

Citations Authorized: December 7, 2017, June 7, 2018, September 20, 2018,  
September 20, 2018, February 28, 2019

**THE LAW SOCIETY OF BRITISH COLUMBIA**

IN THE MATTER OF THE *LEGAL PROFESSION ACT*, SBC 1998, C. 9

AND

A HEARING CONCERNING

**HOMAYOUN SEBASTIAN NEJAT**

RESPONDENT

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**RULE 4-29 ADMISSION OF MISCONDUCT  
AND UNDERTAKING TO DISCIPLINE COMMITTEE**

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1. On October 24, 2019, the Discipline Committee considered and accepted a proposal submitted by the Respondent under Rule 4-29 of the Law Society Rules.
2. Under the proposal, the Respondent admitted misconduct as alleged in citations authorized December 7, 2017, June 7, 2018, September 20, 2018, September 20, 2018, and February 28, 2019 (collectively, the “Citations”). The Law Society of British Columbia (“Law Society”) did not proceed with sub-allegations 1(e) and 3(b) of the citation authorized June 7, 2018, and sub-allegations 3(b) and (c) of the citation authorized February 28, 2019.
3. Under the proposal, the Respondent undertook to tender his resignation from the Law Society forthwith, and for a period of twelve (12) years from November 26, 2018:
  - (i) not engage in the practice of law in British Columbia with or without the expectation of a fee, gain or reward, whether direct or indirect, until such time as he may again become a member in good standing of the Law Society of British Columbia;
  - (ii) not apply for re-admission to the Law Society or elsewhere in Canada;
  - (iii) not apply for membership in any other law society (or like governing body regulating the practice of law) without first advising in writing the Law Society; and
  - (iv) not permit his name to appear on the letterhead of, or otherwise work in any capacity whatsoever for, any lawyer or law firm in British Columbia, without obtaining the prior written consent of the Discipline Committee of the Law Society.

4. In making its decision, the Discipline Committee considered an Agreed Statement of Facts dated October 21, 2019, a letter to the Chair of the Discipline Committee in which the Respondent apologized for his misconduct and expressed his remorse, and evidence of significant health conditions contained in two reports from an appropriately qualified medical expert. The Committee also considered the Respondent's professional conduct record, which included a prior citation for similar misconduct, two administrative suspensions, and recommendations from the Practice Standards Committee.
5. The Citations are resolved, and the Respondent's admissions of professional misconduct will be recorded on his professional conduct record.
6. The Respondent has acknowledged that pursuant to Rule 4-29(5) of the Rules, his undertaking not to practise law means that he is a person who has ceased to be a member of the Law Society as a result of disciplinary proceedings, and that section 15(3) of the *Legal Profession Act* (the "Act") applies to him.
7. In addition, pursuant to Rule 4-6(3) of the Law Society Rules ("Rules"), the Discipline Committee consented to the Respondent's resignation from membership with the Law Society.
8. The admitted facts were set out in an Agreed Statement of Facts dated October 21, 2019. The facts in relation to each citation are summarized in turn, below.

## **I. Member Background**

9. The Respondent was called and admitted as a member of the Law Society on June 1, 2010. From June 1, 2010 to November 3, 2014, he practised law at a small firm in Vancouver. As of November 3, 2014, he started practising law as a sole practitioner in Vancouver. His primary areas of practice were administrative law, family law, civil litigation, real estate law, and motor vehicle law.
10. The Respondent has been a non-practising member of the Law Society since November 26, 2018.

## **II. Citation Authorized December 7, 2017, Issued December 15, 2017 & Amended March 6, 2018**

11. The facts relating to this citation are set out in *Law Society of British Columbia v. Nejat*, 2019 LSBC 16.
12. A hearing panel determined that the Respondent committed professional misconduct in relation to three allegations:
  1. In the course of acting for his client BD regarding an appeal of a provincial court family law matter, he misled his client by doing some or all of the following:

- a. stating in an email dated September 28, 2015, that the written outline had been sent to the court for filing when it had not been;
  - b. (deleted);
  - c. failing to advise his client after June 14, 2016 that opposing counsel had filed an application for dismissal of the appeal;
  - d. telling his client by email dated June 29, 2016 that a hearing had been set for the end of July to “determine the issue of perfecting the appeal” and failing to tell his client that the date was set to hear the opposing party’s application to dismiss the appeal; and
  - e. (dismissed).
2. On July 28, 2016, in the course of acting for his client BD regarding an appeal of a provincial court family law matter, he represented to the court that he had instructions to bring an application to extend the time to perfect his client’s appeal when he knew he did not have those instructions.
3. Between approximately August 2015 and August 2016, in the course of representing his client BD regarding an appeal of a provincial court family law matter, he failed to provide his client with the quality of service that is expected of a competent lawyer in a similar situation, contrary to one or more of rules 2.2-1, 3.1-2 or 3.2-1 of the *Code of Professional Conduct for British Columbia* (the “Code”) by failing to do one or more of the following:
  - a. keep his client reasonably informed about the status of the appeal;
  - b. answer his client’s reasonable requests for information and documents;
  - c. answer, within a reasonable time, communications from his client that required a reply;
  - d. ensure that the work on the appeal was done in a timely manner so that its value to his client was maintained; and
  - e. provide his client with complete and accurate relevant information about his matter.

### **III. Citation Authorized June 7, 2018 & Issued June 19, 2018**

#### **a. Background Facts**

13. The Respondent represented AK in relation to a business agreement with SE. After the parties’ relationship broke down, AK instituted court proceedings against SE. The Respondent represented AK at trial.

14. The trial judge rejected AK's arguments and accepted the interpretation of the agreement proposed by SE.
15. In her reasons for judgment, the trial judge made findings of fact, including that the draft agreement had been prepared by the Respondent, that both parties suggested alterations and the Respondent made changes to the draft, and that the parties attended at the Respondent's office to sign the agreement that he had drafted. The trial judge found that each party initialled each page and signed the agreement in the presence of the Respondent, although the Respondent did not sign as witness.
16. The trial judge found that there were significant problems with the agreement. For example, the price was listed as \$1.00 in one clause, but \$100,000 elsewhere; the company was not a party to the agreement despite the agreement purporting to sell 10% of its assets; while the company was not listed as a party, the signature portion for SE read "Executed and Delivered by [the company name] and SE" and listed "SE, Director" as the signatory; the 10% of the assets being sold was not identified; and some of the assets being sold could only be sold in whole, not in part. Even more significant was that the agreement had characteristics both of an asset and of a share purchase agreement.
17. Prior to trial, AK had signed an affidavit stating that minor modifications had been made to the agreement by SE and/or mutual friends, and that he had not been made aware of and never consented to changes to the termination clause of the agreement. During the trial, AK blamed the Respondent for not paying attention to the changes to the agreement when he printed it, and that the termination clause was not what they had agreed to.
18. The Respondent did not recognize that he was in a conflict of interest, and did not recommend to AK that he should obtain independent legal advice in relation to his testimony at trial.
19. AK instructed the Respondent to appeal the decision, which he did. The Respondent did not advise AK to obtain independent legal advice about the impact of AK's testimony at trial in terms of the Respondent's ability to continue acting in the matter.
20. For approximately one year, the Respondent failed to take steps to advance AK's appeal. In particular, he failed to effect personal service of the Notice of Appeal on SE within the time frame required by the Court of Appeal rules. He also failed to answer AK's reasonable requests for information about the status of the appeal, failed to respond to communications from AK, misled AK, and failed to provide AK with complete and accurate information about his appeal.

21. The Respondent sent AK an email while he was administratively suspended by the Law Society. He did not advise AK that he was suspended from the practise of law between April 11, 2017 and June 28, 2017.

**b. Admissions - Citation Authorized June 7, 2018, Issued June 19, 2018**

22. The Law Society did not proceed with sub-allegations 1(e) and 3(b) of this citation.

23. The Respondent admitted that between December 2013 and June 2017, in the course of representing AK, he failed to provide his client with the quality of service required of a competent lawyer, contrary to rules 3.1-2, 3.2-1, 3.4-1, and 7.8-1 of the *Code*, by doing the following:

- (a) drafting a written “asset/share purchase” agreement that contained significant problems;
- (b) failing to ensure that the written “asset/share purchase” agreement signed by the client on December 28, 2013 (the “Agreement”) accurately reflected the client’s intentions and/or instructions;
- (c) continuing to act for his client after the client testified before the Supreme Court of British Columbia in *K. v. E.* that the Respondent was to blame for not noticing that clause 3.1 of the Agreement had been changed from an earlier draft, and that it no longer reflected the client’s intentions;
- (d) failing to recommend to the client that he obtain independent legal advice in relation to his testimony in *K. v. E.*;
- (e) -
- (f) representing the client in relation to an appeal of *K. v. E.*, when he knew or ought to have known that he was in a conflict of interest;
- (g) failing to properly bring an appeal of *K. v. E.* by failing to serve a filed Notice of Appeal on the opposing party within the time required to do so;
- (h) failing to take steps to advance an appeal of *K. v. E.*;
- (i) failing to answer the client’s reasonable requests for information about the status of an appeal;
- (j) failing to answer, within a reasonable time, communications from the client about an appeal that required a reply;
- (k) failing to provide the client with complete and accurate relevant information about an appeal; and
- (l) failing to advise the client that the Respondent was suspended from the practice of law between April 11, 2017 and June 28, 2017.

24. The Respondent admitted that this conduct constituted professional misconduct, contrary to section 38(4) of the *Act*.

25. The Respondent admitted that between July 2016 and June 2017, in the course of representing AK in relation to an appeal of *K. v. E.*, he misled his client, contrary to rules 2.2-1 and 3.2-2 of the *Code*, by doing the following:
  - (a) indicating that substituted service could be effected on the opposing party, when he knew or ought to have known that personal service was required and he did not have an order from the court stating otherwise; and
  - (b) indicating that he could proceed in default against the opposing party when he knew or ought to have known that he could not do so.
26. The Respondent admitted that this conduct constituted professional misconduct, contrary to section 38(4) of the *Act*.
27. The Respondent admitted that in June 2017, he engaged in the practice of law while suspended, contrary to section 15 of the *Act*, by implying in an email dated June 1, 2017 to AK that he was qualified or entitled to give legal advice.
28. The Respondent admitted that this conduct constituted a breach of the Act or rules, contrary to section 38(4) of the *Act*.

**IV. Citation Authorized September 20, 2018, Issued September 27, 2018 & Amended October 3, 2019**

**a. Background Facts**

29. In May 2015, the Respondent was retained by IF to prepare a spousal sponsorship application to Immigration, Refugees, and Citizenship Canada (“IRCC”). The Respondent and his client entered into a retainer agreement.
30. In May 2015, the Respondent accepted an e-transfer payment from IF and deposited the funds directly into his general account and not a pooled trust account. He did not record in an account record the receipt of the funds, and never issued a receipt or bill to IF in relation to the funds.
31. In September 2015, the Respondent accepted a second e-transfer payment from IF and again deposited them directly into his general account and not a pooled trust account. He did not record in an account record the receipt of the funds, and never issued a receipt or bill to IF in relation to the funds. The Respondent did not have a client ledger for IF.
32. In November 2015, IF’s sister, MF, also retained the Respondent in relation to a spousal sponsorship application to IRCC. The Respondent and MF entered into a retainer agreement.
33. In November 2015, the Respondent accepted an e-transfer payment from MF and deposited the funds directly into his general account and not a pooled trust account. When he deposited

the funds into his general account, he had not done any work on MF's file. He did not record in an account record the receipt of the funds, and never issued a receipt or bill to MF in relation to the funds.

34. In February 2016, the Respondent accepted a second e-transfer payment from MF and again deposited the funds directly into his general account and not a pooled trust account. The funds included an amount to cover the government processing fee, which the Respondent had not incurred. The Respondent never issued a receipt or bill to MF in relation to the funds. The Respondent did not have a client ledger for MF.
35. Between October 2016 and May 2017, the Respondent received a series of emails from both IF and MF, seeking updates with respect to the status of their applications. The Respondent did not take any steps to investigate the status of the applications, and in his responses to his clients, offered a series of excuses and explanations that were not true. He took no further steps to investigate the matter. The Respondent acknowledges that he failed to provide IF and MF with complete and accurate relevant information about the status of their applications.
36. MF advised the Law Society that in May 2017, she contacted the federal government to inquire about her application, and that she had received a response informing her that there was no spousal sponsorship application for her in the system. The Respondent had failed to submit a properly completed spousal sponsorship application for MF, and had failed to submit the application filing fee.
37. While the Respondent was administratively suspended from the practice of law between April 11, 2017 and June 28, 2017, he did not advise IF or MF that he was suspended, and communicated with both IF and MF by email during that time. He also did not advise his locum about the existence of IF and MF's files.

**b. Admissions - Citation Authorized September 20, 2018 & Issued September 27, 2018**

38. The Respondent admitted that between approximately November 20, 2015, and February 11, 2016, in the course of representing MF in a spousal sponsorship application to IRCC, he:
  - a) misappropriated or improperly withdrew some or all of the amount of \$1,120.00, received on or about November 20, 2015;
  - b) misappropriated or improperly withdrew some or all of the amount of \$1,670.00, received on or about February 11, 2016;
  - c) failed to deposit trust funds received by him into a pooled trust account as soon as practicable, contrary to Rule 3-58 of the Rules;
  - d) failed to promptly record receipt of the trust funds within seven days, contrary to Rule 3-72(1) of the Rules; and

- e) failed to immediately deliver a bill or issue to the client a receipt for funds received, contrary to Rules 3-54 and 3-72(3) of the Rules.
39. The Respondent admitted that this conduct constituted professional misconduct, contrary to section 38(4) of the *Act*.
40. The Respondent admitted that between approximately February 2016 and May 2017, in the course of representing MF in a spousal sponsorship application (the “Application”) to IRCC, he failed to provide his client with the quality of service required of a competent lawyer, contrary to rules 3.1-2, 3.2-1, and 3.2-2 of the *Code*, by failing to do the following:
- a) submitting a complete Application to IRCC;
  - b) submitting the filing fee for the Application;
  - c) providing his client with complete and accurate relevant information about the status of the Application;
  - d) advising his client that he was suspended from the practice of law between April 11, 2017, and June 28, 2017; and
  - e) advising his locum about the existence of his client’s file.
41. The Respondent admitted that this conduct constituted professional misconduct, contrary to section 38(4) of the *Act*.
42. The Respondent admitted that between October 2016 and May 2017, in the course of representing MF in a spousal sponsorship application (the “Application”) to IRCC, he made statements that he knew were false or misleading, contrary to rules 2.2-1 and 3.2-2 of the *Code*, in the following communications:
- a) in an email copied to his client on or about October 13, 2016, he implied that the Application had been filed;
  - b) in an email to his client dated April 18, 2017, he stated that he “did escalate the matter”, and that he expected to have news for his client by the end of the month;
  - c) in an email to his client dated May 8, 2017, he stated that:
    - (1) his client’s case number “could arrive any day”;
    - (2) that he would send correspondence to IRCC the next day in which he would state that if he did not receive a response from them, the matter would be escalated by him through the office of a Minister of Parliament; and
    - (3) that he had re-sent a police record check to IRCC;
  - d) in an email to his client dated May 18, 2017, he stated that he was “exploring every avenue that [he could] think of and your files are my number one priority”; and

- e) in an email to his client dated May 19, 2017, he stated he was “trying to get answers” about the Application for his client.
43. The Respondent admitted that this conduct constituted professional misconduct, contrary to section 38(4) of the *Act*.
44. The Respondent admitted that between April 18, 2017 and May 19, 2017, in the course of representing MF in a spousal sponsorship application (the “Application”) to IRCC, he engaged in the practice of law while suspended, contrary to section 15 of the *Act*, by communicating with his client by email about her Application on one or more of the following dates: April 18, May 1, May 8, May 16, May 18, and May 19, 2017.
45. The Respondent admitted that this conduct constituted a breach of the Act or rules, contrary to section 38(4) of the *Act*.
46. The Respondent admitted that between October 2016 and May 2017, in the course of representing IF in a spousal sponsorship application (the “Application”) to CIC/IRCC, he made statements that he knew were false or misleading, contrary to rules 2.2-1 and 3.2-2 of the *Code*, in the following communications:
- a) in an email to his client dated October 13, 2016, he stated that he would courier a letter to the IRCC regarding the Application;
  - b) in an email to his client dated December 1, 2016, he stated that he believed he had found the reason for the delay in processing the Application and had rectified it;
  - c) in an email to his client dated December 1, 2016, he implied that he had paid the Application filing fee through a bank or a financial institution, but that this was problematic because CIC had switched to online credit card payments;
  - d) in an email to his client dated December 1, 2016, he stated that the payment situation had been rectified by him making a payment “again” via credit card online and requesting a refund from the bank;
  - e) in an email to his client dated December 1, 2016, he stated that his client should receive sponsorship approval in “a month and a half or so”, thereby implying that all necessary steps in the application process had been satisfied; and
  - f) in an email to his client dated May 30, 2017, he stated he was not available to meet “tomorrow” or “Thursday”, but that he was available to meet “Friday” because the last day of a hearing had been cancelled.
47. The Respondent admitted that this conduct constituted professional misconduct, contrary to section 38(4) of the *Act*.
48. The Respondent admitted that between approximately May 2015 and June 2017, in the course of representing IF in a spousal sponsorship application (the “Application”) to CIC/IRCC, he failed to provide his client with the quality of service required of a competent lawyer, contrary to rules 3.1-2, 3.2-1, and 3.2-2 of the *Code*, by failing to do the following:

- a) submit the filing fee for the Application;
  - b) provide his client with complete and accurate relevant information about the status of the Application;
  - c) advise his client that he was suspended from the practice of law between April 11, 2017, and June 28, 2017; and
  - d) advise his locum about the existence of his client's file.
49. The Respondent admitted that this conduct constituted professional misconduct, contrary to section 38(4) of the *Act*.
50. The Respondent admitted that in June 2017, in the course of representing IF in a spousal sponsorship application (the "Application") to IRCC, he engaged in the practice of law while suspended, contrary to section 15 of the *Act*, by communicating with his client by email about the Application on the following dates: June 5, 2017, and June 14, 2017.
51. The Respondent admitted that this conduct constituted a breach of the Act or rules, contrary to section 38(4) of the *Act*.
52. The Respondent admitted that between May 2015 and September 2015, in the course of representing IF in a spousal sponsorship application (the "Application") to IRCC, he failed to do the following:
- a) deposit his client's retainer into a pooled trust account as soon as practicable, contrary to Rule 3-58 of the Rules;
  - b) promptly record in an account record funds received from his client, contrary to Rule 3-72(1) of the Rules; and
  - c) immediately deliver a bill or issue to the client a receipt for funds received, contrary to Rules 3-54 and 3-72(3) of the Rules.
53. The Respondent admitted that this conduct constituted professional misconduct, contrary to section 38(4) of the *Act*.

**V. Citation Authorized September 20, 2018 & Issued September 27, 2018**

**a. Background Facts**

54. In April 2017, the Law Society opened a file to investigate issues surrounding a bank draft scam perpetrated on the Respondent in March 2017.
55. In August 2017, the Immigration and Refugee Board ("IRB") reported concerns arising from a hearing on June 16, 2017, at which the Respondent's clients appeared without counsel because he was suspended.
56. This citation addresses the issues identified in both matters.

*i. Fraudulent Bank Draft*

57. In March 2017, the Respondent received the following message in an email purporting to be from D. Co. in Vietnam:

Please I'm looking for an attorney with experience in contract drafting, to help draft Purchase and Sales agreement to enable us closed a transaction for the sales of equipment to a buyer in the Canada.

If you are able to take this matter, please email me for more details. Thank you.

58. The Respondent replied to the email. He was subsequently told that D. Co. was selling a piece of used equipment to a construction company in Vancouver, that the parties had signed a letter of intent, and that that purchaser was represented by a stock broker.

59. The Respondent forwarded a retainer agreement that said that the Respondent would be paid \$3,000, plus tax, prior to the commencement of work, and requested a copy of the letter of intent. The Respondent was provided with a copy of the letter of intent. He prepared a draft purchase agreement based on that letter.

60. In March 2017, the Respondent received a bank draft for \$230,000 and deposited the funds into his trust account. He then issued an invoice for \$3,000 for his legal fees and withdrew that amount from trust and deposited it to his general account, wired \$198,000 to his client, and withdrew \$29,000 and deposited the funds into his general account. The Respondent intended to send the \$29,000 to D. Co., who had asked him to transfer the funds electronically.

61. The Respondent received a second bank draft for \$258,000. When he attempted to deposit the bank draft with his bank, the bank advised him that it was fraudulent, and that the first bank draft was as well.

62. On March 31, 2017, the Respondent reported a \$230,000 trust shortage to the Law Society.

63. When asked what steps he had taken to verify his client's identity, the Respondent advised that he had done an on-line google search and that he did not know what procedures were required. He said there were no "red flags", and advised that he did a lot of on-line marketing and dealt with overseas clients, but this had never happened before. He explained that he had relied on the bank's expertise and the fact that the bank draft had been verified and accepted by the bank.

64. The Respondent acknowledged that he was not as vigilant as he should have been, and that he should have followed the Law Society's client identification guidelines. He had not taken the steps required by the Law Society client identification and verification Rules regarding

non-face-to-face financial transactions for a client not located in Canada. His failure to take the proper steps to obtain, record, and verify client identification information before disbursing funds from his trust account led to his engagement in an activity that he ought to have known assisted in dishonesty, crime or fraud.

65. Records obtained from the bank indicated that on March 27, 2017, the Respondent had a balance of \$1,472.95 in his general account. On March 28, 2017, he deposited \$29,000 into his general account from his trust account. He then purchased a bank draft for \$12,000 made payable to a family member, made a cash withdrawal of \$945, and sent an e-transfer of \$3,000, which left a balance of \$14,488.95 in his general account. On March 30, 2017, the Respondent made a series of payments for other personal expenses from his general account. As of April 3, 2017, the Respondent's general account had a balance of \$9,397.00.

66. On April 5, 2017, the bank recovered \$197,780 of the funds wired to D. Co. Subsequently, the trust shortfall was resolved by the Respondent making a payment to the bank.

*ii. Suspension April 11 – June 28, 2017*

67. The Respondent was suspended from the practice of law between April 11, 2017 and June 28, 2017.

68. The Respondent was scheduled to represent AJ, SJ, and AMJ, refugee clients, at an immigration hearing before the IRB on May 16, 2017.

69. While suspended, on May 4, 8, and 10, 2017, the Respondent exchanged emails with AJ about his legal matter.

70. On May 9, 2017, the Respondent advised his clients that he was suspended from the practise of law, and that he was unable to attend the refugee hearing. His locum also wrote to the clients that day advising that she could not take the hearing and asking the clients if they wanted to seek an adjournment or retain other counsel. The clients responded to the Respondent, saying they were scared to postpone, and that they wanted to continue with the hearing. The Respondent suggested that they attend at his office to collect their documents.

71. On June 15, 2017, the Respondent met with his clients at his law office.

72. The hearing was adjourned for unrelated reasons to June 16, 2017. That day, it proceeded without counsel, and the refugee claims were successful.

73. In August 2017, the IRB raised concerns to the Law Society about the June 16, 2017 hearing. The IRB advised that the Respondent was scheduled to appear as counsel and that the refugee claimants advised the presiding member that the Respondent had advised them the day before that he was unable to attend because he was suspended. The clients said that the

Respondent had advised them of the suspension earlier, but had assured them that the suspension would be lifted in advance of the hearing. The Respondent had provided his clients with a letter, from him to the IRB dated June 15, 2017, requesting an adjournment. The Respondent also provided the clients with disclosure records, which they said they had not seen previously. One of the clients had significant medical problems but stayed out of the hospital to attend the hearing. The clients expressed a strong desire to proceed without the Respondent because of the stress of waiting for their claims to be resolved.

74. The IRB also noted that the Respondent had not provided any notice to the IRB about his suspension prior to the hearing and that he might require an adjournment, contrary to the rules regarding adjournments, and stated that adjournments were only granted in exceptional circumstances.
75. During the Law Society investigation, the Respondent was asked why he met with his clients about the immigration hearing and why he wrote a letter seeking an adjournment, on letterhead indicating that he was legal counsel, but suspended. The Respondent advised the Law Society that the meeting was not to do any substantive work but to simply give his clients a letter seeking an adjournment in case they became nervous about proceeding unrepresented. The Respondent explained that the letter was “quite last minute” and, in retrospect, he should have planned ahead and asked his locum to prepare the letter.
76. In October 2017, the Law Society conducted a compliance audit of the Respondent’s law practice. The audit revealed that on June 6, 2017, \$19,352.80 was deposited into the Respondent’s trust account in relation to another client, and that the funds were withdrawn by bank draft on June 19, 2017, while the Respondent was suspended. The Respondent explained that the funds were related to a real estate file, and that they were a repayment to the real estate agent because the Respondent was not able to work on the file due to his suspension. The Respondent’s locum was not aware of the client related to the withdrawal. The Respondent had not advised his locum that he took steps to return the funds.
77. The Respondent acknowledged that by failing to provide his locum with complete and accurate information about the status of all of his client files, he failed to provide his clients with the quality of service required of a competent lawyer.

*iii. Suspension – April 4, 2018*

78. On April 4, 2018, the Respondent was suspended from the practice of law for failing to complete his 2017 continuing professional development (“CPD”) requirements. The Respondent has explained that he was not in the office April 4 or 5, 2018, and that he became aware of his suspension when he attended his office on the morning of April 6, 2018.

79. In April 2018, the Respondent was acting for a company, MG. His main client contact was RR. CC was also acting for the company.

80. On April 6, 2018, a staff lawyer with the Law Society's Custodianship department learned that the Respondent was suspended. She contacted him by phone to enquire about his plans to deal with his practice during his suspension. The Respondent advised her that he had just learned of his suspension and thought that he had until the end of April to complete his CPD requirements.

81. Email records indicate that on April 6, 2018:

- The Respondent sent an email at 10:28 a.m. to CC with the subject line "SV – Documents for Mediation", saying it was great to have her on board, and attaching a zip file of client documents;
- At 10:53 a.m., the Respondent sent an email to the Law Society staff lawyer with the subject line "Suspension Due to CPDs" saying that he would be taking on-line courses that day and over the weekend to satisfy his 2017 CPD requirements;
- At 11:24 a.m., the Law Society staff lawyer confirmed that the Respondent was not permitted nor insured to practice law, and requested that he provide her with information regarding client appointments and all client files that he had dealt with, from April 4, 2018 to the present;
- At 12:15 p.m., the Respondent advised the Law Society staff lawyer that he was not in the office on April 4 or 5, 2018, and advised that he had no client appointments and had not dealt with any client files;
- At 12:23 p.m., the Law Society staff lawyer confirmed that her enquiries included April 6, 2018, and asked for a copy of the Respondent's office calendar for April to June 2018;
- At 12:40 p.m., the Respondent advised the Law Society staff lawyer that his responses were in respect of April 6, 2018 as well;
- At 1:04 p.m., the Law Society staff lawyer enquired:

Are you stating that after being away from your law practice on April 4 and 5, 2018, you attended your office today, April 6, 2018, but have no client appointments, have not worked on any client files, have not drafted or signed any legal correspondence or legal documents, and have not signed any trust cheques? I want to be clear, so please confirm.
- At 1:44 p.m., the Respondent responded to the Law Society staff lawyer saying, among other things:

Yes, that is correct; I have been working on my CPDs since speaking with you on the phone. I had no scheduled appointments today, and am working on CPDs instead of doing other work, so that I can take care of this matter on or before April 8, 2018.

- At 2:05 p.m., RR said he still did not have certain documents and asked the Respondent to email them to him;
- At 2:41 p.m., the Law Society staff lawyer said she was simply asking for clarification, adding that the Respondent had advised that he did not practise law on April 4 and 5, 2018, and since being in his office that day had not practised law at all;
- At 2:42 p.m., the Respondent sent RR the documents he had requested;
- At 2:52 p.m., the Respondent advised the Law Society staff lawyer that her demand that he provide his office calendar that day was unreasonable; and
- At 3:34 p.m., the Respondent sent an email to CC, copied to RR, saying that his administrative suspension was due to not completing his CPD requirement.

82. The Respondent explained to the Law Society that he was unaware of his suspension when he emailed CC at 10:28 am on April 6, 2018, and that when he emailed RR later that day, he did not believe his email amounted to “practising law”. He now acknowledges that by sending these emails while suspended, he breached the *Act* or rules.

**b. Admissions - Citation Authorized September 20, 2018 & Issued September 27, 2018**

83. The Respondent admitted that in or about March 2017, in relation to his purported client D. Co., he did the following:
- (a) engaged in activity that he ought to have known assisted in dishonesty, crime, or fraud by disbursing funds from his trust account without first taking reasonable steps to verify the identity of his client, contrary to rule 3.2-7 of the *Code*; and
  - (b) failed to obtain, record, and verify client identification information, contrary to Rules 3-100, 3-102, 3-103, 3-104, 3-105, and 3-106 of the Rules.
84. The Respondent admitted that this conduct constituted professional misconduct, contrary to section 38(4) of the *Act*.
85. The Respondent admitted that in approximately March 2017, in relation to his purported client D. Co., he misappropriated or improperly withdrew some or all of the amount of \$29,000.00, by withdrawing those funds from trust and using them, when he was not entitled to the funds, contrary to Rule 3-64(1) of the Rules.
86. The Respondent admitted that this conduct constituted professional misconduct, pursuant to s. 38(4) of the *Act*.
87. The Respondent admitted that he engaged in the practice of law while suspended between April 11, 2017 and June 28, 2017, contrary to section 15 of the *Act*, by doing one or more of the following:

- (a) communicating with his client, AJ, about his legal matter by email on May 4, 8 and 10, 2017;
- (b) meeting with clients, SJ, AJ, and AMJ, on June 15, 2017;
- (c) withdrawing funds of his client, MB, from trust on June 19, 2017; and
- (d) writing a letter in relation to his clients, SJ, AJ, and AMJ, dated June 15, 2017, to the Immigration and Refugee Board.

88. The Respondent admitted that this conduct constituted professional misconduct, contrary to section 38(4) of the *Act*.
89. The Respondent admitted that between April 2017 and June 2017, he failed to provide his clients with the quality of service required of a competent lawyer, contrary to rules 3.1-2 and 3.2-1 of the *Code*, by failing to provide his locum with complete and accurate information about the status of all of his client files.
90. The Respondent admitted that this conduct constituted professional misconduct, contrary to section 38(4) of the *Act*.
91. The Respondent admitted that on April 6, 2018, in relation to his client MG, he engaged in the practice of law while suspended, contrary to section 15 of the *Act*, by sending email communications to CC and RR.
92. The Respondent admitted that this conduct constituted a breach of the Act or rules, contrary to section 38(4) of the *Act*.
93. The Respondent admitted that on April 6, 2018, in relation to his client MG, he made misrepresentations to the Law Society by stating in two emails to the Law Society dated April 6, 2018, that he had not dealt with any client files that day, contrary to rules 2.2-1 and 7.1-1 of the *Code*.
94. The Respondent admitted that this conduct constituted professional misconduct, contrary to section 38(4) of the *Act*.

## **VI. Citation Authorized February 28, 2019 & Issued March 12, 2019**

### **a. Background Facts**

95. In approximately July 2017, the Respondent was retained by BS in relation to the sale of a condominium in Vancouver.
96. In February 2018, the Respondent filed his 2017 Trust Report with the Law Society. The Law Society's Trust Assurance Department requested further information from the Respondent, including production of his client trust ledger for November 2017, December 2017, and January 2018, and information regarding his client BS.

97. On April 25, 2018, the Respondent provided the requested client trust ledger and copies of two invoices addressed to BS. The first invoice was dated January 3, 2018, and was for \$35,784. The second invoice, dated January 30, 2018, was for \$26,264.
98. The Trust Assurance Department referred the invoices to the Professional Conduct department for further investigation.
99. A Law Society investigator asked the Respondent to provide his client file for BS, as well as an up-to-date client trust ledger for BS.
100. On November 30, 2018, the Respondent provided the Law Society investigator with his original client file for BS (“Client File”), and a client trust ledger for BS dated to November 30, 2018 (“Trust Ledger”).
101. The Law Society investigator subsequently determined that the Client File did not contain all of the emails sent between the Respondent and BS, as BS later provided additional emails to the Law Society.
102. File materials demonstrated that between July 21, 2017, and March 1, 2018, the Respondent made ten withdrawals from funds held in trust for BS.
103. The ten withdrawals made from funds held in trust for BS were recorded in the Trust Ledger as “[BS] account”, “payment on account”, “legal fees”, or “legal fees/disbursements”, and totalled \$135,106.38.
104. The Client File contained invoices addressed to BS for five of the ten withdrawals from funds, in addition to the two invoices (dated January 3 and 30, 2018) previously provided to the Trust Assurance Department.
105. The five invoices in the Client Files indicated that fees were withdrawn from trust in relation to the sale of a condo, CRA “tax compliance” and “business/company set up”. However, these invoices did not reflect legal services provided to BS.
106. BS advised a Law Society investigator that he had retained the Respondent in relation to the sale of his condominium for a fee of \$600, and that BS had not seen any of the invoices created by the Respondent. BS provided the Law Society investigator with a “Trust Subledger” that the Respondent had given him, which recorded a \$600 fee for the condo sale. The Client File provided to the Law Society did not contain a copy of the “Trust Subledger”.
107. On July 5, 2017, the Respondent received \$680,325.56 in trust for BS for the sale proceeds of the condominium.
108. As BS was a non-resident of Canada for tax purposes, the sale triggered a tax liability.
109. The undertakings from the purchaser’s notary had included that the Respondent hold back sufficient funds to pay BS’ tax liability until a Certificate of Compliance from CRA was provided to the purchaser confirming payment of the tax owing by BS.

110. In July 2017, the Respondent paid out the expenses related to the property sale and provided BS with a bank draft in the amount of \$301,322.33.
111. The “Trust Subledger” that the Respondent provided to BS indicated that the Respondent would retain a holdback of \$357,500 for taxes.
112. In January 2018, BS forwarded to the Respondent a payment voucher for taxes owing in the amount of \$118,224.23, and the Respondent forwarded the funds to the CRA.
113. The funds came out of the Respondent’s trust account in March 2018. After the withdrawal, the trust account held \$94,943.13 in total, which was not sufficient to pay BS the amount owing to him. As of March 13, 2018, there should have been \$230,261.19 remaining in trust to the credit of BS.
114. In March 2018, BS forwarded a Certificate of Compliance to the Respondent. The Respondent sent BS an email stating that he would send it to the notary and provide him with a cheque once he was released from his undertaking.
115. In an email dated April 23, 2018, the Respondent advised BS that “Pay out [was] not being withheld” and that “We’re just waiting for confirmation that we were released from our undertakings”. However, the Respondent has admitted that he knew or ought to have known that his April 23, 2018 email to BS was false or misleading.
116. On April 3, 2018, \$125,000 was deposited into the Respondent’s trust account, resulting in a balance in the trust account of \$219,931.38. Although the deposit was recorded in the Trust Ledger as “Business Sale – BS”, BS had not retained the Respondent for the set-up or sale of a business.
117. The April 3, 2018 payment of \$125,000 was made by way of cheque paid by another law firm, to the Respondent in trust. The payment was in relation to a different client of the Respondent, S. Inc./HM. The Respondent admitted that he used HM’s \$125,000 to pay BS.
118. HM subsequently received a payment of \$125,000 from the Respondent. The Respondent obtained the funds to make the \$125,000 payment to HM from his family.
119. The Respondent’s trust records did not record the \$125,000 payment to S Inc. or HM, and did not include any records for S. Inc. or HM.
120. In May 2018, the Respondent made payments of \$219,175.77 and \$10,000 to BS, but did not record the payments in the Trust Ledger.
121. In a letter to the Law Society dated February 13, 2019, the Respondent:
  - admitted that he withdrew \$135,106.38 from funds held in trust for BS, without BS’ knowledge or consent, and that the accounts he created were not provided to BS and did not reflect legal services provided to BS;

- stated that he prepared the invoices to “keep track of” the monies he was withdrawing from trust, and denied that the invoices were created to prevent the Law Society from discovering his improper withdrawals;
- admitted that no funds were transferred to him for a business sale by BS, and that his trust entry in this regard was false;
- admitted that he used the funds paid to him on behalf of S Inc./HM to “replenish” funds withdrawn from the funds held for BS, and explained that he obtained the funds to pay HM from his family;
- admitted misleading BS about the reasons for the delay in paying him; and
- denied that he was in any way attempting to mislead the Law Society.

122. In the February 13, 2019 letter, the Respondent also apologized for his conduct and stated that he was suffering from a very serious illness which impacted everything in his life, particularly his professional actions.

**b. Admissions - Citation Authorized February 28, 2019 & Issued March 12, 2019**

123. The Law Society is not proceeding with sub-allegations 3(b) and (c) of this citation.
124. The Respondent admitted that between approximately July 2017 and March 2018, in relation to his client BS, he misappropriated some or all of the amount of \$135,106.38 in client trust funds, or improperly withdrew some or all of the amount of \$135,106.38 in client trust funds, contrary to Rule 3-64 of the Rules.
125. The Respondent admitted that this conduct constituted professional misconduct, pursuant to s. 38(4) of the *Act*.
126. The Respondent admitted that on or about May 7, 2018, in relation to his client S. Inc. and/or HM, he misappropriated some or all of the amount of \$125,000.00 in client trust funds, or improperly withdrew some or all of the amount of \$125,000.00 in client trust funds, contrary to Rule 3-64 of the Rules.
127. The Respondent admitted that this conduct constituted professional misconduct, pursuant to s. 38(4) of the *Act*.
128. The Respondent admitted that on April 25, 2018, in relation to his client BS, he provided information and records to the Law Society that he knew or ought to have known were false or misleading, contrary to Rule 3-5(7) of the Rules and rule 7.1-1 of the *Code*, in the following instance:
- (a) on or about April 25, 2018, he provided falsified bills to the Law Society.
129. The Respondent admitted that this conduct constituted professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.

130. The Respondent admitted that in an email dated April 23, 2018, he represented to his client BS that the payment of funds owed to BS was not being withheld and that he was waiting for confirmation of release from an undertaking, which he knew or ought to have known was false or misleading, contrary to rules 2.2-1 and 3.2-2 of the *Code*.

131. The Respondent admitted that this conduct constituted professional misconduct, pursuant to s. 38(4) of the *Act*.

## **VII. Medical Issues and Other Mitigating Circumstances**

132. The Respondent has explained that at the time of his misconduct, he was suffering from significant health issues, and that he subsequently received treatment for those issues. His treatment is ongoing.

133. The Respondent has provided the Law Society with two medical reports from an appropriately qualified physician. The medical reports diagnose the Respondent with significant health issues that help explain, but do not justify, the Respondent's misconduct. The medical reports also outline the steps the Respondent has taken to address his health issues.

134. The Respondent is remorseful, and has apologized for his misconduct.