

LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL  
HEARING DIVISION

BETWEEN:

**LAW SOCIETY OF BRITISH COLUMBIA**

AND:

**MARK WILLIAM SAGER**

RESPONDENT

**CITATION**

**TO:** **Mark Sager**  
c/o Sager Nairne LLP  
1495 Marine Drive  
West Vancouver, BC V7T 1B8

**AND TO:** **His Solicitor, Richard C. Gibbs, KC**  
1134 - 3rd Avenue  
Prince George, BC V2L 3E5

**TAKE NOTICE THAT** by direction of the Discipline Committee of the Law Society of British Columbia, a Hearing Panel of the Law Society will, at a date and time to be set, conduct a hearing to inquire into your conduct or competence as a member of the Law Society of British Columbia, in accordance with section 38 of the *Legal Profession Act*. Parts 4 and 5 of the Law Society Rules outline the procedures to be followed at the hearing. Your appearance before the Hearing Panel may be your only opportunity to present evidence, call witnesses or make submissions.

**The allegations against you are:**

1. On or before April 14, 2010, you acted in a conflict of interest by causing the preparation of a will for your client, OM, in which you were named trustee of a life interest and received absolute discretion to use estate funds for the purpose of traveling to England, when your client had not received independent

legal advice, contrary to one or both of Chapter 7, Rules 1 and 2 of the *Professional Conduct Handbook*, then in force.

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

2. Between approximately July 2010 and October 2017, while acting as the executor and trustee of the estate of your former client, OM, you improperly withdrew from trust some or all of \$8,801.03 when you were not entitled to those funds, contrary to one or both of Rule 3-56 [now Rule 3-64] of the Law Society Rules and your fiduciary duties.

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

3. Between approximately December 2010 and May 2019, while acting as the executor and trustee of the estate of your former client, OM, you improperly withdrew from trust some or all of \$40,000.00 in executor fees and \$24,113.25 in management fees (not including taxes), prior to receiving signed releases from the beneficiaries waiving the passing of your accounts or obtaining a court order authorizing the payments, contrary to one or both of Rule 3-56 [now Rule 3-64] of the Law Society Rules and your fiduciary duties.

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

4. Between approximately December 2010 and May 2019, while acting as the executor and trustee of the estate of your former client, OM, you invested estate assets with your spouse, an investment manager at an investment firm, without the knowledge and consent of all beneficiaries, contrary to one or both of Chapter 7, Rule 1 of the *Professional Conduct Handbook* then in force [now rules 3.4-26.1 and 3.4-28 of the *Code of Professional Conduct for British Columbia*] and your fiduciary duties.

This conduct constitutes professional misconduct or conduct unbecoming a lawyer [now conduct unbecoming the profession], pursuant to s. 38(4) of the *Legal Profession Act*.

5. Between approximately December 2010 and June 2020, while acting as the executor and trustee of the estate of your former client, OM, you failed to fulfill your obligations to the Law Society and/or the beneficiaries contrary to one or both of Rule 3.48-1 [ now Rule 3-55] of the Law Society Rules and your fiduciary duties, by failing to do one or more of the following:
- (a) produce the records necessary to create a full accounting of the receipt or disbursement of the fiduciary property;
  - (b) consider all beneficiaries in administering the trust and administer the estate in their best interests;
  - (c) make and maintain contact with the residual beneficiaries for approximately nine years;
  - (d) pay all income to the beneficiary, pursuant to the terms of the trust; and
  - (e) file terminal and estate tax returns as required, so as to avoid levies, penalties, and interest.

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

**If you fail to appear at the hearing, the Hearing Panel may proceed with the hearing in your absence** and make any order that it could have made had you been present.

DATED at Vancouver, British Columbia, this 29<sup>th</sup> day of September, 2022.



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Tara McPhail  
Director, Discipline and External Litigation  
The Law Society of British Columbia