2026 LSBC 15
Hearing File No.: HE20250013
Decision Issued: September 24, 2026
Citation Issued: October 6, 2025
Citation Amended: June 26, 2026

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL

HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

LEONARD HIL MARRIOTT

RESPONDENT

DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION

Hearing date:	July 2, 2026
Panel:	Douglas T. K. Chiu, Chair Harinder Mahil, Public representative Herman Van Ommen, KC, Bencher
Discipline Counsel:	Gagan Mann
Counsel for the Respondent:	Joshua Wandler

INTRODUCTION

[1] The citation in this matter was authorized by the Discipline Committee on September 25, 2025, and issued on October 6, 2026 (the "Citation"). Service of the

Citation in accordance with Rule 4-19 of the Law Society Rules (the “Rules”) is admitted.

[2] The Citation was amended on June 26, 2026 (the “Amended Citation”).

[3] Pursuant to the Amended Citation, the allegations against the Respondent are:

1. In or about July 2021, while acting for his client AA (the "Client") in a wills and estates matter, he prepared or caused to be prepared the following documents transferring an interest in real property owned by the Client in British Columbia (the "Property") to himself, contrary to one or more of rules 3.4-1, 3.4-26.1, 3.4-28, 3.4-38 and 3.4-39 of the *Code of Professional Conduct for British Columbia* and his fiduciary duties:

   (a) an irrevocable deed of gift executed by him and the Client on July 23, 2021, gifting himself a 50% interest in the Property;

   (b) a declaration executed by the Client on July 23, 2021, stating the Client's intention to transfer half of her interest in the Property to him; and

   (c) a freehold transfer form executed by the Client on July 23, 2021, and registered in the Land Title Office on or about December 31, 2021, authorizing the transfer of title to the Property from the Client as sole owner in fee simple, to him and the Client as joint tenants.

2. In or about December 2021 and January 2022, while acting for his client AA (the "Client") in a wills and estates matter, he misappropriated or improperly withdrew some or all of $116,866.16 (the "Funds") from trust by transferring the Funds from the client trust ledger for the Client to the client trust ledger for [redacted], a company owned and controlled by him (the "Company"), when neither he nor the Company were entitled to the Funds, contrary to one or both of Rule 3-64(1) of the Law Society Rules and his fiduciary duties.

3. In or about December 2021 and February 2022, while acting for his client AA (the "Client") in a wills and estates matter, he prepared or caused to be prepared the following documents in which he or [redacted], a company owned and controlled by him (the "Company"), had a direct or indirect financial interest, contrary to one or more of rules 3.4-1, 3.4-26.1, 3.4-28, and 3.4-31 of the *Code of Professional Conduct for British Columbia* and his fiduciary duties:

   (a) a promissory note executed by the Client on December 8, 2021, securing an alleged loan from the Client to the Company in the sum of $81,886.16 with interest payable at 5% per year, payable upon demand; and

(b) a promissory note executed by the Client on February 2, 2022, securing an alleged loan from the Client to the Company in the sum of $35,000.00 with interest payable at 5% per year, payable upon demand.

4. In or about March 2022, while acting for his client AA (the "Client") in a wills and estates matter, he prepared or caused to be prepared the Last Will and Testament executed by the Client on March 30, 2022, naming himself as a beneficiary of 75% of the Client's residual estate, contrary to one or more of rules 3.4-1, 3.4-26.1, 3.4-28, 3.4-38 and 3.4-39 of the *Code of Professional Conduct for British Columbia* and his fiduciary duties.

[4] The Amended Citation alleges that the conduct constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.

[5] The Law Society and the Respondent entered into an agreed statement of facts (the "ASF") dated June 26, 2026. The Respondent admits to all of the underlying facts in this case, and that his conduct amounts to professional misconduct for all four allegations. The sole area of disagreement is whether the conduct in allegation 2 of the Amended Citation should be characterized as misappropriation or improper withdrawal of trust funds.

[6] The Law Society provided written submissions to the Panel.

ISSUES

[7] The Panel must determine whether to accept the ASF and the Respondent's admission and find that the Respondent has committed professional misconduct on none, some or all the allegations in the Amended Citation. In relation to allegation 2 the Panel must determine whether the conduct found is misappropriation or an improper withdrawal of trust funds.

FACTS

[8] The facts are taken from the ASF.

[9] The Respondent was admitted as a member of the Law Society of British Columbia on February 14, 1992.

[10] The Respondent practiced as a sole practitioner from his call date to July 1, 1992, when he became an inactive member. On December 31, 1992, the Respondent became a former member.

[11] The Respondent was reinstated on November 3, 2015, subject to a restriction that he practice law part-time under the supervision of another lawyer. The practice condition expired on October 3, 2018.

[12] The Respondent resumed practice on October 3, 2016, at a law firm in Vernon, BC, until January 1, 2018.

[13] The Respondent practiced at North Valley Law also in Vernon, BC from January 1, 2018, to July 1, 2025.

[14] On August 1, 2018, the Respondent began practicing under the firm name Leonard H. Marriott Law Corporation (dba North Valley Law) (the "Firm").

[15] As of July 1, 2025 the Respondent resigned from the practice of law and is a former member.

Background

Client

[16] In or around April 2017, the Respondent began acting for AA, the Client. The Client was 84 years old at that time. The Respondent continued acting for her until 2025 (the "Retainer").

[17] Since the initial meeting, the Respondent was concerned about the Client's capacity and competence.

[18] At the commencement of the Retainer, the Client was the sole legal and beneficial owner of a condominium located in Vernon, BC (the "Property"). The Client resided at the Property.

[19] During the Retainer, the Respondent acted as the Client's legal representative and as her attorney under an enduring power of attorney (the "Power of Attorney").

[20] The Respondent states that he developed a close familial-like relationship with the Client.

[21] During the Retainer, the Client suffered from progressive dementia. By 2022, the dementia became severe and by mid-2023, the Respondent believed that the Client was unable to understand or manage her affairs and lacked capacity.

[22] On or about September 16, 2023, a complaint was received by the Law Society regarding the Respondent's involvement with the Client (the "Complaint").

[23] An investigation from the Law Society was then conducted.

The Retainer

[24] In April 2017 at the commencement of the Retainer, the Respondent prepared a will for the Client (the "First Will").

[25] The First Will distributed 50 per cent of the estate residue to both of the Client's sisters respectively. The First Will was executed on April 20, 2017.

[26] In or around May 2018, the Respondent prepared a codicil to the First Will (the "Codicil"). The Codicil appointed the Respondent as the executor and trustee of the Client's estate.

[27] The Client executed the Codicil on or about May 31, 2018.

[28] In or around May 2018, the Respondent prepared the Power of Attorney whereby it:

(a) revoked all previous enduring powers of attorney and representation agreements;

(b) appointed the Respondent as the Client's attorney; and

(c) authorized the Respondent to make decisions and do anything on the Client's behalf in relation to her financial affairs.

[29] The Power of Attorney was executed by the Client on or about May 31, 2018, and the Respondent helped manage the Client's financial affairs and personal care.

[30] In or around July 2021, the Respondent prepared a new will for the Client (the "Second Will") whereby it:

(a) revoked all prior wills and codicils;

(b) appointed the Respondent as the executor and trustee of the Client's estate;

(c) directed that 100 per cent of the Client's estate residue be transferred to one of the Client's sisters; and

(d) in the event that sister predeceased the Client, directed that 100 per cent of the Client's estate residue be transferred to the Client's Trust Fund (the "Fund").

[31] The Second Will appointed the Respondent as the trustee of the Fund and granted him the absolute discretion to pay or use the capital of the Fund.

[32] The Fund did not exist at any time during the Retainer.

[33] On July 23, 2021, the Client executed the Second Will. The signing of the Second Will was witnessed by an associate (the "Associate") and a legal assistant at the Firm (the "Legal Assistant").

Allegation 1 - Transfer of title of Client's Property

[34] In or around July 2021, the Respondent observed signs of the Client's cognitive decline and impairment, and the Respondent had concerns about the Client's capacity.

[35] On or about July 22, 2021, the Respondent prepared a retainer agreement with the Client for the purchase and sale of the Property (the "Retainer Agreement"). The Property had an estimated fair market value of $385,000.

[36] The Retainer Agreement documented the transfer of the Property from the Client to the Client and the Respondent in joint tenancy (the "Property Transfer").

[37] Following which, the Respondent prepared the following further documents:

(a) a Form A Freehold Transfer which authorized the transfer of title of the Property from the Client as sole owner in fee simple, to the Respondent and the Client as joint tenants and owners in fee simple (the "Form A");

(b) an irrevocable deed of gift, which gifted the Respondent himself a 50 per cent beneficial interest in the Property, both in law and equity, with right of survivorship, and not subject to any express or resulting trust (the "Deed of Gift"); and

(c) a declaration, which stated the Client's desire to transfer half of her interest in the Property to the Respondent, both in law and equity, with right of survivorship, and not subject to any express or resulting trust (the "Declaration").

(collectively, the "Transfer Documents").

[38] At this time, the Associate working with the Respondent had limited experience dealing with real property conveyancing or wills and estates matters and was not responsible for taking instructions from clients or preparing documents.

[39] The Associate did not prepare the Retainer Agreement and the Transfer Documents.

[40] On July 23, 2021, the Respondent asked the Associate to accompany him to the Property, to meet with the Client to execute the documents. They saw the Client together.

[41] The Respondent provided the Associate with copies of the Retainer Agreement, the Form A, and other land title documents.

[42] The Respondent advised the Associate that:

(a) the Client had begun to show some signs of cognitive decline;

(b) the Client wished to transfer title of the Property from her own name into joint tenancy with the Respondent;

(c) the Property Transfer was needed to protect the Client from being taken advantage of or having others be in control of the Property;

(d) he required the Associate to witness the Client's execution of the Form A because the Respondent was a party to the Property Transfer; and

(e) the Respondent was not acquiring any beneficial interest in the Property.

[43] Prior to this meeting, the Respondent did not prepare any trust documentation for the Client.

[44] The Respondent did not advise the Associate about the Deed of Gift and the Declaration or provide him with copies.

[45] The Respondent did not advise the Client at any time about the risks of transferring title of the Property jointly to the Respondent.

[46] The Respondent did not advise the Client at any time about the legal effect of the Deed of Gift and the Declaration.

[47] On July 23, 2021, the Retainer Agreement was executed by the Associate as the sender, and the Respondent and the Client as the recipients.

[48] On July 23, 2021, the Client executed the Form A, without independent legal advice. It was witnessed by the Associate.

[49] On July 23, 2021, the Client executed the Deed of Gift and the Declaration in the Respondent's presence, without independent legal advice. The execution was witnessed by the Legal Assistant.

[50] On December 29, 2021, the Respondent submitted the Form A for registration in the Land Title Office and was entered on December 31, 2021.

[51] On June 15, 2023, the Director of Maintenance Enforcement under the *Family Maintenance Enforcement Act* filed a charge on the title to the Property on behalf of the Respondent's former spouse, due to the Respondent's unpaid child support arrears (the "FMEA Charge").

[52] On or about March 10, 2025, the FMEA Charge was removed.

[53] On March 27, 2025, at the request of the Law Society, the Respondent filed an application in the Land Title Office to transfer the legal title of the Property back to the Client. On April 9, 2025, the Respondent's application was entered.

Allegations 2 and 3 - Misappropriation of Client funds and purported loans

[54] On August 15, 2019, the Respondent incorporated a private holding company (the "Company"). He is the sole shareholder and director of the Company.

[55] The Respondent opened a separate client file for the Company (the "Company File").

[56] On July 31, 2021, the Client held the sum of $127,390.98 in a savings account (the "Client's Savings") at a credit union (the "Credit Union").

[57] In or around September 2021, the Respondent in his capacity as the Client’s Attorney, instructed the Credit Union to deposit the Client's Savings into the Firm's trust account.

[58] The Firm's trust account received a deposit of $127,390.98 from the Credit Union to the Client's estate file (the "Client Savings Deposit").

[59] On or about October 27, 2021, the Respondent entered into a Contract of Purchase and Sale for the purchase of a condominium in Vernon, BC, which was intended to be the Respondent's residence (the "Respondent's Residence").

[60] The purchase price for the Respondent's Residence was $340,000 with a completion date of January 6, 2022.

[61] After the payment of the deposit, the Mortgage, and other adjustments, the sum of $81,479.99 was required from the Respondent in order to complete the purchase of the Respondent's Residence.

[62] The Respondent entered into a contract of purchase and sale to purchase a residence (“Respondent’s Residence”). He opened a separate client file for the purchase of Respondent's Residence (the "Residence Purchase File").

[63] Prior to the completion date, in or around November 2021, the Respondent lent himself the Client’s Savings Deposit for the purchase of the Respondent's Residence and to fund the distribution of the estate in an unrelated client file (the "Unrelated Client File").

[64] On December 8, 2021, in his capacity as the Client's attorney and without the Client's authorization, the Respondent transferred or authorized the transfer of:

(a) $81,886.15 from the Client's estate file to the Company File (the "First Withdrawal"); and

(b) $81,886.16 from the Company File to the Unrelated Client File (the "First Deposit").

[65] The First Deposit is described on the client trust ledger for the Unrelated Client File as "Loan Payout."

[66] On December 8, 2021, the Respondent transferred or authorized a wire transfer of $87,076.67 from the Unrelated Client File, with the description “[BB] Wire Transfer - Distribution of Estate".

[67] On or about December 8, 2021, the Respondent prepared a promissory note for a loan from the Client to the Company in the sum of $81,886.16 (the "First Promissory Note").

[68] The First Promissory Note states that:

(a) the Client agrees to lend the money to the Company as an investment; and

(b) the Company promises to pay the Client, on demand, the principal sum of $81,886.16 together with interest calculated annually at the rate of 5 per cent per annum.

[69] On December 8, 2021, the Client and the Respondent, on behalf of the Company, executed the First Promissory Note.

[70] On January 6, 2022, in his capacity as the Client's attorney and without the Client's authorization, the Respondent transferred or authorized the transfer of:

(a) $35,000 from the Client’s estate file to the Company File (the "Second Withdrawal"); and

(b) $38,500 from the Company File to the Residence Purchase File (the "Second Deposit").

[71] The Second Deposit is described on the client trust ledger for the Residence Purchase File as "Closing funds [Residence Purchase File number] purchase."

[72] On January 6, 2022, the Respondent transferred or authorized a transfer of funds from the Residence Purchase File to a Notary Public, with the description 'Mortgage/Sale Proceeds [Residence Purchase File number] Marriott,' for the purchase of the Respondent's Residence.

[73] On or about February 2, 2022, the Respondent prepared or caused the Firm to prepare a promissory note for a loan from the Client to the Company in the sum of $35,000 (the "Second Promissory Note").

[74] The Second Promissory Note states that:

(a) the Client agrees to lend the money to the Company as an investment; and

(b) the Company promises to pay the Client, on demand, the principal sum of $35,000 together with interest calculated annually at the rate of 5 per cent per annum.

[75] On February 2, 2022, the Client and the Respondent, on behalf of the Company, executed the Second Promissory Note.

[76] Essentially, the Respondent used the Client's Savings Deposit to fund the distribution of an estate in the Unrelated Client File, and to fund the purchase of the Respondent's Residence.

[77] No authorization to withdraw the Client's Savings from the Credit Union for the Respondent's personal use or the Firm's use was obtained from the Client.

[78] The Client was not given an opportunity to obtain independent legal advice or representation with respect to the Client's Savings Deposit, the First Withdrawal, and the Second Withdrawal.

[79] The Client was not given an opportunity to obtain independent legal advice or representation with respect to the First Promissory Note and the Second Promissory Note.

[80] There have been no repayments from the Respondent or the Company for the First Promissory Note or the Second Promissory Note.

Allegation 4 - Client's will with gift to the Respondent

[81] In or around August 2021, the Respondent referred the Client to an external counsel (the "External Counsel") to prepare a new will for the Client that would include a testamentary gift to the Respondent.

[82] In or around August 2021, the Client retained the External Counsel.

[83] On or about August 9, 2021, the Respondent himself prepared a new draft will for the Client (the "Draft Will").

[84] The Draft Will:

(a) revoked all prior wills and codicils;

(b) appointed the Respondent as the executor and trustee of the Client's estate; and

(c) directed that the Client's estate residue be divided equally between one of the Client’s sisters and the Respondent, or the survivor thereof.

[85] On or about August 9, 2021, the Legal Assistant emailed the Draft Will to the External Counsel. The Draft Will was not executed by the Client.

[86] In or about September 2021, the External Counsel prepared a revised draft will for the Client (the "Revised Draft Will").

[87] The Revised Draft Will:

(a) revoked all prior wills and codicils;

(b) appointed the Respondent as the executor and trustee of the Client's estate; and

(c) directed that the Client's estate residue be divided 75 per cent to one of the Client’s sisters and 25 per cent to the Respondent.

[88] The External Counsel was unable to obtain the Client's instructions on the Revised Draft Will and it was not executed.

[89] On March 1, 2022, the External Counsel wrote to the Client enclosing the Second Will, the Revised Draft Will, and final statement of account, advising that he was ending his retainer as no instructions were provided from the Client.

[90] In or around March 2022, the Respondent himself prepared a new will for the Client (the "Third Will").

[91] The Third Will:

(a) revoked all prior wills and codicils;

(b) appointed the Respondent as the executor and trustee of the Client's estate; and

(c) directed that the Client's estate residue be divided 25 per cent to one of the client’s sisters and 75 per cent to the Respondent.

[92] On March 30, 2022, the Client executed the Third Will without the opportunity to seek independent legal advice.

[93] On or about August 17, 2023, the Client was assessed by a physician for the purpose of obtaining a disability tax credit. She was diagnosed with vascular dementia and cognitive impairment.

[94] The physician diagnosed that the Client had limited comprehension of her surroundings and that she lacked capacity.

[95] By early 2024, the Client suffered from advanced dementia and was under constant care and supervision.

[96] On January 11, 2024, the Client, and her sisters (the "Plaintiffs") filed a Notice of Civil Claim against the Respondent and the Firm (the "Defendants") in the Supreme Court of British Columbia.

[97] The Notice of Civil Claim alleges that:

(a) the Respondent and the Firm refused to follow the directions of the Client in financial and health decisions;

(b) the Respondent refused to share information and documents with the Plaintiffs, including the Third Will;

(c) the Client was shocked and dismayed when she discovered that the Respondent had transferred the Property in order that he would have legal and beneficial ownership; and

(d) the Client clearly and explicitly did not wish for the Respondent to receive her property or be on title to the Property.

[98] On January 16, 2024, the Defendants filed a Response to Civil Claim.

[99] The Response to Civil Claim alleges that:

(a) the Client suffers from severe dementia and is not able to manage her affairs or person; and

(b) the Client lacks capacity to retain and instruct counsel.

[100] On January 16, 2024, the Defendants filed a Counterclaim against the Plaintiffs and the Plaintiffs' counsel.

LEGAL ANALYSIS

Onus and standard of proof

[101] The Law Society has the onus of proving on a balance of probabilities that the Respondent has committed professional misconduct.

[102] The Respondent in the ASF has admitted to the facts and that his conduct in all four allegations constitutes professional misconduct.

[103] Counsel for the Law Society took the Panel through the ASF and the Panel finds that the ASF is clear, rational and convincing. The Panel accepts the ASF in its entirety.

Allegations 1, 3 and 4 – Transfer of property, promissory notes, will

[104] Rule 3.4-1 of the *Code of Professional Conduct for British Columbia* (the "*Code*") states:

> **3.4-1** A lawyer must not act or continue to act for a client where there is a conflict of interest, expect as permitted under this *Code*.

[105] The commentary to rule 3.4-1 defines a conflict of interest as:

> [1] … A conflict of interest exists when there is 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…. A client's interests may be seriously prejudiced unless the lawyer's judgement and freedom of action on the client's behalf are as free as possible from conflicts of interest.
>
> …
>
> [5] … The lawyer-client relationship is a fiduciary relationship and as such, the lawyer has a duty of loyalty to the client.…

[106] The commentary in the *Code* provides examples where a conflict of interest may occur. This includes:

> (a) A lawyer, an associate, a law partner, or a family member has a personal financial interest in a client's affairs or in a matter in which the lawyer is requested to act for a client.
>
> (b) A lawyer has a sexual or close personal relationship with a client. Such a relationship may conflict with the lawyer's duty to provide objective, disinterested professional advice to the client.

[107] Rule 3.4-26.1 of the *Code* states:

> **3.4-26.1** A lawyer must not perform any legal services if there is a substantial risk that a lawyer's loyalty to or representation of a client would be materially and adversely affected by the lawyer's
>
> (a) relationship with the client, or
>
> (b) interest in the client or the subject matter of the legal services.

[108] Rule 3.4-28 of the *Code* outlines transactions with clients:

> **3.4-28** … [A] lawyer must not enter into a transaction with a client unless the transaction is fair and reasonable to the client, the client consents to the transaction and the client has independent legal representation with respect to the transaction.

[109] Transactions such as these include lending or borrowing money, and accepting a gift, including a testamentary gift.

[110] Rule 3.4-31 of the *Code* prohibits borrowing money from a client except in very narrow circumstances. These include:

> (a) the client is a lending institution, financial institution, insurance company, trust company or any similar corporation whose business includes lending money to members of the public or
>
> (b) the client is a related person as defined by the *Income Tax Act*, RSC 1985, c.1 (5th Supp.) and the lawyer is able to discharge the onus of proving that the client's interests were fully protected by the nature of the matter and by independent legal advice or independent legal representation.

[111] Rules 3.4-38 and 3.4-39 state:

> **3.4-38** Unless the client is a family member of the lawyer or the lawyer's partner or associate, a lawyer must not prepare or cause to be prepared an instrument giving the lawyer or an associate a gift or benefit from the client, including a testamentary gift.
>
> **3.4-39** A lawyer must not accept a gift that is more than nominal from a client unless the client has received independent legal advice.

[112] The decisions discussed below have addressed circumstances where the lawyer's conduct was contrary to the above rules.

[113] In *Law Society of BC v. Singh,*[1] the lawyer borrowed money from the client, failed to advise that he was not representing the client's interests and improperly withdrew funds from his trust account to repay the loan. The Panel accepted the lawyer's admission of professional misconduct.

[114] In *Law Society of BC v. Albas,*[2] the lawyer borrowed money from the client and provided legal services which he had a financial interest. The Panel found the lawyer had committed professional misconduct.

[115] In *Law Society of BC v. Lloyd,*[3] the lawyer had the client execute a codicil to the client's will without ensuring that the client received independent legal advice

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[1] *Law Society of BC v. Singh,* 2013 LSBC 17.
[2] *Law Society of BC v. Albas,* 2016 LSBC 18.
[3] *Law Society of BC v. Lloyd*, [2002] LSBC 14.

beforehand. The codicil named the lawyer as a beneficiary and would receive one half of the residue of the estate.

[116] In regards specifically to elderly clients, the panel in *Law Society of BC v. Lott,*[4] notes:

> [116] … Elder law is an area of growth in our profession as our population ages and as our awareness of how the elderly can be and are abused by family and "friends". Lawyers who act in this area must have their focus clear. They must know whether the client is capable and if so, they cannot be swayed by what those family or friends think best or what the lawyers themselves think best.

Allegation 2 - Misappropriation/improper withdrawal

[117] Rule 3-64(1) states:

> **3-64(1)** A lawyer must not withdraw or authorize the withdrawal of any trust funds unless the funds are
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> (a) property required for payment to or on behalf of a client or to satisfy a court order,
>
> (b) the property of a lawyer,
>
> (c) in the account as the result of a mistake,
>
> (d) paid to the lawyer to pay a debt of that client to the lawyer,
>
> (e) transferred between trust accounts,
>
> (f) due to the Foundation under section 62(2)(b) *[Interest on trust accounts]*, or
>
> (g) unclaimed trust funds remitted to the Society under Division 8 *[Unclaimed Trust Money]*

[118] In *Law Society of BC v. Gellert,*[5] the panel stated at para. 73:

> [73] … Because of the sacrosanct nature of trust funds, removing a client's trust funds is and should always be a memorable, conscious, and deliberate act that a lawyer carefully considers before carrying out….

[4] *Law Society of BC v. Lott*, 2021 LSBC 4.
[5] *Law Society of BC v. Gellert*, 2013 LSBC 22.

[119] The unauthorized withdrawal of a client's trust funds equates to misappropriation. *Gellert* at para. 71 states:

> [71] Misappropriation of a client's trust funds occurs where the lawyer takes those funds for a purpose unauthorized by the client, whether knowingly or through negligence or incompetence so gross as to prove a sufficient element of wrongdoing. As this definition indicates, there must be a mental element of wrongdoing or fault, yet this mental element need not rise to the level of dishonestly as that term is used in the criminal law.…

[120] *Law Society of BC v. Sahota*,[6] at para. 63, further defined misappropriation as:

> [63] … [A]ll that is required is for the lawyer to take the money entrusted to him or her knowing that it is the client's money and that the taking is not authorized.

APPLICATION

Allegations 1, 3 and 4: Conflicts of interest

[121] For allegation 1, the Respondent admits in the ASF that:

> In or about July 2021, while acting for his client AA (the "Client") in a wills and estates matter, he prepared or caused to be prepared the following documents transferring an interest in real property owned by the Client in British Columbia (the "Property") to himself, contrary to one or more of rules 3.4-1, 3.4-26.1, 3.4-28, 3.4-38 and 3.4-39 of the *Code of Professional Conduct for British Columbia* and his fiduciary duties;
>
> (a) an irrevocable deed of gift executed by him and the Client on July 23, 2021, gifting himself a 50% interest in the Property;
>
> (b) a declaration executed by the Client on July 23, 2021, stating the Client's intention to transfer half of her interest in the Property to him; and
>
> (c) a freehold transfer form executed by the Client on July 23, 2021, and registered in the Land Title Office on or about December 31, 2021, authorizing the transfer of title to the Property from the Client as sole owner in fee simple, to him and the Client as joint tenants.

[122] For allegation 3, the Respondent admits in the ASF that:

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[6] *Law Society of BC v. Sahota,* 2016 LSBC 29.

> In or about December 2021 and February 2022, while acting for his client AA (the "Client") in a wills and estates matter, he prepared or caused to be prepared the following documents in which he or 1219753 B.C. Ltd., a company owned and controlled by him (the "Company"), had a direct or indirect financial interest, contrary to one or more of rules 3.4-1, 3.4-26.1, 3.4-28, and 3.4-31 of the *Code of Professional Conduct for British Columbia* and his fiduciary duties:
>
> (a) a promissory note executed by the Client on December 8, 2021, securing an alleged loan from the Client to the Company in the sum of $81,886.16 with interest payable at 5% per year, payable upon demand; and
>
> (b) a promissory note executed by the Client on February 2, 2022, securing an alleged loan from the Client to the Company in the sum of $35,000.00 with interest payable at 5% per year, payable upon demand.

[123] For allegation 4, the Respondent admits in the ASF that:

> In or about March 2022, while acting for his client AA (the "Client") in a wills and estates matter, he prepared or caused to be prepared the Last Will and Testament executed by the Client on March 30, 2022, naming himself as a beneficiary of 75% of the Client's residual estate, contrary to one or more of rules 3.4-1, 3.4-26.1, 3.4-28, 3.4-38 and 3.4-39 of the *Code of Professional Conduct for British Columbia* and his fiduciary duties.

[124] The Respondent has admitted that he prepared the Retainer Agreement, the Transfer Documents, the First Promissory Note, the Second Promissory Note, the Draft Will, and the Third Will.

[125] The Respondent has admitted that the Client did not obtain any independent legal advice prior to signing the Transfer Documents, the First Promissory Note, the Second Promissory Note, and the Third Will.

[126] The Respondent has admitted that he is aware of the Client's age and that she was diagnosed with progressive dementia and had difficulty in managing her financial affairs and providing legal instructions to the Respondent.

[127] The Respondent has admitted that the Client's signing of the Transfer Documents would render him an owner in joint tenancy of the Client's Property.

[128] The Respondent has admitted that the Client's signing of the Third Will would render him a beneficiary to the Client's estate.

[129] The Respondent's conduct is clearly contrary to the *Code* and raises to the level of a marked departure in all of the circumstances. This Hearing Panel accepts the Respondent's admission of professional misconduct for allegations 1, 3 and 4.

Allegation 2 - Misappropriation

[130] For allegation 2, the Respondent admits in the ASF that:

> In or about December 2021 and January 2022, while acting for his client AA (the "Client") in a wills and estates matter, he misappropriated or improperly withdrew some or all of $116,866.16 (the "Funds") from trust by transferring the Funds from the client trust ledger for the Client to the client trust ledger for [redacted], a company owned and controlled by him (the "Company"), when neither he nor the Company were entitled to the Funds, contrary to one or both of Rule 3-64(1) of the Law Society Rules and his fiduciary duties.

[131] The Respondent has admitted that he instructed the Client's Credit Union in his capacity as the Client's attorney to deposit the Client's Savings into the Firm's trust account.

[132] The Respondent has admitted that on December 8, 2021, and on January 6, 2022, as his capacity as the Client's attorney he withdrew trust funds from the Client's estate file to assist with the purchase and sale of the Respondent's Residence.

[133] The Respondent has admitted that the First Withdrawal and the Second Withdrawal were done without the Client's authorization.

[134] The Respondent has admitted that the Client did not receive any independent legal advice in regard to the withdrawal of the Client's Savings Deposit or the First Promissory Note and the Second Promissory Note.

[135] The Respondent suggests that his conduct ought to be characterized as improper withdrawal of trust funds rather than misappropriation.

[136] Misappropriation may be distinguished from the unauthorized withdrawal or improper withdrawal of trust funds. In *Law Society of Ontario v. Deonarain*, 2019 ONLSTH 89, the distinction was described in the following way:

> [80] The Law Society submitted that there is a distinction to be drawn between misappropriation and unauthorized withdrawal of trust funds. In misappropriation, as discussed above, there is no justification whatsoever for the withdrawal and use by the Lawyer of funds held in trust. It is tantamount to theft. In the case of unauthorized withdrawal of trust funds there is a purported justification for the

> withdrawal on the basis that legal services have been rendered by the lawyer to the client. The misconduct arises from the absence of adequate dockets, invoices and accounting records to explain and justify the amounts withdrawn.

[137] The Panel must consider whether there was any justification for the transfer of the Client's Savings Deposit to the Company's trust ledger. Misappropriation of a client's trust funds occurs when the lawyer uses those funds for a purpose the lawyer knows is not authorized by the client: *Gellert* at para. 71; and *Sahota* at paras. 60 to 63.

[138] In the instant case, the ASF states that the funds were transferred to the Company's file by the Respondent in his capacity as the Client's attorney, under the Power of Attorney, without her authorization. Additionally, the Respondent, or his Firm, drafted Promissory Notes executed by the Client containing a promise by the Company to repay the transferred funds on demand together with interest payable at 5% per year. The Promissory Notes defined the Client as the "Lender" and included the following provision: "The Lender agrees to lend the money as an investment."

[139] The Respondent submits that the transferred funds were loans for the purpose of investing the Client's funds, and at the Client's request, in order to help her accrue a higher rate of interest. The ASF also states that during the time of the Retainer "and from the Respondent's perspective, the Respondent developed a close familial-like relationship with the Client."

[140] As the transfers were made by the Respondent in his capacity as the Client's attorney and were not specifically authorized, it is necessary to consider whether the Respondent was acting within his legal authority under the Power of Attorney with respect to the purported loans of the Client's Savings Deposit. While the Power of Attorney includes a provision limiting investments, the Panel finds it is unnecessary to consider that provision as the Respondent clearly acted in breach of his general fiduciary duties. As an attorney the Respondent had duties to the Client including to act to the benefit and in the best interest of the Client, and not to benefit or profit personally from the Respondent's dealings with the Client's property.

[141] The purported loan was contrary to the Respondent's duty of loyalty and duty to not use his position for personal advantage. The Panel finds in these circumstances the Respondent must have known that the transfers were not within his legal authority under the Power of Attorney and were therefore for a purpose unauthorized by the Client. This finding is further supported by the Respondent's efforts to demonstrate that the Client personally agreed to the purported loans by having her execute the Promissory Notes.

[142] The Respondent drafted, or had the Firm draft, the Promissory Notes when he was in a direct conflict of interest. On December 8, 2021 and February 2, 2022, he had the

Client execute the Promissory Notes when she was suffering from progressive dementia and without the Client having the benefit of any independent legal advice. In July 2021, the Respondent observed signs of the Client's cognitive decline and impairment, and the Respondent had concerns about the Client's capacity. In 2022 the Client's dementia became severe. The Panel finds that in the circumstances, the Respondent must have known that the Client was not capable of providing informed consent or authorization for a loan when executing the Promissory Notes.

[143] The Panel finds that the Respondent's conduct in transferring the funds was misappropriation, and was in breach of Rule 3-64 and his fiduciary duties. The Respondent's dealings with his client lacked integrity and is clearly professional misconduct. The Hearing Panel accepts the Respondent's admission of professional misconduct in relation to allegation 2 of the Amended Citation.

SUMMARY OF ORDERS

[144] The Panel accepts the ASF and finds that the Respondent has committed professional misconduct for allegations 1 to 4 of the Amended Citation.