Citation issued: March 3, 2021

LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

LAW SOCIETY OF BRITISH COLUMBIA

AND

PAUL OTTO DE LANGE

RESPONDENT

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

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1. On November 7, 2022, the Discipline Committee considered and accepted a proposal submitted by the Respondent under Rule 4-29 of the Law Society Rules.

2. Under the accepted proposal, the Respondent admitted to various allegations of misconduct alleged in the Citation.

3. Under the Rule 4-29 proposal, the Respondent undertook that for a period of fifteen (15) years from January 1, 2023, he would not:

    a. 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 (the "Law Society");

    b. apply for re-admission to the Law Society or any other law society within Canada;

    c. 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;

d. 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 or unless any prospective employer successfully applies for and obtains permission pursuant to rule 6.1-4 of the Code of Professional Conduct for British Columbia.

(the "Undertaking").

4. As a result, the Citation is now resolved under Rule 4-29 of the Law Society Rules and the Respondent's admission of professional misconduct and his Undertaking will be recorded on his professional conduct record.

5. In making its decision, the Discipline Committee considered a letter to the Chair of the Discipline Committee, dated October 25, 2022, in which the Respondent admitted the disciplinary violation and gave his Undertaking not to practice law. Furthermore, the Committee also considered an Agreed Statement of Facts dated November 1, 2022, and the Respondent's prior professional conduct record.

6. As part of his proposal, the Respondent has acknowledged that pursuant to Rule 4-29(5) of the Law Society 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* applies to him.

7. At the conclusion of the term of his Undertaking, pursuant to s. 19(3) of the *Legal Profession Act*, should the Respondent apply for reinstatement in British Columbia, a mandatory credentials hearing would be held to consider his good character and fitness to practise law, with the Respondent bearing the onus of demonstrating he meets the requisite test. The Respondent's professional conduct record, including this admitted misconduct, as well as other relevant information, would be considered at that time.

8. If he were to be reinstated, the Respondent would have to comply with any "conditions on returning to practice" that a credentials panel may impose. The Law Society would have the opportunity to seek appropriate conditions to address the protection of the public.

9. As such, the public will be protected as the Respondent is not permitted to practise law for a lengthy period of time and the geographic scope of the Undertaking (specifically, the Respondent cannot practice anywhere in Canada and he must inform the Law Society if he applies to practice elsewhere in the world) adds an additional layer of protection beyond the orders that could be made by a Discipline panel. Finally, if the Respondent applies for reinstatement, he would be subject to a process where he bears the onus of proof as to his fitness to practise law.

The Key Admitted Facts:

Background

10. The Respondent was called and admitted as a member of the Law Society on August 6, 2009. From 2009 to September 2013, the Respondent practiced at Sikander Vikram Law Corporation. Since September 2013, the Respondent has practiced as a sole practitioner.

11. The citation in this matter was authorized by the Discipline Committee on February 18, 2021 and issued on March 3, 2021 (the "Citation").

12. The specific admissions made by the Respondent are summarized below. He admits professional misconduct in connection with various aspects of his representation of clients and trust accounting procedures. However, he did not misappropriate any client trust funds or engage in any dishonest conduct.

Allegation 1 – Failure to inquire

13. The Respondent admitted that between approximately July 2015 and July 2018, in 65 transactions directly or indirectly involving a client group (the "TG Group") set out in lines 1 to 15, and 17 to 18 of Table 1 and lines 1 to 23, 29 to 37, 39 to 50, and 55 to 58 of Table 2 of Schedule A (the "Transactions"), he used or permitted the use of his trust account to receive $21,781,206.82, and disburse $1,640,716.93 in circumstances where he failed to do following:

    a. be on guard against becoming the tool or dupe of an unscrupulous client or other persons;

    b. make reasonable inquiries about the circumstances of the Transactions and related client matters, including, but not limited to, one or more inquiries in relation to:

        (i) the Respondent's clients or other persons, or both;

        (ii) the legal or beneficial ownership of property and business entities;

        (iii) the subject matter and objectives of the Respondent's retainer;

        (iv) the nature and purpose of the Transactions;

        (v) the business relationships between parties and agents or intermediaries;

        (vi) the source of funds received;

        (vii) the purpose of the payment of the funds; and

(viii) the reason for the funds going to or through the Respondent's trust account;

c. make a record of the results of inquiries made; and

d. decline to act or continue to act in the Transactions until such time as he made the inquiries in (b).

14. The details of the suspicious transactions are set out in the Agreed Statement of Facts, but the suspicious circumstances that the Respondent should have inquired into included:

a. the involvement of an individual, T.G., who is charged with fraud, but not yet convicted or held civilly liable, in connection with different transactions that were addressed in a previous Law Society discipline proceeding involving a different lawyer;

b. T.G.'s involvement in the Transactions, including how T.G. would be compensated, was unknown or unclear to the Respondent;

c. T.G.'s status as an undischarged bankrupt;

d. the Transactions often involved many rounds of financing and refinancing, often on short terms;

e. the funds for the Transactions were often provided by bank draft;

f. the buyers and lenders associated with the Transactions were often known to T.G. personally, many of whom had done multiple transactions facilitated by T.G.;

g. the Transactions were effected through numbered companies or other corporations incorporated by T.G., or by another member of the TG Group, on behalf of T.G.;

h. while T.G. appeared to control the Transactions, he was not a director of any of the corporations involved;

i. funds from the Transactions were often paid to corporations who did not appear to have an interest in the Transactions;

j. T.G. frequently collected cheques from the Respondent, where those cheques were payable to corporations that T.G. did not own or direct;

k. in some instances, the corporations involved did not have bank accounts.

15. The Respondent failed to make inquiries in respect of these Transactions concerning the legal and beneficial ownership of the corporations who were participants to the Transactions, the source of the funds being used for the Transactions, and the business

purpose of the Transactions. The Respondent often failed to document who was his client, and from whom he has was authorized to take instructions. The Respondent failed to be on guard but does not admit he was in fact used as a tool or dupe of an unscrupulous client or other person.

Allegations 7, 18 and 19 – Conflict of interest, trust shortages and failure to eliminate and report trust shortages

16. The Respondent admitted that in the fall of 2017, he accidentally paid out funds held in trust to a client two times, creating a trust shortage which he failed to immediately eliminate. He further admitted that he acted in a conflict of interest by causing a mortgage to be registered on his client's property to secure repayment of the double payment without ensuring that his client had independent legal advice.

17. On October 19, 2017, the Respondent received a total of $175,000 in trust for his client.

18. On October 19, 2017, the Respondent signed a trust cheque payable to his client for $174,023.30, but did not provide that cheque immediately to the client.

19. On or around October 23, 2017, the Respondent spoke by phone with his client who instructed him to retain the funds in trust to be used as part of the deposit for another property transaction.

20. However, the Respondent failed to cancel or destroy trust cheque payable to the client for $174,023.30, which was ultimately collected and cashed by the client.

21. On November 3, 2017, the Respondent paid out $250,000 on another file on the erroneous assumption that the interfile trust transfer that the client had instructed him to perform, had in fact taken place.

22. This assumption was incorrect because the funds from had in fact been paid out directly to client on November 2, 2017, creating a trust shortage on in the amount of $175,000.

23. On or about November 10, the Respondent discovered the error and asked the client to return the funds. The client agreed to return the funds, but failed to do so.

24. On November 15, 2017, a different client requested the return of $315,000 from the Respondent. At that point in time, as a result of the erroneous payments described above, the Respondent did not have sufficient funds in his pooled trust account to return the $315,000 to his other client. He advised that other client that he could not pay, and for the following month the client followed up repeatedly seeking his $315,000.

25. On November 22, 2017, the Respondent repaid $200,000 of the $315,000 owed to the second client.

26. On December 13, 2017, having not received the funds from the first client, the Respondent personally paid $175,000 into trust to eliminate the trust shortage created on November 3, 2017. That same day, the Respondent provided the second client with a trust cheque for balance due to him, being $115,000.

27. In order to obtain security for the funds that the Respondent had personally advanced to eliminate the trust shortfall created by the duplicate payment, the Respondent obtained a mortgage over the client's property. The Respondent did not require his clients to obtain independent legal advice concerning the conflict of interest arising from the registration of the mortgage.

Allegations 8, 9, 10 and 11– Conflict of interest and breach of trust conditions

28. In March 2016, the Respondent was retained in connection with the conveyance of a residential apartment building in Burnaby.

29. On the day the transaction was set to close, March 24, 2016, there remained a financing gap for the purchasers, and a number of individuals gathered at the Respondent's office to attempt to complete the deal.

30. Over the course of the day, the Respondent drafted various documents related to the finance of the purchase transaction, including a promissory note, an assignment of shares and a share purchase agreement. These documents were intended to be security for the S. family, who were acting as lenders on the transaction.

31. The Respondent understood that he could not act for all of the individuals in his office that day because their interests in the transaction were different: one was the buyer, one was a director of the buyer and a guarantor on the first mortgage, two were lenders and two others had roles in the transaction which were not clear to the Respondent.

32. Several of the individuals in attendance at the Respondent's office on March 24, 2016 believed that the Respondent was acting as their lawyer, in circumstances where to do so would have been a conflict of interest. The Respondent prepared and had signed various consents to permit him to act, but those consents were not consistent as to who the Respondent was acting for.

33. Following the completion of the purchase on March 24, 2016, the Respondent continued to provide legal advice to various parties to that transaction regarding the property.

34. On February 22, 2017, the Respondent filed a notice of civil claim and certificate of pending litigation, seeking specific performance of the right of first refusal in the share purchase agreement that the Respondent had prepared on March 24, 2016. This claim was

brought against the buyer of the property, who the Respondent had been acting for on March 24, 2016.

35. While the buyer stated that he consented to the claim to be filed by the Respondent against him, consent was not sufficient to resolve the conflict. Therefore the Respondent admitted that between September 2016 and March 2017, by continuing to act for one or more opposing parties in a dispute related to residential apartment property located in Burnaby, he acted in a conflict of interest.

36. Finally, in connection with the same property conveyance on March 24, 2016, the Respondent admitted that he failed to honour the trust condition set out in his letter to opposing counsel dated March 24, 2016, by registering transfer documents when he did not hold in his trust account sufficient funds which, when added to the proceeds of a new mortgage, would allow him to complete the transaction.

Allegations 12, 13, and 14 – Breach of trust conditions and failure to deposit funds

37. In June 2018, the Respondent was retained in connection with a conveyance of a property in Vancouver, and was provided with a cheque for $43,156.59 being the balance of the deposit, after deducting the real estate commission.

38. The cheque was provided on conditions, which required the Respondent to hold the funds in trust "as a stakeholder pursuant to the provisions of the Real Estate Services Act and not on behalf of any of the principals to the transactions" and to repay the funds to the real estate brokerage if the sale did not complete.

39. The Respondent did not deposit the cheque to his trust account nor did the Respondent return the cheque to the real estate brokerage.

40. Subsequently, the Respondent's client agreed to increase the deposit, and the Respondent confirmed to opposing counsel that he had received a further $20,000 in trust representing that increased deposit.

41. However, at the time that the Respondent provided this confirmation, he had not taken steps to transfer into the trust ledger for his client the additional $20,000.

42. On July 2, 2018, the Respondent received a letter from opposing counsel which confirmed that the Respondent had in his trust account $20,000 together with balance of the original deposit of $60,000.00 less the amount due to the selling realtor. The Respondent did not write to opposing counsel to correct this statement.

43. On July 18, 2018, the Respondent received an email from opposing counsel regarding the termination of the sale and deposit, confirming again that the Respondent had the deposit in trust as a stakeholder, and that the deposit was not to be released to anyone without a

court order or agreement of the buyers and sellers. The Respondent did not write to opposing counsel to correct this statement.

44. On September 27, 2018, on instructions from his client, the Respondent released the additional $20,000 that had been intended to serve as the increased deposit.

45. On December 12, 2019, opposing counsel wrote to the Respondent to ask him to confirm that the Respondent had in trust both the $43,156.59 from real estate brokerage and the further $20,000 deposit paid by the Respondent's client.

46. On December 19, 2019, the Respondent wrote to opposing counsel and advised that he had no funds in trust in respect of the sale of the Vancouver property.

47. As a result, the Respondent admitted that between May 2018 and June 2020, in the course of representing his clients in connection with the purchase of a property located in Vancouver, B.C., he:

    a. he failed to honour the trust conditions to hold $43,156.59, being the excess deposit in the purchase transaction (the "Excess Deposit"), in trust;

    b. he failed to correct another lawyer, impression that the Respondent had received and held the Excess Deposit in trust, when the Respondent ought to have known this was inaccurate;

    c. he failed to honour the trust condition to hold the Excess Deposit in trust, as set out in a letter from another lawyer;

    d. deposit the Excess Deposit into trust to the credit of the Respondent's clients as soon as practicable;

    e. deposit or transfer $20,000 in deposit funds into trust to the credit of the Respondent's clients as soon as practicable;

    f. immediately eliminate the trust shortages created by his failure to make timely deposit of trust funds;

    g. failed to make a written report to the Executive Director of the Law Society of the relevant facts and circumstances surrounding the trust shortages;

    h. represented to another lawyer, that he had received and held $20,000 in deposit funds in trust (the "Deposit Funds"), when he ought to have known this was inaccurate; and

i. failed to honour the trust commitment he gave in his June 30, 2018 email to another lawyer, to hold the Deposit Funds in trust as set out in the other lawyer's letter dated July 2, 2018.

Allegations 2, 3, 15, 16, 17 and 20 – Breach of accounting rules and improper trust withdrawals

48. A forensic audit of the Respondent's practice, ordered under Law Society Rule 4-55, revealed a number of breaches of the Law Society Rules related to accounting and trust withdrawals.

49. In particular, the Respondent admitted that:

a. between August 2015 and July 2018, in the fifty-eight instances set out in Table 2 of Schedule A of the Citation, he received $44,604,020.92 into his firm's pooled trust account but did not maintain a book of entry or data source showing the source of the funds received;

b. between July 2015 and May 2017, in 17 instances set out in lines 1-16 and line 19 of Table 1 of Schedule A of the Citation, he disbursed $2,170,329.99 from his firm's pooled trust account but did not retain supporting documentation for the trust withdrawals.

c. in the period from July 17, 2015 to January 16, 2018, the Respondent used interfile fund transfers to transfer a total of $108.45, comprising many small trust fund balances in other client files to a trust ledger that belonged to him, in circumstances where there was a small amount of money held in trust, in the absence of specific written instructions from the clients or an outstanding invoice to support the transfer.

d. between July 2015 and November 2018, in relation to the 14 instances set out in lines 1-10, 12-14 and 16 of Schedule C of the Citation, he authorized the improper withdrawal of $7,524,014.61 in client trust funds, contrary to Rules 3-63 and 3-64(3) of the Law Society Rules and rule 7.2-12 of the *Code of Professional Conduct for British Columbia*, in one or more of the following circumstances:

(i) his trust accounting records were not current;

(ii) there were insufficient funds on deposit to the credit of the client(s); and

(iii) there were insufficient funds in his pooled trust account.

e. between July 2015 and November 2018, he failed to immediately eliminate the trust shortages caused by the instances referred to above in paragraph (d), and failed to

make written reports to the Executive Director of the Law Society of the relevant facts and circumstances surrounding the trust shortages, contrary to Rule 3-74 of the Law Society Rules.

f. between February 2015 and December 2018, he failed to comply with his accounting obligations under Part 3, Division 7 of the Law Society Rules (the "Rules") and the *Code of Professional Conduct for British Columbia* (the "*BC Code*"), by doing, or failing to do, the following:

(i) preparing monthly trust reconciliations of his pooled trust accounts within 30 days of the effective date of the reconciliation, or at all; and

(ii) maintaining a detailed monthly listing to support his monthly trust reconciliation that showed the unexpended balance of trust funds held for each client, and that identified each client for whom trust funds were held,

(iii) completing matter to matter trust transfers without the written approval or without an explanation of the purpose for which each transfer was made, or both, contrary to Rule 3-68(c) of the Rules;

(iv) recording trust transactions more than seven (7) days after the trust transaction, contrary to Rule 3-72 (1) of the Rules;

(v) maintaining his own funds in his pooled trust account, contrary to Rule 3-58(4) and Rule 3-60(5) of the Rules [Rule 3-52(4) prior to July 1, 2015],

(vi) withdrawing funds from trust in payment of his fees and disbursements without first preparing a bill for those fees and immediately delivering the bill to the client(s), contrary to section 69 of the *Legal Profession Act* and Rule 3-65(2) of the Law Society Rules, in two instances.