

**THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION**

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

DAVID MICHAEL SIMON

RESPONDENT

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

1. On October 5, 2023, 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 to various allegations of professional misconduct as alleged in a citation authorized July 5, 2022 (the “Citation”).
3. Under the Rule 4-29 proposal, the Respondent undertook that for a period of twelve (12) years from October 6, 2023, he would not:
 - (i) engage in the practice of law in British Columbia with or without the expectation of a fee, gain or reward, whether direct or indirect, until such time as he may again become a member in good standing of the Law Society of British Columbia (the “Law Society”);
 - (ii) apply for admission or re-admission to the Law Society or elsewhere in Canada;

- (iii) apply for membership in any other law society (or like governing body regulating the practice of law) without first advising the Law Society in writing; and
- (iv) 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.

(the “Undertaking”)

4. As a result, the Citation is now resolved under Rule 4-29 of the Law Society Rules and the Respondent’s admission of professional misconduct and his Undertaking will be recorded on his professional conduct record.
5. In making its decision, the Discipline Committee considered a letter to the Chair of the Discipline Committee dated September 5, 2023 in which the Respondent admitted the disciplinary violations and gave his Undertaking not to practice law as well as an Agreed Statement of Facts dated September 6, 2023 (the “ASF”).
6. As part of his proposal, the Respondent has acknowledged that pursuant to Rule 4-29(5) of the Law Society Rules, his Undertaking not to practice law means that he is a person who has ceased to be a member of the Law Society as a result of disciplinary proceedings, and that section 15(3) of the *Legal Profession Act* applies to him.
7. At the conclusion of the term of his Undertaking, pursuant to section 19(3) of the *Legal Profession Act*, should the Respondent apply for reinstatement in British Columbia, a mandatory credentials hearing would be held to consider his good character and fitness to practise law, with the Respondent bearing the onus of demonstrating he meets the requisite test. The Respondent’s professional conduct record reflecting this admitted misconduct, as well as other relevant information, would be considered at that time.
8. if the Respondent were to be reinstated, he would have to comply with any “conditions on returning to practice” that a credentials panel may impose. The Law Society would have the opportunity to seek appropriate conditions to address the protection of the public.
9. As such, the public will be protected as the Respondent is not permitted to practise law for a lengthy period of time and the geographic scope of the Undertaking (specifically the

prohibition on practising anywhere in Canada and the requirement to inform the Law Society if he applies to practise elsewhere in the world) adds an additional layer of protection beyond the orders that could be made by a discipline hearing panel. Finally, if the Respondent applies for reinstatement, he would be subject to a process in which he bears the onus of proof as to his fitness to practise law.

Key Admitted Facts

Background

10. The Respondent was called and admitted as a member of the Law Society on May 23, 1987. He was also called and admitted as a member of the Law Society of Upper Canada (now Law Society of Ontario) on April 6, 1982. Prior to his retirement, the Respondent practised as a sole practitioner operating as David M. Simon Law Corporation (“Simon Law”).
11. The Citation was authorized by the Discipline Committee on July 5, 2022 and issued on July 13, 2022.
12. At all material times, the Respondent practised out of his home office with no office staff. In addition to a general account, the Respondent operated two pooled trust accounts: (a) Vancity Savings Credit Union pooled trust account #100075523550 (the “Vancity Trust Account”); and (b) TD Canada Trust pooled trust account #0574-5222134 (the “TD Trust Account”).
13. At all material times, the Respondent maintained his client trust ledgers in QuickBooks and did not account separately for the VanCity Trust and TD Trust Accounts in his QuickBooks client ledgers. As a result, the Respondent’s monthly trust reconciliations showed differences between the balances held in each of his pooled trust accounts and his client liability listings. Except for instances noted by the auditor where the Respondent overdrew a client’s funds held in trust, the combined balances of the trust accounts held sufficient funds cumulatively to the credit of the Respondent’s clients. The Respondent’s QuickBooks client ledgers did not show the shortages indicated in the monthly trust reconciliations.

14. The specific admissions made by the Respondent are summarized below. The Respondent admits professional misconduct in relation to various trust accounting practices. No client filed a complaint or was found to have lost money as a result of the Respondent's misconduct.

Allegations 1 and 2 – Misappropriation/Improper Trust Withdrawals/Failure to Eliminate Trust Shortages Upon Discovery

15. The Respondent admitted that between approximately January 2018 and July 2019, in one or more of the 68 instances set out in Schedule "A" to the Citation, he misappropriated, improperly withdrew or authorized the improper withdrawal of client trust funds from one of his pooled trust accounts when there were insufficient funds held to the credit of the client in that pooled trust account, or when his trust accounting records were not current, or both, contrary to one or both of Rules 3-63 and 3-64 of the Law Society Rules and failed to immediately eliminate one or more of the trust shortages upon discovery of the shortages contrary to Rule 3-74(1) of the Law Society Rules.
16. The details concerning the 68 trust shortages (which were each in the amount of \$2,500 or less) are set out in Schedule "A" to the Citation and para. 48 of the ASF.
17. By improperly withdrawing, or authorizing the withdrawal, of trust funds from one pooled trust account when the client's funds were being held in the other pooled trust account, the Respondent created the Schedule "A" trust shortages which totaled \$46,960.13. The Respondent's monthly trust reconciliations were not properly reconciled for the period between January 2018 and July 2019 and the withdrawals were made when his trust accounting records were not current.
18. As a result of the Respondent's failure to properly reconcile his trust accounts with his client trust liabilities, there was no indication of whether, or when, the Respondent eliminated the Schedule "A" Trust Shortages, with the exception of a trust shortage of .05 cents on File 18-120 which was eliminated on May 21, 2019.

Allegations 3 and 4 – Misappropriation/Improper Trust Withdrawals/Failure to Eliminate Trust Shortages Upon Discovery/Failure to Make Written Report to Executive Director of Law Society

19. The Respondent admitted that between approximately March 2018 and September 2019, in one or more of the 29 instances set out in Schedule “B” to the Citation, he misappropriated, improperly withdrew or authorized the improper withdrawal of client trust funds from one of his pooled trust accounts when there were insufficient funds held to the credit of the client in that pooled trust account, or when his trust accounting records were not current, or both, contrary to one or both of Rules 3-63 and 3-64 of the Law Society Rules and failed to immediately eliminate one or more of the trust shortages upon discovery of the shortages contrary to Rule 3-74(1) of the Law Society Rules and failed to immediately make written reports to the Executive Director of the Law Society of the relevant facts and circumstances surrounding one or more of the trust shortages greater than \$2,500 upon discovery of the shortages, contrary to Rule 3-74(2) of the Law Society Rules.
20. The details concerning the 29 trust shortages (which were each more than \$2,500) are set out in Schedule “B” to the Citation and para. 57 of the ASF.
21. By improperly withdrawing, or authorizing the withdrawal, of trust funds from one pooled trust account when the client’s funds were held in the other pooled trust account, the Respondent created the Schedule “B” trust shortages which totaled \$930,253.10. The Respondent’s monthly trust reconciliations were not properly reconciled for the period between March 2018 and September 2019 and the withdrawals were made when his trust accounting records were not current.
22. As a result of the Respondent’s failure to properly reconcile his trust accounts with his client trust liabilities, there was no indication of whether, or when, the Respondent eliminated the Schedule “B” Trust Shortages, with the exception of: (a) a shortage of \$2,968.38 on File 18-065 which was eliminated on March 28, 2018; (b) a shortage of \$29,020 on File 18-120 which was eliminated on July 19, 2018; and (c) a shortage of \$127,975.81 on File 19-74 which was eliminated on May 28, 2019.

23. Apart from those three exceptions, the Respondent failed to immediately eliminate the remainder of the Schedule “B” Trust Shortages upon discovery of the shortages.
24. The Respondent failed to immediately make written reports to the Executive Director of the Law Society of the relevant facts and circumstances surrounding each of the Schedule “B” Trust Shortages. He reported he did not do so “mainly out of embarrassment” and observed that those which could be rectified were done quickly and that serving his clients was more important than taking the time to report something that did not impact them.

Allegations 5 and 6 – Misappropriation/Improper Trust Withdrawals/Failure to Eliminate Trust Shortages Upon Discovery

25. The Respondent admitted that between approximately January 2018 and September 2019, in one or more of the 29 instances set out in Schedule “C” to the Citation, he misappropriated, improperly withdrew or authorized the improper withdrawal of client trust funds from one of his pooled trust accounts when there were insufficient funds held to the credit of the client in that pooled trust account, or when his trust accounting records were not current, or both, contrary to one or both of Rules 3-63 and 3-64 of the Law Society Rules and failed to immediately eliminate one or more of the 14 trust shortages marked with an asterisk in Schedule “C” upon discovery of the shortages contrary to Rule 3-74(1) of the Law Society Rules.
26. The details concerning the 29 trust shortages (which were each in the amount of \$2,500 or less) and 14 trust shortages that were not immediately eliminated are set out in Schedule “C” to the Citation.
27. By improperly withdrawing, or authorizing the withdrawal, of trust funds from one pooled trust account when the client’s funds were being held in the other pooled trust account, the Respondent created the Schedule “C” trust shortages which totaled \$8,293.69. The Respondent’s monthly trust reconciliations were not properly reconciled for the period between January 2018 and September 2019 and the withdrawals were made when his trust accounting records were not current.

28. The Respondent stated that he was not aware that he held insufficient funds in his pooled trust accounts when the withdrawals set out in Schedule “C” were made.

Allegations 7 and 8 – Misappropriation/Improper Trust Withdrawals/Failure to Eliminate Trust Shortages Upon Discovery/Failure to Make Written Report to Executive Director of Law Society

29. The Respondent admitted that between approximately January 2018 and March 2019, in one or more of the eight instances set out in Schedule “D” to the Citation, he misappropriated, improperly withdrew or authorized the improper withdrawal of client trust funds from one of his pooled trust accounts when there were insufficient funds held to the credit of the client in that pooled trust account, or when his trust accounting records were not current, or both, contrary to one or both of Rules 3-63 and 3-64 of the Law Society Rules and failed to immediately eliminate one or more of the trust shortages upon discovery of the shortages contrary to Rule 3-74(1) of the Law Society Rules and failed to immediately make written reports to the Executive Director of the Law Society of the relevant facts and circumstances surrounding one or more of the eight trust shortages greater than \$2,500 upon discovery of the shortages, contrary to Rule 3-74(2) of the Law Society Rules.
30. The details concerning the eight trust shortages (each of which were more than \$2,500) and the dates they originated and were eliminated are set out in Schedule “D” to the Citation and para. 141 of the ASF.
31. By improperly withdrawing, or authorizing the withdrawal, of trust funds from one pooled trust account when the client’s funds were held in the other pooled trust account, the Respondent created the Schedule “D” trust shortages which totaled \$344,326.77.
32. The Respondent’s monthly trust reconciliations were not properly reconciled for the period between January 2018 and March 2019 and the withdrawals were made when his trust accounting records were not current.
33. The Respondent failed to immediately make written reports to the Executive Director of the Law Society of the relevant facts and circumstances surrounding six of the Schedule

“D” Trust Shortages. He reported he did not do so “mainly out of embarrassment” and observed that those which could be rectified were done quickly and that serving his clients was more important than taking the time to report something that did not impact them.

Allegation 9 – Failure to Prepare Monthly Trust Reconciliations

34. The Respondent admitted that between approximately January 2018 and August 2019, in relation to one or more of the 19 instances set out in Schedule “E” to the Citation, he failed to prepare monthly trust reconciliations of his pooled trust accounts within 30 days of the effective date of the reconciliation, or at all, contrary to Rule 3-73 of the Law Society Rules.
35. As a consequence, the Respondent failed to properly prepare his monthly trust reconciliations such that explanations for differences between the balances held in his two pooled trust accounts and the client liability listings were not set out and his monthly trust reconciliations contained unexplained differences or errors which were not corrected. The Respondent did not eliminate the shortages in his monthly trust reconciliations but rather would carry forward each month’s trust shortages to the next trust reconciliation, recording it as an adjusting item on the trust reconciliation.
36. As a further consequence, numerous trust disbursements were made during the period January 2018 and August 2019 when the Respondent’s trust accounting records were not current, creating trust shortages.

Allegation 10 – Failure to Provide Accurate Trust Report

37. The Respondent admitted that he made representations to the Law Society in his 2019 Trust Report that that there were no trust shortages that remained uncorrected for more than one month (Section C, Question 30) and that he had immediately reported trust shortages greater than \$2,500 to the Law Society (Section C, Question 32 and 32a) when he knew, or ought to have known, that those statements were false or misleading.
38. The Respondent certified the information contained in his 2019 Trust Report was “true and correct” when he signed the Trust Report and submitted it to the Law Society.

39. The Respondent answered “no” to Question 30 on the 2019 Trust Report: “*During the reporting period, did your client trust ledger disclose any trust shortages that remained uncorrected for more than one month*” even though his monthly trust reconciliations for each month in the reporting period showed 12 uncorrected trust shortages, each of which significantly exceeded \$2,500 (as set out in para. 352 of the ASF).
40. The Respondent answered “yes” to Question 32 on the 2019 Trust Report: “*Were there any trust shortages in excess of \$2,500 during the reporting period*” and answered “yes” to Question 32(a): “*Did you immediately provide a written report to the Law Society as required by Rule 3-74. If no, use the note function to provide details of such shortages together with your explanation why these shortages were not reported immediately*” even though a forensic review identified 23 trust shortages over \$2,500 that occurred during the reporting period which the Respondent did not immediately report to the Law Society (the details of which are set out in para. 359 of the ASF).

Allegation 11 – Breach of Client Identification and Verification Rules

41. The Respondent admitted that in approximately October 2017, while acting for clients DC and JH in a non-face-to-face transaction on File 17-289, he failed to properly obtain the information required to verify their identity, contrary to one or both of Rules 3-102 and 3-104 of the Law Society Rules.
42. DC and JH were American citizens residing in Florida. The Respondent acted for DC and JH in relation to the sale of their property in Vancouver.
43. At the material time, Rule 104(5) of the Law Society Rules required that if the client was not present in Canada, the lawyer must rely on an agent to obtain the information required to verify the client’s identity. The Respondent was required to have a written agreement with an agent to verify the identity of DC and JH.
44. The Respondent did not enter into a written agreement with an agent to verify the identity of DC and JH. The Florida notary who verified DC’s and JH’s digital images did not verify any government-issued photo identification of DC and JH.

45. The Respondent stated he was not aware of the Law Society's identification requirements for out of country clients at the time he was acting for DC and JH and admitted that he did not follow the proper procedure for verifying their identities.