

2020 LSBC 51  
Decision issued: October 28, 2020  
Citation issued: September 26, 2018

**THE LAW SOCIETY OF BRITISH COLUMBIA**

**In the matter of the *Legal Profession Act*, SBC 1998, c. 9**

**and a hearing concerning**

**PETER DARREN STEVEN HART**

**RESPONDENT**

---

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

---

Hearing dates: July 29 and 30, 2020

Panel: Lindsay R. LeBlanc, Chair  
Thelma Siglos, Public representative  
Thomas L. Spraggs, Bencher

Discipline Counsel: Alison Kirby  
Counsel for the Respondent: J.M. Peter Firestone

**BACKGROUND**

[1] On September 26, 2018, a citation was issued against the Respondent (the “Citation”) directing that this Panel inquire into the Respondent’s conduct in all allegations as follows:

1. In or around August 2013, while acting for your clients ET and MT in connection with an estate planning matter, you misappropriated, or improperly withdrew from trust, \$4,000 by way of a trust cheque payable to Victory Litigation Lending Corp., a company owned and controlled by you, when neither you nor Victory Litigation Lending Corp. were entitled to those funds, contrary to your fiduciary duty or Rule 3-64 of the Law Society Rules, or both.

2. In or around November 2012 and August 2014, you caused Victory Litigation Lending Corp., a company owned and controlled by you, to borrow or receive a total of \$200,000 from your client G Trust and to then lend those funds to your law firm Hart Legal, contrary to one or more of Chapter 7, Rules 4 and 7 of the *Professional Conduct Handbook* then in force, rules 3.4-29 and 3.4-31 of the *Code of Professional Conduct for British Columbia*, and your fiduciary duty.
3. Between approximately November 2012 and November 2014, you provided legal services to your client G Trust, when you or your law firm Hart Legal had a direct or indirect financial interest in the subject matter of the legal services, by preparing promissory notes and assignments in favour of G Trust, as security for loans totalling \$200,000 made by G Trust to Victory Litigation Lending Corp., a company owned and controlled by you, contrary to Chapter 7, Rule 1 of the *Professional Conduct Handbook*, then in force, and rule 3.4-26.1 of the *Code of Professional Conduct for British Columbia*.
4. In or around January 2013, you caused Victory Litigation Lending Corp., a company owned and controlled by you, to borrow or receive \$60,000 from your client D Trust and to then lend those funds to your law firm Hart Legal, contrary to one or more of rules 3.4-29 and 3.4-31 of the *Code of Professional Conduct for British Columbia* and your fiduciary duty.
5. Between approximately January 2013 and October 2013, you provided legal services to your client D Trust, when you or your law firm Hart Legal had a direct or indirect financial interest in the subject matter of the legal services, by preparing a promissory note and assignment in favour of D Trust, as security for a loan of \$60,000 made by D Trust to Victory Litigation Lending Corp., a company owned and controlled by you, contrary to rule 3.4-26.1 of the *Code of Professional Conduct for British Columbia*.
6. In or around June 2013, September 2013, and January 2014, you caused Victory Litigation Lending Corp., a company owned and controlled by you, to borrow or receive a total of \$265,000 from your client S Trust and to then lend those funds to your law firm Hart Legal and your management company Hart Management Inc., contrary to one or more of rules 3.4-29 and 3.4-31 of the *Code of Professional Conduct for British Columbia* and your fiduciary duty.

7. Between approximately June 2013 and November 2014, you provided legal services to your client S Trust, when you or your law firm Hart Legal had a direct or indirect financial interest in the subject matter of the legal services, by preparing promissory notes and assignments in favour of S Trust as security for loans totalling \$265,000 made by S Trust to Victory Litigation Lending Corp., a company owned and controlled by you, contrary to rule 3.4-26.1 of the *Code of Professional Conduct for British Columbia*.
8. In or around August 2013, you caused Victory Litigation Lending Corp., a company owned and controlled by you, to borrow or receive \$6,000 from your client Estate of CG and to then lend those funds to your law firm Hart Legal, contrary to one or more of rules 3.4-29 and 3.4-31 of the *Code of Professional Conduct for British Columbia* and your fiduciary duty.
9. Between approximately August 2013 and October 2013, you provided legal services to your client Estate of CG, when you or your law firm Hart Legal had a direct or indirect financial interest in the subject matter of the legal services, by preparing a promissory note and assignment in favour of Estate of CG as security for a loan of \$6,000 made by Estate of CG to Victory Litigation Lending Corp., a company owned and controlled by you, contrary to rule 3.4-26.1 of the *Code of Professional Conduct for British Columbia*.
10. You acted in a conflict of interest when you failed to honour the promissory notes and assignments entered into between Victory Litigation Lending Corp., a company owned and controlled by you, and one or more of your clients G Trust, D Trust and S Trust by failing, upon receipt, to apply the settlement proceeds or monies paid on Hart Legal files to the indebtedness owed to your clients or to assign replacement security, contrary to rule 3.4-1 of the *Code of Professional Conduct for British Columbia* or your fiduciary duty, or both.
11. You failed to notify the Executive Director of the Law Society of British Columbia in writing of the circumstances of one or both of the following unsatisfied monetary judgments against you or Darren Hart Law Corporation and your proposal for satisfying such judgments, contrary to Rule 3-50 of the Law Society Rules:
  - (a) Certificate filed in Federal Court of Canada on June 26, 2015 under Court File No. ITA-7224-15 against you for \$107,148.21 plus interest; and

(b) Certificate filed in the Federal Court of Canada on September 21, 2015 under Court File No. ITA-10210-15 against Darren Hart Law Corporation for \$45,571.65 plus interest.

The conduct alleged in each allegation is stated to be professional misconduct and, in the alternative, one or both of conduct unbecoming a lawyer or a breach of the *Act* or Rules.

- [2] The main issue raised in this hearing concerns Allegation 1 and whether the conduct alleged is misappropriation of retainer funds. The Respondent denies that the conduct alleged amounts to misappropriation. The Respondent submits that it was a mistake to use these funds in the way he did and that it was not a deliberate act to transfer the funds. The Respondent submits that his actions are no different than those contained in Allegations 2 to 10 in that he acted in a conflict of interest that constitutes professional misconduct and is a marked departure from the conduct expected of lawyers.
- [3] The Respondent acknowledges and accepts that he acted in a conflict of interest as stated in allegations 2 to 10 of the Citation and that his conduct in doing so constitutes professional misconduct and is a marked departure from the conduct expected of lawyers.
- [4] The Respondent admits for Allegation 11 that he failed to notify the Law Society of the Tax Certificate as he was obliged to do. The Respondent acknowledges that he violated Rule 3-50 but did so out of ignorance of the requirements set out in the Rules. The Respondent submits that this was a Rule violation that does not rise to the level of professional misconduct. The Law Society agrees with the Respondent's submission and seeks a finding of a breach of Rule 3-50 but not of professional misconduct.
- [5] Overall, the Respondent asks the Panel to accept that his conduct arose out of a failure to put his mind to the conflict of interest rules and take steps to prevent a conflict of interest out of "ignorance" as opposed to a deliberate attempt to flout his obligations as a lawyer. The Respondent described his behaviour as "reckless" and not intentional.
- [6] For the reasons that follow, the Panel does not accept the Respondent's characterization of the conduct. The repeated self-dealings of the Respondent giving rise to the conflicts are at such a level that any lawyer ought to have recognized the obvious conflicts. Further, the Respondent directly benefited from the financial structure that he set up, and he put his interests before those of his clients.

- [7] For Allegations 1 to 10, the Respondent took funds that he was entrusted to hold in his role as the lawyer and/or executor of an estate and transferred the funds to a company he directly owns and controls. That company in turn transferred the funds to the Respondent's law firm. The funds transferred were secured by promissory notes with the security being fees on the contingency files of the Respondent's law firm. Interest was paid at a rate of 15 per cent with ten per cent going back to the client files and five per cent going to the Respondent's company. This series of transactions spanned a number of years, was complex and required the Respondent to set up the system to facilitate the transfers. This was not a "mistake" or "reckless". This was deliberate. The Respondent did not advise his clients or the estate beneficiaries of the loans, nor did he seek independent advice regarding an assessment of the risk of the loans. The loans were done out of complete self-interest.

## **FACTS**

### **Background**

- [8] The Citation was authorized on September 20, 2018 and issued on September 26, 2018.
- [9] The Respondent admits that he was served with the Citation.
- [10] The evidence before the Panel consisted of a Notice to Admit dated July 11, 2019 prepared by the Law Society. The Respondent provided his Response to Notice to Admit dated August 19, 2019 in which the Respondent admitted some, but not all, of the facts contained within the Law Society's Notice to Admit. The Panel was also provided with a brief Agreed Statement of Facts which was entered as Exhibit 6 in these proceedings. The Respondent did not provide evidence at the Hearing, and no witnesses were called by either party.
- [11] The Respondent was called and admitted as a member of the Law Society on May 20, 1994. His primary areas of practice are family law and civil litigation.
- [12] On or about October 30, 2012, the Respondent activated a dormant numbered company that he owned and changed its name to Victory Litigation Lending Corp. ("VLLC").
- [13] The Respondent envisioned VLLC as a private lending company that would connect investors with lawyers who required financing, particularly for their

contingency files. The Respondent's law firm was the only firm that borrowed from VLLC.

- [14] The Respondent was a director, president and 75 per cent shareholder of VLLC. The Respondent's bookkeeper was a director, vice-president and 25 per cent shareholder of VLLC.
- [15] During a compliance audit conducted in 2014 by the Law Society, a compliance auditor identified that the Respondent had withdrawn more than \$500,000 from his firm's trust account and deposited the funds into VLLC. A further investigation was conducted by the Law Society, including a forensic audit of the Respondent's trust account and an interview of the Respondent.
- [16] Between November 6, 2012 and August 7, 2014, as summarized in the table below, the Respondent made eight withdrawals totalling \$535,000 from his pooled trust account and advanced the funds to VLLC. VLLC then in turn lent \$533,000 of those funds to Hart Legal or Hart Management.
- [17] The eight loans from Hart Legal to VLLC and the eight loans from VLLC to Hart Legal or Hart Management are summarized below:

Ref. No.	Loans to VLLC			Loans to Hart Legal and Hart Management		
	Lender	Loan Amount	Loan Date	Recipient	Loan Amount	Loan Date
1	G Trust	\$ 95,000	11/6/2012	Hart Legal General #1	\$ 90,000	11/6/2012
2	D Trust	60,000	1/31/2013	Hart Legal General #1	58,000	1/31/2013
3	S Trust	38,000	6/25/2013	Hart Legal General #1	40,000	6/26/2013
4	Estate of ET	4,000	8/28/2013	Hart Legal General #1	4,000	8/29/2013
5	Estate of CG	6,000	8/28/2013	Hart Legal General #1	6,000	8/29/2013
6	S Trust	100,000	9/6/2013	Hart Legal General #1	100,000	9/6/2013
7	S Trust	127,000	1/27/2014	Hart Management Inc.	130,000	1/27/2014
8	G Trust	105 000	8/7/2014	Hart Legal General #2	105 000	8/7/2014
<b>Total</b>		<b>\$ 535,000</b>			<b>\$ 533,000</b>	

- [18] All 16 loans were repaid, and the funds were deposited back into the Hart Legal pooled trust account, with interest, as summarized below:

Ref. No.	Repayment of Loans to Hart Legal and Hart Management			Repayment of Loans to VLLC		
	Lender	Repayment Amount	Repayment Date	Lender	Repayment Amount	Repayment Date
1	VLLC	\$ 102,871.23	10/21/2013	G Trust	\$ 104,057.53	10/21/2013
2	VLLC	6,268.77	10/15/2013	DF Trust	4,323.29	10/15/2013
		58,000.00	10/21/2013		60,000.00	10/21/2013
3	VLLC	41,923.29	10/21/2013	S-W Trust	39,842.74	10/21/2013
4	VLLC	4,088.77	10/21/2013	Estate of ET	4,059.18	10/21/2013
5	VLLC	6,133.15	10/21/2013	Estate of CG	6,088.77	10/21/2013
6	VLLC	101,849.32	10/21/2013	S-W Trust	101,232.88	10/21/2013
7	VLLC	146,250.00	11/26/2014	S-W Trust	137,541.00	11/26/2014
8	VLLC	109,271.92	11/13/2014	G Trust	107,847.95	11/14/2014
<b>Total</b>		<b>\$ 576,656.45</b>			<b>\$ 564,993.34</b>	

[19] In all of the loans described below, the Respondent did not advise his clients that VLLC had received five per cent interest on the funds advanced. On all matters described below, the Respondent's law firm rendered accounts to the client files.

[20] With respect to Allegation 1, the Respondent admits the following:

- (a) there was no trust instrument appointing him as trustee;
- (b) he did not obtain instructions or authorization to make investments on behalf of his clients, beyond holding the funds in a separate interest-bearing trust account;
- (c) he did not inform his clients about the loan to or investment in VLLC;
- (d) he did not inform his clients about his interest in VLLC; and
- (e) he did not provide his clients with an accounting regarding the funds.

[21] With respect to Allegations 2 to 10 of the Citation, the Respondent admits that he did not inform any of the beneficiaries or clients involved, either orally or in writing:

- (a) that the funds were being invested from VLLC into Hart Legal;
- (b) that he had a 75 per cent interest in VLLC; and/or
- (c) about the five per cent differential in interest in the loan structure (the "spread"), i.e., the fact that the loans to VLLC were at 10 per cent

interest whereas the corresponding loans to Hart Legal were at 15 per cent interest.

### **Allegation 1 - loan of \$4,000 to VLLC**

- [22] On October 13, 2006, the Respondent opened a client file for ET and described the matter as “estate planning”. On or about October 19, 2006, the Respondent received a cheque in the amount of \$4,000 on behalf of ET and MT. On December 6, 2006, the Respondent sent a letter to ET and MT confirming receipt of the \$4,000 and further confirming that the funds were being held in trust by Hart Legal. In accordance with the instructions he received, the Respondent was to hold the \$4,000 in trust to assist with expenses of ET and MT’s son after the death of the last of them. The instructions further provided that the interest accruing on the trust funds should be compounded with the trust funds.
- [23] On August 28, 2013, the Respondent prepared and executed a promissory note and assignment (in his capacity as principal of VLLC and Hart Legal) in favour of “Darren Hart, Trustee for the Estate of ET” for \$4,000 plus interest at the rate of 10 per cent per annum, calculated and payable annually, not in advance. ET was not and is not deceased.
- [24] As security, the Respondent assigned Hart Legal’s interest in the settlement proceeds in family litigation conducted on behalf of another client.
- [25] Also on August 28, 2013, the Respondent prepared and executed a promissory note (in his capacity as principal of Berge Hart Cassels LLP doing business as Hart Legal) in favour of VLLC, for \$4,000 plus interest at the rate of 15 per cent per annum, calculated and payable annually, not in advance.
- [26] Also on the same date, through a series of transactions, the Respondent transferred the \$4,000 retainer that he held in trust to VLLC. VLLC subsequently transferred the \$4,000 and other funds it held to Hart Legal.
- [27] On October 21, 2013, the Respondent returned the \$4,000 plus 10 per cent interest to his clients.

### **Allegations 2, 3 and 10 – G Trust**

- [28] The Respondent was appointed executor and trustee of the estate of DG under a will dated November 30, 2006. DG died on December 1, 2006.
- [29] The gross value of the estate at the date of death was \$359,431.19.



- [30] On December 1, 2006, the Respondent opened a client file and trust ledger naming himself as the client and the matter as “Estate of DG”.
- [31] Between 2007 and October 2012, the Respondent held the bulk of the estate funds in a separate interest-bearing trust account.
- [32] On October 16, 2012, the Respondent received an electronic funds transfer into his firm’s trust account in the amount of \$101,471.05 as a redemption of a cash management investment in relation to G Trust. On October 22, 2012, the Respondent made a distribution of \$101,471.05 to the beneficiary.
- [33] On October 23, 2012, the Respondent received another electronic funds transfer into his firm’s trust account in the amount of \$98,432.12 as a redemption of a cash management investment in relation to G Trust.

#### **Loan of \$95,000 to VLLC**

- [34] On November 6, 2012, the Respondent issued a cheque in the amount of \$95,000 from his firm’s trust account payable to VLLC. The cheque was deposited by VLLC on the same day.
- [35] Also on November 6, 2012, the Respondent issued a cheque in the amount of \$90,000 from his VLLC bank account payable to Hart Legal. Hart Legal deposited the cheque on the same day into its general account.
- [36] As a result of the deposit, the Respondent's law firm overdraft was reduced from \$367,451.19 to \$269,450.50.
- [37] On November 7, 2012, the Respondent prepared and executed a promissory note (in his capacity as principal of Berge Hart Cassels LLP, carrying on business as Hart Legal) in favour of VLLC for \$90,000 plus interest at the rate of 15 per cent per annum, calculated and payable annually, not in advance.
- [38] On November 8, 2012, the Respondent prepared and executed a promissory note and assignment (in his capacity as principal of VLLC and Hart Legal) in favour of “Darren Hart, Trustee for G Trust” for \$95,000 plus interest at the rate of 10 per cent per annum, calculated and payable annually, not in advance.
- [39] As security, the Respondent assigned Hart Legal’s interest in the settlement proceeds in estate litigation conducted on behalf of another client. The promissory note and assignment provided that Hart Legal:

... hereby assigns, up to the indebtedness herein of VLLC to [G Trust], Hart Legal's share of any and all settlement proceeds/monies payable on the following Hart Legal files/cases, to be applied to such indebtedness when such settlement proceeds/monies are received by Hart Legal unless similar security is assigned in replacement thereof: file number ...

- [40] On or about May 1, 2013, the Respondent received settlement proceeds in connection with the secured estate litigation. The Respondent did not apply the \$88,481.45 to the indebtedness owed upon receipt of the funds. No replacement security was assigned.
- [41] On October 21, 2013, Hart Legal issued a cheque in the amount of \$102,871.23 from its general account payable to VLLC for a "90,000 loan repayment". That same day, the Respondent deposited the cheque into his VLLC bank account as part of a \$314,865.76 deposit marked as "Hart Legal - Loan repayments + interest payments".
- [42] Also on October 21, 2013, VLLC issued a cheque in the amount of \$104,057.53 payable to "Hart Legal in Trust". The Respondent deposited the cheque into his firm's trust account on October 21, 2013 as part of a \$315,281.10 deposit made that day.

#### **Loan of \$105,000 to VLLC**

- [43] On August 1, 2014, the Respondent received a cheque in the amount of \$106,569.00 in connection with G Trust, which he deposited into his firm's trust account.
- [44] On or about August 7, 2014, the Respondent prepared and executed a promissory note and assignment (in his capacity as principal of VLLC and Hart Legal) in favour of "Darren Hart, Trustee for G Trust" for \$105,000 plus interest at the rate of 10 per cent per annum, calculated and payable annually, not in advance.
- [45] As security, the Respondent assigned Hart Legal's interest in the settlement proceeds in family litigation and motor vehicle litigation conducted on behalf of two other clients. The promissory note and assignment read similarly to that provided for the \$95,000 loan.
- [46] Also on August 7, 2014, the Respondent prepared and executed a promissory note (in his capacity as principal of Darren Hart Law Corporation, carrying on business as Hart Legal) in favour of VLLC under which Hart Legal promised to pay

\$100,000 [sic] plus interest at the rate of 15 per cent per annum, calculated and payable annually, not in advance.

- [47] Also on August 7, 2014, the Respondent issued a cheque in the amount of \$105,000 from his firm's trust account payable to VLLC. On the same day, the Respondent deposited the cheque to the VLLC bank account.
- [48] On the same day, the Respondent issued a cheque in the amount of \$105,000 from the VLLC bank account payable to Hart Legal. Also on the same day, the Respondent deposited the cheque in the amount of \$105,000 to his firm's general account.
- [49] On November 13, 2014, the Respondent issued a cheque in the amount of \$109,271.92 payable to VLLC for a "105,000 loan repayment". The Respondent deposited the cheque into the VLLC bank account on the same day as "Hart Legal - Repayment of loan + interest."
- [50] Also on November 13, VLLC issued a cheque in the amount of \$107,847.95 payable to "Hart Legal in Trust". On the same day, the Respondent deposited the cheque into his firm's trust account as part of a \$109,847.95 deposit made that day.
- [51] The G Trust ledger records this cheque as being "received from Victory Litigation Lending Corp - investment redemption and interest earned (2847.95)."

#### **Allegations 4, 5 and 10 – D Trust**

- [52] On or about June 20, 2013, the Respondent was appointed as trustee under a nondiscretionary trust agreement. Under the trust agreement, the trustee was to distribute the funds to meet the beneficiary's needs with the goal of not reducing any government benefits the beneficiary might be entitled to.
- [53] The gross value of the trust at the date of settlement was \$66,011.99.
- [54] On January 1, 2013, the Respondent opened a client file and trust ledger naming himself as the client and the matter as "D - Discretionary Trust".

#### **Loan of \$60,000 to VLLC**

- [55] On January 31, 2013, the Respondent issued a cheque in the amount of \$60,000 from his firm's trust account payable to VLLC for "investment of trust funds". On the same day, the Respondent deposited the cheque to the VLLC bank account.

- [56] Also on January 31, 2013, the Respondent issued a cheque in the amount of \$58,000 from the VLLC bank account payable to Hart Legal. On the same day, the Respondent deposited a cheque in the amount of \$58,000 to his firm's general account as part of a deposit of \$83,010.90 made that day.
- [57] As a result of the deposit, the Respondent's overdraft was reduced from \$355,981.52 to \$272,970.62.
- [58] On October 15, 2013, Hart Legal issued a cheque in the amount of \$6,268.77 from its general account payable to VLLC for "interest paid to Oct 20 on 90,000 [sic] loan." On the same day, the Respondent deposited the cheque into the VLLC bank account.
- [59] Also on October 15, 2013, VLLC issued a cheque in the amount of \$4,323.29 payable to "Hart Legal". On the same day, the Respondent deposited the cheque into his firm's trust account.
- [60] On October 21, 2013, Hart Legal issued a cheque in the amount of \$58,000 from its general account payable to VLLC for "58,000 loan repayment". On the same day, the Respondent deposited the cheque for \$58,000 into his VLLC bank account as part of a \$314,865.76 deposit made that day.
- [61] Also on October 21, 2013, VLLC issued a cheque in the amount of \$60,000 payable to "Hart Legal in Trust". On the same day, the Respondent deposited the cheque for \$60,000 to his firm's trust account as part of a \$315,281.10 deposit made that day.

#### **Allegations 6, 7 and 10 – S Trust**

- [62] The Respondent was appointed as executor and trustee of the estate of ES under a will dated February 11, 2004. ES died on March 10, 2013.
- [63] Under the will, CB had a life interest in the residue to the estate with an institution receiving the remainder on his death. CB was an individual who received disability benefits.
- [64] The gross value of the estate at the date of death was \$448,042.26.
- [65] On March 11, 2013, the Respondent opened a client file and trust ledger naming himself as the client and the matter as "Estate of S - Estate Administration".

**Loan of \$38,000 to VLLC**

- [66] On June 25, 2013, the Respondent issued a cheque in the amount of \$38,000 from his firm's trust account payable to VLLC. On the same day, the Respondent deposited the cheque to the VLLC bank account.
- [67] Also on June 25, 2013, the Respondent issued a cheque in the amount of \$40,000 from the VLLC bank account payable to Hart Legal. On the same day, the Respondent deposited the cheque to his firm's general account as part of a \$42,475.87 deposit made that day.
- [68] As a result of the deposit, the Respondent's overdraft was reduced from \$369,189.30 to \$326,713.43.
- [69] The Respondent recorded the withdrawal on the S Trust ledger as "Victory Litigation Lending Corp Purchase of Investment."
- [70] On June 26, 2013, the Respondent prepared and executed a promissory note and assignment (in his capacity as principal of VLLC and Hart Legal) in favour of "Darren Hart, Trustee for S Trust" for \$38,000 plus interest at the rate of 10 per cent per annum, calculated and payable annually, not in advance.
- [71] As security, the Respondent assigned Hart Legal's interest in the proceeds of a family matter conducted on behalf of another client.
- [72] Also on June 26, 2013, the Respondent prepared and executed a promissory note (in his capacity as principle of Hart Legal) in favour of VLLC for \$40,000 plus interest at the rate of 15 per cent per annum, calculated and payable annually, not in advance.

**Loan of \$100,000 to VLLC**

- [73] On September 6, 2013, the Respondent prepared and executed a promissory note and assignment (in his capacity as principal of VLLC and Hart Legal) in favour of "Darren Hart, Trustee for S Trust" for \$100,000 plus interest at the rate of 10 per cent per annum, calculated and payable annually, not in advance.
- [74] As security, the Respondent assigned Hart Legal's interest in the settlement proceeds in family litigation conducted on behalf of another client.
- [75] Also on September 6, 2013, the Respondent issued a cheque in the amount of \$100,000 from his firm's trust account payable to VLLC. On the same day, the Respondent deposited the cheque to the VLLC bank account.

- [76] On the same day, the Respondent issued a cheque in the amount of \$100,000 from the VLLC bank account payable to Hart Legal. On the same day, the Respondent deposited the cheque in the amount of \$100,000 to his firm's general account.
- [77] As a result of the deposit, the Respondent's overdraft was reduced from \$326,114.32 to \$226,114.32.
- [78] On September 8, 2013, the Respondent prepared and executed a promissory note (in his capacity as principal of Hart Legal) in favour of VLLC under which Hart Legal promised to pay \$100,000 plus interest at the rate of 15 per cent per annum, calculated and payable annually, not in advance.
- [79] On or about October 18, 2013, the Respondent received settlement proceeds in connection with the secured client file.
- [80] Hart Legal's portion of the funds received in connection with that file was \$1,467,000.
- [81] On October 21, 2013, Hart Legal issued a cheque in the amount of \$101,849.32 from the firm's general account payable to VLLC for a "100,000 loan repayment".
- [82] Also on October 21, 2013, Hart Legal issued a cheque in the amount of \$41,923.29 from the firm's general account payable to VLLC for a "40,000 loan repayment".
- [83] On the same day, the Respondent deposited the cheques into the VLLC bank account as part of a \$314,865.76 deposit marked as "Hart Legal – Loan repayments + interest payments".
- [84] Also on October 21, 2013, VLLC issued two cheques in the amounts of \$101,232.88 and \$39,842.74, both payable to "Hart Legal in Trust".
- [85] The Respondent deposited the cheques into his firm's trust account on October 21, 2013 as part of a \$315,281.10 deposit made that day.
- [86] The S Trust ledger records these cheques as being a "received from Victory Litigation Lending Corp - investment redemption and interest earned."

#### **Loan of \$127,000 to VLLC**

- [87] On January 27, 2014, the Respondent prepared and executed a promissory note and assignment (in his capacity as principal of VLLC and Hart Legal) in favour of "Darren Hart, Trustee for S Trust" for \$127,000 plus interest at the rate of 10 per cent per annum, calculated and payable annually, not in advance.

- [88] As security, the Respondent assigned Hart Legal's interest in the settlement proceeds in family litigation conducted on behalf of another client.
- [89] Also on January 27, 2014, the Respondent prepared and executed a promissory note (in his capacity as principal of Hart Legal) in favour of VLLC under which Hart Management Inc. promised to pay \$130,000 plus interest at the rate of 15 per cent per annum, calculated and payable annually, not in advance.
- [90] On the same day, the Respondent issued a cheque in the amount of \$127,000 from his firm's trust account payable to VLLC. On the same day, the Respondent deposited the cheque to the VLLC bank account.
- [91] Also on January 27, 2014, the Respondent issued a cheque in the amount of \$130,000 from the VLLC bank account payable to Hart Management Inc. On or about January 27, 2014, the Respondent deposited the cheque in the amount of \$130,000 to his Hart Management Account.
- [92] On November 26, 2014 Hart Management issued a cheque in the amount of \$146,250 from its Hart Management Account payable to VLLC. On the same day, the Respondent deposited the cheque into the VLLC bank account as "Hart Management - Repayment of loan w/interest".
- [93] Also on November 26, 2014, VLLC issued a cheque in the amount of \$137,541.00 payable to "Hart Legal in Trust". On the same day, the Respondent deposited the cheque to his firm's trust account.
- [94] The S Trust ledger records these cheques as being a "received from Victory Litigation Lending Corp - investment redemption and interest earned (10541.00)."

#### **Allegations 8 and 9 – Estate of CG**

- [95] The Respondent was appointed as executor and trustee of the Estate of CG under a will dated July 30, 2004. CG died on November 8, 2012.
- [96] Under the will, a society received a gift of \$10,060 and PB was the beneficiary of the residue of the estate.
- [97] The gross value of the estate at the date of death was \$4,852.95, but the estate was to receive monthly payments of approximately \$1,127.49 from the deceased's ex-husband's pension, and the executor was responsible to collect those payments and pass them onto the beneficiaries.

[98] On November 27, 2012, the Respondent opened a client file and trust ledger naming himself as the client and the matter as “Estate of CG - Estate Administration”.

### **Loan of \$6,000 to VLLC**

[99] On August 28, 2013, the Respondent prepared and executed a promissory note and assignment (in his capacity as principal of VLLC and Hart Legal) in favour of “Darren Hart, Trustee for the Estate of [CG]” for \$6,000 plus interest at the rate of 10 per cent per annum, calculated and payable annually, not in advance.

[100] As security, the Respondent assigned Hart Legal’s interest in the settlement proceeds in family litigation conducted on behalf of another client.

[101] Also on August 28, 2013, the Respondent prepared and executed a promissory note (in his capacity as principal of Berge Hart Cassels LLP doing business as Hart Legal) in favour of VLLC for \$6,000 plus interest at the rate of 15 per cent per annum, calculated and payable annually, not in advance.

[102] On the same day, the Respondent issued a cheque in the amount of \$6,000 from his firm’s trust account payable to VLLC.

[103] Also on the same day, the Respondent deposited a cheque to the VLLC bank account as part of a \$10,000 deposit made that day.

[104] On August 28, the Respondent issued a cheque in the amount of \$10,000 from the VLLC bank account payable to Hart Legal. On the same day, the Respondent deposited the cheque to his firm’s general account as part of a \$25,952.29 deposit made that day.

[105] On October 21, 2013, the Respondent issued a cheque in the amount of \$6,133.15 payable to VLLC for a “6,000 loan repayment”. On the same day, the Respondent deposited the cheque into the VLLC bank account as part of a \$314,865.76 deposit marked as “Hart Legal- Loan Repayments + interest payments”.

[106] Also on October 21, 2013, VLLC issued a cheque in the amount of \$6,088.77 payable to “Hart Legal in Trust”. On the same day, the Respondent deposited the cheque to his firm’s trust account as part of a \$315,281.19 deposit made that day.

[107] The G Trust ledger records this cheque as “received from Victory Litigation Lending Corp - investment redemption and interest earned (88.77)”.



**Allegation 11 – Unreported judgments**

- [108] On June 22, 2015, a certificate of judgment in the amount of \$107,148.21 was registered by the Minister of National Revenue (“CRA”) against the Respondent.
- [109] On June 26, 2015, a writ of seizure and sale was issued by the Federal Court to collect the amounts owed under the certificate of judgment registered on June 22.
- [110] On July 10, 2015, the judgment was registered in the Land Titles Office against the title to the Respondent’s property.
- [111] On September 8, 2015, a certificate of judgment in the amount of \$45,571.65 was registered in the Federal Court by CRA against Darren Hart Law Corporation.
- [112] The certificates of judgment related to unpaid corporate and personal taxes for the period 2013 and 2014.
- [113] On September 21, 2015, a writ of seizure and sale was issued by the Federal Court to collect the amounts owed under the certificate of judgment registered on September 8.
- [114] The Respondent did not satisfy either judgment within seven days of the date of entry.
- [115] The Respondent did not immediately inform the Executive Director of the Law Society in writing of the circumstances of the judgments and his proposal for satisfying the judgments.
- [116] On May 16, 2016, CRA assessed the Respondent’s 2015 income tax and benefit return and found that the Respondent had to pay \$186,278.01 by June 6, 2016. The amount owed included \$112,188.37 outstanding from 2015.
- [117] On May 9, 2017, CRA assessed the Respondent’s 2016 income tax and benefit return and found that the Respondent had to pay \$149,852.32 by May 29, 2017. The amount owed included \$122,899.22 outstanding from 2016.
- [118] On May 10, 2018, CRA assessed the Respondent’s 2017 income tax and benefit return and found that the Respondent had to pay \$143,511.88 by May 30, 2018. The amount owed included \$143,586.88 outstanding from 2016, which was offset by a tax credit.

## ONUS AND STANDARD OF PROOF

[119] The Law Society has the onus of proving the allegations in the Citation and the standard of proof is the balance of probabilities: *Foo v. Law Society of BC*, 2017 BCCA 151, at para. 63, and *Law Society of BC v. Schauble*, 2009 LSBC 11, at para. 43.

## TEST FOR PROFESSIONAL MISCONDUCT

[120] The test for what constitutes professional misconduct is “whether the facts as made out disclose a marked departure from that conduct the Law Society expects of its members”: *Law Society of BC v. Martin*, 2005 LSBC 16, at para. 171.

[121] In *Re: Lawyer 12*, 2011 LSBC 11, at para. 14, the hearing panel summarized previous applications of the *Martin* test as follows:

In my view, the pith and substance of these various decisions displays a consistent application of a clear principle. The focus must be on the circumstances of the Respondent’s conduct and whether that conduct falls markedly below the standard expected of its members.

[122] Not every breach of the Rules will amount to professional misconduct. In *Law Society of BC v. Lyons*, 2008 LSBC 09, at para. 35, the hearing panel discussed the factors for determining when a breach of the Rules is so serious that it amounts to professional misconduct:

In determining whether a particular set of facts constitutes professional misconduct or, alternatively, a breach of the Act or the Rules, panels must give weight to a number of factors, including the gravity of the misconduct, its duration, the number of breaches, the presence or absence of mala fides, and the harm caused by the respondent’s conduct.

## ANALYSIS

[123] The issues before this Panel are summarized as follows:

- (a) Did the Respondent misappropriate \$4,000 trust funds as alleged in Allegation 1?
- (b) Did the Respondent’s conduct in Allegations 1 to 10 amount to professional misconduct?

(c) Did the Respondent's conduct in Allegation 11 constitute a breach of the *Act* or the Rules?

**Did the Respondent misappropriate trust funds?**

[124] The Law Society submits that the Respondent's use of the \$4,000 trust funds as alleged in Allegation 1 was misappropriation. The Respondent denies that characterization and submits that his actions were a mistake not amounting to misappropriation.

[125] The Respondent further submits that the Panel should consider whether the elements of "malice, greed or intent" were present in the Respondent's conduct. The Respondent submits they were not, and as such, the conduct does not amount to misappropriation.

[126] "Misappropriation" is not a defined term in the *Act*, the Rules, the *Professional Conduct Handbook* (the "*Handbook*") or the *Code*. It is a concept developed through hearing panel decisions.

[127] What constitutes misappropriation and why it is considered so serious, is found in *Law Society of BC v. Gellert*, 2013 LSBC 22, at paras. 71 to 73:

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

In determining whether a lawyer has misappropriated trust funds, it matters not whether the lawyer received any personal benefit from taking the funds. Nor does it matter that the lawyer intended to or did return the funds in short order, that he or she was acting in response to severe personal financial pressures, or that the amount of money taken was relatively small.

The definition of misappropriation, and in particular its mental fault element, is driven by a recognition that the proper handling of trust funds is one of the core parts of the lawyer's fiduciary duty to the client. An unauthorized use of trust funds harms or risks harming the client, undermines the client's confidence in counsel, and has a seriously deleterious impact on the legal profession's reputation in the eyes of the

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

[128] The line of authority regarding misappropriation in *Doolan v. Law Society of Manitoba*, 2016 MBCA 57, has been followed in the more recent cases of *Law Society of Upper Canada v. Adams*, 2017 ONLSTH 102 and *Law Society of Ontario v. Wilkins*, 2019 ONLSTH 47.

[129] In *Adams*, the panel commented that “[t]he practice of law is a privilege. And when it comes to the accurate and proper accounting to clients for trust funds received and applied, lawyers must conduct themselves with absolute honesty and integrity. And our definition of misappropriation must not be too restrictive.”

[130] Similarly, in *Wilkins*, the panel reviewed the jurisprudence establishing a broad mental fault element for misappropriation, and adopted the view that the unauthorized use of trust funds, whether intentional or through negligence or gross incompetence, amounts to misappropriation.

[131] The panel in *Law Society of BC v. Sahota*, 2016 LSBC 29, commented on the test for misappropriation at paras. 62 to 64:

Further, the panel in *Law Society of BC v. Harder*, 2005 LSBC 48, provided at para. 56 the following helpful language to the quest for clarity on this issue:

A useful further clarification of the meaning of misappropriation is found in an American authority, in the matter of *Charles W. Summers* 114 NJ 209 @ 221 [SC 1989] where the Court stated:

Misappropriation is “any unauthorized use by the lawyer of clients’ funds entrusted to him, including not only stealing, but also unauthorized temporary use for the lawyer’s own purpose, whether or not he derives any personal gain or benefit therefrom.” [ . . . ] As we stated in *re Noonan* [ . . . ], knowing misappropriation consists simply of a lawyer taking a client’s money entrusted to him, knowing that it is the client’s money and knowing that the client has not authorized the taking. [ . . . ].

The lawyer’s subjective intent to borrow or steal, the pressures on the lawyer leading him to take the money, the

presence of the attorney's good character and fitness and absence of "dishonesty, venality, or immorality" are all irrelevant.

Thus, all that is required is for the lawyer to take the money entrusted to him or her knowing that it is the client's money and that the taking is not authorized.

In *Law Society of BC v. Gellert*, 2013 LSBC 22, the panel stated at para. 71:

Misappropriation of a client's trust funds occurs where the lawyer takes those funds for a purpose unauthorized by the client, whether knowingly or through negligence or incompetence so gross as to prove a sufficient element of wrongdoing. As this definition indicates, there must be a mental element of wrongdoing or fault, yet this mental element need not rise to the level of dishonesty as that term is used in the criminal law. See *Law Society of BC v. Ali*, 2007 LSBC 18, paras. 79-80, 105; *Harder*, para. 56.

[132] The Respondent withdrew and took client trust funds when he had no authorization to do so, and he used those funds for personal gain. The Respondent does not deny this.

[133] The Respondent took clients' funds entrusted to him. The Respondent knew the funds were the clients' funds and the Respondent knew he was not authorized to take and use those funds – they were retainer funds. This is misappropriation.

[134] Further, the loan to the Respondent's law firm was not without risk as it was secured by the law firm's ability to recover fees on separate client files. At no time did the Respondent consider the best interests of his clients and this is a serious misuse of trust funds.

[135] The Respondent urges the Panel to consider whether there was malice, greed or intent. The Panel does not consider this analysis to be a valid consideration based on the jurisprudence. However, if the Panel did consider such factors, the Respondent would still not be successful in demonstrating that his conduct was not misappropriation.

[136] The Respondent withdrew the trust funds to forward those funds to his law firm and used them not only to fund his business operations, but also to personally profit, without informing the clients or obtaining their consent. This Panel finds

this conduct to fall within the definition of “greed” that the Respondent asks us to consider. The Law Society submits that these factors make the misappropriation that much more egregious. The Panel agrees.

### **Conduct is a marked departure from standard expected**

[137] With respect to Allegations 1 to 10, the Law Society submits that the Respondent’s conduct is a marked departure from the standard expected of lawyers in three ways:

- (a) the conduct violates the prohibition against conflicts of interest;
- (b) the conduct violates the prohibition against borrowing from invested client funds; and
- (c) the conduct breaches the fiduciary duties owed to beneficiaries.

### **Conflict of interest**

[138] The Respondent accepts that he acted in a conflict of interest and admits that he “utterly failed” to see the conflict of interest in the VLLC loan process.

[139] The Panel accepts the Respondent’s admission.

[140] A conflict of interest exists where a lawyer has a personal financial interest in a client’s affairs or in a matter in which the lawyer is requested to act for a client.

[141] A lawyer must always be in a position to independently access and provide advice free from individual considerations. This is the cornerstone to the fiduciary duty owed to clients.

### **Prohibition against borrowing**

[142] Both the *Handbook* (chapter 7, rule 4) and the *Code* (rule 3.4-31) prohibit a lawyer from borrowing money from a client, except in very narrowly-defined circumstances.

[143] The Commentary to rule 3.4-31 of the *Code* states:

- [1] Whether a person is considered a client within this rule when lending money to a lawyer on that person’s own account or investing money in a security in which the lawyer has an interest is determined having regard to all circumstances. If the circumstances are such that the lender or investor might reasonably feel entitled to look to the lawyer for guidance and

advice about the loan or investment, the lawyer is bound by the same fiduciary obligation that attaches to a lawyer in dealings with a client.

- [144] Similarly, rule 3.4-28 of the *Code* provides that a lawyer must not enter into a transaction with a client unless the transaction is fair and reasonable to the client, the client consents to the transaction and the client has independent legal representation with respect to the transaction.
- [145] In addition, rule 3.4-35 of the *Code* prohibits a lawyer from giving a personal guarantee, or otherwise providing security for, any indebtedness in respect of which a client is a borrower or lender, except in the specific circumstances enumerated in rule 3.4-36, none of which have any application to this case.
- [146] With respect to investments as opposed to loans, both the *Handbook* (chapter 7, section 7) and *Code* (rule 3.4-29) place restrictions on a lawyer's ability to invest client funds in anything where the lawyer has a personal interest.
- [147] The evidence establishes that in each of the loan allegations, the Respondent was acting in his capacity as a lawyer. He issued accounts in each of the files.
- [148] It is clear on the evidence that the Respondent's law firm was borrowing from its clients. The fact that VLLC was in the middle of the transaction does not make an otherwise impermissible act, permissible. It demonstrates an attempt on behalf of the Respondent to evade the Rules.

### **Breach of fiduciary duty**

- [149] The Law Society submits that, in addition to acting in a conflict of interest and in breach of his fiduciary duty in his capacity as a lawyer for his trust and estate clients, the Respondent breached his fiduciary duty to the beneficiaries of the trusts and estates for which he acted as trustee.
- [150] In making these submissions, the Law Society relies on the provisions of the *Trustee Act*, RSBC 1996, c. 464.
- [151] The Panel does not have jurisdiction to make findings with respect to the *Trustee Act* and as such, is not making any findings in this regard.
- [152] The Panel finds that the Respondent breached his fiduciary duty in his capacity as a lawyer pursuant to the *Code* and the Rules as summarized above.

**Rule 3-50**

[153] Rule 3-50 of the Rules states that a lawyer against whom a monetary judgment is entered and who does not satisfy the judgment within seven days after the date of entry must immediately notify the Executive Director in writing of the circumstances of the judgment, and his or her proposal for satisfying the judgment.

[154] Rule 3-47(b) defines a “monetary judgment” as including (*inter alia*) “any certificate, final order or other requirement under a statute that requires payment of money to any party.”

[155] The importance of this rule was discussed by the hearing panel in *Law Society of BC v. Spears*, 2017 LSBC 29:

This Rule forms part of the “financial responsibility” requirements set out in Part 3, Division 6 of the Law Society Rules. It is particularly designed to protect the public’s funds being held by lawyers in their trust accounts and rightly so.

If lawyers are having financial difficulties, often evidenced by outstanding judgments against them, the Law Society as regulator should be concerned about whether client funds are adequately protected.

[156] The Respondent acknowledges that he did not report the certificates but submits that he did not do so because he was not aware that he was required to report them. While ignorance of the rules is not an excuse, in this case, an application of the *Lyons* factors and consideration of the harm prevention purpose underlying the relevant Rules suggests that the Respondent breached Rule 3-50 of the Rules when he failed to immediately report the unsatisfied judgments to the Executive Director, but that such breach would not amount to professional misconduct.

[157] This is because the Respondent committed only two breaches of the Rule (there were only two unsatisfied judgments) and the Respondent was unaware that he had to report the certificates to the Law Society. When he was advised of the obligation to report the judgments, he did so. The Respondent also submits that he has been communicating and cooperating with the CRA and, to the best of his knowledge, his tax liabilities have since been paid. In the totality of the circumstances, the Law Society submits that the breach was not sufficiently serious to warrant a finding of professional misconduct, and seeks a finding of a breach of the *Act* or Rules. The Panel accepts that submission.



### **Use of transcripts**

[158] The Respondent made lengthy submissions on the extent to which this Panel could consider the transcript of the Respondent's interview with the Law Society (Exhibit 2B, Tab 8).

[159] The evidence upon which the Panel has delivered its reasons consists of the admitted facts and documents contained in the Law Society's Notice to Admit dated July 11, 2019, along with the Agreed Statement of Facts dated July 27, 2020. The transcript was not relied on in delivering these reasons, and as a result, the Panel need not decide the scope upon which the statements in the transcripts can be considered.

### **NON-DISCLOSURE ORDER**

[160] The Law Society seeks an order under Rule 5-8(2) of the Rules that exhibits and transcripts containing confidential client information or privileged information not be disclosed to members of the public. The Respondent consents to the order.

[161] In order to prevent the disclosure of confidential or privileged information to the public, we order under Rule 5-8(2) that, if a member of the public makes a request for copies of the exhibits or transcripts in these proceedings, those exhibits and transcripts must be redacted for confidential or privileged information before being provided.

### **SUMMARY OF ORDERS MADE**

[162] The Law Society submits that the conduct of the Respondent calls for strict legal censure. The Respondent had a fiduciary duty, as a lawyer, towards his clients. The Respondent fell well below this duty.

[163] The Panel makes the following orders:

- (a) The Respondent has committed conduct that constitutes professional misconduct in relation to Allegations 1 to 10 of the Citation;
- (b) With respect to Allegation 1, the Respondent misappropriated \$4,000 of retainer funds;
- (c) The Respondent breached Rule 3-50 of the Law Society Rules in relation to Allegation 11, but the conduct alleged in Allegation 11 does not constitute professional misconduct;

- (d) If a member of the public makes a request for copies of the exhibits or transcripts in these proceedings, those exhibits and transcripts must be redacted for confidential or privileged information before being provided.