

Citation Authorized: February 28, 2019

Citation Issued: March 8, 2019

Citation Amended: June 5, 2019

THE LAW SOCIETY OF BRITISH COLUMBIA

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

AND

A HEARING CONCERNING

DONALD A. BOYD

RESPONDENT

RULE 4-29 ADMISSION OF MISCONDUCT

AND UNDERTAKING TO DISCIPLINE COMMITTEE

1. On September 26, 2019, the Discipline Committee considered and accepted a proposal submitted by the Respondent under Rule 4-29 of the Law Society Rules.
2. Under the proposal, the Respondent admitted two breaches of the Act and rules as alleged in a citation issued March 8, 2019 and amended June 5, 2019 (the "Citation"), and agreed to undertake to complete 15 Continuing Professional Development credits by December 31, 2019 (in addition to the 12 Continuing Professional Development credits normally required), including completion of the Law Society's Practice Management course.
3. The Citation is resolved, and the Respondent's admissions will be recorded on his professional conduct record.
4. The admitted facts underlying the misconduct were set out in a Notice to Admit dated June 6, 2019, and a Response dated July 8, 2019, and are summarized as follows.

Summary of Misconduct

5. In June 2017, the Law Society of British Columbia conducted a compliance audit of the Respondent's law practice, for an audit period of January 1, 2016 to June 4, 2017. Following the audit, the compliance auditor referred certain concerns to the Law Society's Investigations, Monitoring, and Enforcement Department.

Allegation 1: Certificate Filed under the Income Tax Act

6. The compliance audit revealed that in approximately May 2010, the Respondent received notice that a certificate under the *Income Tax Act*, for personal income tax arrears in the amount of \$119,467.38, had been filed with the Federal Court. The assessed amount related to unfiled personal income tax returns.
7. After the Respondent filed his personal income tax returns, the amount owing was reassessed at approximately \$60,000.
8. On May 16, 2014, a certificate of satisfaction was filed with the Federal Court.
9. In 2010, the Respondent did not immediately notify the Executive Director of the Law Society in writing of the circumstances of the *Income Tax Act* certificate, which had not been satisfied within seven days, as required by Rule 3-44 of the Rules (now 3-50), then in force. The Respondent also did not immediately notify the Executive Director in writing of a proposal for satisfying the *Income Tax Act* certificate, as required by Rule 3-44 of the Rules (now 3-50), then in force.
10. The Respondent was not familiar with Rule 3-44 of the Rules (now Rule 3-50) around the time he became aware of the *Income Tax Act* certificate. He first became aware of the rule when he read about it in the Law Society's Discipline Digest, sometime before the compliance audit.
11. In his 2012 Annual Practice Declaration, the Respondent reported that a judgment for income taxes was owing. However, the Respondent answered "no" to whether he had a judgment rendered against him in the 2010, 2011, 2013, and 2014 reporting years.
12. The Respondent explained that he answered "no" to the question about a judgment being rendered against him in the 2010, 2011 and 2013 reporting years because he believed that the declarations spoke only to the reporting years covered by those Practice Declarations.
13. The Respondent has reviewed Rule 3-50, and is now fully aware of his obligation to report unsatisfied monetary judgments to the Law Society.

Allegation 2: Keeping More than \$300 of Own Funds in Pooled Trust Account

14. The compliance audit also revealed that on four client files, the Respondent issued bills for his legal fees but either kept the funds in his pooled trust account, or deposited payments of the bills directly into his pooled trust account instead of his general account. The funds then remained in the pooled trust account for several months, and on one file for approximately one year. This resulted in a balance greater than \$300 of his own funds in his pooled trust account, contrary to Rule 3-60(5) of the Rules.

15. The Respondent's explanation for keeping the funds in trust was that he wanted to have better control over his finances. He also advised that he did not know that his actions were contrary to the Rules.
16. The Respondent was advised by the Law Society trust compliance auditor that this practice was not acceptable.
17. The Respondent has reviewed Rule 3-60(5) of the Rules, and is now fully aware of his obligation to not maintain more than \$300 of his personal funds in his pooled trust account.
18. The Respondent has changed his practice and now immediately transfers funds from his trust account to his general account when he issues a legal account, or deposits funds directly into his general account where those funds are in payment of a legal account.

Admissions of Misconduct

19. The Respondent has admitted that in approximately May 2010, he failed to immediately notify the Executive Director of the Law Society of British Columbia in writing of the circumstances of a Federal Court monetary judgment (Court File No. ITA-6137-10) entered against him on May 10, 2010, which was not satisfied within 7 days after the date of entry, along with his proposal for satisfying the judgment, contrary to Rule 3-44 of the Law Society Rules, then in force (now Rule 3-50). The Respondent has admitted that this conduct constitutes a breach of the Act or rules, pursuant to s. 38(4) of the *Legal Profession Act*.
20. The Respondent has admitted that between approximately December 2015 and December 2016, he maintained more than \$300 of his own money in his pooled trust account, contrary to Rule 3-60(5) of the Law Society Rules. The Respondent has admitted that this conduct constitutes a breach of the Act or rules, pursuant to s. 38(4) of the *Legal Profession Act*.

Citation Authorized: February 28, 2019
Citation Issued: March 8, 2019
Citation Amended: June 6, 2019

THE LAW SOCIETY OF BRITISH COLUMBIA
IN THE MATTER OF THE *LEGAL PROFESSION ACT*, SBC 1998, c. 9

AND

A HEARING CONCERNING

DONALD A. BOYD

RESPONDENT

NOTICE TO ADMIT

(Rule 4-28 of the Law Society Rules)

TO: Donald A. Boyd
#15-5769 201A Street
Langley, BC V3A 8H9

YOU ARE REQUESTED TO ADMIT, for the purposes of this hearing only, the truth of the facts and the authenticity of the documents listed below.

YOU MUST RESPOND TO THIS REQUEST in accordance with Rule 4-28 of the Law Society Rules by serving a response within 21 days that must contain one of the following in respect of each fact described in this request and each document attached to the request: an admission of the truth of the fact or the authenticity of the document attached to the request; or a statement that you do not admit the truth of the fact or the authenticity of the document, along with the reasons for not doing so.

IF YOU FAIL TO RESPOND TO THIS REQUEST in accordance with Rule 4-28 within 21 days as described above, you will be deemed to admit, for the purposes of this hearing only, the truth of the facts and the authenticity of the documents set out below. If you serve a response within these time limits but do not provide a response to each fact and document listed below, you will be deemed to admit, for the purposes of this hearing only, the truth of the facts and the authenticity of the documents for which you have not provided a response.

YOU ARE REQUESTED TO ADMIT THE AUTHENTICITY OF THE FOLLOWING ATTACHED DOCUMENTS AND BY DOING SO, YOU ACKNOWLEDGE:

“Authenticity” of each attached document means, unless otherwise stated:

- a. the document is a true copy of the original document,
- b. the document 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. the document is admitted into evidence to prove that the statements were made and not for proof of the truth of the matters recorded in it.

Tab	Document Description
1.	Citation, authorized February 28, 2019, issued March 8, 2019 (DD#27)
2.	Affidavit of Service of S. Wesnoski, dated March 12, 2019, with exhibits (DD#28)
3.	Amended Citation, dated June 5, 2019
4.	Memo dated December 15, 2017, from J. Bachra to G. Copland, with selected attachments (redacted for relevance) (DD# 1)
5.	Certificate (ITA-6137-10) filed with the Federal Court on May 10, 2010 (DD#8)
6.	Proceedings Query of ITA-6137-10 (DD#9)
7.	2012 Annual Practice Declaration for the Respondent (DD#19)
8.	2010 Annual Practice Declaration for the Respondent (DD#17)
9.	2011 Annual Practice Declaration for the Respondent (DD#18)
10.	2013 Annual Practice Declaration for the Respondent (DD#20)

Tab	Document Description
11.	2014 Annual Practice Declaration for the Respondent (DD#21)
12.	Excerpts from the transcript of the Respondent's January 4, 2019 interview with a Law Society investigator (DD#13, pp. 17, 18, 19, 24, 25)

YOU ARE REQUESTED TO ADMIT THE TRUTH OF THE FOLLOWING FACTS:

Member Background

1. Donald A. Boyd (the "Respondent") was called and admitted as a member of the Law Society of British Columbia (the "Law Society") on December 19, 1985.
2. The Respondent was previously called and admitted as a member of the Law Society of Alberta in 1976.
3. From December 1985 to September 1989, the Respondent practised law at two medium to large-sized firms in Vancouver, British Columbia.
4. Between September 1989 and July 2013, the Respondent practised law as a sole practitioner in Surrey, British Columbia.
5. Between July 2013 and October 2018, the Respondent practised law as a sole practitioner, but in an apparent partnership with another lawyer, at a small firm in Surrey, British Columbia.
6. Since November 1, 2018, the Respondent has practised law as a sole practitioner in Langley, British Columbia.
7. The Respondent's primary area of practise is family law.

Citation and Service

8. The citation in this matter was authorized by the Discipline Committee on February 28, 2019 and was issued on March 8, 2019 (the "Citation"). [Tab 1]

9. The Respondent admits that on March 8, 2019, he was served with a copy of the Citation, in accordance with Rules 4-19 and Rule 10-1(1)(a) of the Law Society Rules ("Rules"). [Tab 2]
10. On June 5, 2019, discipline counsel amended the citation, pursuant to Rule 4-21 of the Rules ("Amended Citation"). [Tab 3]
11. On June 5, 2019, discipline counsel gave written notice to the Respondent and the President of the Amended Citation, pursuant to Rule 4-21 of the Rules.

Background Facts

12. Between June 5 and 7, 2017, the Law Society of British Columbia ("Law Society") conducted a compliance audit of the Respondent's law practice, for an audit period of January 1, 2016 to June 4, 2017. [Tab 4]
13. Following the compliance audit, the compliance auditor referred certain concerns to the Law Society's Investigations, Monitoring, and Enforcement Department. [Tab 4]

Allegation 1: Certificate Filed under the Income Tax Act

14. The compliance audit revealed that in approximately May 2010, the Respondent received notice that a certificate under the *Income Tax Act*, for personal income tax arrears in the amount of \$119,467.38, had been filed with the Federal Court (File No. ITA-6137-10). [Tabs 4, 5]
15. The Canada Revenue Agency had assessed the amount owing based on unfiled personal income tax returns.
16. After the Respondent filed his personal income tax returns, the Canada Revenue Agency reassessed the amount owing at approximately \$60,000.
17. On May 16, 2014, a certificate of satisfaction was filed with the Federal Court. [Tab 6]
18. In 2010, the Respondent did not immediately notify the Executive Director of the Law Society in writing of the circumstances of the *Income Tax Act* certificate, which had not been satisfied within seven days, as required by Rule 3-44 of the Rules (now 3-50), then in force.

19. In 2010, the Respondent did not immediately notify the Executive Director in writing of a proposal for satisfying the *Income Tax Act* certificate, as required by Rule 3-44 of the Rules (now 3-50), then in force.
20. The Respondent was not familiar with Rule 3-44 of the Rules (now Rule 3-50) around the time he became aware of the *Income Tax Act* certificate.
21. The Respondent first became aware of Rule 3-44 of the Rules (now Rule 3-50) when he read about it in the Law Society's Discipline Digest, sometime before the compliance audit.
22. In his 2012 Annual Practice Declaration, the Respondent reported that a judgment for income taxes was owing. [Tab 7]
23. The Respondent answered "no" to whether he had a judgment rendered against him in the 2010, 2011, 2013, and 2014 reporting years. [Tabs 8-11]
24. The Respondent has explained that he answered "no" to the question about a judgment being rendered against him in the 2010, 2011 and 2013 reporting years because he believed that the declarations spoke only to the reporting years covered by those Practice Declarations. [Tab 12, p. 25]
25. During an interview with a Law Society investigator on January 4, 2019, the Respondent further explained:
- I, I, and I, you know it's, maybe a formal rationalization but my general recollection is when they ask the questions, it's prefaced in the reporting period, did you have whatever, a judgment against you, and I'm sure I would have looked at that and said well it's not in the reporting period so I'm good. [Tab 12, p. 25]
26. The Respondent has reviewed Rule 3-50, and is now fully aware of his obligation to report unsatisfied monetary judgments to the Law Society.

Allegation 2: Keeping More than \$300 of Own Funds in Pooled Trust Account

27. The compliance audit revealed that on four client files, the Respondent issued bills for his legal fees but either kept the funds in his pooled trust account, or deposited payments of the bills directly into his pooled trust account instead of his general account. [Tab 4]

28. The funds then remained in the pooled trust account for several months, and on one file for approximately one year. [Tab 4]

29. This resulted in a balance greater than \$300 of his own funds in his pooled trust account, contrary to Rule 3-60(5) of the Rules.

30. The table below sets out the instances when this occurred: [Tab 4, p. 3]

Client	Invoice Date	Invoice Amount	Dates withdrawn from Trust
KR	June 29, 2016	\$23,520.00	July 5, 2016 (\$9,000); August 2, 2016 (\$10,000); November 9, 2016 (\$5,000)
IS	December 10, 2015	\$53,760.00	Jan 29, 2016 (\$5,000); Feb 2, 2016 (\$5,000); Feb 26, 2016 (\$2,500); March 4, 2016 (\$6,000); June 1, 2016 (\$6,500); Oct 6, 2016 (\$7,500); Dec 22, 2016 (\$6,000)
VU	February 15, 2016	\$20,160.00	March 11, 2016 (\$10,000); April 11, 2016 (\$7,500); Oct 31, 2016 (\$2,958.76)
AN	April 1, 2016	\$13,000.00	Aug 31, 2016 (\$4,000); Sept 6, 2016 (\$5,000); Oct 31, 2016 (\$4,000)

31. The Respondent's explanation for keeping the funds in trust was that he wanted to have better control over his finances.

32. During a January 4, 2019 interview with a Law Society investigator, the Respondent explained as follows: [Tab 12, p. 17]

...I, I felt I guess more in control I guess of being able to do it. In, in my practice, I don't get you know money all the time and so your sort of, I try and have kind of a steady cash flow as opposed to one that's more sporadic. But that's, that's really the rational [sic] I guess.

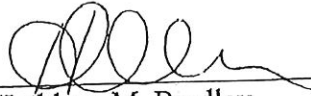
33. The Respondent did not know that his actions were contrary to the Rules. [Tab 12, p. 17]

34. The Respondent was advised by the Law Society trust compliance auditor that this practice was not acceptable. [Tab 12, p. 17]
35. The Respondent has reviewed Rule 3-60(5) of the Rules, and is now fully aware of his obligation to not maintain more than \$300 of his personal funds in his pooled trust account.
36. The Respondent has changed his practice and now immediately transfers funds from his trust account to his general account when he issues a legal account, or deposits funds directly into his general account where those funds are in payment of a legal account. [Tab 12, pp. 17, 18]

Admissions of Misconduct

37. The Respondent admits that in approximately May 2010, he failed to immediately notify the Executive Director of the Law Society of British Columbia in writing of the circumstances of a Federal Court monetary judgment (Court File No. ITA-6137-10) entered against him on May 10, 2010, which was not satisfied within 7 days after the date of entry, along with his proposal for satisfying the judgment, contrary to Rule 3-44 of the Law Society Rules, then in force (now Rule 3-50).
38. The Respondent admits that this conduct constitutes a breach of the Act or rules, pursuant to s. 38(4) of the *Legal Profession Act*.
39. The Respondent admits that between approximately December 2015 and December 2016, he maintained more than \$300 of his own money in his pooled trust account, contrary to Rule 3-60(5) of the Law Society Rules.
40. The Respondent admits that this conduct constitutes a breach of the Act or rules, pursuant to s. 38(4) of the *Legal Profession Act*.

DATED at Vancouver, British Columbia, this 6th day of June, 2019.


Kathleen M. Bradley
Counsel for the Law Society of British Columbia