

Hearing File No.: HE20210080
Citation Issued: December 9, 2021
Citation Amended: May 25, 2022

LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

LAW SOCIETY OF BRITISH COLUMBIA

AND:

JUSTIN GARNER KATES

RESPONDENT

AMENDED CITATION

TO: Justin Garner Kates
c/o DuMoulin Black LLP
10th Floor, 595 Howe Street
Vancouver, BC V6C 2T5

AND TO: His Solicitor, Ian Donaldson, QC
Donaldson's
105 - 1500 Howe Street
Vancouver, BC V6Z 2N1

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:

Misuse of Trust Account

1. Between approximately August 9, 2019 and September 27, 2019, in relation to your client C Inc., later known as B Inc., you permitted some or all of \$9,450,667.36 (including amounts converted to USD) to be paid into or withdrawn from your firm's trust accounts when the funds were not directly related to legal services provided by you or your firm, contrary to Rule 3-58.1 of the Law Society Rules [then in force].

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

2. Between approximately August 9, 2019 and September 27, 2019, in relation to your client C Inc., later known as B Inc., you permitted some or all of \$9,450,667.36 (including amounts converted to USD) to be paid into or withdrawn from your firm's trust accounts and you failed to do one or more of the following:

- (i) make reasonable inquiries about the circumstances, including, but not limited to, one or more of:
 1. the subject matter and objectives of your retainer;
 2. the source of the funds;
 3. the lawfulness of the payments from the trust accounts; and
- (ii) make a record of the results of any inquiries made.

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

3. Between approximately August 9, 2019 and August 13, 2019, in relation to your client C Inc. (██████████), later known as B Inc. (██████████), you circumvented, or assisted your client in circumventing, the Bank of Montreal's (the "Bank") refusal to permit the transfer of approximately USD \$6.4 million (the "Funds") to the United States from C Inc.'s account, in circumstances where you knew or ought to have known that there were questions or concerns about transferring the Funds to the United States, and you did one or more of the following, contrary to one or both of rules 2.2-1, and its commentary, and 3.2-7 of the *Code of Professional Conduct for British Columbia*:
- (a) changed, or assisted in changing, C Inc.'s name to B Inc.;
 - (b) did not advise the Bank that B Inc. was the same company as C Inc.; and
 - (c) permitted the transfer of the Funds through your Firm's trust account, rather than your client's bank account at the same Bank.

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

Breach of Trust Conditions or Escrow Terms

4. On one or more of approximately June 19, 2019, January 27, 2020, and January 28, 2020, in relation to your client C Inc., later known as B

██████████ Inc., you released, permitted or authorized the release of, or failed to prevent the release of, funds from a trust account, when releasing the funds was without required authorization or to parties not entitled to receive the funds, or both, and in so doing you did one or more of the following:

- (a) failed to honour one or more trust conditions;
- (b) failed to comply with, or failed to ensure compliance with, one or more escrow terms; and
- (c) failed to comply with Rule 3-64(1) of the Law Society Rules.

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

Misleading or Incomplete Responses to the Law Society

5. On or about September 19, 2019, in response to queries from a Law Society of British Columbia auditor, you provided a response that you knew or ought to have known was a misleading or incomplete response to the auditor's queries, contrary to one or both of rule 7.1-1 of the *Code of Professional Conduct for British Columbia* and Rule 3-85(2) of the Law Society Rules. In particular, you did one or more of the following:

- (a) failed to advise the auditor that you had not or may not have obtained a copy of the identification of your client SK prior to the auditor's email;
- (b) failed to advise the auditor that you had only just obtained, after receiving her email, the copy of the identification of SK; and
- (c) provided the identification that SK had just sent you to the auditor in a manner that did not make it apparent that you had just received this identification from SK instead of from your file materials.

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

Client Identification and Verification

6. In approximately April 2019, in relation to the incorporation of C Inc., you failed to make reasonable efforts to obtain, record, and retain a record of client identification information for SK and LB, contrary to one or both of Rules 3-100(1)(b) and 3-107(3) 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*.

7. Beginning in approximately April 2019, in relation to your client C Inc., later known as B Inc., you failed to make reasonable efforts to obtain, record, and retain a record of client identification information for SK, contrary to one or more of Rules 3-100(1)(c) and 3-107(3) 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*.

8. Between approximately May 2019 and January 2020, in relation to your client C Inc., later known as B Inc., you failed to do one or both of the following in respect of one or more financial transactions in Schedule “A”:
 - (a) take reasonable steps to verify, or verify, as the case may be, the identities of one or more of SK, LB, and PK, or obtain and retain a copy of every document used to verify the identities of one or more of them, contrary to one or both of Rules 3-102 and 3-107 of the Law Society Rules; and

- (b) take the required steps to verify the identity of LB, or retain a copy of every document used to verify his identity, contrary to one or both of Rules 3-104(2) and 3-107 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*.

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.

THIS CITATION AMENDED pursuant to Rule 5-4.2 of the Law Society Rules.

SCHEDULE "A" – FINANCIAL TRANSACTIONS

File 5502-001

1. One or more of three receipts into trust on or about May 31, 2019.

File 5502-005

2. One or more of all receipts into trust between approximately May 15, 2019 and June 13, 2019.
3. One or more of two payments from trust on or about June 19, 2019.

File 5502-006

4. One or more of all receipts into trust between approximately July 8, 2019 and July 29, 2019.
5. One or more of two payments from trust between approximately July 29, 2019 and August 1, 2019.

File 5502-009

6. One or more of three receipts into trust between approximately November 29, 2019 and December 3, 2019.
7. One or more of two payments from trust between approximately January 27, 2020 and January 28, 2020.