2014 LSBC 58
Report issued: November 28, 2014
Citation issued: November 13, 2012

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

DOUGLAS WARREN WELDER

RESPONDENT

DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION

Hearing date:	July 7, 2014
Panel:	Lynal Doerksen, Chair Graeme Roberts, Public representative Sandra Weafer, Lawyer
Counsel for the Law Society:	Jaia Rai
Appearing on his own behalf:	Douglas W. Welder

[1] It is an unfortunate reality that unscrupulous people often seek the services of a lawyer to enhance the credibility of their illegal schemes. Even unwittingly, lawyers who become involved in these schemes bring dishonour to themselves and to the profession, and the victims of these schemes usually lose their investments. Of course, the victims are duped by their own greed and vapid promises of rich returns with no risks. However, lawyers need to be more wary than these investors.

[2] It is alleged that the Respondent became enmeshed in what is commonly known as a Ponzi scheme. Investors are lured into making contributions with promises of high returns and are initially rewarded with these high returns because the perpetrators of the fraud use the investor's own money to make these returns seem real. Of course, word spreads about this great investment and new investors are eager to join the gravy train. The scheme eventually collapses because there is no

real growth and the fraudsters abscond with the money or are found out by regulatory authorities who shut the scheme down. Lawsuits and prosecutions follow.

[3] It must be stated at the outset that the Respondent was not one of the perpetrators of this Ponzi scheme, nor did he knowingly assist this illegal enterprise. However, it is alleged that, in representing a corporation that was being used to facilitate the Ponzi scheme, the Respondent failed in his duties as a lawyer and this amounts to professional misconduct.

[4] The Panel received a large volume of material in a Notice to Admit that was served on the Respondent in accordance with the Rules. At the outset of this hearing, the Respondent sought an adjournment and, among other applications, an order that the Notice to Admit be set aside. Before commencing with this hearing, the Panel denied the Respondent's applications, including the application to set aside the Notice to Admit. See *Law Society of BC v. Welder*, 2014 LSBC 53. The hearing continued with the material in the Notice to Admit being admitted as evidence in this hearing. The Respondent presented no evidence at the hearing. What follows is gleaned from the Notice to Admit and supporting documents.

[5] The Respondent has been served with a copy of the citation in accordance with the requirements of the Rules.

[6] The Respondent was called and admitted as a member of the Law Society of British Columbia on May 12, 1981. The Respondent has been practising as a sole practitioner in Kelowna since 1991.

[7] The citation has four allegations of professional misconduct. This decision will deal with 1 and 4 together and 2 and 3 separately. The first and fourth allegations are related and read, in part:

> 1. In or about November 2006, you received funds into your trust account from a number of persons and disbursed them by wire transfer to US bank accounts controlled by International Fiduciary Corporation, SA ("IFC") contrary to a Temporary Order and Notice of Hearing dated November 1, 2006 (the "Cease Trade Order"), when you knew that the BC Securities Commission had commenced proceedings alleging that the investment scheme operated through IFC was fraudulent and had issued the Cease Trade Order.
>
> …

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

4. Further, or in the alternative to paragraph 1, in November 2006, in the course of acting for IFC, you received funds into your trust account from the following persons and then disbursed them to U.S. bank accounts controlled by IFC without advising some or all of these persons that you were not protecting their interests, contrary to Chapter 4, Rule 1 of the *Professional Conduct Handbook*:

…

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

[8] Allegations 1 and 4 further particularize that, from November 20 to 28, 2006, the Respondent received funds from seven separate investors (individuals, families or corporations) and transferred these funds to a bank account in the United States controlled by IFC. The total amount of money involved was $1,653,425.

[9] Chapter 4, Rule 1 of the *Professional Conduct Handbook*, as it was in 2006 and 2007, provides:

> **Dealing with unrepresented persons**
>
> A lawyer acting for a client in a matter in which there is an unrepresented person must advise that client and unrepresented person that the latter's interests are not being protected by the lawyer.

[10] Section 38(4) of the *Legal Profession Act* states:

> (4) After a hearing, a panel must do one of the following
>
> (a) dismiss the citation;
>
> (b) determine that the respondent has committed one or more of the following:
>
> (i) professional misconduct;
>
> (ii) conduct unbecoming a lawyer;
>
> (iii) a breach of this Act or the Rules;

(iv) incompetent performance of duties undertaken in the capacity of a lawyer;

…

BACKGROUND FACTS ABOUT IFC

[11] Prior to 2006, an investment scheme was started by DB, MS and PP (collectively referred to as the "IFC Principals"). The investment vehicle used by the IFC Principals was International Fiduciary Corporation, SA, a Virginia corporation headquartered in Arlington, Virginia, USA ("IFC").

[12] The investment scheme promoted by the IFC Principals involved a minimum investment of US $100,000 (the "IFC Scheme"). The IFC Principals promised investors, among other things, a return of six per cent per month.

[13] Investors to the IFC Scheme would receive a "comfort" letter that would advise the investor that:

(a) IFC operates an "asset growth program" by buying and selling 1st Tier medium term bank notes;

(b) IFC does not sell or buy any form of securities or stocks whether or not governed by the Securities Exchange program;

(c) Investor funds are placed into a bank in Argentina or Florida, and each investor will have his or her own separate account number that is in full control of the investor;

(d) IFC uses the services of an experienced named lawyer in Washington DC. [Notice to Admit, Vol. 4, Tab 33]

[14] The statements made by the IFC Principals to investors were false. The IFC Scheme was a fraudulent Ponzi scheme. The IFC Principals used funds from later investors to make the promised payments to earlier investors and to enrich themselves. The IFC Principals took in approximately $40 million and converted $12.7 million of that money for their own use.

[15] At least 143 investors are known to have invested in the IFC Scheme, of which 89 are British Columbians. The British Columbia investors collectively invested over $23.3 million in the IFC Scheme.

[16] Securities regulators took action against the IFC Principals. On November 1, 2006, the BC Securities Commission issued a Temporary Order and Notice of Hearing, also known as a "Cease Trade Order" ("CTO), naming IFC and the IFC Principals as respondents. The CTO was published on November 3, 2006. The CTO ordered that the IFC Principals and "*all persons cease trading in the IFC Investment*." The CTO was effective from November 1, 2006 to November 16, 2006 and then extended from time to time.

[17] The CTO stated that:

(a) the IFC investment was a security under the BC *Securities Act;*

(b) the IFC Principals were not registered to trade securities under the *Securities Act;*

(c) IFC had not filed a prospectus for this investment;

(d) the investment was being offered for sale to residents of British Columbia contrary to the *Securities Act*; and

(e) the investment "… advertises numerous characteristics often attributed to Prime Bank investment schemes to make them appear legitimate."

[18] The CTO also contained the following statements related to the nature of the IFC Scheme:

> 10. The IFC Investment advertises numerous characteristics often attributed to Prime Bank investment schemes to make them appear legitimate, including:
>
> …
>
> (b) investor funds are purportedly invested in "an asset growth program by buying and selling 1st Tier medium term bank notes";
>
> (c) the promise of an inordinately high interest rate;
>
> (d) the guarantee that investor capital is not put at risk;
>
> …
>
> (g) investor funds are directed first to the United Bank NA in Arlington, Virginia, and then to either the Banco Bilboao

Vizcaya Argentaria or Great Florida Bank, at the discretion of IFC.

11. Prime Bank investments are fictional. Secret, exclusive overseas markets for discounted financial instruments do not exist. In promoting and selling the IFC Investment to residents of British Columbia, the Respondents acted contrary to section 57(b) of the Act.

[Notice to Admit, Vol. 2, Tab 7, pp 9&10]

[19] The Respondent was not specifically named in the CTO, but one of the terms of the CTO was that *all persons* were to cease trading in the IFC Scheme.

[20] The Respondent became aware of the CTO, including all of its terms, on November 6 or 7, 2006.

[21] Prior to the publication of the Notice of Hearing and CTO, IFC was using the services of another lawyer, Mr. McCandless. After learning of the actions taken by the BC Securities Commission, Mr. McCandless informed MS, one of the IFC principals, in November 2006 that he was reluctant to transmit any more funds to be paid by investors to IFC.

[22] As a result, IFC retained the Respondent on or about November 6, 2006 to act on its behalf in the BC Securities Commission proceedings and to handle the transfer of funds from investors to IFC.

THE RESPONDENT'S INVOLVEMENT IN IFC PRIOR TO THE CTO

[23] Although the Respondent did not act for IFC until November 6, 2006, the Respondent knew MS from at least 2004. MS also went by the alias "Marty Stewart". The Respondent knew that MS and Stewart were the same person. MS, through his alias Marty Stewart, was a principal of M Investments and W Ltd.

[24] Between August 2004 and November 7, 2006, the Respondent and MS exchanged emails. The emails concern matters other than IFC such as:

(a) federal reserve bond boxes;

(b) the Respondent providing his US dollar trust account number to MS on December 9, 2004; and

(c) the transfer of funds from the Respondent's US pooled trust account to MS's US dollar account in Hong Kong.

[Notice to Admit, Vol. 4, Tabs 34-46]

[25] Between August 14, 2005 and November 7, 2006, the Respondent received the following from MS regarding the IFC Scheme:

(a) email received on August 14, 2005 at 12:46 pm with attachments, concerning the opening of a bank account on behalf of IFC [Notice to Admit Documents, Vol. 4, Tab 29].

(b) email received on August 30, 2005 at 7:58 pm attaching a 2005 "comfort letter" for potential IFC investors investing between US $100,000 and US $999,999.99 [Notice to Admit Documents, Vol. 4, Tab 30].

(c) email received on October 13, 2005 at 9:31 pm attaching an "operating agreement" for potential IFC investors investing US $1 million or more [Notice to Admit Documents, Vol. 4, Tab 31].

(d) email received on October 8, 2006 at 3:51 pm attaching an "information form" for the purpose of wiring money between bank accounts by depositors [Notice to Admit Documents, Vol. 4, Tab 32].

(e) email received on November 7, 2006 at 10:15 am attaching four documents, including a 2006 "comfort letter" for potential IFC investors and form of authorizations regarding the funds deposited with IFC [Notice to Admit Documents, Vol. 4, Tab 33].

[26] The Respondent did not volunteer to the Law Society that he had received the emails referenced in the above paragraph:

(a) When the Law Society commenced an audit and asked the Respondent about his knowledge of IFC, the Respondent said that he did not know a great deal about IFC until he attended the hearing at the BC Securities Commission;

(b) On page 2 of the Respondent's letter dated July 26, 2008 to the Law Society, he wrote that "I believe that my first contact about IFC was during a phone conversation with MS on November 6, 2006." [Notice to Admit, Vol. 5, Tab 59]

[27] On December 29, 2004 the Respondent opened a client file identifying MS as the client for "Miscellaneous Matters" (the "MS Miscellaneous Client File"). Between December 2004 and October 2005, the Respondent received and disbursed trust funds that he recorded on the MS Miscellaneous Client File ledger. [Notice to Admit, Vol. 2, Tab 15]

[28] Within this file were found the following documents:

(a) a newsletter entitled "Medium Term Notes" published by CIBC World Markets;

(b) an article entitled "Who's Afraid of Bank Debentures" printed from a website on November 24, 2006 at 8:24 am;

(c) articles entitled "Bank Roll and Bank Debenture Schemes," "The Prime Bank Instrument Raises its (Ugly) Head Again" and "Prime Bank Instruments Bank Debenture Programs" printed from a website on November 24, 2006 at 8:37 am; and

(d) a printout from the United States Department of Treasury, Bureau of the Public Debt website containing information on "Prime Bank Trading Programs, High Yield Investment Programs, Roll Programs and Private Placement Programs" printed on November 24, 2006 at 8:38 am.

[Notice to Admit Documents, Vol. 2, Tab 15]

[29] The Respondent read the documents referenced above on November 24, 2006.

THE RESPONDENT'S INVOLVEMENT WITH IFC AND MS ON NOVEMBER 6, 2006 AND THEREAFTER

[30] On November 6, 2006, the Respondent spoke with MS, at which time MS told him about the BC Securities Commission proceedings. On November 7, 2006, the Respondent opened a file identifying MS as the client and identifying the client matter as "BCSC Cease Trade Order – IFC" (the "BCSC – IFC Client File").

[31] On November 7, 2006, the Respondent received an email from MS attaching a BC Securities Commission news release referencing the CTO and Commission proceedings. That email contained the following comment:

In the meantime, a cease-trade order is in place until Nov. 16, 2006 against trading in the IFC investment in BC and for DB, MS and PP to cease all investor relations activities on behalf of IFC.

[Notice to Admit Documents, Vol. 2, Tab 7]

[32] On November 7, 8, 10 and 12, 2006, the Respondent had telephone discussions with MS, DB and others regarding IFC and the Commission proceedings. The Respondent sent an email to DB on November 12, 2006.

[33] On November 14, 2006, the Respondent:

(a) had a telephone discussion with MS and PP; and

(b) received from PP a copy of the Notice of Hearing and CTO along with a letter authorizing him to represent both IFC and PP at the BC Securities Commission hearing scheduled for November 16, 2006 (the "BCSC Hearing").

[Notice to Admit Documents, Vol. 2, Tab 7].

[34] On November 15, 2006, the Respondent:

(a) had telephone discussions with Alan Keats, Senior Legal Counsel at the BC Securities Commission, and Paul Bansal, Senior Investigator in the Enforcement Division of the BC Securities Commission;

(b) received from Mr. Keats an email confirming that the Respondent had been retained to represent IFC and all three IFC Principals in the BC Securities Commission proceedings. [Notice to Admit Documents, Vol. 2, Tab 7]

(c) received with Mr. Keats' email a copy of Mr. Bansal's affidavit sworn November 10, 2006 (the "Bansal Affidavit"), which outlined the many concerns the BC Securities Commission had with IFC. [Notice to Admit Documents, Vol. 6, Tab 68 and Vol. 2, Tab 7]

(d) reviewed the Bansal Affidavit; and

(e) had telephone discussions with PP and MS.

[35] On November 16, 2006, the Respondent:

(a) spoke with Mr. Keats to discuss an adjournment of the BCSC Hearing on behalf of his clients, IFC and the IFC Principals;

(b) appeared by telephone to speak to his application to adjourn the BCSC Hearing; [Notice to Admit Documents, Vol. 3, Tab 24] and

(c) had telephone discussions with the IFC Principals [Respondent's handwritten notes contained in Notice to Admit. Documents, Vol. 2, Tab 7]

[36] On December 4, 2006, the United States Securities and Exchange Commission ("SEC") filed a civil action against IFC and the IFC Principals in US District Court in Alexandria, Virginia (the "SEC Complaint"). [Notice to Admit Documents, Vol. 6, Tab 72]

[37] The BCSC – IFC Client File contained a copy of the SEC Complaint. [Notice to Admit Documents, Vol. 2, Tab 7]

[38] The Respondent learned of the SEC Complaint on December 4, 2006 or shortly thereafter.

[39] On December 4, 2006, the SEC also issued a Temporary Restraining Order that froze IFC's bank accounts, [Notice to Admit Documents, Vol. 6, Tab 73]

[40] On December 12, 2006, a preliminary injunction was granted by a US Court. [Notice to Admit Documents, Vol. 6, Tab 77]

[41] The BCSC Hearing was adjourned to December 14, 2006 on the basis of the Respondent's submissions, and the CTO was extended to that date.

[42] On December 14, 2006, the Respondent received an email from the BC Securities Commission attaching an order issued December 13, 2006 extending the CTO and adjourning the BCSC Hearing. [Notice to Admit Documents, Vol. 6, Tabs 78-79]

[43] On March 12, 2007, the Respondent sent a letter to Mr. Keats of the BC Securities Commission advising that he is no longer representing IFC or the IFC Principals. [Notice to Admit Documents, Vol. 2, Tab 7]

THE RESPONDENT'S CONDUCT IN RELATION TO FUNDS RECEIVED FROM IFC INVESTORS IN NOVEMBER AND DECEMBER 2006

[44] Beginning on November 20, 2006, the Respondent received funds into his US dollar pooled trust account from or on behalf of individuals wishing to invest in the IFC Scheme (the "IFC "Investors").

[45] The Respondent disbursed most of the trust funds he received from IFC Investors to bank accounts held at United Bank in Arlington, Virginia, USA ("United Bank"). The bank accounts at United Bank were controlled by IFC.

[46] In the period November 20, 2006 to November 28, 2006, the Respondent received trust funds from IFC Investors totalling $1,653,425.

[47] On November 27 and November 28, 2006, the Respondent made withdrawals from trust by wire transfer totalling US $1,649,817.52 to the benefit of IFC (the "IFC Withdrawals").

[48] The Respondent made the IFC Withdrawals while the CTO was in effect.

[49] The Respondent did not personally disclose the existence of the CTO to the IFC Investors. The Respondent did not give the IFC Investors any legal advice regarding investment in the IFC Scheme or deposit of investment funds to the United Bank while the CTO was in effect.

[50] The Respondent did not give IFC or MS any legal advice regarding acceptance of funds from IFC Investors while the CTO was in effect.

[51] The Notice to Admit and the supporting documents go into extensive detail about the seven IFC investors (persons, families or corporate entities) that provided funds to the Respondent's trust account and the transfer of those funds to an IFC bank account. What follows are the details of these transactions from the Notice to Admit. *The reader can continue to paragraph 205 if these details are not required for further analysis.*

SS AND AS FUNDS

[52] On November 15, 2006, the Respondent received an email from KS in which he wrote:

> I am a close friend of the Principals of IFC and have a gentleman who is coming forward into the "program". He will be scanning his personal

> credentials and forwarding these to me, so that I can later forward them to you for the Banking side of things.
>
> I already have your Bank wire information (Trust Account), but must request the official Banking forms for my friend to fill out. Could you please send these forward after I email you his scanned identification paperwork?
>
> If you need to confirm with MS who I am, that will be great.
>
> [Notice to Admit Documents, Vol. 2, Tab 8]

[53] The Respondent received a second email from KS on November 15, 2006, attaching copies of personal identification for SS and AS. At the time, SS and AS lived in Washington State. [Notice to Admit Documents, Vol. 2, Tab 8]

[54] On November 20, 2006, the Respondent received an email from KS, copied to MS, and a fax from KS, both of which stated that the Respondent should expect a wire transfer of funds from SS and AS into his trust account. [Notice to Admit Documents, Vol. 2, Tab 8] On the same day, the Respondent received $200,075 from AS and SS into his trust account by wire transfer (the "S Funds").

[55] At the time the Respondent received the S Funds into his trust account, he knew that:

(a) the S Funds were deposited for the benefit of AS and SS; and

(b) the S Funds were intended for investment in the IFC Scheme.

[56] On or about November 20, 2006, the Respondent opened a client file identifying SS and AS as the clients and identifying IFC as the client matter (the "S Client File").

[57] On November 23, 2006, the Respondent received an email from KS requesting confirmation of receipt of the S Funds by wire transfer. In that email, KS wrote:

> SS is trying to get into the "cycle" (Virginia) this month-end so that he gets plugged in on time.
>
> [Notice to Admit Documents, Vol. 2, Tab 8]

[58] On November 27, 2006, the Respondent disbursed $200,071.12 of the S Funds from trust by sending $200,000 by wire transfer to an account at United Bank and paying a wire transfer fee of $71.12.

[59] The wire instructions provided by the Respondent identified IFC, not AS or SS, as the beneficiary.

[60] At the time the Respondent disbursed the S Funds, the Respondent knew that IFC controlled the bank account at United Bank.

[61] The Respondent disbursed the S Funds to the credit of IFC on instructions of KS or MS.

[62] The Respondent did not take instructions from SS or AS, and the Respondent had no communications with SS or AS.

[63] The Respondent acted for IFC or MS in respect of the receipt and disbursement of the S Funds and did not act for SS or AS in respect of the receipt and disbursement of the S Funds.

[64] The Respondent did not inform SS or AS of the existence of the CTO or related BC Securities Commission Proceedings.

[65] The Respondent did not recommend to SS or AS that they obtain independent legal advice or advise SS or AS that he was not protecting their interests.

RF FUNDS

[66] On November 21, 2006, the Respondent received $120,090 from RF into his trust account by wire transfer (the "F Funds"). Prior to November 2006, RF had invested in the IFC Scheme through Mr. McCandless. RF provided the F Funds to the Respondent because he was told by someone other than the Respondent that "they were switching lawyers."

[67] On or about November 21, 2006, the Respondent opened a client file identifying RF as the client and IFC as the client matter (the "F Client File").

[68] On November 26, 2006, DE sent an email to the Respondent in which he:

(a) informed the Respondent that the F Funds had been deposited into the Respondent's trust account; and

(b) instructed the Respondent to wire the funds to United Bank to the credit of IFC.

[Notice to Admit Documents, Vol. 2, Tab 9]

[69] On or about November 28, 2006, DE provided RF's address to the Respondent. At the time, RF lived in Abbotsford, BC.

[70] On November 28, 2006, the Respondent disbursed $120,071.24 of the F Funds from trust by sending $120,000 by wire transfer to a bank account at United Bank and paying a wire transfer fee of $71.24.

[71] The wire instructions provided by the Respondent identified IFC, not RF, as the beneficiary. The Respondent disbursed the F Funds to the credit of IFC on instructions of DE or MS.

[72] The Respondent did not take instructions from RF and the Respondent had no communications with RF prior to disbursing the F Funds.

[73] The Respondent acted for IFC or MS and did not act for RF in respect of the receipt and disbursement of the F Funds.

[74] The Respondent did not inform RF of the existence of the CTO or related BC Securities Commission Proceedings.

[75] The Respondent did not recommend to RF that he obtain independent legal advice or advise RF that he was not protecting his interests.

[76] RF learned of the CTO from DB, at the end of December 2006 or in January 2007, after the Respondent had disbursed the F Funds to IFC.

RJ FUNDS

[77] RJ was referred to the Respondent by DS. DS told RJ that Mr. McCandless "wasn't doing it anymore" and the Respondent was "handling it."

[78] On November 21, 2006, the Respondent received $100,100 from RJ into his trust account by way of a bank draft dated November 17, 2006 deposited into his trust account by MS (the "J Funds"). The bank draft for the J Funds was provided by RJ to DS who in turn provided it to MS.

[79] On November 21, 2006, the Respondent received, by fax from DS, copies of RJ's driver's licence and birth certificate, and the name of his company. At the time, RJ lived in Aldergrove, BC.

[80] The Respondent did not have any discussions with DS about the J Funds.

[81] On or about November 21, 2006, the Respondent opened a client file identifying RJ as the client and identifying IFC as the client matter (the "J Client File").

[82] On November 28, 2006, the Respondent received emails from MS advising the Respondent that MS had deposited the J Funds into the Respondent's trust account and instructing to the Respondent to wire the J Funds to the United Bank for the credit of IFC. [Notice of Admit Documents Vol. 2, Tab 11]

[83] On November 28, 2006, the Respondent disbursed $100,071.24 of the J Funds from trust by sending $100,000 by wire transfer to an IFC-controlled bank account at United Bank and paying a wire transfer fee of $71.24.

[84] The wire instructions provided by the Respondent identified IFC, not RJ, as the beneficiary.

[85] The Respondent disbursed the J Funds to the credit of IFC on the instructions of MS and not on instructions from RJ.

[86] The Respondent had no communications with RJ prior to disbursing the J Funds.

[87] The Respondent acted for IFC or MS and not RJ in respect of the receipt and disbursement of the J Funds.

[88] The Respondent did not inform RJ of the existence of the CTO or related BC Securities Commission Proceedings.

[89] The Respondent did not recommend to RJ that he obtain independent legal advice or advise RJ that he was not protecting his interests.

[90] RJ provided the J Funds for investment in the IFC Scheme. Someone other than the Respondent told him that:

(a) his funds would be deposited into a bank account in his name and stay in that account;

(b) he could have his money back at any time; and

(c) his funds would be deposited through a lawyer as an assurance that the money was being handled right and looked after.

[91] RJ says that the Respondent provided him no legal advice about his investment in the IFC Scheme.

BK FUNDS

[92] The Respondent received a bank draft dated November 20, 2006 in the amount of $600,100 from BK (since deceased), which he deposited into his trust account on November 23, 2006 (the "K Funds").

[93] On or about November 23, 2006, the Respondent opened a client file identifying BK as the client and identifying IFC as the client matter (the "K Client File").

[94] On November 26, 2006, the Respondent received an email from DE in which he informed the Respondent that the K Funds had been deposited into his trust account; and instructed the Respondent to wire the funds to United Bank to the credit of IFC. [Notice to Admit Documents, Vol. 2, Tab 10]

[95] On or about November 28, 2006, DE provided BK's address to the Respondent. At the time, BK lived in Abbotsford, BC.

[96] On November 28, 2006, the Respondent disbursed $600,071.24 of the K Funds from trust by sending $600,000 by wire transfer to the IFC bank account at United Bank and paying a wire transfer fee of $71.24.

[97] The wire instructions provided by the Respondent identified IFC, not BK, as the beneficiary.

[98] The Respondent disbursed the K Funds to the credit of IFC on instructions of DE or MS and not on instructions from BK.

[99] The Respondent acted for IFC or MS and not BK in respect of the receipt and disbursement of the K Funds.

[100] The Respondent did not inform BK of the existence of the CTO or related BC Securities Commission Proceedings.

[101] The Respondent did not recommend to BK that he obtain independent legal advice or advise BK that he was not protecting his interests.

K CORPORATION FUNDS

[102] K Corporation ("KC") invested in IFC by pooling funds received from several investors (the "KC Investors"). KC was incorporated in Nevada, USA.

[103] KC had the following characteristics:

(a) The purpose of the company was to pool money from a number of investors.

(b) KC had a principal who acted as the liaison between IFC and the investors whose funds were pooled.

(c) IFC paid this principal to gather a group of investors.

(d) Each investor became a shareholder in the "pooling" company.

(e) The investors were told that, after they paid their investment into the company, the company would invest their funds and would distribute monthly "interest" payments received from the investment.

(f) IFC would distribute monthly "interest" payments to the pooling company, which in turn would distribute payments to the shareholders.

[104] ET was the principal of KC. The Respondent was introduced to ET by MS.

[105] The KC Investors included JB and MB, ML and SL, DA, and BS and LS.

[106] On November 20, 2006, the Respondent received an email from MS in which he wrote:

> ET … is a friend of 25 years and has been working with IFC in the program. He will be sending you a copy of his passport and a copy of the certificate of incorporation and a copy of a resolution empowering him to act.
>
> I hope to meet him this Wed. in Kelowna so as to introduce him to you – he has a deposit (coming in the near future) in the amount of 10M USD that needs to be put into the program.
>
> We hope to meet with you (possibly over lunch) so you can meet with him and vice versa.
>
> [Notice to Admit Documents, Vol. 2, Tab 12]

[107] On November 21, 2006 and November 24, 2006, the Respondent received funds totaling $229,970 (the "KC Funds") from the KC Investors into his trust account by wire transfer as described below.

[108] On or about November 24, 2006, the Respondent opened a client file identifying KC as the client and IFC as the client matter (the "KC Client File").

[109] On November 28, 2006, ET faxed documents to the Respondent regarding the KC Investors, including:

(a) a letter confirming the names of the KC Investors who had wired funds to the Respondent's trust account and instructing the Respondent to wire the pooled funds to IFC in Virginia;

(b) copies of bank documents related to the deposit of funds by the KC Investors into the Respondent's trust account;

(c) three documents entitled "Direction and Estoppel Certificates", directed at KC and the Respondent, and signed by ML or SL, DA, and BS and LS;

(d) one document entitled "Direction and Estoppel Certificate", directed at KC and Mr. McCandless, and signed by JB and MB.

[Notice to Admit Documents, Vol. 2, Tab 12]

[110] On November 28, 2006, the Respondent disbursed the KC Funds as described further below.

[111] Between December 5, 2006 and June 2007, the Respondent exchanged emails with ET regarding funds from KC Investors and a request by one of the KC Investors (DA) for return of her investment funds. [Notice to Admit Documents, Vol. 6, Tabs 74, 81-87, 89-90, 92-95 and Vol. 7, Tabs 96-105]

[112] On May 11, 2007, the Respondent issued a statement of account to KC in the amount of $2,836.12 in Canadian funds for services rendered in connection with the receipt of funds from KC Investors, disbursement of those funds to IFC, and DA's request for return of her funds. [Notice to Admit Documents, Vol. 2, Tab 12]

[113] The Respondent did not give KC or ET any legal advice regarding acceptance of funds from KC Investors while the CTO was in effect.

JB AND MB FUNDS

[114] On November 21, 2006, the Respondent received $100,000 from JB and MB into his trust account by way of a transfer of funds between accounts (the "B Funds"). MB provided the B Funds to the Respondent because ET told her that the Respondent would be handling her investment.

[115] MB knew the Respondent was a lawyer. MB thought that her investment was sound and legitimate because she knew that her funds were going through a lawyer's trust account.

[116] JB and MB did not know about the CTO or related BC Securities Commission proceedings at the time they provided their funds to the Respondent.

[117] On November 28, 2006, the Respondent disbursed the B Funds. The Respondent had no communications with JB or MB prior to disbursing the B Funds.

[118] The Respondent acted for IFC, MS or KC and not JB and MB in respect of the receipt and disbursement of the B Funds.

[119] The Respondent did not inform JB or MB of the existence of the CTO or related BC Securities Commission Proceedings, recommend to JB or MB that they obtain independent legal advice or advise JB or MB that he was not protecting their interests.

ML AND SL FUNDS

[120] On November 24, 2006, the Respondent received $59,990 from ML and SL into his trust account by wire transfer (the "L Funds"). On November 28, 2006, the Respondent disbursed the L Funds to IFC.

[121] The Respondent had no communications with ML or SL prior to disbursing the L Funds.

[122] The Respondent acted for IFC, MS or KC and not the ML and SL in respect of the receipt and disbursement of the L Funds.

[123] The Respondent did not inform ML or SL of the existence of the CTO or related BC Securities Commission Proceedings, recommend to ML or SL that they obtain independent legal advice or advise ML or SL that he was not protecting their interests.

DA FUNDS

[124] On November 24, 2006, the Respondent received $39,990 from DA into his trust account by wire transfer sent by LT on DA's behalf (the "A Funds").

[125] On November 28, 2006, the Respondent disbursed the A Funds to IFC.

[126] The Respondent had no communications with DA prior to disbursing the A Funds.

[127] The Respondent acted for IFC, MS or KC and not for DA in respect of the receipt and disbursement of the A Funds.

[128] The Respondent did not inform DA of the existence of the CTO or related BC Securities Commission Proceedings, recommend to DA that she obtain independent legal advice or advise DA that he was not protecting her interests.

[129] In 2007, DA sought the return of the A Funds, and she retained another lawyer for this purpose.

[130] The Respondent represented IFC or KC or both in connection with DA's request for return of the A Funds and divestment of her interest in KC.

BS AND LS FUNDS

[131] On November 24, 2006, the Respondent received $29,990 from BS and LS into his trust account by wire transfer (the "S2 Funds").

[132] On November 28, 2006, the Respondent disbursed the S2 Funds to IFC.

[133] The Respondent had no communications with BS or LS prior to disbursing the S2 Funds.

[134] The Respondent acted for IFC, MS or KC and not the BS and LS in respect of the receipt and disbursement of the S2 Funds.

[135] The Respondent did not inform BS or LS of the existence of the CTO or related BC Securities Commission Proceedings, or recommend to BS or LS that they obtain independent legal advice or advise BS or LS that he was not protecting their interests.

DISBURSEMENT OF KC FUNDS

[136] On November 28, 2006, the Respondent disbursed all of the KC Funds, which totalled $229, 970, from trust by:

(a) sending $100,000 by wire transfer to a IFC bank account at United Bank;

(b) sending $129,898.76 by wire transfer to another IFC bank account at United Bank; and

(c) paying a wire transfer fee of $71.24.

[137] The wire instructions provided by the Respondent identified IFC, not KC or any of the KC Investors, as beneficiary.

[138] The Respondent disbursed the KC Funds to the credit of IFC on instructions of ET or MS, or both; he did not take instructions from any of the KC Investors.

M CORP. FUNDS

[139] M Corp. was a company that invested in IFC by pooling funds received from several investors (the "M Corp. Investors").

[140] M Corp. had the same characteristics as KC as set out above.

[141] GC was the principal of M Corp. Until November 2006, CG sent M Corp. Investor Funds to IFC through Mr. McCandless.

[142] Mr. McCandless ceased sending funds to IFC on behalf of M Corp. once he became aware of the CTO. At the time the CTO was issued, Mr. McCandless was holding $300,000 in trust on behalf of M Corp. or M Corp. Investors.

[143] On or about November 16, 2006, the Respondent opened a client file identifying M Corp. as the client and identifying IFC as the client matter ("M Corp. Client File").

[144] On instructions from GC, Mr. McCandless delivered $299,990 to the Respondent in trust for M Corp. or M Corp. Investors (the "M Corp. Funds") by wire transfer on November 22, 2006.

[145] On November 22, 2006, the Respondent received an email from GC in which GC wrote:

> MS has recommended my corporations use you in light of current circumstances.
>
> My current lawyer wishes to NOT send monies directly to IFC. That leaves me with a need to employ your services at least in the short term until this all gets sorted out.
>
> I will of course want to speak with you via phone at least, or better, face to face, to discuss our needs more fully.

> For the time being, suffice it to mention that I actually have two (2) separate and distinct corporations. Both are involved with MS.
>
> M Inc. is run by myself as director as well as RL as director. RL is doing most of the work at this corp.
>
> He is unaware of the other corp I have. It is not a "secret" but he has no 'need to know'.
>
> It was I who invited him to participate with me in MS's program in the beginning and I have this separate corp also.
>
> The second corp is M Corp.
>
> In this email, find attachments relating to M Corp. and my personal info only. A scan of my passport will follow in a separate email.
>
> We can touch base soon I hope to discuss our needs and your ability/desire to help.
>
> [Notice to Admit Documents, Vol. 2, Tab 13]

[146] On November 22, 2006, the Respondent received an email from GC, attaching copies of GC's driver's licence, M Corp. Certificate of Incorporation and BC Company Summary for M Corp. [Notice to Admit Documents, Vol. 6, Tab 70]

[147] At the time the Respondent received or disbursed the M Corp. Funds, the Respondent knew that Mr. McCandless refused to send money to IFC.

[148] The Respondent had no communications with the M Corp. Investors. The Respondent had no knowledge of the identity of any of the M Corp. Investors. The Respondent took no steps to ascertain the identity of any of the M Corp. Investors.

[149] On November 28, 2006, the Respondent disbursed the M Corp. Funds from trust by sending $299,918.76 by wire transfer to an IFC bank account at United Bank and paying a wire transfer fee of $71.24.

[150] The Respondent's wiring instructions identified IFC, and not M Corp. or any M Corp. Investors, as beneficiary.

[151] The Respondent disbursed the M Corp. Funds to the credit of IFC.

[152] The Respondent acted for IFC or M Corp. in respect of the receipt and disbursement of the M Corp. Funds.

[153] The Respondent did not act for the M Corp. Investors in respect of the receipt and disbursement of the M Corp. Funds. The Respondent did not inform any of the M Corp. Investors of the existence of the CTO or related BC Securities Commission Proceedings.

[154] The Respondent did not recommend to any of the M Corp. Investors that they obtain independent legal advice or give M Corp. or GC any legal advice regarding acceptance of funds from M Corp. Investors while the CTO was in effect.

HS AND CS FUNDS

[155] On November 17, 2006, the Respondent received a copy of an email from MS that was sent to HS in which MS wrote:

> I just picked up the Nevada Corp. for your use and I will do the paper work etc over the weekend and I also have an account # for you as well – I will be passing the info to Doug and he will work directly with you.
>
> [Notice to Admit Documents, Vol. 2, Tab 14]

[156] On November 18, 2006, the Respondent received an email from MS in which he wrote:

> The IFC Info form should be filled out by GC as he is the introducing party; however I really need to discuss this with you and not put anything in writing – give me a call over the weekend.
>
> You keep the United Bank Form to yourself – I have put both forms into a PDF format so that changes can be done at your end (as long as you have Acrobat Reader etc. on your system.
>
> I also have a Nevada Corp. for HS and I will fax the Cert. of Incorp. To you with the United Bank acct# on it – I will be in Kelowna Tuesday or Wednesday and I will be introducing another associate of mine to you directly – he is putting an MTN contract together for 1B – I have the Euroclear doc with me now.
>
> To give you a heads up, he is a very religious guy so we have to clean up our act a little, especially me, so if I say shit or something like that you can kick me under the table.
>
> [Notice to Admit Documents, Vol. 2, Tab 14]

[157] On or about November 18, 2006, the Respondent opened a client file identifying HS and CS and their company, D Group Ltd., as the client and identifying D Group Ltd. and IFC as the client matter (the "S Client File"). At the time, HS and CS lived in Kelowna, B.C.

[158] On November 28, 2006 at 9:55 am, the Respondent received an email from MS in which he wrote:

> This is reference to the Nevada Corp. (D Ltd.) that I brought to the office – it requires info to put on the form and it best be discussed with LA and the client (with your presence, so as to be informed).
>
> I have also reserved the Belize Corp (D Ltd.) as well so as to complete the structure for the client.
>
> Could call either TQ and/or LA to get this initiated? [phone number]
>
> I could do this; however it is better to maintain Client Privilege and they are in the local area with you.
>
> [Notice to Admit Documents, Vol. 2, Tab 14]

[159] The Respondent received a bank draft in the amount of $103,100 from HS and CS which he deposited into his trust account on November 28, 2006 (the "S3 Funds").

[160] On November 28, 2006, the Respondent disbursed $100,071.24 of the S3 Funds from trust by sending $100,000 by wire transfer to an IFC bank account at United Bank and paying a wire transfer fee of $71.24. The wire instructions provided by the Respondent identified IFC, not HS or CS, as beneficiary.

[161] The Respondent disbursed the S3 Funds on instructions of HS and MS.

[162] The Respondent acted for IFC or MS in respect of the receipt and disbursement of the S3 Funds.

[163] The Respondent did not act for HS or CS except for the limited purpose of receiving the S3 Funds and disbursing them to United Bank for the credit of IFC.

[164] The Respondent did not give HS and CS any legal advice about their investment in IFC or any advice regarding the deposit of funds in United Bank while the CTO was in effect.

[165] The Respondent did not inform HS or CS of the existence of the CTO or related BC Securities Commission Proceedings. The Respondent did not recommend to

HS or CS that they obtain independent legal advice or advise HS or CS that he was not protecting their interests.

[166] On January 22, 2007, the Respondent received an email from HS in which he wrote:

> Good morning Mr. Welder, We are anxious to receive our paperwork and information regarding our transactions following the November 28th deposited $. We have been trying to reach you with no luck. Please call us as soon as you are able. We will continue to try contacting you as well.
>
> [Notice to Admit Documents, Vol. 2, Tab 14]

[167] On or about January 24, 2007, the Respondent disbursed the balance of the S3 Funds from trust in accordance with instructions from HS and CS by issuing a trust cheque in the amount of $3,000 payable to "US and Foreign" and by issuing a trust cheque in the amount of $28.76 payable to HS and CS.

[168] The Respondent sent a reporting letter dated January 30, 2007 to HS and CS enclosing his statement of account in the amount of $395.50. [Notice to Admit Documents, Vol. 2, Tab 14]

[169] The Respondent received payment of the statement of account on February 8, 2007.

ALLEGATION 2 – THE RI AND TI FUNDS

[170] Allegation 2 of the citation reads:

> 2. On November 21, 2006, you received into your trust account $100,100 USD from or on behalf of RI when you knew or ought to have known that the funds were intended for investment in IFC contrary to the Cease Trade Order and you:
>
> (a) did not return these funds to RI but held them in your trust account until March 12, 2007, when you disbursed them by wire transfer to another lawyer; and
>
> (b) did not account in writing to RI for the funds received, contrary to Rule 3-48(1).
>
> This conduct constitutes professional misconduct or breach of the Act or rules, pursuant to section 38(4) of the *Legal Profession Act*.

[171] RI was referred to the Respondent by DS.

[172] The Respondent received $100,100 from RI by way of a bank draft deposited into his trust account on November 21, 2006 by MS (the "I Funds").

[173] The bank draft for the I Funds was provided by RI to DS who in turn provided it to MS.

[174] On November 21, 2006, the Respondent received, by fax from DS, copies of RI's driver's licence and passport, the name of RI's company, and copies of TI's driver's licence and passport.

[175] On or about November 21, 2006, the Respondent opened a client file identifying RI as the client and identifying IFC as the client matter (the "I Client File"). At the time, RI lived in Aldergrove, BC.

[176] At the time the I Funds were received by the Respondent, the Respondent knew that those funds were intended for investment in IFC.

[177] On November 28, 2006, the Respondent received an email from MS advising him that he had deposited the I Funds (along with the J Funds) into the Respondent's trust account and instructing him as follows:

> Would you please make arrangements to have their funds wired to their segregated accounts under International Fiduciary Corp. SA – the account information will follow in a separate email. [Notice to Admit Documents, Vol. 3, Tab 22]

[178] On November 28, 2006, the Respondent recorded in the client ledger for the I Client File a wire transfer of $100,071.24 for the benefit of IFC, and on the same day he reversed the posting.

[179] The Respondent did not return the I Funds to RI but held the I Funds in his trust account until March 12, 2007 when he disbursed them by wire transfer to Mr. McCandless' trust account.

[180] On March 13, 2007, the Respondent received a letter from Mr. McCandless inquiring about the ownership of the funds he received [Notice to Admit, Vol. 3, Tab 22, p. 14].

[181] On March 13, 2007, the Respondent sent a letter to Mr. McCandless in which he wrote:

> On instructions from MS, I have been asked to return to your offices for the benefit of RI, the sum of $100,100, which I was holding in Trust in my US dollar Trust Account. Attached please find a copy of the wire transfer, and you will see in this sum, where I have had TD Canada Trust deduct the wire charge of $69.04 from those funds. Please confirm when those funds have been received by you. [Notice to Admit, Vol. 3, Tab 22, p. 15]

[182] The Respondent did not account in writing to RI for the I Funds.

[183] In failing to account in writing to RI, the Respondent knew or ought to have known that his conduct was contrary to Rule 3-48(1) of the Law Society Rules.

[184] RI did not know that the Respondent held the I Funds in his trust account from November 2006 through March 2007. He thought the funds had been sent to IFC.

[185] The Respondent did not know RI, and the Respondent had no communication with RI about his funds.

[186] The Respondent acted for IFC or MS and not RI in respect of the receipt and disbursement of the I Funds.

[187] The Respondent did not inform RI of the existence of the CTO or related BC Securities Commission Proceedings.

[188] The Respondent did not recommend to RI that he obtain independent legal advice.

[189] RI did not know about the CTO when he provided the I Funds to the Respondent or any time during the period the Respondent held the I Funds in trust.

ALLEGATION 3 AND THE C VENTURES FUNDS

[190] Allegation 3 of the citation reads as follows:

> 3. On December 1, 2006, you received into your trust account $173,783.45 USD from C Ventures when you knew or ought to have known that the funds were intended for investment in IFC contrary to the Cease Trade Order. You did not return these funds to C Ventures but held them in your trust account and then disbursed the funds (except $1 USD) without authorization from C Ventures:
>
> (a) On January 31, 2007, you disbursed $12,543.18 by sending $12,500 by wire transfer to an account controlled by [number] Canada Inc. and paying a wire transfer fee of $43.18.

(b) On January 31, 2007, you disbursed $50,068.78 by sending $50,000 by wire transfer to an account controlled by [number] Alberta Ltd. and paying a wire transfer fee of $68.78.

(c) On February 1, 2007, you disbursed $100,068.54 by sending $100,000 by wire transfer to an account controlled by K Inc. and paying a wire transfer fee of $68.54.

(d) On March 12, 2007, you disbursed $838.28 by issuing a trust cheque payable to yourself in partial payment of a statement of account rendered to K Corporation.

(e) On March 12, 2007, you transferred $10,263.67 to the credit of another client, S Inc. and then, on the same day, disbursed the funds by sending them by wire transfer to an account controlled by [number] Alberta Ltd.

This conduct constitutes professional misconduct, or is contrary to Rule 3-56 and constitutes a breach of the Act or rules, pursuant to section 38(4) of the *Legal Profession Act*.

[191] Rule 3-56 states:

Withdrawal from trust

3-56 (1) A lawyer must not withdraw or authorize the withdrawal of any trust funds unless the funds are

(a) properly required for payment to or on behalf of a client or to satisfy a court order,
(b) the property of the lawyer,
(c) in the account as the result of a mistake,
(d) paid to the lawyer to pay a debt of that client to the lawyer,
(e) transferred between trust accounts,
(f) due to the Foundation under section 62(2)(b) of the Act, or
(g) unclaimed trust funds remitted to the Society under Division 8.

[192] On December 1, 2006, the Respondent received $173,783.45 from CH into the Respondent's trust account by wire transfer.

[193] CH was the principal of C Ventures, an Alberta company.

[194] The Respondent's trust account information was provided to CH by ET on November 25, 2006.

[195] The funds provided by CH to the Respondent were provided on behalf of C Ventures (the "CV Funds").

[196] The CV Funds were intended for investment in IFC.

[197] At the time the CV Funds were deposited into the Respondent's trust account, the Respondent knew that those funds belonged to C Ventures and were intended for investment in IFC.

[198] On or about December 15, 2006, the Respondent opened a client file identifying the client as KC and identifying the client matter as "CH – IFC" (the "KC – CH Client File").

[199] The Respondent recorded the receipt and disbursement of the CV Funds in the KC – CH Client File ledger.

[200] The Respondent did not return the CV Funds to C Ventures.

[201] The Respondent disbursed the CV Funds from trust as follows:

(a) On January 31, 2007, he disbursed $12,543.18 by sending $12,500 by wire transfer to an account controlled by [number] Canada Inc. and paying a wire transfer fee of $43.18.

(b) On January 31, 2007, he disbursed $50,068.78 by sending $50,000 by wire transfer to an account controlled by [number] Alberta Ltd. and paying a wire transfer fee of $68.78. ET is the Director and shareholder of [number] Alberta Ltd.

(c) On February 1, 2007, he disbursed $100,068.54 by sending $100,000 by wire transfer to an account controlled by KDG Inc. and paying a wire transfer fee of $68.54. ML is the President and Director of KDG Inc.

(d) On March 12, 2007, he disbursed $838.28 by issuing a trust cheque payable to himself in partial payment of a statement of account issued to KC in respect of the KC – CH Client File. The total amount of the account issued was $1,243 in Canadian funds.

(e) On March 12, 2007, he transferred $10,236.67 to the credit of another client, S Inc. and then, on the same day, disbursed the funds by sending them by wire transfer to an account controlled by [number] Alberta Ltd.

[202] The Respondent disbursed the CV Funds without authorization from CH or anyone else authorized to give instructions on behalf of C Ventures.

[203] The Respondent disbursed the CV Funds in accordance with instructions from ET when he knew or ought to have known that ET was not authorized to give him those instructions.

[204] The Respondent's disbursement of the CV Funds was contrary to Rule 3-56 of the Law Society Rules.

DEEMED ADMISSIONS OF MISCONDUCT BY THE RESPONDENT

[205] At paragraph 363 of the Notice to Admit, the Respondent is deemed to have made the following admissions:

> As it relates to Citation Allegation 1, the Respondent admits that:
>
> (a) in or about November 2006, he received funds into his trust account and disbursed them by wire transfer to US bank accounts controlled by IFC, as particularized in Allegation 1;
>
> (b) by disbursing the funds, he acted contrary to the terms of the Cease Trade Order;
>
> (c) at the time he disbursed the funds, he knew that the BC Securities Commission had commenced proceedings alleging that the IFC Scheme was fraudulent; and
>
> (d) at the time he disbursed the funds, he knew about the Cease Trade Order.

[206] At paragraph 365 of the Notice to Admit, the Respondent is deemed to have made the following admissions:

> As it relates to Citation Allegation 2, the Respondent admits that:
>
> (a) on November 21, 2006, he received into his trust account US $100,100 from or on behalf of RI;
>
> (b) he received the funds when he:
>
> i) knew that the funds were intended for investment in IFC contrary to the Cease Trade Order; or

ii) ought to have known that the funds were intended for investment in IFC contrary to the Cease Trade Order,

(c) he did not return the funds to RI but held them in his trust account until March 12, 2007;

(d) on March 12, 2007, he disbursed the funds by wire transfer to another lawyer;

(e) he did not account in writing to RI for the funds received,

(f) his failure to account in writing was contrary to Rule 3-48(1) of the Law Society Rules; and

(g) he failed to account in writing to RI when he:

i) knew that his conduct was contrary to Rule 3-48(1) of the Law Society Rules; or

ii) ought to have known that his conduct was contrary to Rule 3-48(1) of the Law Society Rules.

[207] At paragraph 367 of the Notice to Admit, the Respondent is deemed to have made the following admissions:

As it relates to Citation Allegation 3, the Respondent admits that:

(a) on December 1, 2006, he received into his trust account US $173,783.45 from C Ventures;

(b) he received the funds when he:

i) knew that the funds were intended for investment in IFC contrary to the Cease Trade Order; or

ii) ought to have known that the funds were intended for investment in IFC contrary to the Cease Trade Order;

(c) he did not return the funds to C Ventures but held them in his trust account and then disbursed them without authorization from C Ventures as particularized in Allegation 3;

(d) his disbursement of the funds was contrary to Rule 3-56 of the Law Society Rules; and

(e) when he disbursed the funds:

i) he knew he was acting contrary to Rule 3-56 of the Law Society Rules; or

ii) he ought to have known he was acting contrary to Rule 3-56 of the Law Society Rules.

[208] At paragraph 369 of the Notice to Admit, the Respondent is deemed to have made the following admissions:

As it relates to Citation Allegation 4, the Respondent admits that:

(a) in November 2006, in the course of acting for IFC, he received funds into his trust account from persons, as particularized in Allegation 4;

(b) he disbursed the funds to US bank accounts controlled by IFC as particularized in Allegation 4;

(c) he disbursed the funds without advising the following persons that he was not protecting their interests (the "Caution"):

i) SS and AS;

ii) RF;

iii) RJ;

iv) BK;

v) JB and MB;

vi) ML and SL;

vii) DA;

viii) BS and LS,

(d) his failure to provide the Caution was contrary to Chapter 4, Rule 1 of the *Professional Conduct Handbook* then in force; and

(e) by failing to provide the Caution;

i) he knew that he was acting contrary to Chapter 4, Rule 1 of the *Professional Conduct Handbook* then in force; or

ii) he ought to have known that he was acting contrary to Chapter 4, Rule 1 of the *Professional Conduct Handbook* then in force.

POSITION OF THE RESPONDENT

[209] The Respondent did not testify, call witnesses or provide any evidence in his reply to these allegations. Therefore the only evidence before this Panel of an explanation for the Respondent's actions is found in the Notice to Admit documents that contain the Respondent's replies to the Law Society's queries when this matter was under investigation.

[210] In an interview with a Law Society investigator on June 1, 2007 the following is noted:

(a) Respondent acknowledges that he knew by November 16, 2006 that a "cease and desist order" had been issued by the BC Securities Commission. [Notice to Admit, Tab 56, p. 3]

(b) The Respondent explains that he is "pissed off" with MS because money was showing up in the Respondent's account and he did not know where it was coming from. [Notice to Admit, Tab 56, p. 5 & 6]

(c) When asked about whether the Respondent should have been suspicious about these money transfers the Respondent states:

> Yes, kind of…I didn't really put my mind to it and,
>
> I had a business relationship with him (MS) and had no reason to not believe what he told me.

(d) When asked about what was going through his mind at this time the Respondent states:

> When things calmed down mid-November I realized that IFC is not supposed to be trading but I am sending money to IFC… "Oh Shit!" [Notice to Admit, Tab 56, p. 6]

and later in the interview,

> The evolution of the matter, it didn't dawn on me till early December. [Notice to Admit, Tab 56, p. 9]

[211] In a letter dated April 29, 2008 the Law Society asked the Respondent to clarify the following facts:

> The practice that you followed of opening your client files in the names of the investors, and then billing the investors, suggests that you were treating the investors as your clients.
>
> Based on the information I have received to date, my present view is that you were acting for these investors. However, I ask that you clarify your position on this point. If it is your position that you were not representing the investors, I ask what steps you took to comply with Rule 1 of Chapter 4 of the *Professional Conduct Handbook* …
>
> [Notice to Admit, Tab 58, p. 4]

[212] The Respondent replied in a letter dated July 26, 2008 that:

> … I did not know that funds were going to be coming to me from people other than MS and from people that I never authorized to deposit funds into my trust account. I only expected that MS would be depositing funds into my trust account. While the files had client names on them, I did not believe that I was acting for them. I never advised any of these depositors that I acted only for IFC, PP, DB or MS. When I discussed with MS who was going to pay me for my time, he advised me to bill the people that sent me the money since he felt they should be paying for my time. I never took steps under Rule 4 because I did not believe that I was acting for the depositors, other than MS.
>
> I was told by MS and later by LA that if a US corporation was sending the funds to IFC then those transactions were exempt from securities action. My understanding was that each investor was setting up a US corporation and that their investment was made on behalf of a US corporation.
>
> [Notice to Admit, Tab 59, p. 3]

[213] In answer to further enquiries of the Law Society concerning the Respondent's understanding of the law in this matter, the Respondent explained in a letter dated February 22, 2009:

> The issue of the US company was one that I have indicated I was advised on by MS and LA. I did not do any independent research on this issue since it made sense to me that their US corporation would not be subject to the BCSC Order. [Notice to Admit, Tab 61, p. 1]

[214] In a letter dated April 21, 2009 (but actually sent on March 10, 2010), the Respondent further explained why he did not give a warning to any of the investors:

> … I was extremely busy when these funds were sent to me. … During this time a number of people that I did not know were calling my office demanding that their funds be sent to IFC as soon as possible. At this time, some of these people could not be identified by me … I never considered my obligation under Rule 1 at that time …
>
> [Notice to Admit, Tab 66, p. 1]

[215] Further, in this letter the Respondent explained why he continued to receive pooled money after he became aware of the BC Securities CTO:

> Once I was able to ascertain who sent me those funds I simply forwarded then [sic] to IFC without any consideration for the temporary order of the BCSC. I was too busy to sit back and think about my situation and so I never considered that I might be covered by the BCSC Order. … I simply did not consider the effect of the BCSC Order at the time due to all of the demands on my time that were occurring at that time.
>
> [Notice to Admit, Tab 66, p. 1]

SUBSEQUENT OUTCOMES FOR OTHER PARTIES IN THE IFC MATTER

[216] Criminal charges were laid against PP and MS. PP, a U.S. citizen, pleaded guilty to mail fraud in a US court on September 29, 2009 and was given a jail sentence. MS, a Canadian citizen, pleaded guilty in B.C. Supreme Court to defrauding members of the public and was also given a jail sentence.

[217] Civil judgments were entered against IFC and IFC Principals in the U.S. in 2007.

BURDEN OF PROOF AND STANDARD OF PROOF

[218] This Panel is mindful of the burden of proof which is always with the Law Society. The standard of proof is the civil standard of proof on a balance of probabilities. See *FH v. MacDougall*, 2008 SCC 53; *Law Society of BC v. Harding*, 2014 LSBC 30.

PROFESSIONAL MISCONDUCT

[219] If any of the allegations are proven, the Panel must then consider if the proven allegations amount to a finding under s. 38(4) of the *Legal Profession Act* of which professional misconduct is the most serious finding. The Panel adopts the definition of professional misconduct as set out in *Law Society of BC v. McCandless*, 2010 LSBC 03 at paragraph 40:

> Professional misconduct is not defined in the *Legal Profession Act*, the Law Society Rules or the *Professional Conduct Handbook*. However, the case law as laid out in *Law Society of BC v. Hops*, [2000] LSDD No. 11 and evolved in *Law Society of BC v. Martin*, 2005 LSBC 16 characterizes the test as "whether the facts as made out disclose a marked departure from that conduct the Law Society expects of its members; if so, it is professional misconduct."

ISSUE

[220] Does the evidence support a finding that the Respondent committed professional misconduct as alleged in any or all of the four allegations in the citation?

ANALYSIS

[221] Although it was later proven in other proceedings such as the BC Securities Commission that IFC was a fraudulent enterprise, it is not necessary to make a finding that the Respondent knew that IFC or its principals were perpetrating a fraud for a finding of profession misconduct to be found.

[222] However, a lawyer's duties to his client and the public may require action long before a fraud becomes known or determined. In being cognizant of these duties and being constantly vigilant of those who would prey upon the unsuspecting, a lawyer may prevent a harm or loss from occurring or continuing.

[223] Chapter 4 of the *Professional Conduct Handbook* provides a footnote that covers the situation at hand:

> 3. A lawyer has a duty to be on guard against becoming the tool or dupe of an unscrupulous client or of persons associated with such a client and, in some circumstances, may have a duty to make inquiries. For example, a lawyer should make inquiries of a client who:

(a) Seeks the use of the lawyer's trust account without requiring any substantial legal services from the lawyer in connection with the trust matters, or

(b) Promises unrealistic returns on their investment to third parties who have placed money in trust with the lawyer or have been invited to do so.

[224] The case of *Law Society of BC v. Skogstad*, 2008 LSBC 19 at paragraphs 54, 56 and 59, is instructive as to the public interest these rules are designed to protect:

> [54] The evil to which that provision in the *Handbook* is directed is the fear that an unsophisticated and unrepresented party in his or her dealings with a lawyer will develop the impression that the lawyer is representing them in circumstances where that impression is not accurate. On the facts of this case we have a large number of individuals, at least some of whom are likely to be unsophisticated, making trust deposits to the account of a lawyer who has been represented to them as the "lawyer for the pool".
>
> …
>
> [56] It is likely that the Respondent's reluctance to adopt that characterization of his role is a result of the responsibilities that are engaged by that finding. In particular, we find that the provisions of Chapter 4, Ruling 1 are applicable. If he is the lawyer for the pool and at the same time is not the lawyer for the individual investors, then he must tell them that he is not their lawyer. The evidence on this point is uncontroverted. He not only did not advise the individual investors that he was not protecting their interests, in the case of at least 183 of those individual investors, he was not able to tell them that he was not protecting their interests because he did not know who they were. That deficiency is the subject of another count in the citation in this matter.
>
> …
>
> [59] The count does not require that unrepresented members of the public actually rely on the belief that the Respondent is representing their interests. It is sufficient for the circumstances to be such that their interests were not being protected by the Respondent, although, in the circumstances of this case, in our

> view, it was reasonable for the investors to expect that the Respondent's involvement represented some level of protection for their individual interests.

[225] A number of things should have raised red flags for the Respondent:

(a) The Respondent ignored the information provided in the CTO about fraudulent investor schemes.

(b) The Respondent was doing minimal or no legal work for any of the parties. His trust account was simply being used to transfer money.

(c) The Respondent was being told to bill the investors for his work even though he was not acting for them.

(d) The Respondent trusted MS and did not question his instructions because they had a previous business relationship.

(e) The IFC file was moved to the Respondent from another lawyer; the Respondent did not inquire of Mr. McCandless (IFC's previous lawyer) why he was not accepting money on behalf of IFC.

(f) The Respondent did not understand the law in this area (securities law).

(g) The Respondent did not research the law.

(h) The Respondent did not seek out an opinion from a lawyer familiar with securities law.

(i) The Respondent relied on MS and LA for their understanding of securities law in the United States (it is nowhere stated that MS or LA had any expertise in this area).

[226] In addition to those red flags, the Respondent ignored an order of a statutory body. This alone is conduct that would be of grave concern to the Law Society.

[227] The recent case of *Law Society of BC v. Jensen*, 2014 LSBC 14, is instructive on at least two points relevant to this case. At paragraph 31:

> The arrival of $200,000 US at the office for a client brings with its arrival a certain amount of inquiry and diligence.

And at paragraph 57:

> The issue of friendship is also troubling. We find that friendship should give rise to propriety and not short cuts.

[228] The arrival of substantial amounts of money in the Respondent's trust account seemed to raise no concern to the Respondent, other than he could not immediately identify who had sent him the money. His explanation that he was too busy and therefore did not address his mind to the numerous issues that should have been obvious to see, is well beyond mere carelessness.

[229] It should have been obvious from the beginning that something was amiss. Had the Respondent scratched beneath the surface, he would have seen that the IFC Principals were using the Respondent's position as a lawyer to enhance their ability to perpetrate a fraud on naïve investors. The evidence shows that some of the investors had no clear understanding of their true relationship with the Respondent; that the Respondent submitted a bill to HS and CS (which they paid) is particularly disturbing.

[230] The Respondent has raised no argument in his defence other than that he was not involved in the creation of the IFC scheme or knowingly perpetrated the scheme as was determined with Mr. McCandless in a separate Law Society hearing. This is true, and as stated at the outset of these reasons, there is no evidence to suggest that the Respondent was involved in committing or knowingly aiding the commission of the IFC fraud. However, although this may only lessen the degree of blameworthiness, it is not a requirement in proving the allegations set out in the citation.

[231] Further, whether the Respondent's actions or inactions were the result of specific intent or wilful blindness or negligence is of no consequence to the victims of the IFC scheme. Being a lawyer is analogous to a surgeon operating on a patient – a mistake by either professional, whether specifically intended or through negligence – the consequences for the patient or client can be severe and permanent. The duties of a lawyer are designed not only to uphold the honour of the profession but to prevent harm as well. Being too busy to be diligent is not acceptable.

[232] There was no authority presented concerning a lawyer acting contrary to a statutory body's order such as the Security Commission's CTO in this case. However, in two recent cases it was held that a breach of a court order is a very serious matter. See *Law Society of BC v. Scholz*, 2008 LSBC 16, *Law Society of BC v. Kirkhope*, 2013 LSBC 35, and *Law Society of BC v. Lessing*, 2013 LSBC 29. In *Scholz* at paragraph 8 the panel stated:

> All citizens have a duty to observe Court Orders. This is particularly true for members of the Law Society, who are Officers of the Court and owe a duty to maintain the integrity of our legal system. Courts and Court Orders are at the core of our legal system.

In *Lessing* at paragraph 118 the panel stated:

> A lawyer's failure to abide by court orders and being found in contempt cuts very close to the bone …

[233] It is no different with the order of an administrative body. Acting contrary to an order given by a statutory authority is a very serious matter.

CONCLUSION

[234] The Panel makes the following findings:

(a) Allegation 1: The evidence proves that the Respondent knew about the CTO and should have known that the transfer of money from investors to IFC was in violation of the CTO.

(b) Allegation 2: The evidence proves that the Respondent knew about the CTO and received funds from RI for the purpose of transferring those funds to IFC. It is also proven that the Respondent transferred the RI funds without authorization from RI and did not account in writing to RI, contrary to the requirement of Rule 3-48(1).

(c) Allegation 3: The evidence proves that the Respondent knew about the CTO and received funds from C Ventures when he knew the funds were to be transferred to IFC and further, the Respondent disbursed these funds without the authorization of C Ventures, contrary to Rule 3-56.

(d) Allegation 4: The evidence proves that the Respondent provided no advice to the IFC investors that he was not protecting their interests as was his duty and required by Chapter 4 of the *Professional Conduct Handbook.*

[235] For the reasons stated above, the Panel has no difficulty finding that these actions or failures to act constitute a marked departure from the conduct expected of a lawyer and is professional misconduct on all four allegations.