 2013.

[379] The Respondent was in a conflict of interest with AH and MQ in the following circumstances:

(a) The Respondent jointly represented two or more clients, JR, AH and MQ beginning in 2003 when Sproat Lake #1 was purchased and continuing until the sale of Sproat Lake #2 in November 2012. He did not take any of the steps required by the *Handbook* including:

(i) the Respondent did not explain to JR, AH and MQ the principle of undivided loyalty;

(ii) the Respondent did not advise JR, AH and MQ that no information received from one of them as part of the joint representation can be treated as confidential as between them;

(iii) the Respondent did not receive fully informed consent from JR, AH and MQ to the course of action to be followed in the event he received from one client information relevant to the joint representation; and

(iv) the Respondent did not secure informed consent from JR, AH and MQ as to the course of action that would be followed if a conflict arose between them.

(b) He performed legal services for AH and MQ when he had a direct or indirect financial interest in the subject matter of the legal services, namely Sproat Lake #2.

(c) He invested the funds of AH and MQ from Sproat Lake #1 into Sproat Lake #2 in which he and JR had a personal interest and that personal interest affected his professional judgment. He failed to advise AH and MQ of the true purchase price as he wanted to recover the money or be reimbursed for the services he and JR had contributed to the subdivision process.

(d) He failed to advise AH and MQ that a mortgage and a line of credit had been placed against Sproat Lake #2 contrary to the Trust Agreement.

(e) He continued to act for all three clients in circumstances where he knew that JR had breached her duties as a trustee to AH and MQ.

(f) He distributed the sale proceeds from Sproat Lake #2 entirely to JR when he knew the net proceeds were not enough to pay AH and MQ their share.

[380] The Respondent's conduct in acting in a conflict of interest is conduct that represents a marked departure from the conduct expected of lawyers and is professional misconduct.

[381] Allegation 9(c) has not been proved since we have found that at all times material the Respondent was acting as a lawyer.

Allegation 10 – Facilitating a Breach of Trust

[382] This allegation is confined to the mortgage placed against Sproat Lake #2 and not the line of credit.

[383] The Respondent was acting for JR, MQ and AH when he provided a precedent trust agreement. The only revisions to that precedent were the addition of the property description and the names in the signature blocks. The Respondent was well aware of the provisions of the Trust Agreement and the requirement to obtain the consent of AH and MQ before placing a mortgage against Sproat Lake #2. The Respondent was and is wrong to say that JR was permitted to mortgage "her half" of Sproat Lake #2. The Trust Agreement specifically states "…provided that the Trustee shall not deal with the Property in any manner except as the Trustee is herein specifically empowered, except with the consent and direction of the Beneficiary from time to time obtained." There is no provision for encumbering JR's half of the property. In any event, the mortgage was for a maximum of $675,000, well over half the value of Sproat Lake #2.

[384] The Respondent facilitated a breach of the Trust Agreement by signing, as a personal covenantor, a mortgage obtained on Sproat Lake #2 by JR. The Respondent says that he was not acting for AH and MQ but only acting for JR as the trustee. Even on the Respondent's evidence, he facilitated a breach of the Trust Agreement by secretly signing as personal covenantor the mortgage that advanced $260,000 for his and JR's personal use. This represents a marked departure from the conduct expected of lawyers and constitutes professional misconduct.

Allegation 11 – Misleading AH and MQ

[385] This allegation concerns representations the Respondent made to AH and MQ about the true purchase price of Sproat Lake #2 or his failure to correct misinformation provided by JR about the true purchase price of Sproat Lake #2. AH testified that the Respondent represented to him that the purchase price for Sproat Lake #2 was $360,000.

We have accepted that evidence. It is clear that JR misrepresented the purchase price in the June 17, 2005 Email. She told AH and MQ that the purchase price was $360,000. However, it is equally clear from the Purchase Summary that the allocated purchase price was only $300,000. The Respondent's evidence is that JR handled all of the financial matters directly with AH. We do not accept the Respondent's evidence that he was unaware that JR had told AH and MQ that the purchase price was $360,000. He testified that the difference in the two figures represents the $50,000 to $60,000 of funds or assistance that he and JR spent on helping the developer obtain the subdivision of the property. He was clearly aware that JR was trying to recoup their funds spent on the subdivision by inflating the purchase price of Sproat Lake #2. The Respondent misrepresented the true purchase price to AH and also failed to correct the misinformation provided to AH and MQ by JR. This represents a marked departure of the conduct expected of lawyers and constitutes professional misconduct.

Summary

[386] The Law Society has proven the allegations in the Citation numbered 1, 3 to 7, 9 (a), (b), (d) to (g), 10 and 11. Given our findings, alternative allegations 2, 8 and 9(c) are dismissed.