

Hearing File No.: HE20240005
Citation Issued: April 19, 2024
Citation Amended: September 19, 2024
Citation Further Amended: December 19, 2024

LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

LAW SOCIETY OF BRITISH COLUMBIA

AND:

NICHOLAS PETER SMITH

RESPONDENT

FURTHER AMENDED CITATION

TO: Nicholas P. Smith
c/o Legacy Tax & Trust Lawyers
1300 - 777 Dunsmuir Street
Vancouver, BC V7Y 1K2

AND TO: His Solicitor, J. Kenneth McEwan, K.C.
McEwan Cooper Kirkpatrick LLP
900 - 980 Howe Street
Vancouver, BC V6Z 0C8

TAKE NOTICE THAT by direction of the Discipline Committee of the Law Society of British Columbia, a Hearing Panel of the Law Society will, at a date and time to be set, conduct a hearing to inquire into your conduct or competence as a member of the Law Society of British Columbia, in accordance with section 38 of the *Legal Profession Act*. Parts 4 and 5 of the Law Society Rules outline the procedures to be followed at the hearing. Your appearance before the Hearing Panel may be your only opportunity to present evidence, call witnesses or make submissions.

The allegations against you are:

1. Between approximately October 27, 2014 and November 21, 2018, on behalf of one or more of your clients AA, BB, and CC Ltd. (the “Clients”), you engaged in activities that you knew or ought to have known assisted in or encouraged dishonesty, crime or fraud, contrary to rule 3.2-7 of the *Code of Professional Conduct for British Columbia*. In particular, you used or permitted the use of your firm’s trust accounts to receive some or all of approximately \$2,816,858.45 CAD and \$4,386,050.05 USD or disburse some or all of approximately \$2,760,998.21 CAD and \$542,034.99 USD, or both, as set out in Schedule “A” (the “Funds”), when you knew or ought to have known one or more of the following:
 - (a) that one or more of the Clients were being investigated for securities fraud in the United States;
 - (b) that one or more of the Clients had been indicted in the United States for alleged conspiracy to commit securities fraud, conspiracy to commit money laundering, and/or securities fraud;
 - (c) that one or more of the Clients had been put on notice that some or all of the Funds were potentially subject to forfeiture by the United States; and
 - (d) that some or all of the Funds were potentially the proceeds of crime.

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

2. Between approximately October 27, 2014 and November 21, 2018, on behalf of one or more of your clients AA, BB, and CC Ltd., you used or permitted the use of your firm’s trust accounts to receive some or all of approximately \$2,816,858.45 CAD and \$4,386,050.05 USD or disburse some or all of approximately \$2,760,998.21 CAD and \$542,034.99 USD, or both, as set out in Schedule “A” (the “Transactions”), and failed to do one or more of the following in connection with the Transactions:

~~(a) provide any substantial legal services;~~

- (b) make reasonable inquiries prior to acting or continuing to act in the Transactions in circumstances that were objectively suspicious, including inquiries in relation to:
 - (i) your clients or other persons, or both;
 - (ii) the subject matter and objectives of your retainer;
 - (iii) the source of the funds;
 - (iv) the purpose of the payment of the funds; and/or
 - (v) the reason for the payment of the funds to go through your firm's trust accounts; and

- (c) make a record of the results of any inquiries about the circumstances.

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

- 3. Between February and ~~September 2015~~ November 2015, on behalf of one or more of your clients AA, BB, CC Ltd., and in relation to efforts to have funds released by Heritage Bank, you made representations or failed to take actions, or both, and thereby acted in a manner that you knew or ought to have known was false, misleading, inaccurate, or lacked candour, and/or assisted in or encouraged dishonesty, crime, or fraud, contrary to one or both of rules 2.2-1 and 3.2-7 of the *Code of Professional Conduct of British Columbia*.

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

If you fail to appear at the hearing, the Hearing Panel may proceed with the hearing in your absence and make any order that it could have made had you been present.

THIS CITATION AMENDED September 19, 2024 pursuant to Rule 5-4.2 of the Law Society Rules.

THIS CITATION FURTHER AMENDED December 19, 2024 pursuant to Rule 5-4.2 of the Law Society Rules.