

Citation Issued: September 29, 2022  
Citation Amended: January 16, 2024  
Citation Further Amended: February 7, 2024

**LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL**

**HEARING DIVISION**

BETWEEN:

LAW SOCIETY OF BRITISH COLUMBIA

AND:

MARK WILLIAM SAGER

RESPONDENT

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

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1. On February 26, 2024, the Discipline Committee considered and accepted a proposal submitted by the Respondent under Rule 4-29 of the Law Society Rules (the “**Rules**”).
2. Under the Rule 4-29 proposal, the Respondent admitted to the allegations of professional misconduct as alleged in paragraphs 1, 3, 5(a), and 5(c) of the citation issued September 29, 2022, amended January 16, 2024, and further amended February 7, 2024 (the “**Citation**”):

1. On or before April 14, 2010, you acted in a conflict of interest by causing the preparation of a will for your client, OM, in which you were named trustee of a life interest and received absolute discretion to use estate funds for the purpose of traveling to England, when your client had not received independent legal advice, contrary to one or both of Chapter 7, Rules 1 and/or 2 of the *Professional Conduct Handbook*, then in force.

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

3. Between approximately December 2010 and May 2019, while acting as the

executor and trustee of the estate of your former client, OM, you improperly withdrew from trust some or all of \$40,000.00 in executor fees and \$24,113.25 in management fees (not including taxes), prior to receiving signed releases from the beneficiaries waiving the passing of your accounts or obtaining a court order authorizing the payments, contrary to one or both of Rule 3-56 [now Rule 3-64] of the Law Society Rules and/or your fiduciary duties.

This conduct constitutes professional misconduct, conduct unbecoming a lawyer [now conduct unbecoming the profession] or a breach of the Act or rules, pursuant to s. 38(4) of the *Legal Profession Act*.

5. Between approximately December 2010 and June 2020, while acting as the executor and trustee of the estate of your former client, OM, you failed to fulfill your obligations to the Law Society and/or the beneficiaries contrary to one or both of Rule 3.48-1 [now Rule 3-55] of the Law Society Rules and/or your fiduciary duties, by failing to do one or more of the following:

- (a) produce the records necessary to create a full accounting of the receipt or disbursement of the fiduciary property;
- (c) make and maintain contact with the residual beneficiaries for approximately nine years.

3. Under the Rule 4-29 proposal, the Respondent undertook that for a period of two (2) years from April 1, 2024 he would:
- i. not engage in the practice of law in British Columbia with or without the expectation of a fee, gain, or reward, whether directly or indirectly;
  - ii. not apply for reinstatement to the Law Society of British Columbia or elsewhere within Canada;
  - iii. not apply for membership in any other law society (or like governing body regulating the practice of law) without first advising in writing the Law Society of British Columbia;
  - iv. not work in any capacity whatsoever, for any lawyer or law firm in British Columbia, unless he has obtained the prior written consent of the Executive Director of the Law Society of British Columbia;

- v. with the exception of his role as executor of the estate of DL, resign prior to April 1, 2024 from any fiduciary roles arising from a solicitor client relationship, including but not limited to resigning from his role as executor of the estates of AL, KD, KA, and GW, unless he has obtained the prior written consent of the Executive Director of the Law Society of British Columbia;
- vi. not assume any fiduciary roles arising from a solicitor client relationship, including but not limited to assuming the role of executor of the estate of SK, unless he has obtained the prior written consent of the Executive Director of the Law Society of British Columbia; and
- vii. not handle any fiduciary property as defined in Rule 1 of the Rules unless he has obtained the prior written consent of the Executive Director of the Law Society of British Columbia

(the “**Undertaking**”).

- 4. As a result, the Citation is now resolved under Rule 4-29 of the 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 February 23, 2024, in which the Respondent admitted to disciplinary violations and gave his Undertaking, as well as an Agreed Statement of Facts dated November 15, 2023.
- 6. As part of the Rule 4-29 proposal, the Respondent has acknowledged that, pursuant to Rule 4-29(5) of the Rules, his Undertaking not to practice law means that he is a person who has ceased to be a member of the Law Society of British Columbia as a result of disciplinary proceedings and that section 15(3) of the *Legal Profession Act*, S.B.C. 1998, c. 9 (the “*LPA*”), applies to him. The Respondent has also acknowledged that, once he resigns from membership with the Law Society of British Columbia, he must comply with section 82 of the *LPA*.

7. At the conclusion of the term of his Undertaking, pursuant to section 19(3) of the *LPA*, should the Respondent apply for reinstatement in British Columbia, a mandatory credentials hearing would be held to consider his good character and fitness to practice 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 of British Columbia 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 practice law, act in a fiduciary role arising out of a solicitor client relationship, or handle any fiduciary property for a lengthy period of time and the geographic scope of the Undertaking (specifically the prohibition against practising elsewhere in Canada and the requirement to inform the Law Society of British Columbia if he applies to practice elsewhere in the world) adds an additional layer of protection beyond the orders that could be made by a discipline 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 practice law.

### **Key Admitted Facts**

#### **Background**

10. The Respondent is presently 66 years of age.
11. The Respondent was called and admitted as a member of the Law Society of British Columbia on March 15, 1991.
12. Between 2010 and 2020, approximately 10% of the Respondent's practice was comprised of work relating to estates.
13. A compliance audit of the Respondent's firm, Sager Legal Advisors LLP, was conducted by the Law Society of British Columbia from June 10 to 14, 2019 for the period from November 1, 2017 to June 9, 2019 (the "**Compliance Audit**").

## **OM and FM**

14. At all material times, OM resided in West Vancouver, British Columbia. The Respondent had known OM for many years and they had been friends since 1979. OM was also the Respondent's client.
15. OM had a sister, FM, who resided in West Sussex, England, which is about 100 kilometers southwest of Heathrow Airport. FM lived on her own and had no living close relatives.

## **OM's Wills**

16. OM made a Last Will and Testament dated May 5, 2005 (the "**2005 Will**"). The 2005 Will named the Respondent as executor and trustee.
17. The 2005 Will contained specific bequests, with 60% of the residual to be paid to FM and 40% of the residual to be divided equally between four charitable organizations: the West Vancouver Seniors' Activity Centre (the "**WVSAC**"), St. Christopher's Anglican Church ("**St. Christopher's**"), the British Columbia Society for the Prevention of Cruelty to Animals (the "**BCSPCA**"), and the West Vancouver Memorial Library Foundation (the "**WVMLF**") (collectively, the "**Four Charities**").
18. In early 2010, OM, having received a terminal diagnosis, spoke to the Respondent about making changes to her will.
19. OM made a new Last Will and Testament dated April 14, 2010 (the "**2010 Will**"). The Respondent caused the 2010 Will to be prepared.
20. The 2010 Will named the Respondent as executor and trustee; gave FM a life interest in the estate, of which the Respondent was trustee; required the Respondent to hold the residue of the estate and pay the income arising from the interest on its investments to FM; permitted the Respondent to pay to FM from the capital of the residue of the estate any amount that he, in his absolute discretion, decided was advisable to maintain FM according to her station in life and in the style to which she had been accustomed or to meet what he decided were special or unusual circumstances; gave the Respondent absolute discretion to utilize funds to attend to England to meet with FM in the manner that he in his absolute discretion decided was necessary; and, upon FM's death, required the Respondent to pay any remaining residue of the estate to the Four Charities in equal shares of 25%.
21. OM did not obtain independent legal advice prior to the Respondent causing the 2010 Will to be prepared.

### **Administration of the Estate**

22. OM died on July 19, 2010. The Respondent engaged a lawyer from his firm who practiced exclusively in wills and estates to obtain a grant of probate in respect of OM's estate.
23. On August 30, 2010, the lawyer notified each of the Four Charities of the Respondent's application for grant of probate and enclosed a copy of the 2010 Will. The lawyer submitted the application for a grant of probate on September 29, 2010. Probate was approved on December 9, 2010 and the Respondent was granted administration of OM's estate as executor.
24. The lawyer also provided the Respondent with legal advice regarding payment of the Respondent's executor's fees and care and management fees by way of a memo dated December 14, 2010. In the memo, the lawyer advised the Respondent that, unless he applied to the court for a passing of accounts and approval of his executor's fees, he was required to obtain the consent of the beneficiaries regarding his accounts and proposed executor's fees. The lawyer further advised the Respondent in the memo that the beneficiaries in this case would include FM and the Four Charities (together, the "**Beneficiaries**"), and that he could pay himself the executor's fees and care and management fees after requesting the Beneficiaries' consent to do so and if the Beneficiaries so consented.

### **Use of the Estate Funds**

25. The reported gross value of the estate as at OM's death on July 19, 2010 was \$882,242.42. The reported gross value of the estate as at FM's death, which occurred on May 19, 2019, was more than it had been as at OM's death.

#### *Executor's Fees and Care and Management Fees*

26. On December 14, 2010, the Respondent prepared a statement of account for \$40,000.00 (plus taxes) in executor's fees (calculated as 5% of the reported value of the estate of \$882,242.42, minus a reduction of \$4,112.12) for a total \$44,800.00 in executor's fees (the "**Executor's Fees**"). The Respondent withdrew \$44,800.00 from the estate funds in payment of the Executor's Fees that same day. The Respondent did not at any time deliver the statement of account to any of the Beneficiaries and he did not seek or obtain approval from all of the Beneficiaries or the court prior to withdrawing the Executor's Fees from the estate funds.

27. On an annual basis between December 2011 and December 2018, the Respondent invoiced the estate for and paid himself from the estate funds \$24,113.25 (plus taxes) for a total of \$26,790.81 in care and management fees (the “**Care and Management Fees**”). The Respondent did not seek or obtain approval from all of the Beneficiaries or the court prior to withdrawing the Care and Management Fees from the estate funds.

*Funeral Costs*

28. On July 22, 2010, the Respondent withdrew \$2,954.80 from one of OM’s bank accounts as reimbursement for “funeral costs” (the “**Funeral Costs**”). On August 10, 2010, the Respondent withdrew \$2,954.80 from another one of OM’s bank accounts for “funeral costs”. The Respondent mistakenly reimbursed himself twice for the same expense.

*Travel Expenses*

29. Between August 20, 2012 and April 18, 2019, the Respondent made at least 18 trips to England during which he would typically spend a night at a hotel close to where FM lived, visit with FM, take her out for drives, and take her out for meals. The Respondent exchanged letters and other correspondence with FM, spoke with FM via telephone, and FM expressed her desire for the Respondent to continue visiting her. The Respondent took FM to look at a care home, but she was not interested in leaving her home.

30. The Respondent did not charge any professional fees pursuant to the charging clause in the 2010 Will or otherwise for this travel to England to visit with FM.

31. The Respondent invoiced the estate \$162,835.87 for travel expenses between August 19, 2012 and May 2, 2019 (the “**Travel Expenses**”) and reimbursed himself for the Travel Expenses from the estate funds. The Respondent did not seek or obtain approval from all of the Beneficiaries or the court prior to reimbursing himself for the Travel Expenses from the estate funds.

32. On April 20, 2013, the Respondent made a purchase at AllSaints Jacks Place, a clothing store in London, in the amount of \$418.39 (the “**AllSaints Expense**”). The Respondent marked the receipt as personal.

33. On April 22, 2013, the Respondent purchased men’s clothing from Harrods department store in London at a cost of £278.95 (\$447.66) (the “**Harrods Expense**”). The Respondent marked the receipt as personal.

34. On April 25, 2013, the Respondent billed the estate \$3,519.90 plus \$176.00 in GST for a total of \$3,695.90 in travel disbursements. The Respondent mistakenly included the AllSaints Expense and the Harrods Expense as travel disbursements.
35. On November 30, 2013, the Respondent made a purchase at Smythson, a leather goods store in London, in the amount of £238.65 (\$423.83) (the “**Smythson Expense**”).
36. On December 1, 2013, the Respondent billed the estate \$2,581.89 plus \$129.09 in GST for a total of \$2,710.98 in travel disbursements. The Respondent mistakenly included the Smythson Expense as a travel disbursement, when it had been purchased as a birthday gift for FM.
37. On July 14, 2014, the Respondent spent the night at the Hôtel West End in Nice, France at a cost of €193,00 (\$290.00) (the “**Nice Hotel Expense**”).
38. On July 18, 2014, the Respondent billed the estate \$1,469.41 plus \$73.47 in GST for a total of \$1,542.88 in travel disbursements. The Respondent included the Nice Hotel Expense as a travel disbursement.
39. The Respondent made a trip to England in October 2017. The Respondent departed Vancouver on October 7, 2017 and arrived in London on October 8, 2017.
40. On October 8, 2017, the Respondent travelled from London to Arundel, took FM out for a meal, and spent the night in Arundel.
41. On October 9, 2017, the Respondent travelled from Arundel to London. The Respondent spent three nights at a hotel in London at a cost of £1,584.06 (\$2,690.18) (the “**London Hotel Expense**”). The Respondent returned to Vancouver on October 12, 2017.
42. On October 18, 2017, the Respondent billed the estate \$5,377.31 plus \$268.86 in GST for a total of \$5,646.17 in travel disbursements. The Respondent included the London Hotel Expense as a travel disbursement.

*Payment to the Kay Meek Arts Centre*

43. The Respondent issued to the Kay Meek Arts Centre (“**Kay Meek**”) a general cheque dated December 3, 2013 in the amount of \$2,000.00 (the “**Kay Meek Payment**”).
44. The Respondent included the Kay Meek Payment as a disbursement in a statement of account dated December 1, 2013 and he paid the statement of account from the estate funds.
45. Kay Meek is not a beneficiary under the 2010 Will.



46. The Respondent did not obtain from FM any written confirmation that she wished to donate funds to Kay Meek and he did not receive a charitable donation tax receipt from Kay Meek in respect of the Kay Meek Payment.

*Interim and Final Distributions to the Four Charities*

47. With the possible exception of oral conversations with the Reverend at St. Christopher's, neither the Respondent nor his firm communicated with the Four Charities from August 31, 2010 until after FM's death on May 19, 2019.

48. In October 2019, the Respondent provided the Four Charities with an "interim release" for them to sign prior to them receiving an interim distribution, as well as a copy of the 2010 Will, a statement of account for the estate's investment account as at September 30, 2019, and the Respondent's client trust ledger from April 12, 2013 to September 30, 2019. The Respondent did not provide the Four Charities with a detailed accounting of funds received or disbursed by the estate, any invoices or receipts for expenses charged to the estate, any documentation demonstrating that had paid himself \$44,800.00 in Executor's Fees, a calculation or detailed accounting of the \$26,790.81 in Care and Management Fees he paid himself, or any information at all regarding the Care and Management Fees he paid himself prior to April 12, 2013.

49. Following the receipt of the materials provided by the Respondent in October 2019, the WVMLF, the WVSAC, and the BCSPCA raised concerns and asked questions regarding the Respondent's estate accounting. The Four Charities eventually signed revised interim releases and the Respondent paid each of the Four Charities an interim distribution of \$183,645.29 in May 2020 (St. Christopher's, the WVSAC, and the WVMLF) and June 2020 (the BCSPCA). The Respondent paid each of the Four Charities a final distribution of \$15,406.61 (\$15,406.60 for the BCSCPA) in April 2021.

**Estate Record Keeping**

50. The Respondent failed to maintain complete records in respect of the disbursement of the estate funds. The Respondent invoiced the estate and reimbursed himself from the estate funds for flights to and from London and car rentals in England based on quotes, as opposed to receipts, that did not align with his actual travel dates. The Respondent also invoiced the estate and reimbursed himself from the estate funds for other Travel Expenses without having provided any supporting documentation, as well as after having only provided non-itemized credit card receipts, credit card statements, and illegible receipts.

## **Court Approval of the Respondent's Accounts**

51. On May 2, 2023, the Respondent filed a notice of application seeking, *inter alia*, an order that his accounts in respect of his administration and management of OM's estate be passed (the "**Notice of Application**").
52. In the Notice of Application, the Respondent offered to voluntarily repay to the estate a total of \$40,857.66, which consisted of:
- i. \$20,000.00 representing half of the \$40,000.00 (before taxes) in Executor's Fees;
  - ii. \$12,056.63 representing half of the \$24,113.25 (before taxes) in Care and Management Fees; and
  - iii. \$8,801.03 representing expenses alleged by the Law Society of British Columbia in the Citation issued September 29, 2022 to have been improperly charged to the estate by the Respondent and for which the Respondent reimbursed himself from the estate funds (i.e. the second reimbursement for the Funeral Costs, the AllSaints Expense, the Harrods Expense, the Nice Hotel Expense, the London Hotel Expense, and the Kay Meek Payment)  
(the "**Estate Reimbursement**").
53. On August 3, 2023, Master Vos passed the Respondent's accounts in respect of his administration and management of OM's estate and ordered, *inter alia*, that he distribute the Estate Reimbursement to the Four Charities in equal parts within three months. The Respondent did so on August 15, 2023.