

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

RAFFAELE CRESCENZO

RESPONDENT

AGREED STATEMENT OF FACTS

Member Background

1. Raffaele Crescenzo (the “Respondent”) was admitted to the Bar of the Province of British Columbia on September 25, 1987.
2. From his date of call to October 7, 1988, the Respondent practised law as an employee of a law firm. From October 7, 1988 to September 17, 2009, the Respondent practised law as a sole practitioner in Vancouver, BC.
3. On January 1, 2011, the Respondent’s membership in the Law Society ceased for non-payment of fees. As of the date of execution of this Agreed Statement of Facts, the Respondent’s status is that of a former member.

Citation and Service

4. The citation in this matter was authorized by the Discipline Committee on June 21, 2012 and was issued on July 11, 2012 (the “Citation”).
5. The Respondent admits that on or about July 12, 2012, he was served through his counsel with the Citation and waives the requirements of Rule 4-15 of the Law Society Rules.

Attachments

6. Except where otherwise stated, it is agreed in respect of each document attached to this Agreed Statement of Facts that it:

- a. is a true copy of the original document,
- b. was written or created on the date on the face of the document,
- c. where by the content or nature of the document it was intended to be sent or delivered, that it was sent or delivered on the date it bears on its face and was subsequently received by the intended recipient,
- d. where on its face the document purports to have been written or created under the instructions of the person who signed it or where on its face the document's creation was authorized by the person who signed it, that it was so written, created or authorized,
- e. where the document purports on its face to have been received on a particular date or time, that it was so received, and
- f. is admitted into evidence for the proof of the truth of the matters recorded in it.

Background Facts

7. On or about August 6, 2009, the Law Society's Trust Assurance Department gave notice to the Respondent that a routine compliance audit of the books and records of his practice was scheduled for September 22, 2009.
8. On September 16, 2009, a lawyer representing the Respondent contacted the Law Society and requested a meeting so that the Respondent could self-report trust account issues.
9. On September 17, 2009, the Respondent, with his counsel, met with Law Society staff and admitted that during the preceding 18 month period he took approximately \$150,000 from his pooled trust account when he was not entitled to these funds.
10. During this meeting and in subsequent communications with various Law Society staff in September and October 2009, the Respondent stated:
 - a. He has had health issues since the 1990s, including lymphoma, chronic depression, anxiety disorder and prostate cancer. His wife and son have also had serious health issues. He reported that these issues had impaired his judgment during the preceding 18 months.
 - b. He was on prescription medication and developed an addiction to the drugs. He has sought assistance from the Lawyers' Assistance Program for his addiction.

- c. Approximately two years ago, he was indebted to the Canada Revenue Agency (“CRA”) in the amount of \$88,000. Approximately 18 months ago, he started to use funds from his trust account with the intention of repaying the money but he has not replaced the funds.
 - d. When he received notice of the upcoming Law Society compliance audit, he realized the misappropriation would come to light and he consulted a bankruptcy trustee. On September 15, 2009, the Respondent signed a Notice of Intention to Make a Joint Proposal for bankruptcy, which was filed with the Office of the Superintendent of Bankruptcy on September 16, 2009. The Law Society was listed as an unsecured creditor on the Claims Register for the bankruptcy for \$150,000. The Respondent and his wife were in the process of selling their house and the Respondent proposed to pay to the Law Society \$100,000 from the proceeds of the sale of his home, after other secured creditors, including CRA, were paid.
11. On September 17, 2009, the Respondent signed a voluntary undertaking to cease practice as of that date and consented to the appointment of a custodian. By Order of the B.C. Supreme Court on September 17, 2009, the Law Society was appointed as custodian over the Respondent’s law practice. Staff lawyer, Sherelle Goodwin, was designated to perform the duties and functions and exercise the powers of a custodian on behalf of the Law Society (the “Custodian”).
 12. On September 18, 2009, the Respondent provided a preliminary list of clients and amounts owing (totalling \$132,844.63).
 13. On October 13, 2009, the Chair of the Discipline Committee issued an order under Rule 4-43 authorizing an investigation of the books, records and accounts of the Respondent and his firm (the “Audit”). External accountant, Don Terrillon, CGA, was designated to conduct the Audit. Mr. Terrillon prepared an interim report dated March 16, 2011 (the “Audit Report”). The Audit Report included Mr. Terrillon’s findings with respect to the accuracy of the amounts reported by the Respondent as having been taken by him when he was not entitled to them. The Audit Report included additional findings related to matters that are not the subject of the Citation herein.
 14. The Custodian retained an external accountant, Lilly Woo of Mew & Company, to reconcile the Respondent’s trust accounts and reconstruct, to the extent possible, the client trust ledger balances. Ms. Woo prepared a reconstruction as at November 23, 2009 of transactions dating back to January 2008 (the “Reconstructed Ledger”).

15. Ms. Woo determined, based on a reconciliation of all client ledgers sitting in a negative position, that the Respondent's client trust liabilities totalled \$693,799.52 but the pooled trust account had a bank balance of only \$549,759.18, resulting in a global trust shortage of \$144,040.34.
16. The Custodian identified funds withdrawn by the Respondent over and above the global trust shortage when she reviewed individual client files, including matters where the client trust ledger had a positive balance.
17. The evidence obtained during the investigation establishes that between approximately December 2006 and September 2009, the Respondent took funds in the total amount of \$156,309.85 held in trust on behalf of his clients by withdrawing funds from his pooled trust account by cheques made payable to himself when he was not entitled to the funds. The particulars of these transactions are set out in paragraphs 19 through 121 below.

Particulars of the Takings

Allegation 1.1

18. From approximately 2006 to 2009, the Respondent acted for AB, the Administrator of the Estate of MM. AB was the common law wife of the deceased.
19. The Respondent received estate funds into his trust account. He took \$18,946.24 from trust by writing himself cheques totalling \$26,016.34 from December 2006 through February 2009 when he was entitled to only \$7,070.10 as payment for fees and disbursements.
20. The Respondent debited the payments against two ledgers. The following cheques totalling \$11,100 were written in 2006 and 2007 and recorded in the first ledger:
 - a. Cheque dated December 4, 2006 in the amount of \$1,003.17.
 - b. Cheque dated December 4, 2006 in the amount of \$99.17.
 - c. Cheque dated December 22, 2006 in the amount of \$800.
 - d. Cheque dated December 31, 2006 in the amount of \$1,400.
 - e. Cheque dated January 2, 2007 in the amount of \$650.
 - f. Cheque dated January 4, 2007 in the amount of \$2,150.
 - g. Cheque dated January 17, 2007 in the amount of \$501.68.
 - h. Cheque dated January 19, 2007 in the amount of \$2,897.66.

- i. Cheque dated February 15, 2007 in the amount of \$498.52.
 - j. Cheque dated June 6, 2007 in the amount of \$1,099.80.
21. The following cheques totalling \$14,916.34 were written in 2008 and 2009 and recorded in the second ledger:
- a. Cheque dated April 10, 2008 in the amount of \$318.
 - b. Cheque dated April 24, 2008 in the amount of \$2,721.87.
 - c. Cheque dated June 11, 2008 in the amount of \$2,064.68.
 - d. Cheque dated October 24, 2008 in the amount of \$474.92.
 - e. Cheque dated December 3, 2008 in the amount of \$550.
 - f. Cheque dated December 5, 2008 in the amount of \$2,373.67.
 - g. Cheque dated December 24, 2008 in the amount of \$1,861.64.
 - h. Cheque dated January 7, 2009 in the amount of \$850.
 - i. Cheque dated February 5, 2009 in the amount of \$1,725.28.
 - j. Cheque dated February 13, 2009 in the amount of \$1,976.28.
22. In addition, the Respondent took a further \$1,504 from trust by withdrawing this amount for probate fees by cheque dated June 12, 2007 in addition to the \$7,070.10 withdrawn for his fees and disbursements when the \$7,070.10 payment already included \$1,504 as a disbursement for the probate fees.
23. Of the total amount taken, as particularized above (\$20,450.24), \$7,166.31 was taken from funds due to this client and the remaining amount of (\$13,283.93) was taken from the pooled trust funds. The 2006 and 2007 payments are referenced in the Respondent's handwritten ledger.

Allegation 1.2

24. In 2007 and 2008, the Respondent represented PS in connection with the administration of the Estate of PC (file no. 6118).
25. The Respondent received estate funds into trust. He took \$293.57 from funds held in trust for this client by issuing himself cheques totalling \$24,379.23 from March 1, 2007 to May 31, 2008 when he was entitled to only \$24,085.66 as payment for fees and disbursements. The 2007 payments are referenced, along with the 2008 payments, in a reconstruction prepared by the Custodian.

Allegation 1.3

26. From 2007 to 2009, the Respondent represented RG, the Executor of the Estate of PG, in connection with estate matters (file no. 785), and acted for the Estate in connection with the sale of a property (file no. 905).
27. From October 2007 to May 2009, the Respondent took \$25,396.83 from trust by issuing himself cheques totalling \$27,702.83 on both files when he was entitled to payment for fees and disbursements of only \$1,406 on the estate file and \$900 on the conveyance file.
28. The Respondent recorded the following cheques totalling \$10,106 on three separate ledgers relating to the estate file:
 - a. Cheque dated October 10, 2007 in the amount of \$5,842.
 - b. Cheque dated November 13, 2007 in the amount of \$2,858.
 - c. Cheque dated July 31, 2008 in the amount of \$1,406.
29. He recorded the following cheques totalling \$17,596.83 on a ledger relating to the conveyance file:
 - a. Cheque dated January 2, 2009 in the amount of \$650.
 - b. Cheque dated January 27, 2009 in the amount of \$950.
 - c. Cheque dated February 4, 2009 in the amount of \$2,385.81.
 - d. Cheque dated February 11, 2009 in the amount of \$900.
 - e. Cheque dated February 24, 2009 in the amount of \$2,497.57.
 - f. Cheque dated February 26, 2009 in the amount of \$586.21.
 - g. Cheque dated March 4, 2009 in the amount of \$2,231.31.
 - h. Cheque dated March 10, 2009 in the amount of \$1,987.95.
 - i. Cheque dated March 10, 2009 in the amount of \$750.
 - j. Cheque dated March 19, 2009 in the amount of \$2,351.96.
 - k. Cheque dated March 25, 2009 in the amount of \$975.
 - l. Cheque dated March 30, 2009 in the amount of \$950.
 - m. Cheque dated May 11, 2009 in the amount of \$381.02.

30. The funds were taken in part from funds held in trust for this client and in part from the pooled trust funds. The 2007 payments are referenced in the Respondent's handwritten ledger.

Allegation 1.4

31. In 2008, the Respondent represented GB, BM and LR in connection with their purchase of property and subsequent sale of that same property.
32. The financing for the property purchase (file no. 7121) was done in part by way of a private mortgage granted back to one of the vendors (former spouse of GB) and in part by way of refinancing of an existing mortgage. The existing mortgage was supposed to be paid out from the new mortgage proceeds (payout amount at the time was \$3,910.37) but the Respondent failed to do that. As a result, he held \$3,993.45 in trust. He took these funds by issuing himself a cheque dated March 12, 2008 in the amount of \$2,660.50 and a cheque dated April 30, 2009 in the amount of \$1,332.95 when he was not entitled to the funds.
33. Several months later, the clients sold the property (file no. 8111) and the Respondent acted for them in the sale. He received the net sale proceeds in trust and disbursed them to pay out mortgages with the balance paid to the clients in accordance with directions with one exception; the Respondent paid GB \$3,400 less than he was entitled to. He took these funds from trust by issuing himself a cheque dated September 16, 2008 in the amount of \$476.18 and a cheque dated November 28, 2008 in the amount of \$2,923.82 when he was not entitled to the funds.

Allegation 1.5

34. In 2008, the Respondent represented FH in simultaneous transactions involving the purchase of one property (file no. 810) and sale of another property (file no. 814).
35. After receiving funds in trust and making certain authorized withdrawals, including the payment of his fees on both files, the Respondent held \$764.68 in trust representing excess mortgage proceeds. Instead of paying these funds to his client, the Respondent took them by issuing himself a cheque dated April 13, 2008 in the amount of \$375.00 and a cheque dated May 12, 2008 in the amount of \$389.68 when he was not entitled to the funds.

Allegation 1.6

36. On June 6, 2008, the Respondent recorded a transfer of \$42.00 to a client trust ledger identified as "MA" but there was no actual deposit of any funds. He took the funds from trust by issuing himself a cheque dated June 6, 2008 in the amount of \$42

when he was not entitled to the funds. The funds were taken from the pooled trust funds.

Allegation 1.7

37. The Respondent created a ledger card for a client identified as “GA” when no related client file existed and no funds were held in trust.
38. On June 26, 2008, the Respondent took \$555.10 from trust by issuing himself a cheque in the amount of \$555.10 when he was not entitled to the funds. He debited the amount against the “GA” ledger but the funds were taken from the pooled trust funds.

Allegation 1.8

39. In 2008, the Respondent represented PS, the purchaser in a real estate transaction.
40. The Respondent received the purchase proceeds in trust. He took \$894 from trust by issuing himself a cheque dated June 17, 2008 in the amount of \$950, having already withdrawn \$950 as payment for the fees and disbursements that he was entitled to, when he was entitled to bill only a further \$56 for disbursements. The \$894 was taken from the pooled trust funds.

Allegation 1.9

41. In 2008, the Respondent represented AQ, the vendor in a real estate transaction (file no. 862).
42. On July 9, 2008, the Respondent took \$1,331.81 from trust by issuing himself a cheque in the amount of \$881.81 and another cheque in the amount of \$450 when he was not entitled to the funds and after he had already billed and received payment for his fees. The funds were taken from the pooled trust funds.

Allegation 1.10

43. In 2008, the Respondent represented V Ltd., the principals of which were SB and RR, in connection with the refinancing of a property owned by the company (file no. 8121).
44. The Respondent received mortgage proceeds into trust but did not pay out all of the net proceeds to his clients; instead he took \$5,160.08 from trust by issuing himself a cheque dated August 8, 2008 in the amount of \$2,475.08 and a cheque dated September 9, 2008 in the amount of \$2,685 when he was not entitled to these funds.

Allegation 1.11

45. In 2008, the Respondent represented DD in various matters, including a mortgage transaction in connection with the refinancing of property.
46. The Respondent recorded a transfer of \$500 from a ledger related to a matter involving this client (file no. 835) to a ledger identified as "DD (0893)". He took \$250 from trust by issuing himself a cheque dated October 7, 2008 in that amount when he was not entitled to the funds and after he had already received payment for fees and disbursements that he was entitled to. The funds were taken from trust funds held to the credit of this client.

Allegation 1.12

47. In 2008, the Respondent represented MM, the purchaser in a real estate transaction and two client files were opened (file nos. 8127 and 8129) but transactions were recorded in one client ledger.
48. On October 30, 2008, the Respondent took \$930.86 from trust by issuing himself two cheques in the amount of \$465.43 each when he was not entitled to these funds as he had already billed and received payment for his fees. The funds were taken in part from the pooled trust funds and in part from funds held in trust to the credit of this client.

Allegation 1.13

49. In 2008, the Respondent represented VD, the purchaser in a real estate transaction in which he also acted for the lender (file no. 8112).
50. Due to errors in the Statement of Adjustments, the Respondent received more money in trust than was required to complete the transaction. Instead of paying the excess funds to his purchaser client, he took \$5,417.30 from trust by issuing himself the following cheques when he was not entitled to the funds and had already received payment for fees and disbursements that he was entitled to:
 - a. Cheque dated November 6, 2008 in the amount of \$1,350.
 - b. Cheque dated November 24, 2008 in the amount of \$1,275.
 - c. Cheque dated December 1, 2008 in the amount of \$700.
 - d. Cheque dated December 19, 2008 in the amount of \$2,092.30.

Allegation 1.14

51. In 2008, the Respondent represented GC and GD, the principals of F Co. and vendors in a real estate transaction (client file no. 8153).
52. The Respondent was entitled to payment of \$747.50 for his fees and disbursements. He took \$747.50 from trust by withdrawing funds twice in payment. He issued himself two cheques dated December 9, 2008 and December 17, 2008 in the amount of \$747.50 each. These funds were taken from the pooled trust funds.

Allegation 1.15

53. The Respondent created a ledger card for a client identified as “DB” when no related client file existed and no funds were held in trust (although he had a client by the name of D Ltd. but held no funds in trust for this client at the time of the payment described in the following paragraph).
54. The Respondent took \$2,973.67 from trust by issuing himself a cheque dated December 5, 2008 when he was not entitled to these funds. He debited the payment against the “DB” ledger but the funds were taken from the pooled trust funds.

Allegation 1.16

55. The Respondent created a ledger card for a client identified as “MO” when no related client file existed and no funds were held in trust.
56. The Respondent took \$5,710.71 from trust by issuing himself a cheque dated December 29, 2008 in the amount of \$4,345.18 and cheque dated January 27, 2009 in the amount \$1,365.53 when he was not entitled to these funds. He debited the payments against the “MO” ledger but the funds were taken from the pooled trust funds.

Allegation 1.17

57. In 2009, the Respondent represented JD and ES, the vendors in a real estate transaction (client file no. 8155).
58. The Respondent was entitled to payment of \$908.98 for his fees and disbursements. He took \$908.98 from trust by withdrawing funds twice in payment. He issued two cheques dated January 12, 2009 and January 15, 2009 in the amount of \$908.98 each. The funds were taken from pooled trust funds.

Allegation 1.18

59. In 2008, the Respondent represented GM, the vendor in a real estate transaction (client file no. 8146).
60. Approximately six months after the transaction completed and he received payment for fees and disbursements that he was entitled to, the Respondent took \$1,400 from trust by issuing himself a cheque dated January 14, 2009 in that amount when he was not entitled to these funds. The payment was recorded in a ledger connected to this client but the funds were taken from the pooled trust funds.

Allegation 1.19

61. The Respondent created a ledger card for a client identified as “MP” when no related client file existed and no funds were held in trust.
62. On January 26, 2009, the Respondent took \$650 from trust by issuing himself a cheque in that amount when he was not entitled to the funds. He debited the payment against the “MP” ledger but the funds were taken from the pooled trust funds.

Allegation 1.20

63. The Respondent represented R Ltd. in connection with an asset sale in 2007 (client file no. 796).
64. On January 26, 2009, the Respondent took \$2,501.32 from trust by issuing himself a cheque in that amount when he was not entitled to the funds. He debited the payment against a client ledger identified as “R Café” but he did not have a client by that name and no funds were held in trust at this time on behalf of either R Café or R Ltd. The funds were taken from the pooled trust funds.

Allegation 1.21

65. The Respondent created a ledger card for a client identified as “YA” when no related client file existed and no funds were held in trust.
66. On January 4, 2009, the Respondent took \$3,003.33 by issuing himself a cheque in that amount when he was not entitled to the funds. He debited the payment against the “YA” ledger but the funds were taken from the pooled trust funds.

Allegation 1.22

67. In 2007, the Respondent represented JH in connection with a real estate transaction (client file no. 7104).

68. After the transaction was completed and the file closed, the Respondent took \$2,835.34 from trust by issuing himself the following cheques when he was not entitled to the funds.
- a. Cheque dated January 9, 2009 in the amount of \$1,417.67.
 - b. Cheque dated May 11, 2009 in the amount of \$1,107.86.
 - c. Cheque dated May 13, 2009 in the amount of \$309.81.
69. The Respondent created a new ledger purportedly related to the JH client matter and debited the payments against that ledger but the funds were taken from the pooled trust funds.

Allegation 1.23

70. In 2009, the Respondent represented KO and BO, purchasers in a real estate transaction (file no. 902).
71. The Respondent was entitled to a payment of \$1,050 for his fees and disbursements. He took \$1,050 from trust by withdrawing funds twice in payment. He issued himself two cheques, dated February 18, 2009 and February 26, 2009, each in the amount of \$1,050. The funds were taken primarily from the pooled trust funds.

Allegation 1.24

72. The Respondent represented G Ltd. in an asset sale transaction (file no. 8179).
73. After the transaction completed and he received payment for fees and disbursements that he was entitled to, the Respondent took \$1,860 from trust by issuing himself a cheque dated February 28, 2009 in the amount of \$550 and cheque dated March 3, 2009 in the amount of \$1,310 when he was not entitled to the funds. The funds were taken from the pooled trust funds.

Allegation 1.25

74. The Respondent created a ledger card for a client identified as "FA" when no related client file existed and no funds were held in trust.
75. On March 3, 2009, the Respondent took \$585.30 from trust by issuing himself a cheque in that amount when he was not entitled to the funds. He debited the payment against the "FA" ledger but the funds were taken from the pooled trust funds.

Allegation 1.26

76. The Respondent created a ledger card for a client identified as “ML” when no related client file existed and no funds were held in trust.
77. On March 16, 2009, the Respondent took \$1,250 from trust by issuing himself a cheque in that amount when he was not entitled to the funds. He debited the payment against the “ML” ledger but the funds were taken from the pooled trust funds.

Allegation 1.27

78. In 2009, the Respondent represented AB and CB, the purchasers in a real estate transaction (file no. 908).
79. The Respondent received purchase proceeds into trust. After making certain authorized withdrawals, including payment for his fees and disbursements, he took \$964 from trust by issuing himself a cheque dated March 12, 2009 in the amount of \$975 and cheque dated March 30, 2009 in the amount of \$47 when he was only entitled to bill an additional \$58 for disbursements. Of the funds particularized above, \$190.30 was taken from funds held to the credit of this client that were supposed to be used to pay for title insurance. The remaining amount (\$773.70) was taken from the pooled trust funds.

Allegation 1.28

80. In 2009, the Respondent represented TB, the Administrator of the Estate of TT (file no. 8137).
81. The Respondent received estate funds into his trust account. He properly distributed the funds in accordance with the accounting provided to the client but he took a total of \$7,614.02 from trust as described in the following two paragraphs. The funds were taken from the pooled trust funds.
82. According to the accounting provided to the client in the “Administrator’s Statement of Accounts”, the Respondent was entitled to fees and disbursements of \$8,615.96 which included a disbursement of \$416 for probate filing fee. The Respondent issued himself four cheques totalling \$15,813.98 (\$7,198.02 more than what he was entitled to):
 - a. Cheque dated March 26, 2009 in the amount of \$4,607.96.
 - b. Cheque dated April 6, 2009 in the amount of \$4,191.96.

- c. Cheque dated April 16, 2009 in the amount of \$5,615.96.
 - d. Cheque dated May 12, 2009 in the amount of \$1,398.10.
83. The Respondent also withdrew another \$416 to pay the probate filing fee by cheque dated March 26, 2009 when this amount was already included in the bill for \$8,615.96.

Allegation 1.29

84. In 2008, the Respondent represented DD in connection with a mortgage transaction involving the refinancing of property (file no. 8170).
85. Approximately four months after the transaction completed and he received payment for fees and disbursements that he was entitled to, the Respondent took \$4,508.72 from trust by issuing himself a cheque dated March 9, 2009 in the amount of \$550 and cheque dated May 2, 2009 in the amount of \$3,958.72 when he was not entitled to these funds. He debited the payments against this client ledger but the funds were taken from the pooled trust funds.

Allegation 1.30

86. In 2009, the Respondent represented DU, the purchaser in a real estate transaction that did not complete (file no. 915).
87. The Respondent received \$9,802.50 from the realtor to hold in trust on certain undertakings which required him to return the funds upon request to the realtor if the transaction did not complete. The transaction did not complete and the Respondent took \$3,618.76 from trust by issuing himself the following cheques when he was not entitled to the funds:
- a. Cheque dated March 9, 2009 in the amount of \$1,050.
 - b. Cheque dated March 24, 2009 in the amount of \$895.20.
 - c. Cheque dated May 8, 2009 in the amount of \$778.39.
 - d. Cheque dated August 14, 2009 in the amount of \$895.17.
88. The first cheque described above was issued prior to the Respondent receiving monies in trust (March 24, 2009) and, therefore, the funds were taken from the pooled trust funds. The remaining funds were taken from funds held in trust on behalf of this client.

Allegation 1.31

89. In 2009, the Respondent represented OD, LD and SD, the vendors in a real estate transaction (file no. 916).
90. The Respondent received the sale proceeds into trust, made certain authorized withdrawals, including payment of his fees and disbursements in April 2009. He subsequently took \$4,112.96 from trust by issuing himself the following cheques when he was not entitled to the funds:
 - a. Cheque dated April 13, 2009 in the amount of \$595.98.
 - b. Cheque dated May 5, 2009 in the amount of \$766.88.
 - c. Cheque dated May 5, 2009 in the amount of \$875.
 - d. Cheque dated June 29, 2009 in the amount of \$1,875.10.
91. The funds were taken from the pooled trust funds.

Allegation 1.32

92. In 2009, the Respondent acted for JA and KE, the purchasers in a real estate transaction (file no. 918).
93. The Respondent received purchase proceeds into trust. After making certain authorized withdrawals, including payment for his fees on April 30, 2009, he took \$975 from trust by issuing himself a cheque dated May 1, 2009 in that amount when he was not entitled to the funds. The funds were taken from the pooled trust funds.

Allegation 1.33

94. In 2009, the Respondent represented SB, the vendor in a real estate transaction (file no. 931).
95. The Respondent received the sale proceeds into trust. After making certain authorized withdrawals, including payment of his fees and disbursements on June 15 and 16, 2009, he took \$13,680.07 from trust by issuing himself the following cheques when he was not entitled to the funds.
 - a. Cheque dated June 23, 2009 in the amount of \$825.
 - b. Cheque dated June 24, 2009 in the amount of \$2,310.85.
 - c. Cheque dated June 30, 2009 in the amount of \$3,265.19.

- d. Cheque dated July 3, 2009 in the amount of \$3,931.14.
 - e. Cheque dated July 8, 2009 in the amount of \$2,397.89.
 - f. Cheque dated August 5, 2009 in the amount of \$950.
96. Of these funds, \$2,675.95 was taken from funds that should have been paid to this client and the remaining amount (\$11,004.12) was taken from the pooled trust funds.

Allegation 1.34

97. In 2009, the Respondent represented JM in connection with the sale of a manufactured home (file no. 921).
98. The Respondent received the sale proceeds into trust and disbursed the funds to his client. He billed the client for his fees and disbursements and received payment directly from the client. He subsequently took \$2,812.28 from trust by issuing himself the following cheques when he was not entitled to the funds:
- a. Cheque dated June 24, 2009 in the amount of \$550.
 - b. Cheque dated July 20, 2009 in the amount of \$1,485.95.
 - c. Cheque dated July 21, 2009 in the amount of \$349.15.
 - d. Cheque dated August 5, 2009 in the amount of \$427.18.
99. The funds were taken from the pooled trust funds.

Allegation 1.35

100. In 2009, the Respondent represented DB and MV in a mortgage transaction.
101. The Respondent received the mortgage proceeds into trust and disbursed the net proceeds to his client. He took \$950 from trust by issuing himself the following cheques totalling \$2,116.03 when he was entitled to only \$1,166.03 as payment for fees and disbursements:
- a. Cheque dated June 30, 2009 in the amount of \$966.03.
 - b. Cheque dated July 2, 2009 in the amount of \$950.
 - c. Cheque dated July 8, 2009 in the amount of \$200.
102. The funds were taken from the pooled trust funds.

Allegation 1.36

103. In 2009, the Respondent represented MR in connection with the purchase of the remaining half-interest in property owned by the client (file no. 948).
104. The Respondent received into trust the funds required to complete the transaction and made certain authorized withdrawals. He took \$296.25 from trust by issuing himself two cheques totalling \$1,275 (cheque dated July 15, 2009 in the amount of \$800 and cheque dated July 22, 2009 in the amount of \$475) when he was entitled to payment of only \$978.75. The funds were taken primarily from the pooled trust funds.

Allegation 1.37

105. In 2009, the Respondent represented JB in connection with the sale of one property and purchase of another property (file nos. 936 and 937).
106. After the transactions completed and the Respondent made certain authorized withdrawals from trust, including payment for his fees and disbursements, he held \$566.91 in trust as a result of having received mortgage proceeds of \$500 more than anticipated. Instead of paying the \$500 to his client, the Respondent took \$500 from trust by issuing himself a cheque dated July 8, 2009 in the amount of \$566.91 when he was entitled to only \$66.91 as payment for additional disbursements.

Allegation 1.38

107. In 2009, the Respondent represented KD and MB, the purchasers in a real estate transaction (file no. 951).
108. The Respondent received the purchase proceeds into trust and made certain authorized withdrawals. He took \$1,398.04 from trust by issuing himself three cheques totalling \$2,514.04 (two cheques dated July 13, 2009 in the amount of \$950 each and one cheque dated August 4, 2009 in the amount of \$614.04) when he was entitled to only \$1,116 as payment for fees and disbursements. These funds were taken in part from funds held in trust for these clients (\$700.77 should have been paid to the strata corporation on behalf of the clients and \$35 should have been paid as an insurance binder fee disbursement on behalf of the clients) and the remaining amount (\$662.27) was taken from the pooled trust funds.

Allegation 1.39

109. In 2009, the Respondent represented RC and GC, the vendors in a real estate transaction (file no. 939).
110. The Respondent received the net sale proceeds into trust and made certain authorized withdrawals (payment of taxes owing and an interim payment to RC). He did not immediately pay out the mortgage or the balance of sale proceeds to the clients as he was awaiting instructions regarding disbursement of funds. In the interim, he took \$13,153.46 from trust by issuing himself the following cheques when he was not entitled to these funds:
- a. Cheque dated July 31, 2009 in the amount of \$1,395.10.
 - b. Cheque dated July 31, 2009 in the amount of \$2,750.85.
 - c. Cheque dated August 4, 2009 in the amount of \$4,621.96.
 - d. Cheque dated August 12, 2009 in the amount of \$350.
 - e. Cheque dated August 14, 2009 in the amount of \$546.06.
 - f. Cheque dated August 17, 2009 in the amount of \$950.
 - g. Cheque dated August 19, 2009 in the amount of \$750.
 - h. Cheque dated August 25, 2009 in the amount of \$1,789.49.
111. The funds were taken from the sale proceeds held in trust for his clients.

Allegation 1.40

112. In 2009, the Respondent represented MU, the purchaser in a real estate transaction (file no. 952).
113. The Respondent received the purchase proceeds into trust and made certain authorized withdrawals. He took \$1,497.83 by issuing himself the following cheques totalling \$2,547.83 when he was entitled to only \$1,050 as payment for fees and disbursements.
- a. Cheque dated August 8, 2009 in the amount of \$950.
 - b. Cheque dated August 19, 2009 in the amount of \$975.
 - c. Cheque dated August 30, 2009 in the amount of \$273.03.
 - d. Cheque dated August 30, 2009 in the amount of \$349.80.

114. The funds were taken from funds that should have been paid to his client.

Allegation 1.41

115. In 2009, the Respondent represented F Ltd. in connection with a mortgage transaction involving the refinancing of property (file no. 914).

116. The Respondent received the mortgage proceeds into trust and on March 3, 2009, he made certain authorized withdrawals, including payment for his fees, leaving a zero balance in trust. On August 30, 2009, he took \$1,250 from trust by issuing himself a cheque in that amount when he was not entitled to the funds. He debited the payment against this client ledger but the funds were taken from the pooled trust funds.

Allegation 1.42

117. In 2009, the Respondent represented RF and UF, the vendors in a real estate transaction (file no. 955).

118. The Respondent received the sale proceeds into trust and made certain authorized withdrawals. He took \$4,022.19 from trust by issuing himself a cheque dated August 19, 2009 in the amount of \$4,672.19 when he was entitled to only \$650 as payment for fees and disbursements. These funds were taken from the pooled trust funds.

Allegation 1.43

119. In 2009, the Respondent represented M Ltd., the purchaser in a real estate transaction (file no. 963).

120. The Respondent received the purchase proceeds into trust and made certain authorized withdrawals. He took \$600.20 from trust by issuing himself two cheques totalling \$2,500.20 (cheque dated August 27, 2009 in the amount of \$1,550.20 and cheque dated September 1, 2009 in the amount of \$950) when he was entitled to only \$1,900 as payment for fees and disbursements. These funds were taken from the pooled trust funds.

Admission of Misconduct

121. The Respondent admits that he misappropriated \$156,309.85 held in trust on behalf of his clients by withdrawing the funds from his pooled trust account by cheques made payable to himself when he was not entitled to the funds, as set out in the Citation.

122. The Respondent admits that his conduct in doing so constitutes professional misconduct.

As a result of these admissions the Respondent undertakes for a period of 4 years, commencing on September 25, 2014, and concluding on September 25, 2018, as follows:

1. not to apply for reinstatement to the Law Society of British Columbia;
2. not to 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 of British Columbia;
3. not to 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 of British Columbia.