2025 LSBC 04
Hearing File No.: HE20220036
Decision Issued: February 5, 2025
Citation Issued: December 9, 2022
Citation Amended: July 27, 2023

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL

HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

DANIEL JAMES BARKER

RESPONDENT

DECISION ON FACTS AND DETERMINATION

Hearing dates:	April 29 to May 3, 2024 and June 27, 2024
Panel:	Jennifer Chow, KC, Chair Darlene Hammell, Public representative Sean Rowell, Lawyer
Discipline Counsel:	Mandana Namazi
Counsel for the Respondent:	William B. Smart, KC

A. OVERVIEW

[1] When a notorious alleged fraudster is the main point of contact for various clients, what is the lawyer required to do to avoid becoming a dupe?

[2] The Law Society says that in 11 real estate matters where a notorious alleged fraudster was the main point of contact, the Respondent failed to be on guard against being a dupe when he failed to make reasonable inquiries in suspicious circumstances, and failed to keep a record of those inquiries. The Respondent's failures are said to constitute professional misconduct.

[3] The Respondent denies any professional misconduct. He says he was not required to make reasonable inquiries in the circumstances. The Respondent was defending previously completed foreclosures or transactions, and all individuals including alleged notorious fraudsters, have the right to hire lawyers to defend themselves regardless of guilt or innocence. Similar to criminal defence lawyers, the Respondent says that civil litigation defence lawyers should not be required to ask their clients any questions as to whether they are guilty of crimes, dishonesty or fraud.

[4] The Panel must determine what are the Respondent's obligations under the *Code of Professional Conduct* ("*Code*") and whether he met those obligations in the circumstances in which he was taking instructions, funds, communications and documents from a notorious alleged fraudster.

[5] After considering all the evidence and submissions, the Panel finds that the Respondent's conduct was contrary to the *Code* and amounts to a marked departure from conduct expected of lawyers and thus, constitutes professional misconduct.

B. CITATION

[6] The allegations against the Respondent are set out in a citation that was authorized on November 30, 2022, issued on December 9, 2022 and amended on July 27, 2023 ("Citation"). The parties raised no issue with the Panel about the service of the Citation. Accordingly, the Panel finds that the Citation was properly served pursuant to Rule 4-19 of the the Law Society Rules (the "Rules").

[7] The Citation sets out the following allegations:

> Between approximately January 2018 and September 2019, in the course of acting in one or more of the matters set out in Schedule "A", you provided legal services, or used or permitted the use of your firm's trust account in one or more

of the instances set out in Schedule "B", or you did both, in circumstances where you failed to do one or more of the following:

(a) be on guard against becoming the tool or dupe of an unscrupulous client or other persons;

(b) make reasonable inquiries about the circumstances, including, but not limited to:

(i) the identity of your clients or other parties, or both;

(ii) the relationships between the parties and certain agents or intermediaries;

(iii) the legal or beneficial ownership of certain property and business entities;

(iv) the subject matter and objectives of your retainer;

(v) the nature and purpose of some or all of the transactions;

(vi) the source of funds received;

(vii) the purpose of the payment of the funds;

(viii) the reason for the funds to go through your firm's trust accounts; and

(c) make a record of the results of inquiries made.

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

[8] Schedule "A" to the Citation is a table of files sorted into 11 groups, with columns setting out the file name and number, named client, nature of the file and date opened and closed. Schedule "B" to the Citation sets out a table of transactions for four files, with columns setting out the transaction date, amount received into trust and amount paid from trust.

C. APPLICABLE *CODE* RULE AND COMMENTARY

[9] The Citation does not expressly refer to rule 3.2-7 of the *Code*. Rather, the Citation reflects the wording of the commentary to section 3.2-7 that existed at the time. The

Panel agrees with the Law Society that the rule's commentary has equal force as the substantive rule of the *Code*.

[10] *Code* rule 3.2-7 provides as follows:

> A lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud.

[11] The applicable commentary is set out below:

> [1] A lawyer should be on guard against becoming the tool or dupe of an unscrupulous client, or of others, whether or not associated with the unscrupulous client.
>
> [2] A lawyer should be alert to and avoid unwittingly becoming involved with a client engaged in criminal activities such as mortgage fraud or money laundering. Vigilance is required because the means for these, and other criminal activities, may be transactions for which lawyers commonly provide services such as: establishing, purchasing or selling business entities; arranging financing for the purchase or sale or operation of business entities; arranging financing for the purchase or sale of business assets; and purchasing and selling real estate.
>
> [3] Before accepting a retainer, or during a retainer, if a lawyer has suspicions or doubts about whether he or she might be assisting a client in any dishonesty, crime or fraud, the lawyer should make reasonable inquiries to obtain information about the client and about the subject matter and objectives of the retainer. These should include making reasonable attempts to verify the legal or beneficial ownership of property and business entities and who has the control of business entities, and to clarify the nature and purpose of a complex or unusual transaction where the nature and purpose are not clear.
>
> …
>
> [3.2] The lawyer should make a record of the results of these inquiries.
>
> ["Commentary"]

[12] The Commentary embodies the common law, as recently affirmed by the Court of Appeal in *Gregory v. The Law Society of British Columbia,* 2024 BCCA 350 ("*Gregory BCCA*"). The Court of Appeal explained:

> [3] Case law establishes that where there are suspicious circumstances, a lawyer is required to make reasonable inquiries to satisfy themselves that the

> client is not seeking assistance in breaking the law. The inquiries must be made and satisfactory responses received before the lawyer takes steps that could advance a client's intent to act unlawfully …

[13] Both parties expressly relied on rule 3.2-7 and the Commentary in their written submissions.

D. FINDINGS OF FACT

1. The Notice to Admit

[14] Several documents were entered as exhibits at the hearing, including a Notice to Admit dated December 7, 2023 ("NTA") and a Reply to Notice of Admit dated January 16, 2024 ("NTA Reply").

[15] The NTA consists of 2,103 pages, of which 61 pages request the Respondent to admit the truth of the facts set out in 393 paragraphs. The remaining pages are the attached documents which the Respondent was requested to admit the authenticity of those documents including among others, key documents from court files relating to the Respondent's clients, court decisions, emails, mortgage documents, contracts of purchase and sales and other documents such as online media reports. Most of the factual admissions sought in the NTA related to the Schedule "A" of the Citation involving the notorious alleged fraudster, AB and his role in those litigation files.

[16] The NTA Reply consists of 9 pages in which the Respondent admitted the authenticity of all the documents as requested in the NTA. As the Law Society acknowledged in its written submissions, the Respondent admitted a substantial portion of the facts included in the NTA, and "has admitted the underlying facts of the Law Society's case." In that respect, the Respondent's admissions support his general credibility as a witness in this proceeding.

[17] The Law Society seeks additional "deemed admissions" on the basis that the Respondent did not make clear denials regarding some of the requested admissions. The Respondent says that his denials were clear and substantive in nature since he did not admit the facts alleged. The Respondent says that it would be unreasonable and unfair to deem his clear denials as admissions.

[18] The deeming of admissions was discussed in *Law Society of British Columbia v. Ahmadian*, 2023 BCCA 470, where the Court of Appeal upheld the panel's decision to deem certain requested facts in a Notice to Admit as admitted for the truth of their contents. In *Ahmadian*, the lawyer gave general blanket denials in his response to the

notice to admit and the Law Society took the position that the requested admissions were defective. The Court of Appeal rejected the lawyer's general blanket denials as they did not provide a substantive response to the requested admissions. The Court explained:

> [54] … The Panel was correct in law to say the Rules require a substantive response to a notice to admit. Its conclusion that the response provided by the appellant did not satisfy the requirements of R. 5-4.8(6) was not a result of a palpable error. In my opinion, there is no basis for us to interfere with the Panel's conclusion that the appellant should be deemed to admit the facts described in, and the authenticity of the documents appended to the amended notice to admit pursuant to R. 5-4.8(7).

[19] In this case, the Law Society takes issue with the sufficiency of a number of the Respondent's answers to the NTA and submits that they did not amount to "clear denials of facts." As a result, the Law Society asks the Panel to deem those admissions so that the underlying facts are deemed to be admitted for the truth of their contents.

[20] The Panel has reviewed the impugned answers given by the Respondent. In the NTA Reply, the Respondent provided individual denials to the requested admissions, rather than a blanket denial as in *Ahmadian*. We agree with the Respondent's submission that in those denials, the Respondent provided substantive responses, in that "he has clearly identified the relatively few facts that he has denied and explained why." Although some of the Respondent's denials were concise and may be read as offering alternative inferences or legal conclusions, we find that they nevertheless amounted to substantive denials to the requested admissions. Accordingly, we decline to make the deemed admissions as requested by the Law Society.

[21] In this decision, the Panel has considered and drawn extensively from the NTA, the NTA Reply, the Respondent's testimony at the hearing, the documents entered as exhibits, and the parties' respective written and oral submissions.

2. The Respondent's Background

[22] The Respondent was called as a lawyer in British Columbia on May 10, 1984. The Respondent also had active status as a lawyer in Quebec from 2000 to 2011.

[23] The Respondent opened his own firm in 2011 called "Barker & Company."

[24] From 2018 to 2022, the Respondent's practice focussed primarily on civil litigation (about 60 to 80 per cent). The remainder of his practice consisted of family, wills and estates, criminal, administrative and creditor remedies files.

[25] The Respondent admitted to having limited experience in foreclosure proceedings in early 2018, although he gained some experience in bankruptcy proceedings in 2003.

3. The Notorious Alleged Fraudster, AB

[26] The term "notorious alleged fraudster" is adopted in this decision to refer to AB who was connected to a fraudulent real estate scheme in British Columbia in which another lawyer, CD, was eventually disbarred and convicted of criminal fraud.

[27] By way of background, in 2010, AB was charged on a five-count indictment alleging offences from June 2000 to May 2002 (the "Indictment"). The Indictment alleged that AB directed his lawyer, CD to pay him funds that were intended to be used to discharge mortgages on properties AB was selling or refinancing ("CD Fraud"). The Indictment alleged that the resulting losses were in the tens of millions of dollars.

[28] In 2009, CD entered guilty pleas to the CD Fraud and was sentenced to seven years in jail. CD was also disbarred.

[29] In 2013, AB pleaded guilty in connection with the charges laid against him arising from the CD Fraud. However, in 2014, AB was permitted to withdraw his guilty plea in connection to the CD Fraud. AB is currently awaiting trial on those charges.

[30] During the timeframe material to the Citation, the Respondent became aware that AB was an undischarged bankrupt and that both AB and the Respondent's client, EF were the subject of a default judgment dated March 21, 2017 arising from their alleged roles in an alleged cheque-kiting scheme against AA Bank.

[31] During the material timeframe, publicly available media articles described AB's alleged involvement in the CD Fraud. Additionally, publicly available media articles also described AB and EF's alleged involvement in an alleged cheque-kiting scheme.

[32] An undischarged bankrupt may not:

(a) borrow more than $1,000 without informing the lender they are bankrupt (*Bankruptcy and Insolvency Act*, RSC, 1985, c. B-3, s. 199(b)); and

(b) serve as a director of a corporation (*Business Corporations Act*, SBC 2002, c. 57, s. 124(c)).

[33] While we have referred to AB as a notorious alleged fraudster, we would like to be clear in this decision, that our task is not to determine whether AB is guilty or innocent of any of the allegations raised in the various litigation about his role in the Schedule "A" files. Nor is our task about drawing any "nexus" between AB and any illegal activity. The

applicable *Code* rule and Commentary do not require lawyers to "judge" their own clients, rather they require lawyers to reduce the risk of becoming a dupe of any scrupulous client or individual by being on guard and asking reasonable questions in the face of suspicious circumstances. As the panel stated in *Law Society of BC v. Gurney*, 2017 LSBC 15 at para. 79(c), professional misconduct can be found even if the underlying transaction cannot be proven to be illegitimate.

4. AB'S Connection to the Respondent

[34] GH, a former lawyer, had referred EF to the Respondent in early 2018. When GH referred EF to the Respondent, the Respondent knew that GH had previously been refused readmission to the Law Society.

[35] In early January 2018, the Respondent met AB and EF for the first time as AB had accompanied EF to the Respondent's office. At that initial meeting, the Respondent was retained to represent and defend EF and EF's numbered company, Number Company 1, in various proceedings related to a property on S Avenue, Burnaby.

[36] The Respondent testified that at the initial meeting, he did not realize that AB was the notorious alleged fraudster. He testified that he took a copy of AB's and EF's identifications but says he did not check the identifications at that time. He further testified that he only learned that AB was a notorious alleged fraudster when his articled student first alerted him to that fact several weeks later.

[37] When he was cross-examined at the hearing, the Respondent testified that he did not have a specific recollection of when he took AB's identification, in response to being asked whether AB's identification was only found in AB's criminal file rather than the S Avenue file.

[38] In January 2018, within a few weeks of meeting AB, the Respondent learned through his articled student, IJ, that AB was a "fairly notorious" alleged fraudster.

[39] In a memo dated January 30, 2018 to the Respondent, IJ addressed four litigation files related to EF and Number Company 1. She set out the other parties' allegations that: EF was an agent of AB; had incorporated the vendor company at AB's direction; and that AB was originally the purchaser of a property but assigned the right to Number Company 1.

[40] In an email dated February 2, 2018 to the Respondent by IJ, articled student, she stated that:

> One worrisome thing has come up. More than one party has suggested that [EF] is merely a front for [AB], and that [AB] was really the one making all the decisions and was closely involved in the negotiations. [AB] has a history of pretty serious real estate fraud. [media link] He is also currently being sued by AA Bank for cheque kiting.

IJ provided the Respondent with links to a CBC news article describing various allegations involving AB and a link to a copy of the Indictment for AB dated March 24, 2010.

[41] On February 6, 2018, the Respondent received an email from his articling student with an attached memo where the articling student indicated that KL, a real estate agent, had given evidence that EF was acting as a proxy for AB. The Respondent promptly sent AB an email asking AB to have EF communicate directly with his office. The Respondent also asked AB to let EF know that an additional $10,000 retainer was needed before he attended cross-examinations in the upcoming days. AB responded by providing him with EF's email.

[42] In April or May 2018, within a few months of meeting AB, the Respondent learned that AB was an undischarged bankrupt.

[43] The evidence shows that during the material timeframe, the Respondent regularly exchanged numerous emails with AB using two email addresses for him regarding the files listed in Schedule "A" of the Citation. The Respondent admits he did not receive any written instructions of any kind from EF regarding the files listed in Schedule "A" of the Citation.

[44] The Respondent testified that he took notes, prepared court filings and filed evidence that EF had given AB the authority to participate in the process of giving the Respondent instructions. In all of the non-EF client matters, the Respondent testified that he took notes and his articled students prepared court filings and filed evidence that the clients or representatives of the clients had all given AB verbal authority to give instructions to the Respondent.

[45] The Respondent says that his role in the various foreclosure and specific performance files was to assist his clients in preserving their interest, whatever that was, in their properties. Other than the specific performance actions, he testified that he was often unsuccessful.

[46] He further submits that whether AB had some beneficial interest in the properties or whether the Respondent's clients had acted dishonestly in connection with any of these properties *in the past*, was not the issue the Respondent was defending. He was defending

the status quo, that is, attempting to protect or preserve whatever equity interest his corporate client had in the property. The Respondent says he was doing what lawyers routinely do in courtrooms in this province, defending foreclosure applications.

[47] The Respondent testified that at some point, AB also became a client as he gave legal advice to AB in relation to his criminal charges related to the CD Fraud about delay and *Charter* issues. The Respondent also discussed the alleged cheque-kiting scheme with AB as part of the Respondent's efforts to defend that litigation on behalf of EF.

5. The Hiring of PN as Articled Student

[48] MN was a wealthy investor who had done business in the past with EF and AB. In July 2018, the Respondent hired PN, the son of MN, as a paid articled student. AB, EF, and MN met with the Respondent and came to an understanding that by hiring MN's son, PN, to assist in foreclosure proceedings, the Respondent would be provided with more foreclosure work from them.

[49] From the Respondent's perspective, he believed that there were basically no red flags arising from his hiring of PN. At the hearing, the Respondent testified that given his own limited experience in foreclosure matters, it was beneficial for him to hire an "experienced" articled student who had been working with a foreclosure lawyer. He testified that when he hired PN, PN had completed about four months of articles. The Respondent testified that even though MN offered to have his son, PN, work for free, the Respondent insisted on paying PN a salary.

6. AB's Extensive Involvement in the Schedule "A" Files

[50] The Respondent testified that AB was a very well-organized individual on whom the Respondent came to rely to help keep his client files organized, to obtain and provide instructions on behalf of his clients, to review emails and court documents, to obtain and provide funds and to provide general assistance.

[51] The evidence shows that the Respondent and his articled students obtained instructions or information directly from AB on various related files, rather than from the clients themselves. For example, AB played an important supervisory role as follows:

(a) AB attended the initial client meeting along with EF on the S Avenue file;

(b) AB was recorded as a contact on the S Avenue litigation, including phone number and emails;

(c) AB forwarded the Respondent key information about the various litigation, including emails from other lawyers, emails from the clients, financing documents, contracts of purchase and sale, mortgage documents and reviewed those and court documents for the litigation;

(d) AB had direct contact with the Respondent and the articled students, and was the main source of instructions on the various litigation files. The Respondent's articled students were communicating directly with AB, rather than with the clients, regarding litigation updates, next litigation steps, availability for meetings, bank drafts, and court orders;

(e) AB was often emailed directly, if not copied, on many if not all communications from the Respondent and his articled students on "client" emails;

(f) AB was often emailed by the Respondent when he requested funds for his retainers, transcripts and payments of his fees and accounts;

(g) there were no notes in the file evidencing that the Respondent or the articled students confirmed any "instructions" received from AB with their actual clients as they took AB's instructions as governing;

(h) as instructed by the Respondent, one articled student drafted and caused to be filed a court document on AB's behalf without any reference to the Respondent or his office; and

(i) while providing the Respondent with instructions on behalf of various clients, AB sought to have the Respondent assist in adding further mortgages to be registered against title on property, while the Respondent was defending the same property against foreclosure.

7. The Schedule "A" Files

A1. S Avenue Property

Background

[52] The S Avenue property was a three-storey apartment building. The 48 units of that building were rented to third parties, with many short-term tenancies ("S Avenue Property"). Several proceedings were commenced in connection with the S Avenue Property, three of which are identified as item #1 in Schedule "A" to the Citation. The

NTA referred to several other proceedings related to the S Avenue Property as context and at times, were discussed by the Respondent during his testimony.

[53] In March 2016, EF's company, Number Company 1, purchased the S Avenue Property for $11.5 million which was its sole asset. While acting for EF and Number Company 1, the Respondent was aware that Number Company 1 borrowed the funds to purchase the S Avenue Property.

[54] One group of lenders, QR and SR, in the name of TR (together "R Group"), loaned Number Company 1 $1.5 million for the purchase of the S Avenue Property ("S Loan"). The S Loan was documented by a right of first refusal and assignment of shares in Number Company 1 as well as a promissory note signed by EF and AB. The S Loan was never registered against the S Avenue Property.

[55] On June 22, 2018, QR and SR (R Group) filed an action alleging that EF, AB and Number Company 1 executed a promissory note in exchange for a loan. The promissory note was allegedly made in the amount of $1.53 million. The interest rate was 47 percent per annum until fully repaid.

[56] The promissory note signed on March 24, 2016 expressly provided that Number Company 1, EF and AB were "jointly and severally" liable to QR and SR, and all were defined as the "Borrower" who promised to pay the sum of $1.53 million on or before September 24, 2016 at a rate of 47 percent per annum plus a lender fee of 2 percent of the loan. The promissory note was signed by EF for himself and Number Company 1 and AB all in the presence of PL, a lawyer.

[57] In August 2016, Number Company 1 sold the S Avenue Property to UV for $23 million. The closing date of the sale was July 6, 2017 ("UV Purchase").

[58] In November 2016, Number Company 1 failed to make timely mortgage payments and the first mortgagee, L Investments, commenced foreclosure proceedings on the S Avenue Property.

[59] In December 2016, L Investments obtained receivership over Number Company 1 which remained in place until March 16, 2017.

[60] In January 2017, Number Company 1 took steps to refinance the S Avenue Property to a new lender Number Company 2 ("Number Company 2 Refinance"). Also in January 2017, the S Avenue Property received preliminary approval for high density zoning.

[61] On January 17, 2017, Number Company 1 accepted a "back-up" offer to sell the S Avenue Property to K Ltd., conditional on the UV Purchase failing to close.

[62] On January 19, 2017, UV agreed to execute a priority agreement in favour of Number Company 1 and removed the conditions of the UV Purchase.

[63] On February 1, 2017, the Number Company 2 Refinance completed and Number Company 2 registered a first mortgage of $17.5 million on the S Avenue Property ("Number Company 2 Mortgage"). The Number Company 2 Mortgage prohibited further lending without Number Company 2's approval.

[64] On February 3, 2017, K Ltd. registered its option to purchase against the S Avenue Property. Number Company 2 objected to the registration of the K Ltd. option on the grounds that K Ltd. was not permitted to do so until after the UV Purchase closing date of July 7, 2017.

[65] On February 10 and 22, 2017, two additional mortgages were registered against the S Avenue Property ("February 2017 Mortgages") without Number Company 2's approval, contrary to the Number Company 2's Mortgage.

[66] In July 2017, UV assigned the option to purchase to WX. In July 2017, WX then assigned the option to purchase to Number Company 3.

[67] Between February 2017 and October 2017, the following claims were filed against the S Avenue Property on:

(a) February 22, 2017, an action by the R Group against EF, Number Company 1, and Number Company 3 claiming a right of first refusal and other relief (together with the action listed in subparagraph (c) below, the "Specific Performance Actions");

(b) March 20, 2017, an action by YZ against AB, EF and others, claiming recovery of funds owed to him related to the S Avenue transactions (the "YZ Action");

(c) July 6, 2017, an action by Number Company 3 against Number Company 1, K Ltd., TR, YZ and others, claiming a right to purchase the S Avenue Property (together with the action listed in subparagraph (a) above, the "Specific Performance Actions");

(d) September 13, 2017, a petition of foreclosure by Number Company 2 (the "Number Company 2 Petition"); and

(e) September 27, 2017 and October 3, 2017, petitions of foreclosure by mortgagors for the February 2017 Mortgages.

[68] On August 3, 2018, the Respondent filed a Response to Notice of Civil Claim on behalf of EF and Number Company 1 regarding the Promissory Note. The Respondent says that "it is the Respondent's practice where acting for one of two defendants with common interests to allow the self-represented non-client access to the draft, for example, Response to Civil Claim that the Respondent intends on filing for the client."

[69] On that same day, articled student, PN, emailed the Respondent as follows:

> Subject: [AB]'s Response to Notice of Civil Claim
>
> Made sure I capitalized every time I used the word "Defendant", made sure I used his email as the address for service and made sure that nowhere is your name mentioned in this response. Hope there are no issues.

Attached to that email was a draft Response to Civil Claim for AB in the litigation, which provided AB's email as the address for service.

[70] On that same day, a Response to Notice of Civil Claim was filed on behalf of AB. The Respondent says that AB endorsed and filed his Response to Civil Claim.

[71] On October 3, 2018, AB forwarded to the Respondent an email from opposing counsel seeking AB's time estimate for trial and list of documents. On that same day, AB forwarded to the Respondent two emails from opposing counsel to AB, regarding his response to the claim.

[72] The following provides a separate discussion of three files listed under "1." in Schedule A (multiple litigation proceedings in relation to S Avenue). To be clear, the evidence often addressed the related S Avenue Property litigation files together, so the evidence does overlap among the different S Avenue Property litigation files.

(i) *TR v. EF, Number Company 1 and Number Company 3*: Right of First Refusal Agreement/Specific Performance Action (Schedule A1/ Respondent's Documents #2)

Background

[73] This action was filed on February 22, 2017, seeking specific performance by TR pursuant to a right of first refusal allegedly granted by EF and Number Company 1 under a share purchase agreement dated March 2016.

[74] The Respondent was not involved in negotiating, recording or registering the 2016 transaction that was the subject of the litigation.

[75] The Respondent submits that he successfully defended the claim, arguing that the agreement was made for an illegal purpose because it was put in TR's name.

[76] The Respondent submits that no equity interest in the property was transferred and no one received any funds pursuant to a financial transaction from this litigation. The only result, he submits, was that the status quo was preserved.

The Client

[77] From the date of incorporation on March 21, 2016 and throughout the material timeframe, EF was the director of Number Company 1 The Respondent denies that during the material timeframe, AB controlled Number Company 1 The Respondent admits that EF had control over Number Company 1 and AB only assisted EF and the Respondent in obtaining or communicating instructions from EF.

[78] In January 2018, the Respondent was retained by EF to defend Number Company 1 in various litigation relating to the S Avenue Property. From the date of incorporation on March 21, 2016 and throughout the material timeframe, EF was listed as the sole director of Number Company 1.

[79] In regard to the related S Avenue Property proceedings, the Respondent testified that he acted for EF and Number Company 1 throughout those proceedings and he "thought it not to be appropriate to act for AB" on the basis that there were conflicts. The Respondent testified that he did not act for AB in relation to any of the S Avenue Property litigation.

[80] The File Opening Sheet recorded the clients as Number Company 1 and EF, with EF recorded as the client contact. In terms of phone numbers, AB's phone number was recorded first, with EF's phone number recorded second. The only recorded email was one for AB.

(ii) *Number Company 3 v. Number Company 1 and others*: Option to Purchase/Specific Performance (Respondent's Documents #1)

Background

[81] This action was filed on July 6, 2017, seeking specific performance pursuant to a contract of purchase and sale dated August 5, 2016 in which Number Company 1 agreed to sell the S Avenue Property to Number Company 3 for a total price of $23 million with an option to purchase to be filed in October 2016.

[82] The Respondent was not involved in the 2016 transaction that was the subject of the litigation until he was hired in 2017.

[83] The Respondent submits that he successfully defended the action on the basis that the plaintiff was not entitled to specific performance because it was not ready, able and willing to complete and the property was not unique.

[84] The Respondent submits that no equity interest in the property was transferred and no one received any funds pursuant to a financial transaction from this litigation. The only result was that the status quo was preserved.

[85] The Respondent says that he was first confronted with assertions as to AB's involvement in Number Company 1 during the discovery process in the S Avenue Property litigation.

[86] The court documents show that as early as November 2, 2017, Number Company 3 made several allegations about AB's involvement in the S Avenue Property as follows:

(a) EF, AB, and the R Group were working together to defeat Number Company 3's purchase contract by fraudulent means. EF was purposely attempting to mislead the court;

(b) Number Company 1 was controlled by AB;

(c) EF was acting "as some form of proxy" for AB in the S Avenue Property transactions;

(d) AB had a history of acting fraudulently in real estate deals including when AB had his lawyer CD divert closing funds and register forged documents in the Land Titles Office; and

(e) AB and EF have been involved in other fraudulent activities together, including a cheque-kiting scheme to defraud AA Bank.

[87] By February 2018, the Respondent was aware that one of the real estate agents, on cross-examination of his affidavit, referred to AB as "the person behind the seller" of the S Avenue Property.

[88] At a February 27, 2018 cross-examination, the real estate agent for Number Company 1 was cross-examined on AB's role in Number Company 1 and at the negotiations about the sale of the S Avenue Property. The real estate agent stated that AB was arranging the financing for the S Avenue Property. AB was also paying the real estate agents' commission and AB would be willing to pay more if the real estate agent

could convince UV not to go ahead with the purchase. The real estate agent also stated that while EF instructed him, AB was working with him as the advisor.

[89] In February 2018, the Respondent's articling student summarized the allegations about AB in two memos as follows:

(a) Number Company 1's business license had expired in 2014;

(b) AB owed $760,000 to YZ;

(c) AB negotiated the purchase of the S Avenue Property with a March 24, 2016 closing date;

(d) on March 21, 2016, AB caused Number Company 1 to be incorporated by EF;

(e) AB assigned the right to purchase the S Avenue Property to Number Company 1;

(f) YZ guaranteed a $9 million mortgage in exchange for a promise that Number Company 1 would repay AB's outstanding debt owed to YZ upon the sale of the S Avenue Property;

(g) the purchase completed on March 24, 2016 and on that day Number Company 1 sold its company shares to TR;

(h) a receiver was previously appointed over AB in December 2016;

(i) there did not appear to be insurance on the S Avenue Property;

(j) the S Avenue Property's 48 rental units were occupied mainly by short-term tenancies;

(k) on September 13, 2017, Number Company 2, filed a petition against Number Company 1 and others;

(l) the petition concerned monies owed by AB, guaranteed by EF, in excess of $18 million;

(m) foreclosure proceedings commenced on September 13, 2017;

(n) on November 23, 2017, the Court granted an *order nisi*, setting the redemption amount at $18,888,367.57 with per diem interest of $10,347.45 thereafter; and

(o) although the petitioner held an assignment of rents for the S Avenue Property, rents were not being remitted to the petitioner. AB had a history of threatening eviction if tenants remitted rents to the petitioner instead of himself.

[90] In March 2018, the Respondent filed court documents including an application response where EF identified himself as a director and a shareholder of Number Company 1 but did not address any of the allegations about AB's involvement.

[91] In April 2018, the Respondent emailed AB regarding the next steps in the file. The Respondent filed an amended response in the litigation that did not address the allegations involving AB.

[92] The Respondent submits that the allegations regarding AB were not related to the issue to be decided and ultimately was not material to the Court's decision denying specific performance.

[93] On August 19, 2018, AB emailed the Respondent stating "… here is the offer," attaching a purported Contract of Purchase and Sale for the S Avenue Property dated August 12, 2018 between Number Company 1 and Number Company 15, signed by EF as the director of Number Company 1.

[94] On September 20, 2018, the Respondent emailed EF, copying AB, indicating the terms of a retainer where the Respondent would continue to represent EF for the appeal. He followed up with a second email on September 24, 2018 to EF, copying two of AB's email addresses. On September 24, 2018, AB emailed the Respondent stating "good job thx again also (*sic*) i send you the documents to be signed by [name] client we need to file before Wednesday could you follow up."

[95] The Respondent obtained a stay of the order from the Court of Appeal and an extension of time to pay out the first mortgage, but Number Company 1 was ultimately unable to do so, and whatever interest Number Company 1 had in the S Avenue Property was lost.

The Client

[96] The File Opening Sheet recorded Number Company 1 as the client and EF recorded as the client contact. EF's phone number was recorded first, with an additional phone number for AB. An email was recorded only for EF.

[97] In March 2018, EF signed a Retainer and Contingency Agreement with the Respondent. That agreement was for a $90,000 retainer and since EF was unable to

deliver that amount, the Respondent required a $30,000 payment before the April trial, another $60,000 retainer, with a "contingent bonus" of $250,000 if the Respondent was successful at trial. The bonus was lost with the Court's granting of the first order absolute in the summer of 2018. EF then agreed to pay him $20,000 a month to move forward with his various cases.

[98] EF paid to the Respondent retainer amounts in various sums, such as $5,000, $7,500, $2,500, and $10,000 over the course of the retainer, which sums were deposited to the Respondent's trust account over the course of the litigation files.

[99] The Respondent generally obtained his instructions or information directly from AB rather than EF as in the following:

(a) AB forwarded the Respondent "info for the case" (January 19, 2018, AB email to the Respondent).

(b) AB forwarded filed court documents to the Respondent (January 21, 2018 AB forwarded Number Company 1's response to Number Company 3's action).

(c) The Respondent communicated directly with AB regarding his fees and accounts, including on:

(i) January 26, 2018, the Respondent sent AB a statement of account, asking him to forward same to EF, to ensure that the account was paid and to obtain a further $10,000 retainer. He also advised that AA, articled student, was "preparing a memo for you as to what needs to be done for the coming application";

(ii) January 28, 2018, AB forwards an email from a previous lawyer to the Respondent regarding "1 more file;" and

(iii) April 25, 2018, the Respondent wrote to AB about having to pay for the costs of transcripts for the trial which would be useful for drafting the argument. He asked AB to get $5, 000 for that disbursement. AB replied: "OK I will work some how".

(d) The Respondent's articled students were communicating directly with AB including the following on:

(i) January 30, 2018, AA, articled student, emailed AB and the Respondent to provide a file update on the case planning conference, cross-examinations and next litigation steps.

(ii) January 31, 2018, AA emailed AB and EF asking for their availability to meet with herself and the Respondent to which AB responded that Friday at 8:30 in the morning would be okay.

[100] On August 8, 2018, the Court delivered oral reasons for judgment in the trial. The oral reasons determined that:

(a) both specific performance actions were dismissed;

(b) the key witnesses in the trial lacked credibility;

(c) AB, although not on title, exercised considerable control or significant involvement over the S Avenue transactions;

(d) EF, to some extent, was AB's subordinate; and

(e) EF and AB behaved unscrupulously in their dealings with the S Avenue Property and "left a trail of bad debts and broken contracts in their wake."

(iii) *Number Company 2 v. Number Company 1 et al.*: Foreclosure by First Mortgagee (Respondent's Documents #3 and #14) and Collection of Rents Payable to the Receiver who had been Appointed Pursuant to the Foreclosure Proceeding and *Order Nisi*.

Background

[101] This petition was filed on September 13, 2017 by the first mortgagee, Number Company 2, for an order absolute to obtain ownership of the S Avenue Property and the benefit of all the equity in the S Avenue Property. The principal amount was $17.5 million. The petitioner advanced funds to Number Company 1 by way of a mortgage registered on February 1, 2017 with a maturity date of August 31, 2017 at 20 percent interest per year. EF signed a guarantee dated January 30, 2017.

[102] On November 23, 2017, the Court granted *order nisi* setting the redemption amount at $18,886,367.57 with a per diem interest of $10,347.48.

[103] The Respondent was not involved in the 2017 mortgage that was the subject of the litigation.

[104] In January 2018, the Respondent was retained to defend Number Company 1 in the petition filed by Number Company 2. Before he was retained, the Court ordered Number

Company 1 to remit rents and a balance sheet for the S Avenue Property on a monthly basis ("January Order").

[105] On January 22, 2018, AB emailed the Respondent, forwarding an email exchange between opposing counsel, with an attachment. AB asked the Respondent to "take a look (*sic*) date for tomorrow."

[106] A memo to file prepared by articled student, AA, dated January 22, 2018, stated that: "Our client has a history of threatening to evict tenants if they remit rents to the petitioner rather than our client."

[107] On January 23, 2018, an articled student emailed AB, copying the Respondent and attaching an order made after application, stating:

> Hi [AB], I have attached a copy of the order that you need to comply with. Please provide us with a trust cheque today along with the balance sheet in order to meet the requirements under the order.

[108] On that same day, the articled student sent an email to AB and the Respondent, stating:

> [AB], Another item that would be helpful: can you provide a document evidencing the hold on the account, which caused the late payment? If you go to the bank and request this, they may be able to help you.

[109] On January 23, 2018, an articled student emailed the Respondent stating: "[AB] has the $$. [AB] just called and told me he has the money. He will drop the cheque off by 8:30 am tomorrow."

[110] On January 24, 2018, the articled student emailed AB, copying the Respondent, stating:

> [AB] and [EF],
>
> The application was adjourned to February 6, 2018, when Mr. Barker will be available to speak to it. However, Mr. Justice Groves made it very clear that we must be prepared to speak to the application on that date, as it will not be adjourned again.
>
> It is very important that you continue to comply with the order of Master Vos by paying the net rents and submitting the February balance sheet to the petitioner's lawyer **by February 10th** or earlier if possible. I understand there are some complications with getting the monies in time, but please make your best efforts.

[emphasis in original]

[111] On January 23, 2018, the Respondent filed a response to the petition on behalf of Number Company 1 and EF, including an affidavit sworn by EF.

[112] On January 24, 2018, the Respondent caused a bank draft for $25,000 to be deposited to his trust account with references to Number Company 1, EF and Number Company 2 pursuant to the January Order.

[113] On February 9, 2018, the Respondent emailed AB requesting that he bring a cheque payable to a law firm in trust for $15,000 to comply with the January Order. AB replied by email stating "Ok I will do."

[114] From June 18, 2018 to August 20, 2018, the Respondent was dealing with the petitioner's application for an order absolute. The Court granted the order absolute on August 20, 2018.

[115] In July 2018, counsel for YZ wrote a detailed letter to the Respondent setting out the connections between EF, AB, YZ and various mortgages, assignments and guarantees, stating among other things:

(a) AB and EF allegedly agreed that YZ would provide a personal guarantee of a $9 million first mortgage loan in exchange for the transfer of shares to YZ of four numbered companies owned by AB and EF which together owned six different properties, subject to an option to repurchase those shares for $865,000 in two installments;

(b) the properties were all allegedly heavily encumbered and did not possess the equity claimed by AB;

(c) at the urging of AB and EF, YZ agreed to borrow $400,000 from Number Company 7, a company controlled by MN, secured by a mortgage against a property owned by Number Company 4 (a company controlled by EF) at L Drive ("L Drive Property") and a property owned by YZ on R Street;

(d) a written loan agreement dated May 27, 2016 was entered into between YZ, EF (and BB) under which EF (and BB) agreed to repay YZ for the money borrowed from Number Company 7, with interest at double the rate payable by YZ to Number Company 7

(e) no payments were allegedly made by EF and AB to YZ;

(f) the letter also included an Assignment of shares in Number Company 1 effective March 24, 2016 given to TR signed by EF, AB and TR; and

(g) an Assignment of a right to reacquire the shares from TR given to YZ signed by EF and AB dated March 24, 2016.

[116] On August 13, 2018, articled student, IJ, emailed the Respondent a draft letter to send to opposing counsel regarding YZ's purported attempt to purchase Number Company 1's shares from TR. The Respondent forwarded the letter to AB for review, who replied: "It's ok."

[117] From August 14, 2018 to March 12, 2019, AB forwarded various emails to the Respondent that BB had forwarded to AB. At least ten of those emails from AB included communications between BB and other individuals, including BB's counsel on a Court of Appeal leave application file.

[118] In September 2018, counsel for YZ wrote to QR and SR (R Group) at the request of EF and AB regarding the S Avenue Property, detailing the financial arrangements made between EF, AB and YZ regarding the assignment of shares of Number Company 1 The letter also contained a proposal to resolve the litigation that would see YZ paying the full amount owed in exchange for a transfer by TR of her shares in Number Company 1 to YZ.

[119] In September 2018, the Respondent emailed EF about a retainer for the Court of Appeal matter. The Respondent advised that EF was to pay him $310,000 with the successful defence of the specific performance claim and owed him $275,000. In relation to the S Avenue appeal only, he required $5,000 the following Monday and $5,000 a week starting September 28, 2018 and if payment was not made, he would insist on a $40,000 retainer. EF replied "good job thx again (*sic*) also I send you the documents to be signed by [name] client we need to file before (*sic*) wednesday could you follow up."

[120] On January 2, 2019, the Respondent emailed AB forwarding a draft reply to the factum, for AB's review. On February 7, 2019, the order absolute was overturned by the Court of Appeal.

[121] On February 12, 2019, AB emailed the Respondent with an attached purported payout statement from Number Company 2 to Number Company 1 dated February 7, 2019, regarding the S Avenue Property. The total payout amount was stated to be $24,006,811.38 as of February 7, 2019 plus costs.

[122] On February 19, 2019, the Respondent was served with another application for order absolute that alleged EF was AB's subordinate and that Number Company 1 was

controlled by AB who was "known for having perpetrated" an infamous province-wide fraud in real estate transactions.

[123] On March 18, 2019, the Court granted the order absolute.

The Client

[124] The File Opening Sheet showed EF as the client and the client contact. EF's phone number was recorded first, with an additional phone number recorded for AB. An email was recorded only for EF.

[125] The Respondent filed court documents that affirmed that EF was the sole director of Number Company 1 and that Number Company 1 was the registered owner of the S Avenue Property. Those court documents did not refer to AB.

(v) September 27, 2017 and October 3, 2017: Petitions of Foreclosure by the Mortgagors for the February 2017 Mortgages

[126] A petition was filed by H Ltd., CC, DD and EE as lenders, seeking to foreclose on a mortgage dated February 9, 2017 in the amount of $3.65 million at 12 percent interest per annum against Number Company 1 as borrower and EF as covenantor.

[127] This petition named Number Company 1 as the registered owner of the S Avenue Property.

[128] A petition was filed by CC, DD and EE as lenders, seeking to foreclose on a mortgage dated February 22, 2017 in the amount of $1.5 million at 12 percent interest per annum against Number Company 4, Number Company 5 and Number Company 1 as borrowers and EF as covenantor.

[129] This petition named Number Company 4 as the registered owner of properties on L Street, Number Company 5 as the registered owner of a property on B Avenue, Vancouver and Number Company 1 as the registered owner of the S Avenue Property.

[130] While the NTA referred to these two petitions which the Respondent admitted to in the NTA Reply, the parties did not make any substantive submissions regarding the petitions. The petitions do not appear to form part of the allegations set out in the Citation. Accordingly, the Panel has treated these petitions as part of the broader context.

(vi) *YZ v. Number Company 1*: Alleged Equitable Mortgage Against the S Avenue Property

Background

[131] On March 20, 2017, YZ filed a proceeding against Number Company 1 seeking a declaration of an equitable mortgage against the S Avenue Property.

[132] In court documents, YZ alleged that both AB and EF acquired the right to purchase the S Avenue Property, EF was AB's agent and nominee and EF acted at AB's direction. Additionally, the proceeding alleged that AB or EF acting on AB's behalf caused Number Company 1 to be incorporated for the purpose of taking title to the S Avenue Property and of acting as the borrower under mortgage loans arranged by AB and EF to finance part of the purchase price.

[133] In a memo dated January 30, 2018 to the Respondent by IJ, articled student, she described the situation as follows: AB owed $760,000 to YZ; AB "allegedly originally was the purchaser of the Property, but assigned right to [Number Company 1];" "allegedly [EF] is the agent of [AB] and incorporated [Number Company 1] under his direction; "allegedly [AB] made an agreement for his indebtedness to [YZ] to be paid out of the proceeds of the Property in exchange for [YZ] guaranteeing a mortgage on the property." She also described YZ's mortgage as: YZ alleged that he guaranteed a $9M mortgage "in exchange for a promise that [Number Company 1] would pay [AB]'s outstanding debt upon the sale of the [S Avenue Property]."

The Client

[134] The File Opening Sheet showed Number Company 1 as the client and EF as the client contact. AB's phone number was recorded first, with an additional phone number recorded for EF. An email was recorded only for AB.

[135] While the NTA referred to this proceeding which the Respondent admitted to in the NTA Reply, the parties did not make any substantive submissions regarding the proceedung. The proceeding does not appear to form part of the allegations set out in the Citation. Accordingly, the Panel has also treated this petition as part of the broader context.

A2. *E Ltd et al. v. Number Company 6 et al.* (Schedule A2; Respondent's Documents #4)

Background

[136] This petition was filed on December 8, 2017 against Number Company 6 as registered owner and mortgagor and EF as guarantor seeking foreclosure on a mortgage granted on August 31, 2015 in the amount of $2 million at 11 percent interest per annum regarding an E Street property in Vancouver (the "First December 2017 Petition").

[137] The Respondent was not involved in the 2015 transaction that was the subject of the First December 2017 Petition.

[138] On February 28, 2018, AB emailed the Respondent, forwarding an email exchange between another lawyer, FF and MS, opposing counsel.

[139] In March 2018, the Respondent was retained by OO and Number Company 6 to respond to a petition of foreclosure. The Respondent took over the file from FF.

[140] On March 23, 2018, the Respondent prepared and filed court documents on behalf of Number Company 6 disputing the mortgage as outlined in the amended petition. The Respondent prepared affidavits where OO challenged the alleged mortgage and purported renewal, stating that no payments had been made under the mortgage.

[141] After opposing counsel provided a copy of a bank draft demonstrating an alleged payment was indeed made, OO swore an affidavit disputing that Number Company 6 had given the petitioner the bank draft.

[142] By memo dated April 4, 2018 to the Respondent, IJ, articled student wrote "[MS] sent an email alerting us that a payment of $18,333.33 was made on August 17, 2016. This is contrary to our assertion that no payments were made on the mortgage. He has provided a copy of a bank draft in support of this." She then made further calculations suggesting that "[a] payment in this amount supports our position that the renewal terms were never effective, and the terms of the registered mortgage continued to govern."

[143] On April 9, 2018, the Respondent emailed AB stating: "[AB], see the attached memo from [articled student] as to [OO], so it still looks ok, but would be best if you do have evidence that payment wasn't made" and then asked for further retainers.

[144] On May 3, 2018, AB emailed the Respondent with an attached purported payout statement stating "… here is the document I mension (*sic*) re [E Ltd.]."

[145] After the matter was put on the trial list, on May 29, 2019, the Respondent was copied on an email from his articling student sent to AB, stating:

> Dear [AB],
>
> The response to Notice of Civil Claim filed by [E Ltd.] in the [E] Street Matter is due on May 31, 2019. I was told to not work on any of your files until you are able to pay the outstanding amount owing to [the Respondent]. Please advise if you will be able to pay the outstanding amount soon.

[146] The Respondent prepared and filed a Response to Civil Claim on May 31, 2019 on behalf of Number Company 6.

[147] In June 2019, the Respondent withdrew as counsel for OO and Number Company 6.

[148] In various email exchanges on September 8, 2019 copied to the Respondent, new counsel, HH wrote to opposing counsel: "The payments you allege are based on hearsay from [AB] that he owned the property. Payments from him – who was not liable on the mortgage – could not possibly constitute an acknowledgement by the Mortgagee or covenantor that would extend the limitation period …."

[149] On September 8, 2019, the Respondent received an email from another counsel, who forwarded an email chain between opposing counsel, indicating a litigation position that AB was alleged to own the property at issue.

[150] On September 9, 2019, the Respondent received an email from AB forwarding email exchanges he had received from one of the respondents in the litigation, including one with an attached Order After Trial entered September 9, 2019.

[151] On September 9, 2019, an order was made after trial by consent that Number Company 6 was in default under the mortgage and would be required to pay $3.02 million to redeem the mortgage. The Respondent was no longer counsel at that time.

The Client

[152] The Respondent's clients were OO and Number Company 6.

[153] During the material timeframe, OO was the director of Number Company 6.

A3. *Number Company 7 v. Number Company 4, YZ et al*. (Schedule A3; Respondent's Documents #5)

Background

[154] A petition was filed on January 12, 2017 by Number Company 7, seeking foreclosure on a mortgage granted in 2016 regarding the L Drive Property, and judgment against EF as a guarantor of the mortgage (the "January 2017 Petition").

[155] The Respondent was not involved in the 2016 transaction that was the subject of the January 2017 Petition.

[156] In various court documents filed on August 4, 2017, November 6, 2017 and December 4, 2017, YZ, one of the respondents, attested to the following:

(a) due to criminal charges against him, AB does not carry out transactions in his own name, but instead does so through close business associates who act as nominees on his behalf, such as EF;

(b) in March 2016, AB and EF asked YZ to provide his personal guarantee for a mortgage to purchase the S Avenue Property as AB and EF could not qualify for the mortgage without YZ's guarantee;

(c) to complete the purchase of the S Avenue Property, AB and EF borrowed from the R Group;

(d) AB and EF executed an assignment in favour of YZ of their rights to reacquire the shares of Number Company 1 under the R Group Loan;

(e) in May 2016, AB made an urgent request to YZ to lend more money to AB and EF to make certain payments including a large payment coming due under AB's agreement with the R Group which, if not paid, would result in forfeiture of the right to reacquire the shares in Number Company 1;

(f) AB asked YZ to borrow funds from Number Company 7 using YZ's properties as security; and

(g) Number Company 7 advanced funds to YZ for AB and EF, which were used by AB and EF for purposes related to their business activities.

[157] In April 2018, the Respondent was retained to represent EF and Number Company 4. He took over the file from FF after an Order Approving Sale had been made by Master Muir in January 2018.

[158] On May 22, 2018, AB emailed the Respondent respecting the L Drive Property stating:

> hi dan here is the info for the units that [EF] need mortgage basicly (*sic*) is according to what sold in the complex works out to 700 per squre (*sic*) foot value comps to 8.7m on faci all mortgage total i (*sic*) 6m if consider 3rd mortgage belongs to [S Avenue Property] than (*sic*) total mortgage should be not more 5m lots of equity talk to ur guy if he can do quickly 1m on [L Drive and] (*sic*) 1m at [M Street Property]."

[159] In a memo dated June 20, 2018 to the Respondent, articled student, PN, summarized the issues between AB and YZ. He noted that on November 16, 2016, YZ and EF borrowed $470,000 from MN (PN's father) with YZ receiving $20,000 and EF receiving $450,000. PN's memo also set out EF and AB's arguments that the transfer of three properties were sufficient consideration for YZ to co-sign the mortgage. PN concluded that:

> It's a tough case as I'm not sure we can win … I am going to work with [AB] nevertheless to draft the necessary pleadings and attempt to try and get [YZ] to come to some sort of deal …

[160] On June 25, 2018, articled student, PN, emailed the Respondent regarding YZ's foreclosure proceeding over the L Drive Property. He stated: "This is the matter that [AB] came to discuss with us a few days back … I have attached a letter that [AB] wants us to send to … [the] Property Manager … He wants to send the document by tomorrow but I didn't promise anything."

[161] In that same email chain, PN wrote: "There's some work for [AB] that is going to come up today (he sent me a message). Given that its [AB] I'll message you as soon as he emails me so you know whats going on and can advise me if you have any concerns …" The attached draft letter was written to suggest that YZ was not authorized to do anything on behalf of Number Company 4.

[162] On June 26, 2018, articled student, PN, emailed the Respondent asking if he had reviewed the letter AB wanted to be sent that day and stating that AB had messaged the articling student again asking if the Respondent had approved the sending of the letter. That same day, the Respondent emailed the articling student, AB and EF with revisions

to the letter. Later that day, AB replied to the Respondent's email, stating that the letter was ok to send and did not copy EF on that email.

[163] On July 24, 2018, the Respondent forwarded an email to AB and EF with an attached letter from YZ's counsel. On that same day, the Respondent filed an Application Response and a Notice of Application on behalf of Number Company 4 and EF.

[164] On July 26, 2018, the Court granted an order absolute to Number Company 7. The Respondent sought an accounting of rents collected on the property but ultimately was unsuccessful.

[165] On July 26, 2018, the articled student emailed the Respondent with an attached memo stating: "[YZ] obtained Order Absolute, but we got it on the record that any rent collected by [YZ] has not been deducted from the subject mortgage. This is important as if [AB] wants to bring a civil action against [YZ] in the future, [YZ] will not be able to avoid the civil action by using the defence that all rent collected was deducted from the subject mortgage. Such a defence if it were possible, would likely mean that [AB] would be barred from suing for any unauthorized rent collection."

The Client

[166] The Respondent represented EF and Number Company 4.

[167] The first director of Number Company 4 was IB, AB's spouse.

[168] From August 2010 to November 2015, YZ was the director of Number Company 4.

[169] During the material timeframe (between approximately January 2018 and September 2019), EF was the director of Number Company 4.

[170] The Respondent says that Number Company 4 was EF's company and EF gave instructions to the Respondent, with AB only assisting. He says the allegations as to [AB]'s role were front and centre in this litigation.

A4. *AA Bank v. AB et al.* (Schedule A4; Respondent's Documents #6)

Background

[171] On February 1, 2017, AA Bank filed a claim alleging that AB, EF, Number Company 1, A Ltd. and others, participated in a cheque-kiting scheme to defraud the bank of $500,000. AA Bank eventually obtained a default judgment against AB, EF, Number Company 1 and others for assessed damages of $500,000.

[172] At a hearing on February 1, 2017, counsel for AA Bank presented evidence in an *ex parte* hearing that the bank was the victim of an "elaborate kiting scheme" involving three financial institutions in December 2016 and January 2017. Counsel for AA Bank also advised that AB was formerly linked by the Court to CD who was involved in a "massive large fraud into the tens of millions of dollars." Counsel also advised that AB was "severely reprimanded" by the Court after he delivered a non-sufficient-funds cheque as security for a damage award in another proceeding. The Court was further advised that the $500,000 obtained from cheque-kiting was earmarked for a commercial transaction closing that week.

[173] The affidavit evidence filed by the bank showed that:

(a) The first bank draft was purchased from an A Ltd. account. The two signatories to the A Ltd. account were AB and EF. The purchaser of the first bank draft was identified as AB from digital video snapshots.

(b) The second bank draft was purchased from a Number Company 14 account. The two signatories to the Number Company 14 account were AB and YC. The purchaser of the second bank draft was identified as AB from digital video snapshots.

(c) The third bank draft was purchased from a Number Company 1 account. The purchaser of the third bank draft was identified as EF from digital video snapshots.

[174] The Respondent was not involved in the alleged-cheque kiting scheme and had not met the defendants at the time that the alleged kiting scheme had occurred.

[175] In April 2018, the Respondent was retained to attempt to have the AA Bank judgment and order reversed. The Respondent obtained the court documents along with transcripts of the AA Bank's counsel's court appearances.

[176] On April 10, 2018, the Respondent wrote to counsel for the AA Bank setting out his understanding of the court orders against his client, EF which was substantively different from the explanation provided earlier by AA Bank's counsel who explained how he obtained the interim preservation order, default judgments and costs.

[177] On December 1, 2018, the Respondent sent eight emails to EF, forwarding seven emails relating to the AA Bank matter.

[178] The Respondent was unsuccessful in his attempts to reverse the court judgment and orders. The Respondent's invoices to EF/Number Company 1 dated April 8, 2018, June

3, 2018 and December 1, 2018 were for a total of $19,670. The Respondent does not appear to have received payments for the invoices he issued on the AA Bank matter.

[179] In December 2018, after receiving a request from EF, the Respondent transferred the AA Bank matter to new counsel.

The Client

[180] EF and Number Company 1, and presumably A Ltd. as well.

A5. *E Ltd. et al. v. Number Company 8 et al.* (Schedule A5; Respondent's Documents #7)

Background

[181] On May 2, 2018, E Ltd. and BS filed a petition against EF, Number Company 8 and another company seeking to foreclose on a mortgage dated May 16, 2016, in the amount of $550,943.86 plus interest at 20 percent per annum with a one-month term (the "May 2018 Petition").

[182] The Respondent was not involved in the 2016 mortgage and the assignment of rents that was the subject of the May 2018 Petition.

[183] In May 2018, the Respondent was retained by EF and Number Company 8 to respond to the May 2018 Petition.

[184] On May 8, 2018, the Respondent was served with the May 2018 Petition. The Respondent became counsel of record on August 10, 2018.

[185] On October 3, 2018, the Respondent emailed his articling student, forwarding an email from opposing counsel. He stated: "You need to meet with [AB] asap early next week to prepare the materials, including the response on this matter, as you will be arguing it …." The articled student replied promptly stating that he had a meeting scheduled the next day with AB to prepare the response materials.

[186] On October 11, 2018, the Respondent filed a Response to Petition on behalf of EF disputing the amount claimed and EF's status as covenantor. He then filed a Response to Civil Claim on November 23, 2018 stating that only $350,000 was advanced on May 16, 2016 and that EF had since sold Number Company 8. He also stated that E Ltd. and BS had agreed that the new owner, BB would now be liable for the mortgage and that EF would not be held liable.

[187] On October 11, 2018, the articled student emailed the Respondent stating that E Ltd.'s counsel would likely try to tie EF to AB to "expose some big fraud (whether that will work remains to be seen)" and that "[AB] wants to delay this as much as possible, so it is his call and yours as well."

[188] On October 12, 2018, the Respondent and the articled student exchanged various emails:

(a) the articled student emailed the Respondent stating that he "didn't know [AB]'s plans so he might have some alternative goal that [the articling student was] unaware of at the moment;"

(b) the Respondent emailed the articled student to go ahead with the hearing and to "get the orders that [EF] sets out. What do you and [AB] think?" and

(c) the articled student emailed that he was fine with that and thought "[AB] is as well from having spoken to him."

[189] On October 15, 2018, the Respondent was informed by his articling student that when the student attended the hearing on October 15, 2018, opposing counsel told him the following:

(a) the Respondent's clients were dangerous people;

(b) the articling student should stop representing the dangerous clients as they could cause "grave harm" to the student's reputation in the future; and

(c) the student should be wary of the Respondent.

[190] On November 22, 2018, the Respondent prepared and filed a Response to Civil Claim on behalf of EF.

[191] The May 2018 Petition was converted into an action in 2019, and the Respondent withdrew as counsel in April 2019 before a trial was held.

[192] The Respondent's evidence does not show that he issued any invoices or received any payment from EF or anyone else on this matter.

The Client

[193] The Respondent represented EF and Number Company 8 which was incorporated on November 18, 2015.

[194] From November 2017 to April 2018, EF was the director.

A6. *F Services v. Number Company 9* (Schedule A6; Respondent's Documents #8) JJ

Background

[195] A petition was filed on April 25, 2018 by F Services and P Corp, seeking to foreclose on a mortgage granted a month earlier on March 14, 2018 to Number Company 9 in the amount of $3.6 million regarding a commercial property on M Street ("M Street Property"), with JJ as guarantor (the "April 2018 Petition").

[196] Number Company 9 was the registered owner of the M Street Property. At the material timeframe, EF was the director of Number Company 9.

[197] The Respondent was not involved in the 2018 transaction that was the subject of the April 2018 Petition.

[198] In May 2018, the Respondent was retained to assist JJ and Number Company 9 to defend against the foreclosure.

[199] On May 18, 2018, a memo was prepared for the Respondent by IJ, articled student, in preparation for a meeting. She wrote:

> From our meeting this morning it was my understanding that our position is that the mortgage did not contain any term restricting [Number Company 9] from registering a second mortgage.

She then described the standard mortgage terms and expressly referenced clauses, including one that the company covenants that it will not "grant, create, assume or permit to exist any … mortgage … or other security except Permitted Encumbrances."

[200] On May 19, 2018, the Respondent emailed JJ, copying AB stating:

> I have attached a memo from my student [IJ] which addresses on a prima facie basis the issue of whether you have anything to complain about where the lender asserts that there is a breach with the granting of a second mortgage. I need from you documents evidencing the initial communications with the lender which

> communications support the proportion (*sic*) that the lender did not assert (for example) by reference to the standard mortgage terms mentioned in [IJ]'s memo the prohibition on a second mortgage. Also please provide us with a retainer of $5,000. I can meet with you today or you can meet with [IJ] tomorrow.

[201] On May 22, 2018, AB emailed the Respondent referencing "loan," stating:

> hi dan here is the contract re [M Street Property] that its sold completing end of nov total owing is 5.2m sold for 7.5m so equity is 2.3m see if your guy can put 4th mortgage for 1m [EF] and [JJ] can pay 30% return per year only for 3 months.

[202] On May 22, 2018, the Respondent received another email from AB, with an attachment, with further instructions regarding the mortgage to be placed on the M Street Property.

[203] On May 23, 2018, the Respondent emailed AB referencing JJ, stating: "[AB], I will review the e-mails this a.m. I need you to get 5K to [IJ], for [JJ], this week."

[204] On May 30, 2018, the Respondent emailed JJ copying AB stating:

> [JJ], See attached commitment letter, which seems to clearly state no second mortgage! see highlighted portions.

The attached commitment letter was dated March 9, 2018 from P Corp. to JJ and Number Company 9.

[205] On May 31, 2018, AB emailed the Respondent three times. The first email attached a purported offer to purchase the M Street Property. The second email forwarded a copy of an appraisal for the M Street property. The third email forwarded an email from another lawyer, attaching a package regarding the purported sale of the M Street Property. AB stated: "… here is mortgage documents it show lender is holding interest reserve (*sic*)."

[206] On June 4, 2018, the Respondent emailed opposing counsel to negotiate a consent order.

[207] On that same day, counsel for F Services emailed the Respondent stating:

> The problem is that my clients' (*sic*) are absolutely adamant that they would never have agreed verbally or otherwise to 2nd or 3rd mortgages being placed on the property. They wanted and were told that your client would be putting at least $1.2m of his own money into the property. That was what persuaded them to do this mortgage. With respect, the Contract of Purchase and Sale you provided with

> a completion date of November 30, 2018, does not impress my clients in the slightest. I can't see any reason why there would be a 6 month closing on a sale. I am instructed to proceed.
>
> …

[208] The Respondent then forwarded that email to JJ, copying AB, stating: "[JJ], See what follows. We should probably agree to the six month redemption period to allow the sale to take place at the end of November. Please confirm asap."

[209] On August 30, 2018, the Respondent received an email from counsel for the second lender stating his understanding that the first lenders had obtained an *order nisi*. He advised that he was instructed to proceed with an application for conduct of sale. The Respondent forwarded that email to EF and AB stating "check this asap" and later to both of AB's email addresses.

[210] On September 13, 2018, AB emailed the Respondent regarding the M Property with an attached purported contract of purchase and sale, stating:

> hi daniel here is the offer that properti (*sic*) is sold completing nov 30 2018 that is first mortgage got redemtion (*sic*) till 30nov so don't need to get condoc sale im sure you have copy of this i send you again here it is.

[211] On September 13, 2018, the Respondent emailed AB attaching drafts of a Response to Petition on behalf of Number Company 9 and JJ and an affidavit for JJ. The email asked AB to have JJ attend at the Respondent's office early the next day.

[212] On September 17, 2018, the Respondent received an email from his articled student stating: "You said you had set it up for [JJ] to come in today and sign the affidavit so we could submit the Response to Petition and Response to Application. What time can I expect them to be here?" The Respondent replied stating "he should contact you to confirm."

[213] The next day, IJ, articled student, emailed the Respondent, stating: "Still haven't heard anything from [JJ] or [AB]. The application is on Thursday. We haven't filed anything, and cannot do so without the affidavit to support the Response to Petition and the Application Response. Let me know what you want me to do."

[214] On September 18, 2018, the Respondent filed a Response to the Petition on behalf of Number Company 9 and JJ, indicating that JJ and Number Company 9 had entered into a contract to sell the M Property, seeking for his client the opportunity to sell the property, and stating the client had an outstanding offer to purchase. He also filed an accompanying affidavit.

[215] On July 11, 2019, the Respondent was served as counsel for Number Company 9 and JJ, with various application materials by F Services and P Corp.

[216] On July 12, 2019, the Respondent emailed AB with attachments, asking AB to "[s]ee attached" and "have [JJ] confirm if he is taking any position and let him know we are not acting."

[217] On August 21, 2019, the Respondent emailed AB, forwarding an email he had received about the upcoming completion of the purchase and sale of the M Street Property on August 26, 2019, stating "please deal with this."

[218] The Respondent did not appear to have issued any invoices or receive payment from EF or any parties on this matter.

The Client

[219] The Respondent was retained to represent JJ and Number Company 9.

[220] EF referred JJ as a client to the Respondent. There is no retainer letter or file opening sheet in the Respondent's file.

[221] An appraisal report dated February 19, 2018 addressed to A Ltd. to the attention of EF was prepared for the M Street Property.

[222] Number Company 9 was the registered owner of the M Street Property. Number Company 9 was incorporated on December 19, 2017 by AB, with EF as director.

[223] Between January and August 2018, the directorship of Number Company 9 was changed several times, from EF to JJ (January) then back to EF (March) then back to JJ (March) then to KK (July). JJ was removed as director in August 2018.

A7. *E Ltd. v. Number Company 10 et al.* (Schedule A7 & B23 to 24; Respondent's Documents #9)

Background

[224] This petition was filed by E Ltd. on December 8, 2017, seeking to foreclose on a mortgage it granted to Number Company 10 in the amount of $360,000.00 at 15 percent interest on a two-month term, regarding an A Avenue Property in July 2017 and to enforce an assignment of rents ("Second December 2017 Petition").

[225] The Respondent was not involved in the 2017 mortgage and assignment of rents that was the subject of the Second December 2017 Petition. On March 5, 2018, a

Response to the Second December 2017 Petition was filed by Number Company 10's former lawyer, FF.

[226] After the directorship of Number Company 10 was changed back to LL, the Respondent filed a response the next day on behalf of LL and Number Company 10

[227] After being retained, the Respondent took over conduct of the defence and sought an order postponing the petitioner's application to have conduct of the sale of the property until August 30, 2018, so that Number Company 10 could seek to complete a proposed sale to a third party.

[228] On July 18, 2018, PN, articling student, emailed the Respondent referring to emails with opposing counsel "regarding the conduct of sale for [AB]."

[229] On July 23, 2018, the Respondent received a photo from AB of a bank draft for $80,000 addressed to Number Company 10. That bank draft was not deposited into the Respondent's trust account. There are no documents in the Respondent's file that explain why AB had the bank draft, the source of funds for the bank draft, why AB was sending the Respondent the photo or whether AB provided the bank draft to Number Company 10.

[230] On July 24, 2018, the Respondent filed a Response to Application on behalf of LL and Number Company 10 stating that Number Company 10 had a binding offer for purchase and sale from MM dated July 3, 2018.

[231] On July 26, 2018, the Respondent's articled student, PN, appeared on behalf of the Respondent for Number Company 10 and LL. The consent order contained a condition that MM's $80,000 deposit was to be paid into the Respondent's trust account by July 30, 2018.

[232] On July 26, 2018, PN, articled student, emailed the Respondent with an attached memo he authored which stated:

> Application for Conduct of Sale for [A Avenue] – [AB] is required to place the deposit paid by the purchaser into your trust account by July 29, 2018. The value of this deposit is $80,000. [AB] is in a slightly problematic situation as it is my understanding he does not have $80,000 with him at the moment. It will be interesting to see if he is able to raise the funds in the next four days.

[233] On July 31, 2018, the Respondent caused a bank draft from P Enterprises dated July 30, 2018 for $80,000 to be deposited to his trust account, which was recorded as "bank draft from CIBC – [Number Company 10]/[LL]."

[234] On August 30, 2018, the Respondent received an email from AB with an attached purported "extension" to the contract of purchase and sale between MM and Number Company 10.

[235] On September 17, 2018, AB emailed the Respondent with an attached purported "cancelled contract" of purchase and sale dated September 10, 2018, which stated that: "The Seller has been just made aware that as of September 1, 2018, the Seller did not have the right to sell anymore. By mutual agreement, both purchaser and seller agree to terminate the said agreement and deposit be (*sic*) released to Purchaser."

[236] On September 17, 2018, the Respondent disbursed the $80,000 held in trust to MM, recorded as "Return Deposit." The Respondent told the Law Society that he released the $80,000 from his trust account "back to the owner of the funds as per the orders in question." The Respondent also told the Law Society that the $80,000 was deposited to his trust account in furtherance of an attempt by the client to forestall foreclosure through a sale of the property. Then, once the intended transaction expired, the funds were returned.

[237] On September 19, 2018, AB emailed the Respondent with an attached purported contract of purchase and sale between Number Company 10 and MM dated July 3, 2018 that provided MM would buy the A Avenue Property from Number Company 10 for $1.75 million with a deposit of $80,000 to be paid to the "Buyer's Lawyer." On that same day, AB also emailed the Respondent with an attached copy of MM's identification.

[238] On October 17, 2018, E Ltd. filed a claim against the Respondent which was served the next day, relating to the $80,000 deposit paid into the Respondent's trust account seeking a declaration that the Respondent had committed a fraudulent breach of trust and a fraudulent misrepresentation, seeking damages of $80,000.

[239] The E Ltd. claim against the Respondent alleged that:

(a) AB incorporated Number Company 10 on July 12, 2017;

(b) AB was an undischarged bankrupt and "real estate developer;"

(c) in 2008, AB was criminally charged under section 380 of the *Criminal Code* for 107 instances of fraud and depriving others of over $40 million in his real estate development dealings;

(d) AB had continued his real estate development business since 2008;

(e) AB had used numbered companies and confederates such as JJ, LL, and others to be the front people and corporate entities for his real estate development business;

(f) AB no longer had access to institutional or mainstream credit to fund his real estate development business so he preys on his ethnic and religious faith community to borrow money for short terms at high interest rates with promises and assurances of payment;

(g) since the 2008 criminal charges against him, AB had acquired properties using numbered companies and front persons such as LL;

(h) in the previous two years, foreclosures had arisen on many of the properties AB had been developing, properties which had multiple mortgages on them with covenants given by AB's confederates, such as LL; and

(i) when the foreclosure petitions were brought, AB retained a lawyer to defend the mortgagor and his confederate or accomplice who had covenanted the mortgage and as of August 10, 2018 that lawyer was the Respondent (or his firm).

[240] One of the key issues in the litigation was how $60,000 of the $360,000 was added to the mortgage amount. In an affidavit by NZ, the director of E Ltd., sworn on November 6, 2018, NZ attested that AB told NZ to add an additional $60,000 to the mortgage to be repaid to NZ on the sale of the property and that the $60,000 was to be paid towards a judgment debt owed by AB's daughter.

[241] The Respondent's articled student prepared an affidavit by LL that was witnessed by the Respondent and filed on December 21, 2018, stating that the additional $60,000 was added to the mortgage to ensure that EF had the funds necessary to develop the S Avenue Property. LL attested that:

(a) EF was a close colleague who had previously helped him in various business dealings;

(b) EF had contacted LL and requested LL' help to secure funds to redevelop the S Avenue Property;

(c) EF told LL that he had asked NZ to lend the funds but NZ was unwilling to lend any further funds given EF's financial difficulties at the time;

(d) LL then contacted NZ to add $60,000 to the mortgage;

(e) NZ told LL that he had already advanced the $60,000 to EF, but LL later learned that EF had not received the additional $60,000; and

(f) NZ later represented that he would provide the monies when the S Avenue Property was developed, but "the funds never materialized as development on the [S] Avenue Property never started."

[242] On December 30, 2018, PN, articled student, emailed the Respondent stating that he would have served the LL affidavit earlier but he was "unable to reach [AB] or the client as [AB] was not picking up an of our phones (*sic*) as he didn't have the 5,000." The articled student also expressed uncertainty about how the registrar would act in light of AB's involvement in the matter.

[243] On December 31, 2018, the Respondent was served with an affidavit by NZ sworn December 30, 2018, indicating that NZ had attended PL, a lawyer's office and discussed the $60,000 with AB. NZ attested that AB told him that the funds would also be secured on the S Avenue Property and paid on the sale of that property.

[244] The Respondent prepared and witnessed an affidavit of LL sworn January 17, 2019 indicating that AB was not in PL's office as attested by NZ.

[245] The Respondent did not appear to issue any invoices or receive payment from LL or any parties on this matter.

[246] On May 2, 2019, the Respondent filed a response to civil claim, disputing that he had paid the $80,000 deposit to the wrong party. In his court document, the Respondent stated that: "In answer to … the Notice of Civil Claim, plaintiff's counsel raised many of the allegations made here concerning [AB before the Court], but then agreed that the Court was not being asked to consider them."

[247] On July 2, 2019, a notice of discontinuance was filed in the proceeding.

The Client

[248] LL was referred to the Respondent by his prior counsel, FF, as well as AB and EF. The Respondent was retained sometime between March and June 2018, to represent LL and Number Company 10.

[249] Number Company 10 was incorporated on July 12, 2017 by AB, with LL as director.

[250] On July 1, 2018, the directorship of Number Company 10 was changed from LL to JJ. On July 23, 2018, the directorship was changed back to LL.

[251] At the material timeframe, the Respondent says that Number Company 10 was controlled by LL and JJ.

A8. *H Inc. v. LL et al.* (Schedule A8; Respondent's Documents #10)

Background

[252] A petition was filed on February 9, 2018 by H Inc. naming LL, his wife OL, and JJ as respondents (the "February 2018 Petition"). H Inc. as petitioner sought to foreclose on a mortgage dated October 18, 2017 against OL, registered owner and mortgagor regarding a Richmond property. The amount said to be owing on January 22, 2018 was $1,774,906.58 at 24 percent interest per annum. The February 2018 Petition also sought remedies against LL and JJ as guarantors.

[253] The Respondent was not involved in the 2017 mortgage and security agreement that was the subject of the February 2018 Petition.

[254] On April 10, 2018, an *order nisi* was granted by the Court.

[255] On October 17, 2018, the Respondent filed an Application Response on behalf of JJ indicating that JJ was attempting to purchase the property from the borrower who would pay out the mortgage.

[256] On October 17, 2018, the Court granted the petitioner conduct of sale of the property. The court order noted that the Respondent's articled student, PN had appeared on behalf of counsel for JJ and no one had appeared on behalf of OL or LL. PN signed the order on behalf of the Respondent as counsel for JJ.

[257] On March 5, 2019, the Court granted an order approving the petitioner's sale of the property to the purchaser, effective March 15, 2019, and provided the respondents until March 14, 2019 to redeem the mortgage.

[258] On March 14, 2019, the Court made an order granting H Inc.. exclusive conduct of the private sale after hearing its application. The court order noted that the Respondent had appeared as counsel for OL and LL but no one had appeared on behalf of JJ. The Respondent signed the order on behalf of OL and LL.

[259] The respondents were unable to redeem the mortgage and the sale of the property took place, leaving the respondents with no interest in the property.

The Client

[260] The Respondent's file does not include any client correspondence and does not indicate if the Respondent was retained by LL, JJ or both.

[261] The Respondent says he received his instructions from the clients JJ and LL and that those instructions were distilled in the various pleadings and supporting affidavits of JJ and LL.

[262] The Respondent did not appear to have issued any invoices or received payment from LL, JJ or any parties on this matter.

A9. *KC Ltd. v. Number Company 11 et al.* (Schedule A9; Respondent's Documents #11)

Background

[263] A petition was filed on February 26, 2019 by KC Ltd. ("February 2019 Petition") seeking to foreclose on a mortgage dated June 28, 2018 granted to Number Company 11 as mortgagor and LL and MM as guarantors on a Vancouver property plus a security agreement, and assignment of rents. The mortgage amount was $800,000 at 25 percent interest with a six-month term.

[264] The Respondent was not involved in the 2018 transactions that were the subject of the February 2019 Petition.

[265] In March 2019, the Respondent was retained by LL, MM and Number Company 11 to defend against the foreclosure proceeding.

[266] On March 19, 2019, a law firm wrote to the Respondent to serve the petition and affidavit on his office on behalf of the respondents. Handwritten notes on the letter state "open file," "we act for the respondents" (Number Company 11, LL and MM) with an automated reminder to look at the file on April 8, 2019.

[267] On April 10, 2019, the Respondent filed a Response to Petition on behalf of Number Company 11, LL and MM stating that the defendants took no position regarding the relief sought.

[268] On August 29, 2019, KC Ltd. filed an application and served it on the Respondent.

[269] On September 5, 2019, articled student, PN, emailed the Respondent stating: "I have the email for [LL] that being [email address] … I don't have the email for [MM] as [AB] kept avoiding giving it to me."

[270] In his submissions, the Respondent stated that he was unable to obtain instructions from his clients, so he filed a *pro forma* Response to protect his proposed clients' interest.

[271] Additionally, the Respondent stated that he withdrew as counsel on September 18, 2019. He testified that he withdrew because he never did receive instructions.

The Client

[272] Number Company 11 was incorporated on March 7, 2018. From June 8 to July 10, 2018, LL was the director of Number Company 11.

[273] From July 10, 2018 to November 21, 2019, AB's spouse, IB was the director of Number Company 11.

[274] From November 21, 2019 to January 1, 2020, another individual was the director of Number Company 11.

[275] On January 1, 2020, AB became the director.

[276] From February 6 to 10, 2020, IB became the director again.

[277] From February 10 to November 1, 2020, four other individuals held directorship of Number Company 11.

[278] OL then became the director of Number Company 11 until October 2022.

[279] The Respondent did not appear to issue any invoices or receive payment from LL, MM, Number Company 11 or any parties on the matter.

A10. *PP v. Number Company 12 et al.* (Schedule A10)

Background

[280] On October 3, 2018, PP filed a petition against Number Company 12 as registered owner and mortgagor and other parties, seeking to foreclose on a property in Maple Ridge (the "October 2018 Petition"). PP held a mortgage with ZZ who sold the property to Number Company 12. Number Company 12 agreed on June 28, 2018 to be bound by the mortgage. The renewal of the mortgage expired on August 16, 2018 with the total amount owing stated as $3,280,906.98 at 15 percent interest per annum.

[281] As the mortgage was granted prior to the Respondent's involvement with this matter, he was not involved in the 2017 transaction that was the subject of the October 2018 Petition.

[282] On February 19, 2019, the Respondent received an email from PN, articled student, stating:

> … as a quick summary, [TT]'s lawyer (*sic*) is the Petitioner who is seeking an application for an order for conduct of sale. Our client is [RR] who holds a third mortgage over the subject property. [AB] and [RR] oppose the petitioner's application as both want [RR] to get an order for conduct of sale [...] rather than the Petitioner. [AB] and [RR] know that they need an appraisal showing the property to be valued at atleast (*sic*) 4 million to oppose the application and to obtain conduct of sale. Without such an appraisal it will be extremely difficult to oppose the Petitioner's application as the value of the encumbrances on the property far exceeds the current appraised value of 3.3 million.
>
> [TT] … is asking to set the date for the hearing for their application for conduct of sale on March 8, 2019. I have told them that I am away and that you will respond to them. My personal advice would be to ask for a later date so as to give [AB] and [RR] time to obtain the appraisal.

[283] On February 28, 2019, the Respondent asked PN, articled student, to prepare a conduct of sale application for the third lenders, RR and SS.

[284] On March 9, 2019, the Respondent was advised by his articling student that PN had been contacted by AB with instructions on this foreclosure matter.

[285] On March 11, 2019, the Respondent received an email from AB, forwarding an email from an appraiser.

[286] On March 11, 2019, after inquiring with his articled student, the Respondent received a reply email from him stating that AB's recent email was an appraisal to be attached to an affidavit and filed in court. He stated: "[AB] just finally got [the appraisal] today."

[287] There is no indication that any documents were filed by the Respondent with the court in this foreclosure matter.

[288] The Respondent explained in his January 27, 2022 letter to the Law Society that he obtained pleadings and filed a notice of change of lawyer, but no steps were taken on this file. He testified that he was never "retained" by RR, SS or Number Company 12 and ultimately did not do anything of substance in relation to this file, and he had no knowledge of the asserted connection between one of the parties and AB.

The Client

[289] From 2016 to the material timeframe, the Respondent denies knowing whether UU was allegedly the director of Number Company 12. The Respondent also denies knowing whether UU was allegedly EF's father-in-law.

[290] The Respondent denies having been retained in this matter, by RR, SS, Number Company 12 or UU.

[291] The Respondent did not appear to issue any invoices or receive payment from RR and SS or any parties on this matter.

A11. *"CH Ltd."* (Schedule A11 & B25 to 26; Respondent's Documents #12)

Background

[292] On June 23, 2018 a contract of purchase and sale of a property on C Street was signed between the seller, CH Ltd. and the buyer, Number Company 13 ("Contract").

[293] In July and August 2018, the Respondent assisted Number Company 13 with the purchase of a property in Vancouver ("C Street Property").

[294] On July 11, 2018, the Respondent received an email from VV, a real estate agent for the purchaser, stating that Number Company 13 had entered into a contract to purchase the C Street Property. He asked if the Respondent had received the $100,000 deposit. The email attached a copy of the Contract.

[295] On July 12, 2018, PN, articled student, emailed the Respondent attaching a scanned copy of a bank draft and stating "[a]ttached is a scanned copy of the bankdraft (*sic*) given by [AB]."

[296] On July 12, 2018, the Respondent caused the bank draft dated July 11, 2018 of $100,000 to be deposited to his trust account, which was recorded as "official chq from Westminster Savings – [Number Company 13]"

[297] On July 12, 2018, the Respondent sent two emails replying to VV stating he had received the $100,000 deposit on July 12, 2018.

[298] On July 13, 2018, the Respondent received an email from VV stating that an addendum to the contract was required due to the late deposit and asked for the purchaser's contact information. The Respondent forwarded that email to EF and AB, stating "pls confirm."

[299] On July 13, 2018, AB emailed the Respondent stating: “hi daniel you just tell [VV] you recieve (*sic*) the draft yesterday which is dated july 11 from westminister (*sic*) saving other draft from td guy who (*sic*) i arrange with was not happy he did not release the draft.”

[300] On July 16, 2018, Number Company 13 filed its last annual record. On that date, the director of Number Company 13 was WW.

[301] On August 22, 2018, the Respondent received an email from AB stating “here is contract for 100k deposit” with an attached copy of a purported contract of purchase and sale for three properties by Number Company 13 with KK signing on its behalf.

[302] On August 27, 2018, XX, another real estate agent for the purchaser, also emailed the Respondent with a copy of the Release executed by both the seller and the buyer, stating that: “We would appreciate your kindness to release from your trust account the deposit funds in the amount of $100,000.00 to the buyer, [Number Company 13]” The Respondent forwarded that email to AB..

[303] On August 28, 2018, the Respondent provided Number Company 13 with a trust cheque in the amount of $100,000 with an attached Release regarding the C Street Property. The Release dated August 24, 2018 was signed by WW as director which authorized the Respondent to release the $100,000 funds to Number Company 13. The Release also had handwritten notations that the funds should be sent to the WW as the buyer at a Port Coquitlam address or to the director, WW of Number Company 13. The Respondent then emailed AB forwarding the email from XX with the attached Release.

[304] The Respondent testified that he was not involved in this transaction regarding the sale and purchase of the C Street Property. He was provided with a copy of the Contract and advised that he had been designated to hold the $100,000 deposit. He denied that he acted “per se” as the intended retainer was cancelled (as well as the underlying property purchase) before the Respondent could meet with the client’s representative.

[305] The Respondent says that the $100,000 was deposited into his trust account on the representation of the real estate agent that the Respondent was named in the contract of purchase and sale as the person to receive the deposit. He says that “[n]o further enquiries were made as before the Respondent could meet the client’s representative, the Respondent was instructed by the real estate agent that the contract had been cancelled and to return the funds. The Respondent acknowledges that he failed to make inquiries as to the source of the funds for the $100,000 bank draft.

The Client

[306] Number Company 13 was incorporated in June 2017 by AB, with EF listed as the sole director.

[307] Between January 7 and July 11, 2018, the directorship of Number Company 13 changed ten times as follows:

(a) from EF to YY;

(b) adding LL (January 8)

(c) removing LL and YY and adding KK (June 15); and

(d) on July 11, 2018, six changes removing or adding LL, KK and WW.

[308] The Respondent says that he was never retained in this matter but dealt with KK as the person who would have given him instructions for the proposed client Number Company 13.

[309] The Respondent's trust ledger recorded a reference to Number Company 13.

8. The Schedule "B" Trust Entries

[310] The table in Schedule "B" refers to four litigation matters in which the Respondent is said to have received and paid out monies in trust.

[311] The NTA provides the Respondent's banking statements for the material timeframes, including his General and Trust accounts, copies of bank drafts, letters and emails accompanying the bank drafts, and other financial documents. The NTA Reply did not dispute the trust entries set out in Schedule "B." The Panel accepts that the trust entries have been proven by the Law Society.

[312] The impugned trust transactions are as follows:

A1: S Avenue litigation

[313] In relation to the S Avenue litigation, the table lists 20 trust transactions from January 17, 2018 to August 13, 2018 totalling $75,530.00 in various deposits and withdrawals from the Respondent's trust account.

A2: E Ltd. v. OO (Number Company 6)

[314] In regard to the *E Ltd. v. OO* litigation, the table lists 2 transactions in March 2018 totalling $5,000.00 in a deposit and corresponding withdrawal from the Respondent's trust account.

A7: LL

[315] In regard to the LL litigation, the table lists 2 transactions from July 30, 2018 to September 17, 2018 in the amount of $80,000.00 in a deposit and corresponding withdrawal from the Respondent's trust account.

A11: "CH Ltd."

[316] In regard to the C Street Property, the table lists 2 transactions from July 11, 2018 to August 24, 2018 in the amount of $100,000.00 in a deposit and corresponding withdrawal from the Respondent's trust account.

[317] While the Panel did not list all the individual trust transactions in our discussion of the Schedule "A" files and above, we are satisfied from the NTA and the NTA Reply that the funds paid in and out of the Respondent's trust account are accurately set out in Schedule "B."

E. ISSUES

[318] The Panel will address the following issues:

1. Has the Law Society proven on a balance of probabilities, the underlying facts in the allegations against the Respondent as set out in the Citation?

2. If yes, is the Respondent's conduct contrary to the *Code* and does it amount to a marked departure from conduct expected of a lawyer and thus constitutes professional misconduct?

F. GENERAL LEGAL PRINCIPLES

1. Onus and Burden of Proof

[319] The Law Society carries the burden of proof to establish on a balance of probabilities that the facts as alleged constitute professional misconduct: *Foo v. Law Society of British Columbia*, 2017 BCCA 151, at para. 63.

2. The Test for Professional Misconduct

[320] "Professional misconduct" is not a defined term in the *Legal Profession Act* (the "*Act*"), the Rules or the *Code*. Section 38(4)(b)(i) of the *Act* authorizes a panel to determine that a respondent has engaged in professional misconduct. The test for whether conduct constitutes professional misconduct is set out in the leading case of *Law Society of BC v. Martin,* 2005 LSBC 16 at para. 171 as "whether the facts as made out disclose a marked departure from that conduct the Law Society expects of its members."

[321] The "marked departure" test in *Martin* is an objective test. A hearing panel must consider the appropriate standard of conduct expected of a lawyer and then determine if the lawyer falls markedly below that standard: *Law Society of BC v. Sangha*, 2020 LSBC 3. It has been accepted by many subsequent hearing panels, and was affirmed by the British Columbia Court of Appeal in *Foo,* at paras. 52 to 57.

[322] In determining the appropriate standard, a panel must bear in mind the requirements of the *Act*, the Rules, and the *Code*, and then consider the duties and obligations that a lawyer owes to a client, to the court, to other lawyers and to the public in the administration of justice. Each case will turn on its particular facts: *Law Society of BC v. Kim,* 2019 LSBC 43, at para. 45.

G. THE RESPONDENT'S CREDIBILITY

[323] The Law Society submits that some aspects of the Respondent's testimony are not credible. In particular, the Law Society says that in advancing a "positive defence" that the Respondent made inquiries in the circumstances, he did not call any witnesses to confirm his evidence and provided no evidence that he took any notes of those inquiries other than his bare assertions.

[324] The Law Society provided several examples, including the Respondent's testimony that when he or his articled students took notes from clients, they would then destroy those notes after relying on them to draft court documents and before closing the client files.

[325] The Law Society also challenges the credibility of the Respondent's explanation that he did not represent AB in the S Avenue matters because of the "potential conflict" between EF and AB. Further, the Law Society challenges the Respondent's explanation that part of his usual client identification process was to do a corporate search and confirm that the client was a director of the company. The Law Society says that had he done so, he would have known that certain clients, such as MM and LL were not the directors of the numbered company that they purported to be.

[326] The Respondent submits that he provided numerous admissions that were not necessarily in his own interest to admit. He submits that his testimony sought to clarify aspects of the documentary evidence and the circumstances of his involvement with the various files. He submits that the purported inconsistencies or deficiencies are not material to the allegations in the Citation.

[327] We have considered the principles set out in the Court of Appeal decision in *Faryna v. Chorny*, 1951 CanLII 252, [1952], 2 D.L.R. 354 at paras. 11to 12 (applied in *Bradshaw v. Stenner*, 2010 BCSC 1398, at para. 186), in which the Court of Appeal stated that the "real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions."

[328] In applying that test, the Panel finds that the Respondent's testimony was generally credible. The Respondent admitted a substantial portion of the NTA. We find that the majority of the points raised by the Law Society as inconsistencies are not material to a finding of credibility or to the allegations in the Citation.

[329] The Respondent testified that he made inquiries and notes, and that those inquiries and notes were reflected in the court documents he filed on behalf of his clients. However, the evidence filed by the Respondent does not address the allegations that AB played an extensive role in the various transactions, nor AB's role as a bankrupt or alleged notorious frauster. The Panel accepts that the Respondent made some inquiries, for example, he did inquire as to his client's identity when he obtained copies of AB's and EF's identification and made inquiries when he prepared responses and affidavits to defend his clients in the various litigation.

[330] The Respondent's evidence has been consistent in that he or his articled students made "extensive notes" to prepare responses to various court documents. The Respondent says that the instructions he received were "inherent" in the filed court materials; the court documents reflect his inquiries and discussions; and that the instructions and evidence gathered by the Respondent or his articled students were "distilled" in the various pleadings and supporting affidavits. Whether we accept that the Respondent's inquiries, as evidenced by the court documents, satisfied his obligation to be on guard against being a dupe is an issue that is central to our decision.

[331] We find that the Respondent's testimony was generally credible where it was consistent with the documents, the NTA and NTA Reply; however, where the Respondent's testimony was vague or unsupported, we relied on the evidence reflected in the NTA, NTA Reply and other exhibits.

[332] The issue before us is not whether the Respondent made any inquiries, but whether the Respondent made the type of inquiries that would show that he was on guard against being a dupe. That is not a credibility issue. On the other issues raised by the Law Society, we find they are not material to the issues before us.

H. ISSUE ONE: HAS THE LAW SOCIETY PROVEN ON A BALANCE OF PROBABILITIES, THE UNDERLYING FACTS IN THE ALLEGATIONS AGAINST THE RESPONDENT AS SET OUT IN THE CITATION

[333] The Panel accepts all the facts described above regarding the Schedule "A" and "B" transactions. Accordingly, we find that the Law Society has proven on a balance of probabilities the facts that between approximately January 2018 and September 2019, the Respondent provided legal services in all the matters set out in Schedule "A" and permitted the use of his firm's trust account in all the instances set out in Schedule "B," as discussed above.

[334] The remaining issues relate to whether the Respondent failed to be on guard against becoming the tool or dupe of an unscrupulous client or other persons, failed to make reasonable inquiries or failed to make records of those inquiries contrary to the *Code* and do any failures amount to a marked departure from conduct expected of a lawyer.

I. ISSUE TWO: DOES THE RESPONDENT'S CONDUCT AMOUNT TO A MARKED DEPARTURE FROM CONDUCT EXPECTED OF A LAWYER AND THUS CONSTITUTES PROFESSIONAL MISCONDUCT?

1. The Law

(a) Schedule "A" files

[335] As discussed in *Gregory BCCA,* at para. 5, a lawyer "acting as counsel has duties to a client, but those duties do not go so far as to allow the lawyer to assist in illegal activities." The Court of Appeal referred to the Supreme Court of Canada decision in *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7, which explained:

> [93] … [T]he duty of commitment to the client's cause must not be confused with being the client's dupe or accomplice. It does not countenance a lawyer's involvement in, or facilitation of, a client's illegal activities. Committed representation does not, for example, permit let alone require a lawyer to assert

> claims that he or she knows are unfounded or to present evidence that he or she knows to be false or to help the client to commit a crime. The duty is perfectly consistent with the lawyer taking appropriate steps with a view to ensuring that his or her services are not being used for improper ends.

[336] The Court of Appeal explained at para. 6 that "[w]hat [counsel] must do, however, is obtain sufficient information to assure themselves that they are not misleading the court or furthering illegal activity." The Court of Appeal endorsed the hearing panel's facts and determination decision at paragraph 103 in *Law Society of BC v. Gregory*, 2021 LSBC 34 ("*Gregory F&D*"):

> [103] When the circumstances of a client or potential client reasonably raise suspicions, the lawyer should first make reasonable inquiries to be satisfied on an objective standard, that the lawyer will not be assisting the client in doing something unlawful or potentially unlawful. It is not sufficient to say that the lawyer should zealously represent the client's interests and trust in the court system to sort out the "truth" or to bring the unlawful behaviour to light. That deflects the lawyer's responsibilities. As officers of the court, lawyers must make reasonable inquiries of their clients so that their unscrupulous clients do not burden the court system with questionable claims rooted in fraud, money laundering or other criminal activities.

[337] In the hearing panel's disciplinary action decision, *Law Society of BC v. Gregory*, 2022 LSBC 17 ("*Gregory DA*"), the panel stated as follows:

> [89] The Respondent further submits that the professional obligations placed upon counsel in litigation differ from those placed upon a solicitor because the solicitor is engaged in immediate transactions. He submits that "the nature of contested litigation allowed for more time in which to make an eventual decision about continued representation, but that the *ultimate* deadline (i.e. the 'crossing of the Rubicon') would not be reached before substantive submissions were made to a Court for relief or before entering upon settlement negotiations."
>
> [90] The Respondent's position that a litigator should not be held to the same standard as a solicitor in making reasonable inquiries, or should be allowed to delay fulfilling those duties in litigation, is unreasonable. The view that litigation somehow displaces a lawyer's duty or lowers the standard to make reasonable inquiries because a judge will eventually figure things out does not guard against the Respondent being duped into facilitating his client's unscrupulous activities.
>
> [emphasis in original]

[338] We are advised that the *Gregory F&D* and the *Gregory DA* decisions are currently under review under s. 47 of the *Act*.

[339] A lawyer's professional obligation to make inquiries in objectively suspicious circumstances has been known, or ought to have been known, to the profession since the decision in *Law Society of BC v. Elias,* [1993] LSDD No. 182 (review), aff'd (1996) 26 BCLR (3d) 359 (CA). In *Elias*, the Court of Appeal affirmed the bencher's decision on review and quoted the review decision as follows:

> ...where the circumstances of a proposed transaction are such that a member should reasonably be suspicious that there are illegal activities involved under Canadian law or laws of other jurisdictions, it is professional misconduct to become involved until such time as inquiries have been made to satisfy the member on an objective test that the transaction is legitimate. …

[340] In *Law Society of BC v. Ross,* 2010 LSBC 24, at para. 11, the hearing panel reminded the profession that the wording "ought to know" in the *Professional Conduct Handbook* required, in some circumstances, skepticism of their clients, stating:

> Chapter 4, Rule 6, specifically provides that a lawyer must not engage in any activity that he or she ought to know assists in a fraud. The expression "ought to know" was specifically introduced into the *Handbook*, along with Footnote 3 …, to alert lawyers to the need to view objectively, and perhaps from time to time, depending on the circumstances, with some skepticism, representations and actions of a client. …

[341] At the heart of the duty to investigate is a lawyer's obligation to ensure that he does not permit himself to become "a mere unquestioning instrument" of their client's wishes: *Law Society of BC v. McCandless*, 2010 LSBC 3, at paras. 56; *Law Society of Upper Canada v. Di Francesco*, [2003] L.S.D.D. No. 44, at paras. 25 to 27; *Holy v. Law Society*, [2006] EWHC 1034, at paras. 23, 35.

[342] In recent cases, a lawyer's failure to be on guard and to make reasonable inquiries against becoming the tool or dupe of an unscrupulous client have been found to be professional misconduct: *Gregory BCCA; Law Society of BC v. Kates,* 2023 LSBC 40; *Law Society of BC v. Guo,* 2023 LSBC 28; *Law Society of BC v. Huculak,* 2022 LSBC 26; *Law Society of BC v. Osei,* 2022 LSBC 43; *Law Society of British Columbia v. May,* 2021 LSBC 35, 2023 BCCA 218, 2023 LSBC 43; *Law Society of BC v. Uzelac,* 2020 LSBC 58; *Law Society of BC v. Yen*, 2020 LSBC 45, 2023 LSBC 02 (currently under appeal under s. 48 of the *Act* but as to other issues); *Law Society of BC v. Hammond*, 2020 LSBC 30; *Law Society of BC v. Daignault,* 2020 LSBC 18; and *Law Society of BC v. Hsu*, 2019 LSBC 29.

[343] We note that the Law Society's written submissions referred to the Cullen Commission Reports that were published in 2020 and 2022. Additionally, the Law Society's written submissions referred to the Federation of Law Societies' Risk Assessment Case Studies for the Legal Profession, which was published after the time period material to the Citation. As both the Cullen Commission Reports and the Federation of Law Societies' reports were published after the timeframe in the Citation, we have not relied on those reports in our decision.

(b) Schedule "B" trust transactions

[344] *Gurney* is the leading case on a lawyer's duty to make inquiries and their role as gatekeeper of the trust accounts. The hearing panel in *Gurney* used the principles from *Elias* to ground their analysis of that conduct:

> [79] …
>
> > (b) The Court of Appeal in *Elias*, quoted the Bencher review decision at para. 9: "where the circumstances of a proposed transaction are such that a member should reasonably be suspicious that there are illegal activities involved under Canadian law or laws of other jurisdictions, it is professional misconduct to become involved until such time as inquiries have been made to satisfy the member on an *objective* test that the transaction is legitimate." It is clear that the duty to make inquiries is triggered prior to the lawyer becoming involved in the transaction, and the lawyer must be satisfied on an objective basis that the transaction is legitimate.
> >
> > (c) The lawyer's duty to investigate arises when, on an objective basis, he becomes suspicious that the transaction is illegitimate. Professional misconduct can be found even if the underlying transaction cannot be proved to be illegitimate. A lawyer cannot delegate the duty to inquire to a third party such as a client and rely upon the client's assurance as to the legitimacy of the transaction.
> >
> > [emphasis in original]

[345] The hearing panel in *Gurney* held:

> [80] A lawyer has a gatekeeper function with regard to trust accounts. This function arises, in part, from the fact that transactions that occur through a lawyer's trust account are protected by solicitor-client privilege. … The purpose of the privilege is to allow open and candid communications between a lawyer

> and client. The purpose of the privilege is not to facilitate suspicious transactions. … Prior to the lawyer becoming involved in a transaction, if there is a reasonable suspicion that the transaction may involve illegal activities in Canada or abroad the lawyer has a duty to make reasonable inquiries. An objective test is applied to the lawyer's conduct. In order for professional misconduct to be found, illegal activities do not have to be proved.

[346] A lawyer's failure to discharge the gatekeeper duty over trust accounts creates a serious risk to the public and is a specific harm caused by the lawyer's failure. Therefore, lawyers play an important and distinct role as gatekeepers and must not shirk these duties.

(c) "Red flags"/Suspicious circumstances

[347] As part of the requirement to be on guard, the lawyer must be alert to any suspicious circumstances also known colloquially as "red flags", to guard against being a dupe or facilitating an unscrupulous client's unlawful activities. These suspicious circumstances or red flags are objectively suspicious circumstances.

[348] In *Huculak,* at para. 65, the panel noted the main objectively suspicious circumstances of the transactions, or the key "red flags", that Huculak should have been aware of in the circumstances. Some similar red flags the panel identified in *Huculak* that the Respondent should have been aware of here are as follows:

(a) the client's criminal history;

(b) allegations of criminal activity made about another client in the course of estate litigation, along with the source of the funds for a property purchase, and discoverable online information linking that client to money laundering;

(c) obviously close relationships and business connections between many of Huculak's repeat clients and other parties to the transactions, despite their portrayal to banks and mortgage companies as arm's-length interests; and

(d) limited or no direct contact between Huculak and his purported clients.

[349] In *Osei,* at para. 20, similar red flags to those in the circumstances of the instant case included:

(a) Osei received funds into trust from two numbered companies, but he was not provided with instructions from those companies, did not verify the

source of the funds, and was not aware of any tangible relationship between his client MP, and the numbered companies;

(b) MP gave Osei inconsistent instructions abouts MP's relationship with one of his associated corporations; and

(c) Osei learned of claims that MP had engaged in unscrupulous activity.

[350] Similarly, in *Gregory F&D*, at para. 60 the hearing panel included a list of risk factors and red flags. The following are similar to the circumstances in the instant case:

(a) the client wanted to replace his counsel at a relatively early stage of a foreclosure proceeding;

(b) another individual advised Gregory that he would provide instructions on the matter, even though he was not the client (the "Instructing Individual");

(c) Gregory's first meeting on the matter was with the Instructing Individual, not with the client;

(d) Gregory did not meet or speak with his client in the absence of the Instructing Individual;

(e) the matter involved recovery of a private loan for a large amount where it was not clear why the borrower would borrow such a large amount from a non-credit institution;

(f) Gregory received an affidavit that described the Instructing Individual as a money lender who was in trouble with the police and under investigation for offences involving money; and

(g) Gregory was aware of a published article that reported that his client and the Instructing Individual had been previously arrested together in possession of funds that were later forfeited as proceeds of crime.

2. Allegation 1(a): Failing to be on Guard

[351] The Law Society alleges that between approximately January 2018 and September 2019, in regard to the Schedule "A" files and the Schedule "B" trust transactions, the Respondent failed to be on guard against becoming the tool or dupe of an unscrupulous client or other persons.

(a) Schedule "A" files

(i) The Law Society's position

[352] The Law Society submits that the circumstances in this case are exceptional and troubling. The circumstances involve a notorious alleged fraudster who has allegedly duped a lawyer in the past in a large scale fraudulent real estate scheme. The Law Society says that these circumstances required the Respondent to have exercised extreme diligence and care to abide by his professional obligations. Instead, the Law Society says that at best, the Respondent was willfully blind to the sea of red flags present; at worst, he proceeded in spite of knowing the risks involved.

[353] The Law Society points to a number of suspicious circumstances, or "red flags." The most significant is the involvement of AB in all the Schedule "A" files. The Law Society submits that AB is notorious as the alleged mastermind behind a fraudulent scheme that resulted in the largest costs to the Law Society in its history. The Law Society submits further that the fraudulent scheme to which a lawyer, CD, pleaded guilty, ought to have been a "major" red flag in the Respondent's mind.

[354] The Law Society's submissions list many "red flags" arising from the Schedule "A" files, including the following:

(a) AB was charged with fraud, and subject to a default judgment due to his involvement in a cheque-kiting scheme with EF.

(b) AB was not a named party to the litigation or transactions and his financial or other interest in the Schedule "A" files was not known or was unclear to the Respondent.

(c) In a file where AB was named as a defendant in the promissory note action, the Respondent says he did not represent AB. Nevertheless, the Respondent's articled student prepared AB's Response to Civil Claim. The Respondent admitted he told PN to make sure his name was not mentioned anywhere on AB's court document.

(d) Even though the Respondent testified that he was concerned about potential conflicts in representing both AB and EF, he received instructions on all of "EF's files" from AB.

(e) AB's compensation or motivations for his involvement in the Schedule "A" Files was claimed to be unknown to the Respondent.

(f) The funds provided to the Respondent in the Schedule "A" Files were provided by various bank drafts, meaning they are not traceable to the source of the funds.

(g) AB was involved in all the Schedule "A" Files and was the main, and often only, contact person. AB was the contact person and middleman for at least ten "clients", even though there was no indication the clients were not able or available to communicate with and instruct the Respondent.

(h) There is no indication the purported clients knew anything about AB's communications to the Respondent about their litigation matters and they did not appear to have any knowledge of the professional services requested, as AB arranged everything with the Respondent. The Respondent's files did not provide any evidence that he confirmed AB's "instructions" directly with the clients.

(i) According to the Respondent, AB had access to all important documentation and information the Respondent needed to represent his clients, with no explanation as to why AB would have such access or why the purported clients did not. The Respondent thought AB was "very helpful" and he "had no doubt that [AB] was acting here as a consultant or an agent and that he had a lot of the knowledge".

(j) The Respondent testified that EF was not forthcoming with the information the Respondent needed, even though EF was the purported client with a purported interest in the litigation he was defending.

(k) Even though, initially, on February 6, 2018, the Respondent appears to have realized he should be communicating with, and receiving instructions from, his client, EF, directly, he did not proceed to do so, or make such an effort with any of the other ten clients involved in the Schedule "A" files.

(l) There are no written instructions from any of the Respondent's clients and it appears the Respondent and his articling students were only in contact with AB.

(m) The Respondent's purported clients, or the natural persons who were named directors of the numbered companies, appeared to have no interest in involvement in defending foreclosure actions and other litigation that could result in huge financial losses for them. Either the

clients were being evasive and avoiding contact with the Respondent, or they had no interest in the proceedings as AB was the actual beneficial owner of the numbered companies and using the named individuals as his nominees.

(n) Many of the clients were numbered companies or other corporations incorporated by AB or by other named individuals using AB's same address.

(o) Many of the numbered company clients had numerous historical changes of directors, sometimes numerous changes on the same day, shortly before the Respondent's involvement was requested by AB.

(p) Many of the numbered company clients had prior directors including AB, EF, or AB's wife, IB.

(q) While AB appeared to control the C Street transaction, and provided instructions on all of the Schedule "A" Files, he was not a named director during the material timeframe of the Citation of any of the numbered company clients.

(r) The Respondent did not have his client MM's e-mail address or contact information, and PN, articled student, told the Respondent AB would not provide it to PN even though PN had requested it.

(s) EF changed legal counsel and hired the Respondent to represent him on the S Avenue litigation shortly before trial. The Respondent's testimony was that, with a trial date that close, "you generally aren't retained three to four months before a trial". Here, the Respondent was hired one month before EF had been scheduled for cross-examination.

(t) EF consented to payment of a $250,000 bonus to the Respondent in the Retainer and Contingency Agreement.

(u) On two different occasions (the $80,000 and $100,000 bank drafts), the Respondent received a copy of a bank draft, from a different bank, for the amount of funds he was expecting to receive, and then received a different bank draft which he proceeded to deposit, without information as to why the previously provided bank draft was not used. In both those instances, the Respondent was provided with funds from one entity, with no apparent interest in the Respondent's file (P Enterprises for the $80,000 bank draft and AB for the $100,000 bank draft) and then was

asked to disburse those same funds to a third party, the Respondent's purported client (MM and Number Company 13, respectively), with no explanation as to why the funds initially were provided by the depositor.

(v) The Respondent did not have a copy of his purported client MM's identification, or his address, until the day he disbursed $80,000 to MM, and received the identification copy from AB, not MM.

(w) The Respondent testified that EF decided he would no longer send the assignment of rents funds to a law firm through the Respondent. The Respondent says he agreed to no longer be involved in the funds transfer, even though it was normal practice to use one's lawyer to accept and transfer such funds, because EF's previous cheque was returned NSF.

(x) The Respondent testified that he was approached by EF, AB, and MN with the idea that PN continue his articles (unpaid) with the Respondent, as PN was said to have lots of experience in foreclosure proceedings (even though he was only an articling student), and that AB would provide the Respondent with a lot of foreclosure work to keep PN busy. The Respondent admitted he had never had such an experience and thought he was just a "lucky guy" to have such an offer. The Respondent was encouraged to have PN do further work for "[AB] and his associates".

(y) At EF's invitation, the Respondent travelled to Panama and Mexico to "consider possible investments" for EF, even though the Respondent "has no education or experience in real estate investments in either jurisdiction." The Respondent also travelled to Bulgaria, Columbia, Cuba, Czech Republic, Germany, France, Ireland, Italy, Luxembourg, Netherlands, Switzerland, England, and the U.S. and charged the "travel disbursements" to EF, as he says EF instructed him to do.

(z) The Respondent's articling student was warned, by opposing counsel, that the Respondent's clients were dangerous people and PN informed the Respondent of this warning.

(aa) The Respondent was "collaborating" with parties he identified as "adverse in interest" in litigation, indicating those parties actually had similar interests, likely all being AB's interests, and that the litigation was a sham to further AB's frauds, as all the parties seem interrelated as AB's associates.

(bb) AB was directly paying the Respondent's fees on the Schedule "A" files, not the Respondent's named clients.

(ii) The Respondent's position

[355] The Respondent testified that there were basically no red flags arising from AB's extensive role in providing "assistance" to the Respondent and his clients in the various real estate matters. The Respondent testified that he did not have any concerns at any time that he was assisting in criminal conduct, dishonesty, or fraud in relation to the files. When questioned, he did not identify any concerns he had when he learned he was working with a notorious alleged fraudster and stated he had no concerns "in terms of any kind of a transaction or a movement of money or an investment or anything."

[356] The Respondent testified that "[i]t never occurred to [him] that [he] had to be concerned about what [AB] was doing because all he was doing is what [the Respondent] get[s] involved in with all [his] clients and people that assist them."

[357] The Respondent's position is that AB's role and involvement in the Schedule "A" files were irrelevant when defending his clients in those matters. This position best explains why the Respondent when he filed court documents in his clients' defence, chose not to address any of the opposing parties' allegations and evidence regarding AB.

[358] The Respondent's position that AB's involvement was irrelevant to the court proceedings is best encapsulated by his objection made to the trial judge in April 2018 during the S Avenue litigation. The Respondent made his objection while QR was being cross-examined about a meeting in March 2016 with EF and AB, as below:

> … I object to … [counsel] saying that [AB] was involved in this transaction. It's irrelevant on the pleadings. There's been this cloud of [AB] that has been referred to here, but that question, it was more of an aside by my friend … was [AB] … involved in the transaction. …There is no pleading here, My lord, that suggests in any way, shape, or form that— … anything about [AB]'s involvement in the transaction, and particularly anything that would have an effect upon my client's position in this litigation.
>
> So the general idea of [AB] being there as however he's been described, and we've heard varying things, we've heard him saying things, in my respectful submission that is not a relevant topic for the purposes of this lawsuit as we move forward.

> The Court: Okay. Well, I'm not with you on the overall irrelevance of [AB]'s involvement in these transactions, but that wasn't what this question was about. …

[359] The Respondent submits that the fact that the client may have a history of discreditable conduct is not relevant other than how it may affect a court's assessment of credibility, if credibility is even relevant. He says: "In the specific performance actions before Tammen J. for example, [EF]'s credibility or [AB]'s conduct were not relevant to the outcome."

[360] We disagree that EF's credibility and AB's conduct were irrelevant to the trial judge, Justice Tammen's, trial decision. On review of the trial judge's decision, our view is that EF's credibility was relevant to the weight given to the evidence of other witnesses. The trial judge stated at para. 130 that he rejected EF's evidence regarding speaking to the real estate agent about the right of first refusal. The trial judge accepted the evidence of the real estate agent instead. In our view, EF's credibility was clearly relevant to which of the competing recollections of events he would accept, which evidence would then shape and determine the outcome of the trial. For example, the trial judge commented at para. 81 on EF's conflicting evidence regarding a meeting at a lawyer's office, explaining:

> … I cannot think of a reason that [EF] would fabricate his evidence, but his account is so internally inconsistent that I can cannot place any weight on it.

Further, Justice Tammen's decision referred extensively to AB's involvement in the S Avenue transaction. He stated at para. 22 that both EF and AB behaved unscrupulously in their entire dealings with the S Avenue Property and they left "a trail of bad debts and broken contracts in their wake."

[361] The Respondent's view that AB's role and involvement in the Schedule "A" files is irrelevant appears to be rooted in his underlying belief that *Code* rule 3.2-7 and the Commentary do not apply to a lawyer defending a client accused of having committed dishonesty, fraud or crime. As set out as follows in his submissions:

> Representing a client accused of misconduct in a court proceeding is not assisting them to commit the misconduct. It is, at its highest, assisting them to avoid or minimize the consequences of their alleged misconduct. This occurs virtually every weekday in courtrooms and hearing rooms across our province as lawyers represent clients who are alleged to have engaged in dishonest, fraudulent or criminal conduct. The lawyers are not required to make reasonable inquiries to ensure their clients did not commit the alleged misconduct and withdraw if they

> are not satisfied. If that was the case, many more litigants would be self-represented.

[362] The Respondent relies on *Dhillon v. Jaffer*, 2011 BCSC 942. This was a claim brought by Mr. Dhillon against Mr. Jaffer, who was the lawyer for Mr. Dhillon's wife. The wife had forged a power of attorney and fraudulently sold Mr. Dhillon's property to third parties. The wife then tried to get out of the sale, and the third parties sued her for specific performance. She hired Mr. Jaffer to defend the specific performance lawsuit. The lawyer tried to defend on the basis that the power of attorney was defective but that defence failed, and the property was sold. Mr. Dhillon subsequently sued Mr. Jaffer for negligence, arguing, *inter alia*, that Mr. Jaffer had allowed himself to be used as a fraudster's dupe. Madam Justice S. Griffin (as she then was) rejected this argument, concluding:

> [144] Here, Mr. Jaffer [the lawyer] did not know that the Power of Attorney was fraudulent. The plaintiff says there were a number of odd circumstances about the Power of Attorney, and how it fit with Mrs. Dhillon's [the wife's] story, and the timing of the conveyance, that ought to have put Mr. Jaffer on alert to investigate.
>
> [145] The problem with this argument is that the use of the fraudulent Power of Attorney occurred before Mr. Jaffer was retained. His role was to help Mrs. Dhillon set aside or resist the very transaction that the plaintiff says was fraudulently entered into. As such, Mr. Jaffer was not accepting instructions from clients perpetrating a fraud, he was accepting instructions to help them out of the consequences of their fraud (although he did not know of the fraud). Had Mr. Jaffer been successful, it would have been to Mr. Dhillon's benefit as it would have reversed the fraudulent sale.
>
> …
>
> [149] I do not see that Mr. Jaffer did anything which could be said to be in furtherance of the fraud. Rather, he was just dealing with matters that occurred as a consequence of the fraud having occurred before he even came on the scene and was retained. I conclude therefore that he did not allow himself to be negligently used as a fraudster's dupe and that his actions or omissions did not facilitate a fraud.

[363] In our view, the *Dhillon* case is distinguishable since the lawyer was pointing out the flaws in the (fraudulent) power of attorney to avoid having the Court rely on it. Further, the Court relied on other evidence provided by the opposing party before making the order of sale. In other words, there were no red flags to alert the lawyer that the power

of attorney was fraudulent, and in any event, the litigation steps he took would not have furthered that fraud.

[364] The Respondent also relies on *Cahoon v. Brideaux*, 2010 BCCA 228, at paras. 16 to19, for the principle that a lawyer must represent the client "resolutely, honourably, and within the limits of the law." He also relies on the majority judgment of the Supreme Court of Canada in *Groia v. Law Society of Upper Canada*, 2018 SCC 27 which states:

> [72] The importance of resolute advocacy cannot be overstated. It is a vital ingredient in our adversarial justice system — a system premised on the idea that forceful partisan advocacy facilitates truth-seeking: see e.g. *Phillips v. Ford Motor Co.* (1971), 18 D.L.R. (3d) 641, at p. 661. Moreover, resolute advocacy is a key component of the lawyer's commitment to the client's cause, a principle of fundamental justice under s. 7 of the *Canadian Charter of Rights and Freedoms*: *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7, [2015] 1 S.C.R. 401, at paras. 83-84.
>
> [73] Resolute advocacy requires lawyers to "raise fearlessly every issue, advance every argument and ask every question, however distasteful, that the lawyer thinks will help the client's case": Federation of Law Societies of Canada, *Model Code of Professional Conduct* (online), r. 5.1-1 commentary 1. This is no small order. Lawyers are regularly called on to make submissions on behalf of their clients that are unpopular and at times uncomfortable. These submissions can be met with harsh criticism — from the public, the bar, and even the court. Lawyers must stand resolute in the face of this adversity by continuing to advocate on their clients' behalf, despite popular opinion to the contrary.

[365] The Respondent submits that he had no reason to suspect that if he successfully assisted his clients in the Schedule "A" files, that he may be assisting a client in the commission of any dishonesty, crime or fraud. He submits that the Law Society has misinterpreted rule 3.2-7 in that representing a client in court who is accused of past misconduct is not assisting them to commit the misconduct. He submits:

> The Law Society's submission that "the circumstances in this case are exceptional and troubling" overlooks the fact that the transactions being litigated had generally taken place long before Mr. Barker was retained and were neither exceptional nor troubling. In any event, Mr. Barker was not advising on or involved in these underlying transactions. His role was to defend the status quo and no party in the [S] Avenue cases was challenging [EF] and Number Company 1's ownership of the [S Avenue Property]; rather, they were trying to take it over from them on the basis of an alleged breach of agreements that had been made years before Mr. Barker was retained.

[366] The Respondent submits that he was grounded in his belief that there was no causal connection between AB's alleged dishonesty or involvement in those files and the Respondent's defence of them. In the absence of such a connection or linkage, the Respondent did not believe he was assisting the commission of a crime or fraud and AB's involvement in the properties was not material.

[367] The Respondent submits that "there needs to be a nexus between [AB]'s alleged dishonesty and the properties being foreclosed, such that the direct consequence of successfully defending these foreclosure proceedings would be the commission of a crime or fraud."

[368] The Respondent submits that his "perceived dismissiveness" of AB's involvement in the specific performance and foreclosure files is grounded in his belief that there was no causal connection between AB's alleged dishonesty or involvement in these files and the Respondent's defence of them. In the absence of such a nexus, the Respondent did not believe he was assisting the commission of a crime or fraud and AB's involvement in the Schedule "A" properties was not material.

[369] The Panel does not agree that a "nexus" is required that a direct consequence of successfully defending the Schedule "A" files would be the commission of a crime or fraud. To the contrary, as discussed by the Court of Appeal in *Gregory BCCA*, at para. 1, the goal is to make reasonable inquiries to identify or reduce the "risk that he was assisting the client in money laundering or other illicit activity." Additionally, the Court explained at para. 6 that "[c]ounsel are not required, in the final analysis, to play the role of a judge and definitively find facts. What they must do, however, is obtain sufficient information to assure themselves that they are not misleading the court or furthering illegal activity."

[370] The focus of the Commentary is to reduce the risk of a lawyer becoming the tool or dupe of an unscrupulous client or other persons. The Respondent was required to be on guard and pay attention to the red flags, rather than treat the red flags as irrelevant or unimportant as he did.

[371] In summary, the Respondent's position appears to be that where there is a completed transaction and the lawyer is defending that transaction, that he is not required to turn his mind to whether there is any illegality related to that transaction in the presence of obvious red flags.

[372] In our view, the Respondent's position is not sound. Assuming an unscrupulous person successfully duped a solicitor, this position would mean that a litigation defence lawyer would not need to be on guard defending against any fraudulent transactions. All lawyers, whether solicitors or litigators are required to be on guard against being dupes of

unscrupulous clients. An unscrupulous person may hire a defence lawyer to lend an air of respectability to an otherwise fraudulent lending scheme. In our view, the protection of the public is jeopardized when a notorious alleged fraudster who has previous experience with a fraudulent real estate scheme, may proceed through the court system without being questioned by any lawyer he hired. In other words, a sophisticated fraudster could then assume that he could hire any litigation defence lawyer to protect his fraudulent schemes. That cannot be in the public interest.

3. Discussion

[373] In our view, there were several "red flags" that ought to have been noticed and addressed by the Respondent had he been on guard against being a dupe. Given the Respondent's key position that AB's role and involvement in the transactions were irrelevant to the defense of his clients' litigation, the Respondent became willfully blind to the multitude of red flags in the Schedule "A" files.

[374] The Panel adopts the Law Society's list of "red flags" as discussed above. We provide additional comments as follows.

(a) Red flag: AB as Notorious Alleged Fraudster

[375] The involvement of a notorious alleged fraudster is a red flag. We find that as early as January 30, 2018, IJ, articled student, raised concerns with the Respondent in her memo when she addressed four litigation files related to EF and Number Company 1. She set out the other parties' allegations that: EF was an agent of AB; had incorporated the vendor company at AB's direction; and that AB was originally the purchaser of a property but assigned the right to Number Company 1.

[376] Additionally, the Respondent was provided another red flag when IJ provided a second memo dated February 2, 2018 in which she specifically drew the Respondent's attention to concerns over AB's role.

[377] The link provided by IJ in that memo, led to a CBC News article with the heading "Alleged $40M fraudster [AB] goes back on guilty plea." The article referred to AB having pleaded guilty to two counts of fraud in one of the larges fraudulent real estate transaction cases in BC history. He admitted to scamming nearly $40 million in 107 fraudulent transactions between 2000 and 2002 in a "pyramid scheme in which the money [77 homebuyers] paid to purchase a house would be diverted to fund AB's development projects."

[378] We agree with the Law Society's position that the involvement of AB in the Schedule "A" Files is a central and unique circumstance. We agree with the Law

Society's position that AB, as an alleged "mastermind" behind a fraudulent scheme to which a lawyer pleaded guilty, ought to have been a red flag in the Respondent's mind. The Law Society referred to other cases involving AB. However, it appears those admissions and consent agreements made in 2022 and 2023 were by other lawyers and not the Respondent. As each case turns on its unique facts, we have not relied on those lawyers' admissions and consent agreements as similar fact evidence as seemingly suggested, in regard to the Respondent's conduct.

[379] AB's status as an undischarged bankrupt was another red flag. The Respondent found out about AB's status in April or May 2018. By that time, the Respondent was aware of the various allegations being made about AB being the "beneficial owner" of the S Avenue Property, or using colleagues or confederates to set up numbered companies and so forth to get around AB's status as an undischarged bankrupt. Several of the corporate records showed that AB was an initial director, had corporate addresses that linked to AB, or showed AB' wife as a director. Additionally, the corporate records in some instances showed a high number of changes and reversals of directors alleged to be colleagues with links to AB. In other words, AB's involvement in real estate transactions when he was an undischarged bankrupt was a red flag

[380] Finally, the allegations in court documents about AB, including the S Avenue litigation, the AA Bank litigation, and the promissory note litigation were serious and not trivial and constituted red flags. The S Avenue litigation suggested that AB held a financial interest, whether as a beneficial owner or not, and was basically trying to benefit financially when he was not entitled to, by virtue of his status as an undischarged bankrupt. The AA Bank litigation included affidavit evidence attesting to video capture of AB drawing bank drafts at financial institutions, in tandem with EF. The evidence shows that the Respondent did not accept the AA Bank counsel's explanation of cheque-kiting. Whether the Respondent was unable to fully grasp the concept of cheque-kiting or whether he was wilfully blind, there is no evidence that the Respondent was on guard against the possibility of being misled or duped by AB or EF. There is no evidence that the Respondent questioned EF or AB about whether the respective bank accounts held the total funds at the time the bank drafts were drawn.

[381] Going back to the initial meeting held in early January 2018 between EF, AB and the Respondent. The Respondent said he did not check AB's actual identification when he made a copy. The fact that the Respondent did not check underscores how he was not on guard at that time against being a dupe by AB, EF or anyone else for that matter.

(b) Red flag: AB's involvement in the Schedule "A" files

(i) AB's involvement as a client representative

[382] Despite knowing in late January to early February 2018, that AB was a notorious alleged fraudster, the Respondent accepted AB's "assistance" in among other things, helping him communicate with the clients, reviewing communications with opposing counsel including court documents, contracts, mortgages, etc. and in acting as a representative or agent of the clients.

[383] There is no evidence in the files of any written instructions by the clients in the Schedule "A" files confirming any instructions given by AB on their behalf. This is troubling. We accept that AB was not the client in the Schedule "A" litigation, given that the named defendants (except where named, for example, in the AA Bank and Promissory Note litigation) were not AB.

[384] While we accept that AB was acting as representative and agent for clients, the Respondent should have been on guard to protecting those clients' interests in the litigation by confirming with them the litigation steps as they occurred. Given AB's reputation as a notorious alleged fraudster, the Respondent should have confirmed his instructions directly with his clients to ensure against including any misleading evidence whether by omission or commission, in the court documents.

[385] Where a client is providing misleading evidence to the court, then the Respondent cannot hide behind the proposition that any illicit activity occurred in the past. The Respondent would be furthering his clients' (or dupes' or both) illicit activities. It appears that the Respondent blindly accepted without any healthy skepticism, his clients' positions, whether conveyed to him by AB or the clients' themselves.

(ii) AB's alleged and actual involvement in the Schedule "A" files

[386] As discussed in the facts section, AB was involved in all the Schedule "A" litigation files, directly or indirectly. This was another red flag. AB was directly involved in at least one financial transaction as evidenced by the promissory note signed on March 24, 2016 expressly providing that Number Company 1, EF and AB were "jointly and severally" liable to QR and SR, as the "Borrower." The Promissory Note was signed by EF for himself and Number Company 1 and AB all in the presence of PL, a lawyer. This promissory note was a red flag that AB, an undischarged bankrupt, had taken on a loan of $1.53 million, and there is no evidence as to where those funds went. Did for example, those funds go towards paying his creditors? Or did they go towards some further property purchase or development?

(iii) The directorship of the various numbered companies

[387] The number of numbered companies that were involved in the Schedule "A" files and their interconnectedness to AB was a red flag. Many of the numbered companies had revolving directors, but more importantly, most were linked directly or indirectly to AB, including AB's spouse. As an undischarged bankrupt, AB was not permitted to be a company director. The revolving directors of companies where AB was no longer a director but was "giving instructions" or working with his colleagues as a director, was a red flag.

(iv) The hiring of PN

[388] AB, EF and MN urged the Respondent to hire MN's son, PN, as an unpaid articled student to do foreclosure work when the Respondent's practice did not include much foreclosure work was a red flag. AB, EF and MN met with the Respondent and dangled the carrot of more work if he were to hire PN as an articled student. The Respondent testified that he was pleased that he could have the assistance of an "experienced" articled student who had worked for a foreclosure lawyer. However, when asked by the Panel how long PN had articled for at the time he was hired, the Respondent testified that PN had articled for four months. While it is questionable whether an articled student with four month's experience working under a foreclosure lawyer could provide much assistance to the Respondent, the fact that he hired PN demonstrates that he did not reasonably see the hiring as a suspicious circumstance when the Respondent at that point, did little foreclosure work himself.

(v) Other transactions involving AB

[389] The Respondent's submissions focused on his defense of litigation as a reason why he did not need to be on guard. However, the evidence shows that on several occasions, AB contacted the Respondent about placing additional mortgages on properties in litigation that he was defending.

[390] For example, in Schedule A(1)(b), *Number Company 3 v. Number Company 1 and others* , AB emailed the Respondent on August 19, 2018 stating "… here is the offer," attaching a purported Contract of Purchase and Sale for the S Avenue Property dated August 12, 2018 between Number Company 1 and Number Company 15, signed by EF as the director of Number Company 1. This "offer" did not form part of the litigation the Respondent was defending as it post-dated the transactions his client was defending.

[391] As another example, in Schedule A6 *F Services v. Number Company 9* , on May 30, 2018, the Respondent emailed JJ copying AB that the financial institution's

commitment letter of March 9, 2018 clearly stated that no additional mortgages were permitted.

[392] Despite this, on May 31, 2018, AB emailed the Respondent three times. The first email attached a purported offer to purchase the M Street Property. The second email forwarded a copy of an appraisal for the M Street Property. The third email forwarded an email from another lawyer, attaching a package regarding the purported sale of the M Street Property. AB stated: "… here is mortgage documents it (*sic*) show lender is holding interest reserve."

[393] On June 4, 2018, counsel for F Services emailed the Respondent raising concerns over the placement of further mortgages on the property after the property was sold.

[394] It would appear that while the Respondent was defending his client against F Services, AB and his client went against his advice and caused another mortgage to be lodged on title during the litigation. More concerning however is that in defending against the foreclosure, it appears that the Respondent knew that AB or his client was registering a further mortgage on the property.

[395] A final example is Schedule A3, *Number Company 7 v. Number Company 4, YZ et al*.**,** where on May 22, 2018, AB emailed the Respondent requesting assistance in adding a further mortgage to the M Street Property.

[396] This transaction also suggests that AB or his client was adding a further mortgage to the property while litigation was ongoing, whether to defeat other interests or to gain funds under a mortgage that would be effectively extinguished, after an order absolute. Accordingly, in so far as the Respondent submits that he was merely assisting his clients in defending litigation, we find that his assistance went beyond defence. In addition to the above, the Respondent also admitted that he went on a trip paid by and for EF to help EF find investments in Europe.

(c) Schedule "B" transactions

[397] The table in Schedule "B" refers to four litigation matters in which the Respondent is said to have received and paid out monies in trust.

[398] The Respondent testified that he did not know what AB did for a living or how he was compensated, but that he was in financial dire straits. Despite this, the Respondent received hundreds of thousands of dollars directly from AB by way of bank drafts, both for payment of his fees and funds which he later disbursed to AB's associates.

[399] In his submissions, the Respondent says that an undischarged bankrupt is entitled to earn a living and to acquire property, enter into contracts, form partnerships and obtain credit after their bankruptcy. However, it is clear from the NTA and NTA Reply that the Respondent chose not to have his clients or AB respond to any of the allegations against AB being allegedly a beneficial owner, the *de facto* director of various numbered companies and allegedly being the controlling mind with colleagues as fronts for the various transactions. If the answer were that straightforward, then we would have expected them to be addressed in the Schedule "A" files. However, those allegations remain unaddressed and we can only conclude that the Respondent was also wilfully blinded to the red flags waving over the Schedule "B" transactions.

[400] The Respondent submits that there was no basis for the Respondent to suspect that AB had not disclosed his status to any creditors; it would be incredible for any creditor to be unaware of AB's status. However, there was also no basis for the Respondent in the face of the red flags, to suspect that AB had disclosed his status, or for creditors to be aware of AB's status. The Respondent's position demonstrates a failure to act as a gatekeeper to his trust account and a failure to guard against being a dupe by a notorious alleged fraudster and undischarged bankrupt.

[401] As in regard to the Schedule "A" files, the Respondent's evidence was clear and frank that he had no documentation specifically authorizing AB to give instructions on behalf of the clients.

A1: S Avenue Litigation

[402] In regard to the S Avenue litigation, the table lists 20 trust transactions from January 17, 2018 to August 13, 2018 totalling $75,530.00 in various deposits and withdrawals from the Respondent's trust account.

[403] The evidence shows that the Respondent was obtaining and receiving funds directly from AB for retainers on behalf of EF. Since AB was providing the Respondent with the funds, the Respondent was required to be on guard and confirm the source of funds for these payments. Was the source of funds AB? Was the source of funds EF or someone else? Who was in fact paying the Respondent's retainers? The Respondent also needed to verify that the client knew where the funds were going and for what purpose.

[404] The Respondent needed to confirm directly with his client to ensure that EF was in fact consenting to his fees and to the instructions given by AB to the Respondent. By checking in, the Respondent would have reduced the risk if any, that he was being duped by AB, EF or both. The Respondent, by not asking any questions of the client, was wilfully blinded to the possibility that AB had duped EF and in turn, that AB had duped the Respondent.

A2: E Ltd. v. OO (Number Company 6)

[405] In regard to the *E Ltd. v. OO* litigation, the table lists 2 transactions in March 2018 totalling $5,000 in a deposit and corresponding withdrawal from the Respondent's trust account.

[406] AB was extensively involved in this litigation and the Respondent had limited if any direct contact with his purported client OO. In order to safeguard his trust account, the Respondent needed to identify and confirm the source of funds for his retainer. Was it AB? Was it OO? Or someone else? By checking in, the Respondent would have reduced the risk that he was being duped by AB, OO or both or that AB had duped OO in any manner to guard against himself being a dupe.

[407] This need to confirm the source of funds was particularly critical in this case since opposing counsel was alleging that AB himself owned the property at issue. Even the way PN, articled student, was told that he was not to work on any of "AB's" files until AB was able to pay the outstanding amount owing, suggests no attempts were made to gatekeep the Respondent's trust account.

[408] The Respondent needed to check in with his client OO directly, to ensure that he was in fact consenting to his fees and to confirm his instructions. By checking in, the Respondent would have reduced the risk if any, that he was being duped by AB, OO or both or may have been alerted to any possibility that AB had duped OO in any manner, including himself.

A7: LL

[409] In regard to the LL litigation, the table lists 2 transactions from July 30, 2018 to September 17, 2018 in the amount of $80,000 in a deposit and corresponding withdrawal from the Respondent's trust account.

[410] On July 31, 2018, the Respondent received a bank draft from an unrelated entity "P Enterprises" in the amount of $80,000 that was deposited into his trust account. Given these circumstances, the Respondent had to be on guard and confirm the source of funds. In regard to P Enterprises, the Respondent was required to ask how that entity was connected to his client or at minimum, to AB. These were highly suspicious circumstances, and there is no evidence that the Respondent was on guard as to who was providing him with funds and why.

[411] The Respondent deposited $80,000 to his trust account to the credit of MM, even though the bank draft named the remitter as P Enterprises. The Respondent testified he did not know from whom he received the bank draft, MM or AB, and he had no

relationship with P Enterprises. He testified that he did not notice that P Enterprises was the remitter and that he did not ask where the $80,000 was coming from. The Respondent did not receive instructions from whoever owned the $80,000 (P Enterprises) to whose credit he was holding the funds. He also did not receive authorization from P Enterprises to disburse the funds. He simply followed what MM or AB told him or his articled student to do with the funds.

[412] The Respondent testified he did not have concerns with the fact that AB provided a copy of a bank draft for $80,000 even though "[AB] was working to make these deals occur" and "had some hand in providing a copy of this … draft for the purpose of the application". In summary, the Respondent said he did not inquire as to why AB had this bank draft, who paid for the draft, why AB sent the Respondent a copy of the draft, and if AB provided the draft to Number Company 10.

[413] The Respondent acknowledged that he did not notice the remitter on the bank draft as "P Enterprises" and that he knew nothing about that company. He acknowledged that he had a photocopy of an $80,000 TD bank draft dated July 23, 2018 payable to his client Number Company 10 which was forwarded by AB.

[414] The Respondent acknowledge that he failed to make inquiries as to the source of funds. However, he submits that there was nothing to suggest that the proposed purchase and sale were not *bona fide* or that the deposit was paid in an effort to launder the funds. He further submits that despite not knowing the remitter of the bank draft from a major Canadian bank, it was not a violation of rule 3.2-7 or Commentary to fail to determine the source of the $80,000 funds.

A11: "CH Ltd.""

[415] In regard to the C Street Property, the table lists 2 transactions from July 11, 2018 to August 24, 2018 in the amount of $100,000 in a deposit and corresponding withdrawal from the Respondent's trust account.

[416] The Respondent conceded in the NTA Reply, and in his evidence that he was never retained and he failed to make inquiries as to the source of the funds for the $100,000 bank draft and he should have before disbursing it.

[417] The Respondent testified as to his belief that AB gave the $100,000 bank draft to PN, his articled student. The Respondent admitted this occurred the day after the directorship of the purported purchaser, Number Company 13, changed six times.

[418] The Respondent testified that he could not recall if he had any information about the $100,000 deposit before PN told him that he had the $100,000 bank draft. He said

that, after the $100,000 was deposited into trust, the Respondent "went about … trying to determine what this was about" and determined the buyer was Number Company 13. The Respondent also testified he determined the representative of Number Company 13 was KK and he then spoke to KK "to find out what this was all about." The Respondent said that was all of his involvement until he was informed by the real estate agent that the contract had been terminated and he was to return the funds to Number Company 13 or to the director.

[419] The Respondent has admitted that he failed to make inquiries as to the source of funds for the $100,000 bank draft. It is apparent from the Respondent's testimony that he did not make any inquiries regarding the $100,000 before he accepted the funds into trust and did not even contact the current director for Number Company 13 for instructions. Then, he disbursed the funds to Number Company 13 based on information from the real estate agent, not on instructions from the purported client or the owner of the funds. It is clear the Respondent assigned the funds to Number Company 13 based on information from AB without making any inquiries.

[420] The Respondent further testified that he had not noticed that the copy of a bank draft for $100,000 sent to him by the real estate agent previously was not the same bank draft that he deposited into his trust account. The Respondent received instructions from AB by email where AB told the Respondent what to tell the real estate agent about what bank draft he received. A month later, the Respondent received a "contract for 100K deposit" from AB over email.

[421] The Respondent describes his deposit of the $100,000 funds into his trust account as holding the funds as a "stakeholder" and he "wasn't really concerned about anything else until [he] could get instructions or until [he] was asked to do something with the money". The Respondent testified that he forwarded the email from the real estate agent to AB regarding the release of $100,000 from the Respondent's trust account to Number Company 13 because AB was supposedly the middle man or connection who had provided the funds. He admitted he still had not met with a director or officer of Number Company 13, everything was waiting on instructions on what to do with the funds, and that the Respondent would not have been involved in anything to do with a real estate transaction.

4. Summary

[422] The Panel finds that the Respondent was not on guard and did not fulfill his duties as a gatekeeper over his trust account in regard to the Schedule "B" transactions.

[423] In regard to all of the Schedule "B" transactions, the circumstances were such that AB was the individual providing funds directly to the Respondent rather than the

Respondent's clients. In order to fulfill his gatekeeper function, whether AB was a notorious alleged fraudster or not, the Respondent was required to identify and verify the source of funds with his clients before the funds were deposited into his trust account.

[424] Given that AB was a notorious alleged fraudster, there was an additional need for the Respondent to identify and verify that the source of funds was flowing from his clients, rather than from AB.

[425] In regard to the $80,000 in Schedule A7:, the Respondent acknowledged that he did not notice the remitter on the bank draft as "P Enterprises" and acknowledged that he knew nothing about that company. The Respondent was required to confirm the identity of P Enterprises' director and verify that the source of funds was flowing from a reputable enterprise. The Respondent was not on guard against being a dupe by simply following what MM or AB told him or his articled student to do with the funds. The Respondent acknowledged in the NTA Reply that he failed to make inquiries as to the source of the funds.

[426] In regard to Schedule A11, the Respondent allowed $100,000 to be deposited into his trust account before he was retained by any client, so he did not have the opportunity to verify his client identity in advance of the deposit. If the Respondent had confirmed the client identity and source of funds in these circumstances, he would have addressed the risk that Number Company 13 was duped by AB or was perhaps even a dupe for AB. The Respondent provided no legal advice in connection with the $100,000 and the evidence shows that he was not concerned over the flow of funds through his trust account.

[427] In all of the circumstances, the Respondent was required to confirm directly with his clients that they were the source of the funds and to confirm their respective instructions on how the funds would be disbursed.

[428] Since AB was a notorious alleged fraudster, the Respondent could not rely on AB's word. The Respondent was not on guard about AB's role in relation to his clients' litigation matters as the Respondent had no written agreement clarifying AB's role with his clients, had no information about AB's line of work and had no information to confirm that AB was in fact communicating all relevant information on his clients' or his own behalf regarding the clients' funds or instructions on the Schedule "B" transactions.

5. Determination on allegation 1(a)

[429] In regard to allegation 1(a), the Panel finds that the Respondent was not on guard against becoming the tool or dupe of an unscrupulous client or other persons regarding the Schedule "A" Files and the Schedule "B" Transactions. In the circumstances, we find that the Respondent was wilfully blind to the numerous "red flags" (or suspicious

circumstances) surrounding AB as a notorious alleged fraudster and AB's extensive involvement in the Schedule "A" Files and the Schedule "B" Transactions. We find that the Respondent's conduct was a marked departure from conduct expected of a lawyer.

6. Allegation 1(b): Failing to Make Reasonable Inquiries

[430] The Panel finds that, between January 2018 and September 2019, in the course of acting in one or more of the matters set out in Schedule "A", the Respondent provided legal services or used or permitted the use of his firm's trust account in one or more of the instances set out in Schedule "B" or both, in circumstances where he failed to:

> (b) make reasonable inquiries about the circumstances, including, but not limited to:
>
> (i) the identity of his clients or other parties or both;
>
> (ii) the relationships between the parties and certain agents or intermediaries;
>
> (iii) the legal or beneficial ownership of certain property and business entities;
>
> (iv) the subject matter and objective of his retainer;
>
> (v) the nature and purpose of some or all of the transactions;
>
> (vi) the source of funds received;
>
> (vii) the purpose of the payment of the funds;
>
> (viii) the reason for the funds to go through his firm's trust accounts; and
>
> …

[431] The Commentary to rule 3.2-7 provides examples of reasonable inquiries including "making reasonable attempts to verify the legal or beneficial ownership of property and business entities and who has the control of business entities, and to clarify the nature and purpose of a complex or unusual transaction where the nature and purpose are not clear."

[432] Additionally, the case authorities discussed earlier suggest that a reasonable inquiry should include verifying information using independent documentation and avenues of inquiry and not merely questioning the client and relying on their response.

[433] In *Osei*, at paras. 30(c) and 31¸ the lawyer was found to have demonstrated a lack of knowledge, and disregard, for the source of funds that were deposited into his trust account. The panel found that the lawyer received and disbursed over $2 million in funds through trust in circumstances where little or no legal work was performed on the transactions and where the lawyer had little to no knowledge of the corporate identities involved.

[434] In *May*, the lawyer took a referral from another solicitor for two clients and their numbered companies in building lien matters. The lawyer proceeded to apply for default judgments on behalf of the clients and was unsuccessful. After the unsuccessful results, and for the first time, the lawyer requested supporting documentation from the clients. There were various issues and inconsistencies in the received documentation, on which the lawyer did not inquire. Then, when new and evolving information arose about the claims, the lawyer did not request any supporting documentation or question the new information he received about a loan.

[435] The panel in *May* noted that the information presented to the lawyer, May, shifted over time and evolved from what he was told when he was first retained. The panel found the respondent failed to investigate the evolving facts. It was also found that May was complacent and careless with regard to the evidence before him.

[436] As the panel in *Gurney* stated at para. 79(c), a lawyer cannot delegate the duty to inquire to a third party such as a client and rely on that client's assurance as to the legitimacy of the transaction.

[437] The Court of Appeal in *Gregory* upheld the finding of professional misconduct regarding the failure to make appropriate inquiries which were required to be made before moving the file forward.

(a) The Law Society's Position

[438] The Law Society submits that there is no evidence that the Respondent made any inquiries of independent parties or obtained documents to meet his obligations to make reasonable inquiries or verify any allegations surrounding AB or his clients. The Law Society submits that where the Respondent says that he made "inquiries" to respond to allegations about AB or his clients, he had his clients swear affidavits stating basically that they owned the property or were the directors of the numbered companies in question. We note that the Respondent's clients' affidavits went no further than that as the Respondent's position was and continues to be that AB's role and connection to the clients or properties were irrelevant.

[439] The Law Society submits as in *Gregory,* the Respondent here was faced with both media information and opposing parties' allegations that AB was a fraudster and that AB was using nominees as fronts to further his purposes, among other concerns. Yet, the Respondent did not make any reasonable inquiries to satisfy himself, on an objective standard, that his clients had their own legitimate interests in their retainer matters and AB was merely assisting as the organized conduit who did not have an interest in the matters for nefarious purposes. The Respondent has admitted that he thought AB would be compensated for his involvement in these matters in some way but did not know anything about the purported compensation arrangements AB had with the approximately ten clients the Respondent was said to be representing.

[440] The Law Society submits further that even if it is accepted that the Respondent made *some* inquiries as he claims he did, it is clear the Respondent did not make sufficient, reasonable, and independent inquiries. It is also clear the Respondent did not continue to make further inquiries as matters evolved and new suspicious circumstances were brought to his attention. The Respondent's failure to make reasonable inquiries in the face of a sea of red flags is contrary to the conduct expected of the profession, and amounts to professional misconduct.

(b) The Respondent's Position

[441] The Respondent's primary position as set out in his submissions, is that he was not required to make "inquiries" (in the sense of rule 3.2-7) about the matters enumerated in the Citation, because the circumstances of his retainer did not engage the concerns in rule 3.2-7.

[442] The Respondent submits that he did make other inquires in the general sense of asking questions about the allegations levelled against EF and AB by other parties (e.g. that EF was a front for AB.) However, he submits that the Respondent did not make inquiries with the intention of complying with rule 3.2-7 of the *Code*.

[443] The Respondent submits that even under rule 3.2-7, it is difficult to imagine what "inquiry" could be more reasonable than obtaining a sworn affidavit from one's client. Not even solicitors conducting business transactions are required to obtain sworn evidence from their client on every source of funds for a proposed transaction. Even if rule 3.2-7 were engaged, what more could the Respondent or any reasonable lawyer have done that would be more reliable than obtaining a sworn affidavit?

[444] From the court documents in the NTA and NTA Reply, the evidence that could amount to a "reasonable inquiry" was where the client, such as EF, swore an affidavit stating that he was a director of a numbered company and the numbered company was the registered owner of the property.

[445] However, beyond accepting what his client said, the Respondent did not seek supporting documentation to verify whether AB was a beneficial owner, was using accomplices as directors of the companies, and so on.

[446] For example, the evidence shows that AB along with EF both signed a promissory note as borrowers regarding the S Avenue Property. The promissory note clearly is evidence that AB held some financial interest or gained some funds through borrowing against a property held by EF and EF's numbered company (of which AB was allegedly once a director). In the face of this evidence that corroborated some of the allegations about AB's financial involvement, the Respondent needed to make some inquiries into AB's role in the S Avenue Property and his financial interests in that property. In the face of the allegations made, the Respondent chose the position that AB's role and interest were irrelevant to the S Avenue litigation.

[447] As the Respondent stated to Justice Tammen, the allegations against AB were irrelevant to the case and he objected to questions involving AB's role. This position is at odds with the Respondent's submissions that he did in fact make the type of reasonable inquiries required by rule 3.2-7. Even after Justice Tammen's trial decision, the Respondent held steadfast to his position that AB's role in the property remained irrelevant.

[448] At the hearing, the Respondent asked almost hypothetically what reasonable questions could he have asked, other than to ask whether his client or AB was guilty of fraud or other illegal activities.

[449] The Respondent could have asked AB what his financial interests were in the S Avenue Property given the promissory note he signed for $1.53 million. He could have asked where did the money go? To the other properties in Schedule "A"? The Respondent needed to ensure that the evidence he was filing was not misleading to the court so he needed to address AB's role for example, as Justice Tammen did in the S Avenue Property court decision.

[450] The Respondent could have asked whether he was the next CD? AB was already notorious for being allegedly involved in a "mortgage pyramid scheme," so would it be farfetched to guard against any other schemes by asking questions?

[451] For example, almost all if not all the foreclosure proceedings involved lending and borrowing between numbered companies many of which had links to AB. Yet, while at least two properties were the subject of foreclosure proceedings (Schedule A3, A6), AB was asking the Respondent about adding more mortgages to those properties, before the orders absolute or orders for sale were granted.

[452] In Schedule A3, *Number Company 7 v. Number Company 4, YZ et al*., AB emailed the Respondent requesting assistance in respect to adding a mortgage to the M Street property. In the Schedule A6 litigation, AB was emailing the Respondent about adding a second or further mortgage while the property was being foreclosed upon.

[453] These circumstances were suspicious and warranted further inquiries, such as why were the Respondent's client and AB wanting to add another mortgage to a property that was already the subject of a foreclosure proceeding? Would it be farfetched to question whether the numbered companies, with one foreclosing on the other at maybe inflated mortgage amounts, were in cahoots? Maybe AB was masterminding a situation between his colleagues' numbered companies that saw second, third or fourth mortgages providing funds and then liability being extinguished when the first mortgagee obtained order absolute? This may sound farfetched, but at the time, the CD fraudulent scheme may also have seemed farfetched.

[454] The Respondent needed to confirm what AB's financial interests were in the Schedule "A" files. There is no evidence that the Respondent asked his client EF what AB's role was in the alleged cheque-kiting scheme or why AB was recorded on video obtaining two of the three bank drafts from numbered companies' accounts.

[455] The point is that the Respondent did not need to know whether AB or his clients were in fact involved in something unscrupulous. He just needed to reduce the risk that he was providing misleading information to the court or facilitating illegal activity by making reasonable inquiries.

[456] Since the Panel found that the Respondent was wilfully blind as to his obligation to be on guard and alert to any suspicious circumstances, we find that he did not make any reasonable inquiries as required under rule 3.2-7 of the *Code* and its Commentary. The evidence that the Respondent did set out in EF's, OO's or other client affidavits did not address AB's role or interests in the property because the Respondent did not view that information as relevant to the lawsuits.

[457] In regards to the $80,000 deposit, there is no evidence that the Respondent made any inquiries regarding the connection between P Enterprises, LL and MM; why P Enterprises provided the $80,000 bank draft, what interest P Enterprises had in CH Ltd., the source of the funds; who authorized the release of the $80,000 to MM; and why MM was entitled to the $80,000 instead of P Enterprises.

[458] The Respondent did not have any knowledge of P Enterprises and acknowledges that he failed to make inquiries as to the source of the funds. The evidence clearly shows that the Respondent adopted a "do not know, do not ask" attitude on the Schedule A11

matter. The Respondent appeared to take AB at his word that these were MM's funds without any further confirmation.

(i) The identity of the clients or other parties or both

[459] In regard to the $100,000 in Schedule A11 "[C] Street," the Respondent conceded in the NTA Reply and his written submissions that: he was never retained by a client; he failed to make inquiries as to the source of funds; and he should have made inquiries before disbursing the funds.

[460] Based on the Respondent's admissions and the evidence discussed above, we find that the Respondent failed to make reasonable inquiries in regard to Schedule A11 "[C] Street" before he deposited the $100,000 in trust.

(ii) the relationships between the parties and certain agents or intermediaries

[461] As discussed earlier, we found that the Respondent was not on guard against being a dupe in regard to the Schedule "A" files, because he failed to place any significance on the fact that AB was a notorious alleged fraudster and seemingly connected to all his clients in the Schedule "A" files.

[462] Given the Respondent's position that AB's role and financial interests, if any, were irrelevant to the litigation, we find that the Respondent did not make reasonable inquiries under rule 3.2-7 and the Commentary. If we are wrong, we find that the Respondent only took the word of his clients, and did not seek supporting evidence to verify AB's role, whether his clients were in fact dupes of AB or "confederates" or from where funds were sourced.

[463] Additionally, in regard to all of the Schedule "A" files, the Respondent failed to make any reasonable inquiries as to whether and how the numbered companies (whether plaintiff or defendant client) were related if at all, given that some numbered companies (as clients) had numerous directors who were sometimes directors of other numbered companies. Additionally, some of the directors were related to AB or colleagues of AB and the Respondent failed to make inquiries regarding the inter-relatedness of the directors and numbered companies to ensure that the court was not being misled or to identify the risk of any unscrupulous scheme being perpetrated.

(iii) the legal or beneficial ownership of certain property and business entities

[464] The Respondent failed to make reasonable inquiries from his clients as to AB's role in the numbered companies, if any; in the properties being foreclosed on; and whether his clients knew what instructions AB was giving and so forth in regard to the Schedule "A" files.

[465] For example, the promissory note AB signed with EF cried out for inquiries by the Respondent as that note clearly showed that AB had a financial interest in the S Avenue Property. Yet the Respondent made no reasonable inquiries to determine how AB, as an undischarged bankrupt and notorious alleged fraudster was involved in the Schedule "A" transactions.

(iv) the subject matter and objectives of your retainer

[466] The Respondent did know the subject matter of his retainers in most of the files and the objectives of most of the Schedule "A" files such as defending against foreclosure proceedings. However, the evidence also shows that the Respondent was asked to perform work beyond defence of litigation, including assisting or advising on adding additional mortgages on properties already facing imminent foreclosure. The Respondent did not make reasonable inquiries of the objectives of his retainer in regard to assisting AB with additional mortgages for properties already under foreclosure.

[467] The Schedule A11 file is relevant to this heading as the Respondent admits that he was "never retained" yet flowed $100,000 through his trust account without inquiring as to the source of funds or knowing who his client was.

(v) the nature and purpose of some or all of the transactions

[468] The Respondent did not make reasonable inquiries regarding any of the additional mortgage transactions he was asked to take care of by AB in the Schedule "A" files. We find that the Respondent failed to understand the nature and purpose of those transactions, including the nature and purpose of AB being a borrower on a promissory note for $1.3 million.

(vi) the source of funds received

[469] The Respondent did not make reasonable inquiries about the source of funds in the Schedule "B" transactions, when he received funds directly from AB instead of from his clients. In so doing, the Respondent failed to confirm with his clients what the source of funds were for his retainer and the various transactions in Schedule A" and "B."

(vii) the purpose of the payment of the funds

[470] The Respondent did not make reasonable inquiries about the purpose of the payment of the funds in regard to the $80,000 and the $100,000 trust transactions. In regard to the $80,000 deposit, the Respondent did not know why AB sent him a copy of a first bank draft, and he did not know why P Enterprises was the remitter of the second bank draft. He failed to make reasonable inquiries about the source of funds and the purpose of the payment of the funds by P Enterprises.

(viii) the reason for the funds to go through the Respondent's trust accounts

[471] In regard to the $80,000 and the $100,000 funds, the Respondent failed to make reasonable inquiries as to the reason that those funds were flowing through his trust account. As discussed above, the Respondent did not know why funds from P Enterprises were deposited into, then distributed from, his trust account. Although he was not retained by a client in regard to the $100,000 funds, the Respondent, nonetheless, let these funds go through his firm's trust account as well.

7. Determination on Allegation 1(b)

[472] In regard to Allegation 1(b), the Panel finds that the Respondent failed to make reasonable inquiries about his clients and their connections to AB, a notorious alleged fraudster and undischarged bankrupt. The Respondent failed to make reasonable inquiries as to whether AB did in fact have a financial interest in the properties and was "masterminding" financial gains through the use of dupes or through duping the Respondent.

[473] As the Respondent generally treated AB's role as being irrelevant to the Schedule "A" Files and Schedule "B" Transactions, we find that the Respondent failed to make reasonable inquiries about the circumstances as discussed above. We find that the Respondent's conduct in failing to make reasonable inquiries about AB's role and financial interests in the Schedule "A" and Schedule "B" Transactions to be a marked departure from conduct expected of a lawyer.

8. Allegation 1(c): Failure to Make a Record

[474] As discussed above, the Panel finds that the Respondent failed to be on guard against being a dupe and failed to make reasonable inquiries relating to his obligations under rule 3.2-7 of the *Code* and its Commentary.

[475] The Law Society made a submission that the Respondent's "record" of information set out in the clients' pleadings or affidavits does not amount to a proper record of the inquiries made under rule 3.2-7 of the *Code* and its Commentary. The Panel agrees.

[476] However, we find that the Respondent did not make a record because his clients' pleadings and affidavits did not directly address the allegations about AB's role or alleged involvement or alleged financial interests in the Schedule "A" files.

[477] As a consequence of not having made any reasonable inquiries, the Panel dismisses allegation 1(c) against the Respondent since a record would not have been made about non-existent inquiries.

J. SUMMARY OF ALLEGATIONS 1(a), (b) AND (c)

[478] As discussed above, the Panel finds that the Law Society has proven allegations 1(a) and (b) of the Citation against the Respondent. We find that the Respondent's conduct in regard to (a) failing to be on guard; and (b) failing to make reasonable inquiries to be a marked departure from conduct expected of a lawyer. We find that in regard to allegations 1(a) and (b), the Respondent committed professional misconduct.

[479] The Panel dismisses allegation 1(c) of the Citation against the Respondent. We find that in the circumstances, the Law Society has not proven that the Respondent failed to keep a record of those inquiries, because the Respondent made no inquiries under rule 3.2-7 of the *Code* and its Commentary.