

2026 LSBC 05
Hearing File No.: HE20240013
Decision Issued: March 20, 2026
Citation Issued: October 4, 2024
Citation Amended: May 12, 2025

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

EDWIN SOON

RESPONDENT

**DECISION OF THE HEARING PANEL
ON FACTS AND DETERMINATION**

Hearing dates: October 27 to 29, 2025
December 18, 2025

Panel: Kimberly Henders Miller, KC, Chair
Michael Dungey, Public representative
James Struthers, Bencher

Discipline Counsel: J. Kenneth McEwan, KC
Sydney Gomez

Counsel for the Respondent: Ian Donaldson, KC

BACKGROUND

[1] On October 4, 2024, the Law Society of British Columbia (the “Law Society”) issued a citation against the Respondent, which was amended on May 12, 2025 (the “Amended Citation”). In summary, the Amended Citation alleges that the Respondent

committed conduct unbecoming the profession or professional misconduct as set out in s. 38(4) of the *Legal Profession Act*, SBC 1998, c 9 (the “*Act*”), by misusing firm trust accounts, acting for clients while in a conflict of interest, and failing to maintain compliant trust accounting records.

[2] The Amended Citation’s eight allegations, which collectively span the period between December 2015 and September 2020 (the “Allegations”), are as follows:

1. Between approximately July 2019 and September 2020, you misused your law firm’s trust account by receiving some or all of \$299,350.19 or disbursing some or all of \$154,171.80, or both, as set out in Amended Schedule “A” (the “Trust Transactions”), when you had not provided any or substantial legal services in connection with the Trust Transactions, contrary to one or more of Rules 3-58.1, 3-60(4), and 3-60(5) of the Law Society Rules.

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

[“Allegation 1”]

2. Between approximately December 2015 and September 2020, you caused one or both of Company 1, and Company 2, companies in which you had a direct or indirect financial interest, to enter into loan agreements with your clients, or former clients, AA and companies associated with them, for funds totaling approximately \$4,635,000.00, as set out in Schedule “B”, contrary to one or more of rules 2.1-3(b), 3.4-1, 3.4-26.1, 3.4-28, 3.4-29, 3.4-34, 7.3-1, and 7.3-2 of the *Code of Professional Conduct for British Columbia* and your fiduciary duties to your client(s).

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

[“Allegation 2”]

3. Between approximately March 2016 and February 2019, in relation to a mortgage and subsequent refinancing, you acted in a conflict of interest when you represented one or more of Company 1, a company in which you had a direct or indirect financial interest, Company 3, and AA, contrary to one or more of rules 2.1-3(b), 3.4-1, 3.4-2, 3.4-26.1, 3.4-28, 3.4-29, 3.4-34, 7.3-1, and 7.3-2 of the *Code of Professional Conduct for British Columbia*, and your fiduciary duties to your client(s).

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

["Allegation 3"]

4. Between approximately June 2016 and July 2017, concerning File #13150, you acted in a conflict of interest when you represented Company 1, a company in which you had a direct or indirect financial interest, and Company 4, as co-lenders in relation to a \$437,000 second mortgage loan, contrary to one or more of rules 2.1-3(b), 3.4-1, 3.4-2, 3.4-5, 3.4-26.1, 3.4-28, 3.4-29, 3.4-34, 7.3-1, and 7.3-2 of the *Code of Professional Conduct for British Columbia*, and your fiduciary duties to your client(s).

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

["Allegation 4"]

5. Between approximately July 2017 and March 2020, in relation to one or more of the 13 trust transactions set out in Schedule "C", you transferred, or caused to be transferred, some or all of \$1,054,126.21 between clients' trust ledgers and you failed to maintain the required records showing the transfer of those funds, contrary to Rule 3-68(c) of the Law Society Rules.

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

["Allegation 5"]

6. Between approximately January 2018 and January 2020, in relation to one or more of the 372 trust transactions set out in Schedule "D", you deposited, or caused to be deposited, some or all of \$901,463.62, and you failed to maintain a book of entry or data source showing the source and form of funds received, contrary to Rule 3-68(a)(ii) of the Law Society Rules.

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

["Allegation 6"]

7. Between approximately April 2018 and April 2020, in relation to one or more of the 20 trust transactions set out in Schedule "E", you deposited, or caused to be deposited, some or all of \$465,484.06, or you withdrew, or caused to be

withdrawn, some or all of \$98,239.44, or both, and you failed to maintain a book of entry or data source showing the identity of the client on whose behalf trust funds were received or disbursed, contrary to Rule 3-68(a)(iii) of the Law Society Rules.

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

[“Allegation 7”]

8. Between approximately January 2018 and April 2020, in relation to one or more of the 385 deposits into trust totaling \$1,363,697.68 set out in Schedules “D” and “E”, or one or more of the 5 withdrawals from trust totaling \$98,239.44 set out in Schedule “E”, you failed to record the trust transactions in accounting records in chronological order and in an easily traceable form, contrary to Rule 3-67(5) of the Law Society Rules.

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

[“Allegation 8”]

[3] A hearing was held in which the Law Society called evidence and cross-examined the Respondent. The parties provided written and oral submissions.

[4] For the reasons set out below, the Panel finds that the Law Society has proven that the Respondent committed professional misconduct, regarding each of the Allegations individually, and with consideration to the circumstances as a whole.

ISSUES

[5] The Law Society argues that the Respondent’s conduct as set out in each of the Allegations amounts to professional misconduct. The Respondent substantively admits the conduct alleged in the Allegations, and even that some of it constitutes professional misconduct, but argues that some of the conduct amounts to only breaches of the Law Society Rules (the “Rules”) or the rules of the *Code of Professional Conduct for British Columbia* (the “BC Code”).

EVIDENCE

[6] The Law Society issued the Respondent a detailed notice to admit dated February 26, 2025 (the “Notice to Admit”), and a supplemental notice to admit dated September 10, 2025 (the “Supplemental Notice to Admit”). The Respondent responded to these

respectively on March 18, 2025 (the “Response”) and September 29, 2025 (the “Supplemental Response”). These were admitted as evidence in this proceeding. In the Response and Supplemental Response, the Respondent admitted many of the facts alleged by the Law Society, while offering corrections or alternative explanations to some.

[7] The Panel also accepted into evidence a Condensed Book of Documents, which included a transcript of the Law Society’s interview with the Respondent on September 21, 2023, accounting documents and summaries, and correspondence with the Respondent.

[8] Kevin Vergel, a forensic accountant with the Law Society, gave evidence summarizing and analyzing the Respondent’s trust ledgers and trust account bank journals.

[9] The Panel exercised its authority pursuant to s. 41(2) of the *Act* to grant the Law Society’s application under Rule 5-5(2)(a), compelling the Respondent to give evidence under oath, thereby providing the Law Society with the opportunity to cross-examine him, as provided for in Rule 5-5(3).

FACTS

[10] The Respondent was called and admitted as a member of the Law Society of British Columbia on August 1, 1986. He is a sole practitioner, in the areas of corporate, family, and wills and estates, but primarily residential real estate law.

[11] Much of the Respondent’s practice involves acting for lenders in residential real estate transactions. In this vein, he has facilitated lending transactions by referring his lender clients to potential borrowers. When he does so, the funds provided by the lender flow through his trust accounts.

[12] The Respondent has substantively admitted the underlying facts of this matter by way of formal admissions. In the case where the evidence directly conflicts with the admitted facts, this Panel must determine whether to accept the admissions in the Response and Supplemental Response as proof of the facts contained therein.

Respondent’s Private Lending Companies

[13] At the heart of the Allegations are two lending companies, Company 1 and Company 2 (the “Lending Companies”).

[14] The Respondent’s father incorporated the first company, Company 1 in 2013. The Respondent’s father contributed funds to Company 1 for the purpose of conducting lending transactions, and years later gifted these held funds to the Respondent. PH, an

immigration consultant, replaced the Respondent's father as director prior to his father's death. From incorporation, the Respondent was a director of Company 1. When his father died in 2018, the Respondent became the controlling interest holder of Company 1. The Respondent had functional control over the company. PH was a nominee director and took directions from the Respondent in respect of the company's affairs, had no beneficial interest in the company, and was not compensated for his role.

[15] The Respondent incorporated the second company, Company 2, in 2019. The Respondent had functional control over the company. PH was a nominee director and took directions from the Respondent in respect of the company's affairs, had no beneficial interest in the company, and was not compensated for his role.

[16] Neither Company 1 nor Company 2 had its own bank account, with all transactions being made through the Respondent's trust account.

Company 4

[17] The Respondent began representing Company 4 in 2011. He was given blanket authority by Company 4 to use its funds in lending transactions.

[18] Between approximately June 2016 and July 2017, the Respondent represented Company 4 as a co-lender with his own lending company, Company 1, in a second mortgage loan as well as a second mortgage refinance to Company 5 (the "Company 5 Loans"). The Respondent did not inform Company 4 that his own lending company, Company 1, was the co-lender.

[19] At the time of the Company 5 Loans, a first mortgage and assignment of rents had priority over Company 4 and Company 1. The borrower on the Company 5 Loans defaulted. Once the first ranking mortgage was satisfied, there were no remaining funds to satisfy the Company 5 Loans.

[20] The Respondent did not inform Company 4 of the losses in relation to the Company 5 Loans. He has attempted to mitigate these losses by reallocating funds received from other loans to the negative account balance for the Company 5 Loans. These allocations have been made through his trust accounts

AA and Company 3

[21] The Respondent began representing AA and his various companies, including Company 3, in 2010. Often, he acted for one of his own Lending Companies with AA as the borrower.

[22] Between 2016 and 2020, the Respondent agreed to loan AA and his companies over four million dollars through his Lending Companies. Through this period, he

deposited mortgage-related payments into his trust account from AA and AA's companies. During this period, the Respondent prepared mortgage documents and facilitated lending transactions between Company 1 and Company 3.

The Respondent's Trust Account Usage

[23] In conducting his private lending business, the Respondent says he represented lender clients by providing minimal legal services such as reviewing and making recommendations regarding loan proposals or preparing documents. If such services were provided, it was not evident they were provided in relation to the funds passing through the Respondent's trust accounts. In addition, he would facilitate the transfer of funds from the client to the borrower, often through his trust account. He did not make queries about the source of the loan money.

[24] The Respondent would often hold sums of the client's funds either for repayment of existing loans, payment of legal fees or for use in future lending transactions, in which case he might hold funds for several years.

[25] In relation to his Lending Companies, the Respondent received multiple payments into his trust account from AA. These were for mortgage-related payments and monthly payments. The Respondent says he provided no legal services to AA other than preparing loan documents. If such services were provided, it was not evident they were provided in relation to the funds passing through the Respondent's trust accounts.

[26] The Respondent used his trust account for payment of condominium fees for properties owned by Company 1. The only service provided by the Respondent to Company 1 was to ensure payments were made by borrowers. This was not a legal service.

[27] The Respondent received rent payments into his trust account from PH for an office space owned by the Respondent. Receipt of rent payments on behalf of a client is not a legal service. These payments, as well as other payments for legal services, were later allocated to Company 4 for losses incurred in the Company 5 Loans. The intent of the Respondent was to make up for the losses over time through ad hoc payments into the Company 4 ledger. He has not kept track of the balance of the losses that remain outstanding.

Conflicts

[28] It is not clear that the Respondent ever disclosed the existence of his interest in Company 1 to Company 4, or the potential conflict that his interest created. His relationship with Company 4 allowing him "blanket authority" to conduct transactions on their behalf was not one that would promote the usual safeguards in conflict situations,

such as obtaining independent legal advice or obtaining written consent for joint representation.

[29] It is also not clear that the Respondent even recognized that there was a potential conflict. Given that he was acting under Company 4's "blanket authority" he certainly did not advise Company 4 about the risks of the Company 5 Loans.

[30] On March 21, 2016, the Respondent registered a mortgage in favour of Company 1 and a third-party co-lender. The borrower was AA's Company 3 (the "Company 3 Mortgage").

[31] In 2019, when a mortgage refinance was sought on the subject property of the Company 3 Mortgage, the Respondent represented Company 3. In this refinance, the Company 3 Mortgage was paid out to Company 1, the third-party co-lender, and a credit union.

[32] There is nothing to document that AA was aware of the Respondent's potentially conflicting interests regarding the Company 3 Mortgage and subsequent refinance, that the Respondent required that AA seek independent legal advice, or that AA expressly consented to joint representation. The Respondent says that AA was aware he was acting for the lender and that AA had access to his own lawyers. He also indicated that he made some attempt to get independent legal representation for Company 1, but was unable to, and proceeded nonetheless.

Trust Ledgers and Accounting

[33] The Respondent's trust and accounting records fell short of the Law Society's requirements. In analyzing them, the character of transactions in his ledgers could only be deciphered by rebuilding the ledgers through cross-referencing the transactions using the Respondent's handwritten ledgers, bank journals, bank statements, deposit slips, cheques, client files and other records, as well as institutional banking documents.

[34] The Respondent's trust accounting records contained monies received, disbursed, or transferred across client accounts without explanation. A single entry in the Respondent's trust accounting ledger was sometimes ultimately found to represent multiple transactions from multiple sources, for multiple purposes.

[35] Between July 2017 and March 2020, trust account transfers totaling \$1,054,126.21 were made between client accounts, including Company 4 and the Lending Companies, and even between the Lending Companies. There is no explanation given for these transfers or any record of approval for the transfers.

[36] Between January 2018 and January 2020, there were entries for 372 trust account deposits, totaling \$901,463.62 in which the recorded source of funds did not match the often-multiple sources of funds discerned through examination of the underlying documents.

[37] Between April 2018 and April 2020, there were 20 trust account withdrawals totaling \$98,239.44 and deposits totaling \$465,484.06 in which the matter numbers and matter names recorded in the trust ledgers and the trust account bank journals did not match. This prevents proper identification of the client or ability to trace the funds.

[38] To be clear, it is not alleged that any of the Respondent's clients or parties to transactions in which he was involved suffered any loss. The Respondent's explanation, in part, for his trust account practices is that he was allocating unrelated legitimate legal fees into ledgers for clients, including Company 1, who had suffered losses on transactions or non-payments. He says he did this because "he felt bad" for companies such as Company 4 and didn't "want them to be really mad" at him. In addition, he says that his poor accounting practices occurred because he didn't have time to monitor everything and as a result resorted to bundling transactions.

LEGAL PRINCIPLES

Professional Misconduct

[39] Following the hearing of this matter, based on the position of the parties, pursuant to section 38(4) of the *Act*, this Panel must determine if the respondent has engaged in professional misconduct.

[40] It is well established that the test for professional misconduct requires conduct which is a "marked departure" from what the Law Society expects of lawyers, for example where the lawyer's conduct displays gross culpable neglect of their duties: *Law Society of BC v. Martin*, 2005 LSBC 16 at paras. 171 and 172.

[41] The test is an objective one, and in making the determination, a panel may have regard to objective measures such as the requirements imposed on lawyers through the *Act*, the Rules, and the *BC Code*. Ultimately, a determination will be made on the facts and surrounding circumstances unique to each case. While a respondent's culpability is part of the assessment of the circumstances, the presence of *bona fides* or absence of *mala fides* is not determinative of whether there has been professional misconduct: *Law Society of BC v. Kim*, 2019 LSBC 43 at para. 45; *Law Society of BC v. Harding*, 2014 LSBC 52 at para. 79; *Law Society of BC v. Guo*, 2023 LSBC 28 at paras. 35 to 36.

[42] The Law Society has the burden of proving the Respondent's conduct, as alleged in the citation, on a balance of probabilities; in other words, the Panel must be persuaded

that the relevant evidence, once scrutinized, establishes that an event is more likely than not to have occurred. This determination is to be based on evidence that is “sufficiently clear, convincing and cogent”: *FH v. McDougall*, 2008 SCC 53 at paras. 40, 44, and 46. Based on the proven conduct, the Panel must first determine whether a delict is established and second whether it rose to the level of a marked departure from expected conduct.

Objective Measures - the *Act*, *Rules* and *BC Code*

[43] Section 3 of the *Act* makes it clear that the object and duty of the Law Society is to “protect the public interest in the administration of justice.” It does so, in part, through ensuring the integrity of lawyers, establishing standards for professional responsibility, and regulating lawyers via the *Act*, *Rules* and *BC Code*. The Panel can therefore utilize the guidance and requirements in these sources as an objective measure.

[44] The Respondent’s position on Allegations 2, 3, 4, 5, and 7 is that the conduct amounts only to a breach of the Rules or rules of the *BC Code*. In determining whether the conduct goes beyond that, amounting to professional misconduct, the Panel should consider “the gravity or the misconduct, its duration, the number of breaches, the presence or absence of *mala fides*, and the harm caused”: *Law Society of BC v. Lyons*, [2008 LSBC 9](#), at para. 35.

[45] The parties agreed that a formal determination of a breach of the Rules is not available for Allegations 2 to 4. Firstly, a Rules breach is not alleged in the Amended Citation in relation to these allegations. Secondly, the “rules” referred to in s. 38(4)(b)(iii) are those enacted by the benchers under the *Act*. Because the *BC Code* is not enacted by the benchers, a breach of its rules is not a determination available to this Panel: *Law Society v. Weiser*, 2024 LSBC 43 at para. 62.

Conduct Unbecoming

[46] In this matter, the Respondent’s conduct blurred the lines between a lending business and a legal practice. Allegations 2 to 4 of the Amended Citation allow the Panel to consider if his conduct does not meet the level of professional misconduct, whether it is still conduct unbecoming to the legal profession. Unlike professional misconduct, conduct unbecoming the legal profession is conduct that generally transpires outside of a respondent’s legal practice. The definition in the *Act* includes conduct that is considered by a panel:

- (a) to be contrary to the best interest of the public or of the legal profession,
or
- (b) to harm the standing of the legal profession.

[47] Rule 2.2-1 of the *BC Code* deals with integrity. The commentary to this section provides that both within and outside of a lawyer's practice:

[2] [p]ublic confidence in the administration of justice may be eroded by a lawyer's irresponsible conduct. Accordingly, the lawyer's conduct should reflect favourably on the profession, inspire the confidence, respect and trust of clients and the community, and avoid the appearance of impropriety.

Duty of Loyalty and Conflicts of Interest

[48] Rule 2.1-3(b) of the *BC Code* requires the disclosure to clients of potential conflicts and prohibits a lawyer from acting where a conflict of interest exists. The many subrules of section 3.4 Conflict, of the *BC Code*, provide lawyers extensive guidance on the duties a lawyer owes to their client regarding identifying, avoiding, and managing conflicts. Conflict of interest is discussed by the SCC in *R v. Neil*, [2002 SCC 70](#) at para. 29. The Court described the prohibition as follows:

The bright line is provided by the general rule that a lawyer may not represent one client whose interests are directly adverse to the immediate interests of another current client — *even if the two mandates are unrelated* — unless both clients consent after receiving full disclosure (and preferably independent legal advice), and the lawyer reasonably believes that he or she is able to represent each client without adversely affecting the other.

[49] Rule 3.4-1 of the *BC Code* deals with the duty to avoid conflicts of interest. As described in the Commentary to the rule, this concept is rooted in the duty of loyalty which is essential to the fiduciary relationship between a lawyer and client, and also essential "to maintain public confidence in the integrity of the legal profession and administration of justice."

[50] Several other rules in section 3.4 of the *BC Code* are instructive with regard to the types of transactions involved in this matter. Underlying all of these is the requirement for disclosure, transparency, and voluntary and informed consent on the part of the client. These include:

- (a) rule 3.4-2, which permits a lawyer to act where a conflict exists in certain circumstances where consent is obtained;
- (b) rule 3.4-5, which guides a lawyer's conduct in joint retainers;
- (c) rule 3.4-26.1, which prohibits a lawyer from acting in circumstances where their relationship with, or interest in, the client or service creates a conflict;

- (d) rule 3.4-28, which guides a lawyer's ability to enter into business transactions with clients, including lending or borrowing;
- (e) rule 3.4-29, which guides a lawyer's ability to act in circumstances where their client is conducting a transaction in which the lawyer has an interest (the Commentary states that in disciplinary hearings under the rule the burden is on the lawyer to demonstrate good faith, adequate disclosure, and that consent was obtained); and
- (f) rule 3.4-34, which guides a lawyer in loaning money to clients.

[51] Consent must generally be express, rather than implied. Implied consent to a conflict of interest is permitted only in very narrow circumstances not relevant to the Allegations.

[52] Rules 7.3-1 and 7.3-2 of the *BC Code* expand on the above noted conflict of interest rules, adding that lawyers who engage in other businesses must not allow their outside interests to jeopardize their professional integrity, independence, competence or judgment on behalf of a client.

[53] Circumstances where a lawyer is acting as counsel for both borrowers and lenders, while having an interest in the parties' transactions, is a clear conflict of interest. Even if informed consent had been obtained, the Respondent would have been prohibited from acting for both parties to the transaction: *Law Society of BC v. Guo*, 2023 LSBC 30, at paras. 320 to 326, 338; *R. v. Neil*, [2002] 3 SCR 631, at para. 29. In such circumstances, the failure to fulfill the duties of loyalty to the clients required by the *BC Code* to disclose the conflict and obtain informed consent from the clients is a marked departure from what is reasonably expected of lawyers, and will constitute professional misconduct: *Law Society of BC v. Weiser*, 2023 LSBC 10, at paras. 126 to 128.

Trust Accounts

[54] The requirements for the proper use of lawyer's trust accounts cannot be understated, as they are tied very directly to maintaining the confidence the public has in the legal profession. Rule 3-58.1 includes:

- (1) Except as permitted by the Act or these rules or otherwise required by law, a lawyer or law firm must not permit funds to be deposited to or withdrawn from a trust account unless the funds are directly related to legal services provided by the lawyer or law firm.

(2) A lawyer or law firm must take reasonable steps to obtain appropriate instructions and pay out funds held in a trust account as soon as practicable on completion of the services to which the funds relate.

[55] Further, Rule 3-60 relating to a pooled trust account states in part:

...

(4) Subject to subrule (5) and Rule 3-74 [*Trust shortage*], a lawyer must not deposit to a pooled trust account any funds other than

(a) trust funds,

(b) funds that are fiduciary property, or

(c) funds the lawyer is permitted to deposit to a trust account under Rule 3-58.1 (3) [*Trust account only for legal services*].

(5) A lawyer may maintain in a pooled trust account up to \$300 of the lawyer's own funds.

[56] Given the protections afforded by solicitor client privilege, lawyers' trust accounts are not subject to the same scrutiny as other types of holding accounts. As a result, in the worst cases, these accounts can be used to more easily hide illegal funds and transactions. Improper use of these unique accounts degrades public confidence and risks the continued protection of solicitor client privilege in monetary transactions. The need for compliance with the Rules in this regard has been described as a "basic firewall" against abuse: *Law Society of BC v. Daignault*, 2020 LSBC 18 at para. 66; *Law Society of BC v. Alfonso*, 2022 LSBC 32 at para. 80.

Maintaining Trust Account Records

[57] Law Society Rule 3-67 requires lawyers to maintain proper records in relation to their trust accounts. This includes recording transactions "in chronological order and in an easily traceable form" pursuant to Rule 3-67(5).

[58] Law Society Rule 3-68 includes the following requirements:

3-68 A lawyer must maintain at least the following trust account records:

(a) a book of entry or data source showing all trust transactions, including the following:

(i) the date and amount of receipt or disbursements of all funds;

(ii) the source and form of the funds received;

- (iii) the identity of the client on whose behalf trust funds are received or disbursed;
 - (iv) the cheque or voucher number for each payment out of trust;
 - (v) the name of each recipient of money out of trust;
- (b) a trust ledger, or other suitable system, showing separately for each client on whose behalf trust funds have been received, all trust funds received and disbursed, and the unexpended balance;
- (c) records
- (i) showing each transfer of funds between clients' trust ledgers, including the name and number of both the source file and the destination file,
 - (ii) containing an explanation of the purpose for which each transfer is made, and
 - (iii) containing the lawyer's written approval of the transfer;

[59] Where a lawyer's records are such that they must be re-created in order to trace or source funds, this can amount to a marked departure of what is reasonably expected and therefore constitute professional misconduct. This is especially so, when there are concurrent issues with proper use of trust accounts: *Law Society of BC v. Smail*, 2020 LSBC 14 at paras. 24 to 25.

Analysis

Allegation 1: Misuse of trust accounts for transactions where the funds are not directly related to legal services

[60] The Respondent admits the facts underlying this allegation and that it constitutes professional misconduct. Over a 15-month period, the Respondent on 178 occasions received and once disbursed trust account funds when he had provided no legal services directly related to such trust funds.

[61] In relation to his Lending Companies, the Respondent used his trust accounts for business purposes rather than as a lawyer's trust account. There were no legal services directly related to the money flowing through his trust accounts. Instead, they were used, for example, to hold lender funds to facilitate current, past and future lending and borrowing transactions, or to pay and receive property-related income. He also used the accounts to distribute funds around in a "shell game", allocating monies received to cover losses in failed lending transactions, or other lending business losses.

[62] In his answers to investigators, the Respondent did not seem aware that there was any issue with how he was using his trust accounts. In fact, he seemed to use his trust accounts in part, for the reason it would give more legitimacy and instill a higher level of trust with the parties involved in transactions. In his words, “everything will look proper if it goes through a lawyer” otherwise “everything looks more sketchy when its private.”

[63] This conduct is contrary to the cited Rules. Moreover, this conduct, including the express intent to harness the legitimacy of a trust account for unauthorized uses, is more than a marked departure from what is reasonably expected of a lawyer. It constitutes highly culpable neglect of the duties required of him under the Rules and puts at risk the public’s confidence in the use of specialized trust accounts.

[64] The Panel finds that this conduct constitutes professional misconduct, pursuant to s. 38(4) of the *Act*.

Allegations 2 to 3: Conflicts of interest with AA and Company 3

[65] Allegations 2 and 3 relate to AA and Company 3. The Respondent admits the facts underlying the conflict allegations but argues that the conduct only amounts to a failure to follow the rules, so that no formal determination is available and the allegation should be dismissed.

[66] The conduct arises in the context of the Respondent’s lending business and his failure to treat the parties with whom he was dealing with as legal clients. The Respondent acted as counsel for AA and Company 3, while conducting loan transactions on behalf of his own Lending Companies. He did this in the context of AA and Company 3 being borrowers from his own Lending Companies in over twenty transactions over almost four years.

[67] The Respondent also represented AA and Company 3, while registering a mortgage and refinancing a mortgage to the benefit of one of his Lending Companies and a co-lender.

[68] The issue with these transactions is that the Respondent did not identify the clear conflict of interest, did not take steps to inform AA or Company 3 respecting the conflict, and did not ensure that AA or Company 3 obtained independent legal advice.

[69] The Respondent had some idea that there was an issue with this relationship, as he apparently took some steps to seek independent legal advice for Company 1 regarding the refinancing transaction.

[70] The Respondent relies on the facts of his prior relationship with AA, that AA was aware he was acting for the lender (his own lending company, Company 1) and that AA

had access to his own lawyers and was knowledgeable about lending transactions. The Respondent argues that he was in substantial compliance with the relevant rules, that he had verbal consent to act, and that there is no requirement for written consent.

[71] He was not in substantial compliance with the rules. The *BC Code* has specific requirements for conflict situations, particularly those involving lending transactions. The rules relating to transactions with clients include requirements for disclosure, independent legal advice, and consent. The general definition of consent requires that consent be in writing or recorded in writing following verbal consent. At the heart of these rules is an obligation for conflicted lawyers to be candid so that their clients can objectively assess the risk of the conflict and make an informed decision about their legal representation.

[72] The Panel acknowledges that there was no evidence of *mala fides* and that neither AA nor Company 3 appear to have suffered any monetary loss resulting from the Respondent's conduct. However, the Respondent's conduct, which spanned many years and multiple transactions, was completely at odds with rules directly designed to protect clients. Such rules are crucial to the Law Society's object of protecting the public interest. Even though the consequences were fortunately benign for AA and Company 3, engaging in conduct that is contrary to such a key interest makes this conduct particularly serious. To find otherwise would erode the means by which the Law Society protects the public from the potential harm of conflict situations.

[73] Clients must be able to trust that their counsel are vigilant in respect of conflicts of interest, are open and transparent about conflicts, and fulfill their obligations in the *BC Code* diligently. A pattern of disregard for rules that are so fundamental to protection of the public, is a clear marked departure from the standard expected of a lawyer.

[74] This Panel finds that the Respondent's conduct is contrary to the cited rules of the *BC Code*, contrary to the fiduciary duties he owed to his clients, and constitutes professional misconduct, pursuant to s. 38(4) of the *Act*.

Allegation 4: Conflict of interest with Company 4

[75] Allegation 4 relates to Company 4. Again, the Respondent admits the facts underlying the conflict allegations but argues that the conduct only amounts to a failure to follow the rules, so that no formal determination is available and the allegation should be dismissed.

[76] The Respondent's lending company, Company 1, was a co-lender with Company 4 in relation to a second mortgage in the Company 5 Loans. The Respondent represented both Company 1 and Company 4.

- [77] According to the Respondent, he had *carte blanche* authority over Company 4's lending and money in the Company 5 Loans. He had authority to conduct transactions on behalf of Company 4 without any substantial oversight from the company itself. There was a long-standing relationship between the Respondent and Company 4.
- [78] In addition to the *BC Code's* specific requirements for conflict situations, there are additional requirements for joint retainers and transactions with clients. The general definition of consent requires that consent be in writing or recorded in writing following verbal consent. Rule 3.4-5 regarding joint retainers requires the lawyer to be transparent with both clients regarding the nature of the joint retainer. Rule 3.4-29 requires informed disclosure, independent legal advice, and consent.
- [79] It is clear there was no compliance with the conflict rules regarding this transaction, as Company 4 was not aware of the details of the transaction, or the Respondent's interest as a co-lender. In fact, to this day, Company 4 is apparently unaware of the loss it incurred resulting from the borrower's default. The Respondent has been apparently trying to recoup Company 4's loss by allocating credit to it but has not kept an accurate account of these efforts.
- [80] The nature of this conflict is somewhat different than that with AA, where the interests were adverse. Here, Company 1 and Company 4 were aligned and on equal footing in terms of financial risk, and according to the Respondent, Company 4 had relinquished control of its lending to him. If not for the Respondent's long-standing relationship as counsel for Company 4, and his use of his trust account in managing the Company 5 Loans and subsequent losses, this could arguably be viewed as strictly a business partnership.
- [81] There is no evidence of *mala fides*. The time frame and number of transactions is less than those with AA, but the harm is greater, even though it may be unrealized and the Respondent is trying to mitigate it. The Respondent says that the harm, if any, did not relate to the conflicts. That, however, is impossible to assess given that Company 4 never had the information it was entitled to, prior to entering into the Company 5 Loans.
- [82] Ultimately, however, this is another example of the Respondent's neglect of the rules that protect clients and are crucial to the Law Society's object of protecting the public interest, making this conduct also particularly serious. The Respondent's conduct is a marked departure from what is reasonably expected of a lawyer.
- [83] As the Respondent did not lend money to Company 4, there was no breach of rule 3.4-34 as alleged. However, the Panel finds that the Respondent's conduct is

contrary to the remaining cited rules of the *BC Code*, contrary to the fiduciary duties he owed to his clients, and constitutes professional misconduct, pursuant to s. 38(4) of the *Act*.

Allegations 5 to 8: Failure to Maintain Trust Account Records

[84] The Respondent admits the facts underlying these allegations but argues that the conduct underlying Allegations 5 and 7 only amounts to a failure to follow the Rules. He admits that Allegations 6 and 8 constitute professional misconduct.

[85] Rule 3-68 sets out in great detail what is required from lawyers in terms of their trust account records.

[86] Rule 3-68(c) requires not only a record of the transfer, but an explanation for the transfer and lawyer's written approval for the transfer.

[87] Allegation 5 relates to thirteen transactions over approximately two and a half years, made between his Lending Companies, Company 4, and potentially others. Some of these transfers are not properly recorded and none are explained or indicate that the appropriate approval was obtained.

[88] The Respondent points out that there were no transfers of actual funds and that these were just bookkeeping entries. He admits that "some data was missing." He says that his handwritten records reflected written approval.

[89] Rule 3-68(a)(ii) requires that the records must show the source and form of the funds received.

[90] Allegation 6 relates to conduct over the course of two years, where the Respondent recorded 372 trust transactions in which the source or form of the funds were not recorded properly. In fact, they were recorded to misrepresent the actual source of funds. This made the source difficult to discern. It was only through extensive forensic accounting analysis based on external documentation that the true source could be determined. Often a single entry would represent multiple different sources than the one identified, combined into the single entry.

[91] The Respondent said that he recorded lump sum deposits to save time. In his testimony, he also explained that the source identified was often an account that had suffered losses, so he was trying to reduce the loss on paper to the credit of that account.

[92] Rule 3-68(a)(iii) requires that the record must show the identity of the client on whose behalf funds are received or disbursed.

[93] Allegation 7 involved 20 deposits and disbursements over the course of two years where the client name and file number recorded did not match external records. Most of these transactions related to the Respondent's Lending Companies and Company 4.

[94] The Respondent's explanation is that these 20 records are mere errors and do not amount to professional misconduct.

[95] Rule 3-67(5) requires that the records must be in chronological order and in easily traceable form.

[96] Allegation 8 involves the 385 deposits and five disbursements made in relation to Allegations 6 and 7 over the course of two years and four months where the records were not chronological or easily traceable, given the issue of entries misrepresenting sources of funds or not correctly identifying the client.

[97] Due to solicitor client privilege, lawyers enjoy legitimate protections in their use of trust accounts. The ability to be able to easily trace records relating to trust accounts is essential to allow oversight and monitoring of trust transactions and instill confidence that lawyers' records accurately reflect the transactions made using these specialized accounts.

[98] The accounting allegations span several years, and collectively hundreds of transactions. While there is no evidence of *mala fides*, or actual harm, this conduct was intentional and the Respondent's own explanations for his conduct reflect a flagrant disregard for the basic accounting requirements. Given the importance of lawyers' trust accounts, and the role that proper use of them plays in the public's confidence in the legal profession, this conduct is serious. The Respondent's conduct in each of Allegations 5 to 8 is a marked departure from what is reasonably expected of a lawyer.

[99] The Panel finds that the Respondent's conduct is contrary to the cited Rules and constitutes professional misconduct, pursuant to s. 38(4) of the *Act*.

Conclusion

[100] The Panel finds that the conduct underlying each allegation has been proven. However, it is noted that the scope of the Respondent's conduct cannot be assessed in a vacuum. The conduct relating to incomplete, inaccurate, and insufficient record-keeping, in Allegations 5 to 8 helped to enable and obscure the Respondent's misuse of his trust accounts in Allegation 1. Similarly, the transactions in Allegations 2 to 4 where he was acting in breach of his fiduciary duties and in conflict were being recorded in ways that are not easily transparent, allowing his "shell game" of allocating funds from one place to another to occur in circumstances that were difficult to detect and track.

[101] Abuses of trust accounts and failures to uphold the fiduciary duties owed to clients are areas that are directly tied to erosion of the public's confidence in the legal profession. To prevent this, it is imperative that lawyers conduct themselves in these areas with care, and in observance of the guidance that both governs and instructs members of the profession.

[102] In general, the Respondent's conduct shows an utter lack of recognition of, or adherence to, the basic requirements for a lawyer with trust accounts. He treated these accounts as regular business accounts and enjoyed the legitimacy they afforded him in his business, while disregarding the requirements for their use.

[103] Similarly, he treated his clients with no regard to obvious conflicts while engaged in his own business dealings.

[104] The Panel finds that the Law Society has proven that Respondent committed professional misconduct, regarding each of the Allegations individually, and with consideration to the circumstances as a whole.