

COMMISSION OF INQUIRY INTO MONEY LAUNERING IN BRITISH COLUMBIA

The Honourable Mr. Austin F Cullen, Commissioner

AFFIDAVIT

I, Gurprit Bains, lawyer, with an address at 845 Cambie Street, Vancouver British Columbia, AFFIRM THAT:

1. I am the Deputy Chief Legal Officer of the Law Society of British Columbia (the “**Law Society**”) and oversee the Investigations, Monitoring & Enforcement Group of the Law Society.
2. I testified before the Commission of Inquiry into Money Laundering in British Columbia (the “**Commission**”) on November 18-19, 2020.
3. Attached to my affidavit as **Exhibit A** is a true copy of a letter sent on April 28, 2020, on the Law Society’s behalf, to counsel for the Commission (the “**First Response**”). The First Response was prepared in reply to the following two questions counsel for the Commission had sought a response to:
 - (a) Can lawyers accept foreign wire transfers into their trust accounts for the purposes of closing a real estate transaction?
 - (b) What rules exist around lawyers facilitating a real estate transaction, but not dealing with closing funds themselves? For example, is it possible to have lawyers paper the deal, but have nothing to do with handling closing funds?
4. Attached to my affidavit as **Exhibit B** is a true copy of a letter sent on September 16, 2020 (the “**Second Response**”), on the Law Society’s behalf, to counsel for the Commission, responding to the following question counsel for the Commission had sought a response to:
 - (a) Can the Law Society direct [Commission counsel] to any materials dealing with lawyers’ obligations when it comes to the registration of a mortgage? [Commission counsel is] also more specifically, building on the questions answered by [the Law Society’s letter of April 28, 2020], interested in the Law Society’s position with respect to lawyers registering mortgages in instances where other aspects of the transaction (i.e. the transfer of funds) takes place outside of their view and control.

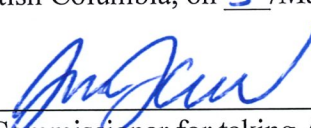
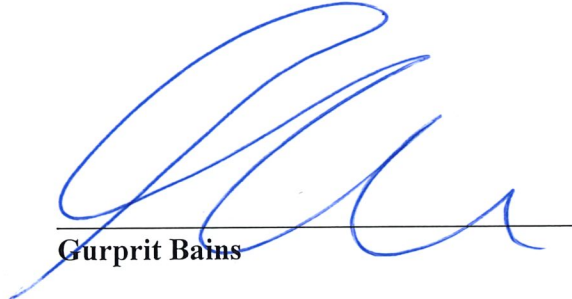
5. I have been advised and I believe that staff at the Law Society provided the substantive content for the First Response and the Second Response based on their review of the Law Society Rules, the *Code of Professional Conduct for British Columbia*, educational publications by the Law Society, disciplinary decisions, materials published by the Federation of Law Societies of Canada, and staff's own knowledge and understanding of the conduct of real estate transactions in British Columbia.

6. The Law Society has produced publications to educate the profession on private lending, foreign transactions, and misuse of trust accounts including the following:
 - (a) Attached to my affidavit as **Exhibit C** is a copy of a Discipline Advisory entitled "Lawyers are gatekeepers", published on the Law Society's website on April 10, 2018, and referenced in the First Response.

 - (b) Attached to my affidavit as **Exhibit D** is a copy of a Discipline Advisory entitled "Private Lending", published on the Law Society's website on April 2, 2019, and referenced in both the First Response and the Second Response.

 - (c) Attached to my affidavit as **Exhibit E** is a copy of a Discipline Advisory entitled "Country/Geographic risk", published on the Law Society's website on February 10, 2021.

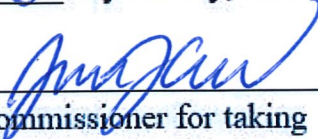
AFFIRMED BEFORE ME at Vancouver,)
 British Columbia, on 5 /May/2021)
)
)
 _____)
 A Commissioner for taking Affidavits)
 for British Columbia.)

Gurprit Bains

Jennifer W. Chan
 Barrister and Solicitor
 Law Society of British Columbia
 845 Cambie Street
 Vancouver, BC V6B 4Z9

This is Exhibit "A" referred to
in the affidavit of Gurprit Bains
sworn before me at Vancouver, BC,
this 5 day of May, 2021


A Commissioner for taking
Affidavits for British Columbia

Reply Attention of: Catherine George
Direct Dial Number: [REDACTED]
Email Address: [REDACTED]

FARRIS

File No: 01590-0082

April 28, 2020

BY EMAIL

Cullen Commission of Inquiry into Money Laundering in BC
Suite 601 – 700 West Georgia Street
Vancouver, BC V7Y 1B6

Attention: Nicholas Isaac and Steven Davis

Dear Sirs/Mesdames:

**Re: Cullen Commission of Inquiry into Money Laundering in BC
(the “Commission”)**

We write with respect to the request for information from the email of March 10, 2020, with respect to the following questions:

1. Can lawyers accept foreign wire transfers into their trust accounts for the purposes of closing a real estate transaction?
2. What rules exist around lawyers facilitating a real estate transaction, but not dealing with the closing funds themselves? For example, is it possible to have lawyers paper the deal, but have nothing to do with handling closing funds?

Following consultation with the Law Society of British Columbia (the “LSBC”), we provide the following responses.

Question 1: Foreign Wire Transfers

Lawyers are permitted to accept foreign wire transfers into their trust accounts for the purposes of closing real estate transactions, provided they meet the relevant requirements set out in the Law Society Rules and the *Code of Professional Conduct for British Columbia*. The Law Society Rules (the “Rules”) do not differentiate between foreign or domestic electronic transfers¹ and as such the following requirements apply to all electronic transfers, as well as more broadly to transactions that do not involve electronic transfers. These requirements include, *inter alia*:

- a) Only accept the funds into trust if they are directly related to the legal services provided by the lawyer or law firm, and to take reasonable steps to obtain appropriate instructions to pay out funds held in trust as soon as practicable on completion of the legal services (Rule 3-58.1);

¹ The only reference to the origin of electronic transfers in the Rules is found in Rule 3-101(c), with respect to exemptions for client identification and verification.

FARRIS LLP

25th Floor – 700 W Georgia Street Vancouver, BC Canada V7Y 1B3
Tel 604 684 9151 farris.com

April 28, 2020

- 2 -

FARRIS

- b) Identify and verify the identity of the client and obtain from the client and record, with the applicable date, information about the source of money (Rule 3-102). Relevant information that lawyers should obtain about the source of money include: the payer's full name, occupation and contact information; the relationship of the payer to the client; the date on which the money was received by the lawyer; the economic activity or action that generated the money (e.g. bank loan, savings from salary, settlement funds); the form in which the money was received; the full name and address of all financial institutions or other entities through which the payer processed or transmitted the money to the lawyer; and any other information relevant to determining the source of money. For more information regarding the requirement to verify the source of money, see: "New client verification and source of money requirements" by Barbara Buchanan, QC, in the Benchers' Bulletin 2019 No. 4 Winter, p. 13;2
- c) Monitor on a periodic basis the professional business relationship with the client for the purposes of determining whether the client's information regarding their activities and the source of money, and the client's instructions in respect of the transactions, are consistent with the purpose of the retainer and the information obtained about the client (Rule 3-110);
- d) Not receive money into trust by means of electronic transfer unless (a) the lawyer obtains written confirmation providing details of the transfer from the financial institution or the remitter of the funds within 2 banking days of the deposit, and (b) the deposit generates sufficient documentation to enable the lawyer to meet the record-keeping requirements under the Trust Accounts and Client Property division of the Rules (Rule 3-64.2);
- e) Ensure that they do not engage in any activity that they know or ought to know assists in or encourages any dishonesty, crime or fraud (*Code* 3.2-7). This includes making inquiries of a client if there are any suspicious circumstances, and obtaining supporting documentation. Failure to take adequate steps to avoid becoming the tool or dupe of an unscrupulous client, or to make reasonable inquiries, may result in significant disciplinary actions against the lawyer (e.g. *LSBC v. Gurney*, 2017 LSBC 15; *LSBC v. Hsu*, 2019 LSBC 29); and
- f) Withdraw from representation of the client if the lawyer knows or ought to know that they would be assisting in fraud or other illegal conduct (Rule 3-109).

What steps a lawyer must take to satisfy these requirements will depend on the facts and whether there are suspicious circumstances. To assist lawyers in understanding how to recognize suspicious circumstances, including in the context of foreign transactions, the Law Society has worked with the Federation of Law Societies of Canada's ("FLSC") Anti-Money Laundering and Terrorist Financing Working Group to develop risk assessments, advisories and guidance documents. For example, the FLSC's "Risk Assessment Case Studies for the Legal Profession" published in February 2020³ includes analyses of red flags in various real property purchase and sale transaction scenarios, and identifies foreign wire transfers as potential red flags triggering the need for careful consideration and inquiry. The FLSC's "Risk Advisories for the Legal Profession" published in December 2019 also addresses

² https://www.lawsociety.bc.ca/Website/media/Shared/docs/bulletin/BB_2019-04-Winter.pdf?ext=.pdf

³ <https://flsc.ca/wp-content/uploads/2020/02/CasestudiesENv5.pdf>

April 28, 2020

- 3 -

FARRIS

risks in the context of real estate transactions.⁴ The Law Society has also prepared its own Discipline Advisories on related issues (e.g. “Lawyers as Gatekeepers” dated April 10, 2018;⁵ “Private Lending” on April 2, 2019⁶).

Question 2: Rules Respecting Closing Funds

The Rules do not specifically require that lawyers receive closing funds for real estate transactions. However, in the context of a real property purchase and sale transaction, the real estate bar in British Columbia has developed generally accepted practices that include the use of lawyers’ undertakings – personal, enforceable obligations on a lawyer – to control how funds and registration documents will be handled.

The process as developed serves to mitigate the risk that clients may face in a land title system where the movement of funds, the discharge of existing encumbrances, and the registration of new interests does not occur simultaneously. Ultimately, the role of the lawyer is to ensure that the transaction completes in accordance with the agreement of the parties. In this capacity, lawyers for the buyer and seller may handle funds through their trust accounts to, *inter alia*, ensure that sufficient purchase funds and new mortgage proceeds are received, existing mortgages are paid out, property taxes and utilities are paid, non-resident tax holdbacks are retained and paid, other encumbrances are discharged, the buyer receives registered title, and the seller receives their net proceeds. Lawyer undertakings facilitate this process, and a lawyer cannot give an undertaking with respect to the disposition of any funds or documents which they do not have in hand. As such, under the existing system for real property purchase and sale transactions, it would be unusual for a lawyer to not handle funds in trust.

The PLTC program administered by the LSBC teaches all BC articling students about the standard practices for closing real estate transactions, and our understanding is that most residential real estate transactions use the standard contract of purchase and sale and standard undertakings published by the Canadian Bar Association of British Columbia, or undertakings in substantially similar form.

If you have any questions or require any clarification, please do not hesitate to contact the under-signed.

Yours truly,

FARRIS LLP

Per:


Catherine George

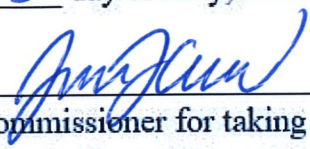
CEG/sd
Enclosure
c.c.: client

⁴ <https://flsc.ca/wp-content/uploads/2020/01/RiskAdvisory6EN.pdf>

⁵ <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/discipline-advisories/april-10,-2018/>

⁶ <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/discipline-advisories/april-2,-2019/>

This is Exhibit "B" referred to
in the affidavit of Gurprit Bains
sworn before me at Vancouver, BC,
this 5 day of May, 2021



A Commissioner for taking
Affidavits for British Columbia

Reply Attention of: Catherine E. George
Direct Dial Number: [REDACTED]
Email Address: [REDACTED]

FARRIS

File No: 01590-82

September 16, 2020

BY EMAIL

Cullen Commission of Inquiry into Money Laundering in BC
Suite 601 – 700 W. Georgia St.
Vancouver, BC V7Y 1B6

Attention: Eileen Patel

Dear Sirs/Mesdames:

Re: Question to the Law Society of British Columbia (the “LSBC”) regarding lawyers’ obligations for registrations of mortgages

We write in response to your question to the LSBC dated August 27, 2020, and clarified on August 31, 2020, as follows:

Can the Law Society direct me to any materials dealing with lawyers’ obligations when it comes to the registration of a mortgage? I am also more specifically, building on the questions answered by [the LSBC’s letter of April 28, 2020], interested in the Law Society’s position with respect to lawyers registering mortgages in instances where other aspects of the transaction (i.e. the transfer of funds) takes place outside of their view and control.

We have consulted with the LSBC and provide information that we hope will be helpful to you, below. If this does not address your question or we have misunderstood what you were seeking, please feel free to contact the undersigned at 604-661-1724 or by email at cgeorge@farris.com.

As you will see, the majority of the materials referenced below are accessible online, and as such we have provided links to them. The two presentations which are not accessible online were provided (as were various of the linked documents) as part of the LSBC’s document upload in the summer of 2020 and are referenced by their LSBC document number.

A. Materials dealing with lawyers’ obligations when it comes to the registration of a mortgage

Lawyers have various obligations when it comes to the registration of a mortgage. These include obligations established by statute (such as the *Land Title Act*), common law, and public entities overseeing the land title system (such as the Land Title Survey Authority). For information on general obligations related to conveyancing practices and mortgages, we refer you to the PLTC Practice Materials on real estate¹ and the Law Society Practice Checklists Manual for residential conveyancing,²

¹ <https://www.lawsociety.bc.ca/Website/media/Shared/docs/becoming/material/RealEstate.pdf>

² <https://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/checklists/F-1.pdf>

FARRIS LLP

25th Floor – 700 W Georgia Street Vancouver, BC Canada V7Y 1B3
Tel 604 684 9151 farris.com

September 16, 2020

- 2 -

FARRIS

mortgage drafting³ and mortgage procedure.⁴ For information on mortgage registration requirements, including the form of mortgage, standard terms, witnessing and filing requirements, we refer you to the *Land Title Act*.⁵ For information on technical and other requirements associated with the registration of a mortgage, we refer you to the directions issued by the Director of Land Titles.⁶ For information on subscriber obligations related to certificates and electronic signatures for e-filing of mortgages, we refer you to a copy of the subscriber agreement with Juricert Services Inc.⁷

Lawyers are also obligated to comply with applicable Law Society Rules (the “Rules”) and provisions of the *Code of Professional Conduct for British Columbia* (the “Code”) when registering a mortgage. These obligations may include, without limitation:

- Identifying and verifying client identity (see Rules, Part 3, Division 11);
- Not assisting in or encouraging any dishonesty, crime or fraud (see *Code* 3.2-7 and Discipline Advisory on Private Lending dated April 2, 2019⁸);
- Avoiding falling victim to fraudulent mortgage scams (see various LIF publications, Benchers Bulletin materials and other fraud alerts⁹);
- Fulfilling every undertaking given in relation to the transaction (see *Code* 7.2-11);
- Discharging responsibilities honourably and with integrity (*Code* 2.2-1);
- Providing competent and quality services (*Code* 3.1 and 3.2);
- Avoiding conflicts of interest (*Code* 3.4, 3.4-34, and Appendix C);
- Directly supervising staff delegated tasks, such as filing the mortgage (*Code* 6.1-1); and
- Not permitting others to use or access their encrypted electronic certificate for electronic filing (*Code* 6.1-5, 6.1-6 and commentary; Rule 3.96-1).

B. The LSBC’s position with respect to lawyers registering mortgages in instances where other aspects of the transaction take place outside their view and control

Lawyers must comply with the Rules and *Code* in relation to the registration of mortgages. This includes obligations to comply with applicable client identification and verification requirements. In this regard, it should be noted that a lawyer’s obligation under Rule 3-102 to obtain and record information about the “source of money” and to verify the client’s identity is triggered when the lawyer provides legal services in respect of a “financial transaction”. What constitutes a “financial transaction” is defined

³ <https://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/checklists/F-3.pdf>

⁴ <https://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/checklists/F-2.pdf>

⁵ https://www.bclaws.ca/civix/document/id/complete/statreg/96250_00

⁶ Such as the E-Filing Directions: <https://ltsa.ca/sites/default/files/E-filing%20Directions.pdf>

⁷ Available as an appendix to the Certification Practice Statement: <https://www.juricert.com/pdf/cps1.pdf>

⁸ <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/discipline-advisories/april-2,-2019/>

⁹ For example: <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/lawyers-indemnity-fund/fraud-prevention/fraud-alerts/> and <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/lawyers-indemnity-fund/fraud-prevention/real-estate-value,-identity-and-other-frauds/> and <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/lawyers-indemnity-fund/fraud-prevention/bad-cheque-scam/the-ruses/phony-real-estate-conveyance-or-fake-mortgage-ruse/>

September 16, 2020

- 3 -

FARRIS

broadly in Rule 3-98 to include not only the receipt, payment or transfer of money¹⁰ on behalf of a client, but also the giving of instructions on behalf of a client in the receipt, payment or transfer of money. That is, the verification and source of money obligations may be triggered even where funds are not deposited into the lawyer's trust account.¹¹ Lawyers also must not engage in any activity that they know or ought to know assists in or encourages any dishonesty, crime or fraud. As discussed in the commentary to *Code* 3.2-7, this means that a lawyer must be on guard against becoming the tool or dupe of an unscrupulous client, or others, through vigilance and making reasonable inquiries to obtain information regarding the client and the transaction. The lawyer must also record the results of their inquiries. If the results of their inquiries are not satisfactory, the lawyer must withdraw.

There is no restriction against a lawyer registering a mortgage in circumstances where they are not also handling the transfer of funds. However, the "other aspects of the transaction" such as any funds transfer, should not take place entirely "outside of their view" given the lawyer's due diligence inquiries regarding the transaction and the parties involved. In some cases, there may be a legitimate reason why a mortgage may be registered without a corresponding transfer of funds (e.g. vendor financing; a secured promissory note for a contingent loan; a secured revolving loan prior to an advance) or where the funds are transferred directly to a party without first being deposited into the lawyer's trust account (e.g. a secured line of credit with the borrower's financial institution). In other cases, the registration of a mortgage without a concurrent transfer of funds may be a potential red flag for money laundering (e.g. a mortgage granted to a private lender after loan proceeds have allegedly been advanced). As noted above, if any suspicious circumstances are present, the lawyer must make and record sufficient enquiries to ensure that they are not facilitating money laundering. If the suspicions cannot be reasonably resolved, then the lawyer must withdraw from acting in the transaction.

Given the broad range of scenarios that may arise in the course of a lawyer's practice – whether in real estate, secured transactions, or other practice areas that may involve the registration of mortgages – it is important for lawyers to be able to identify red flags and suspicious circumstances. The LSBC has, both independently and through its participation in the Federation of Law Societies of Canada's Anti-Money Laundering and Terrorist Financing Working Group, produced educational materials and advisories for lawyers that discuss risks associated with private lending and the use of mortgages. These publications include:

- Federation of Law Societies of Canada AMLTF Working Group, "*Risk Assessment Case Studies for the Legal Profession*", February 2020, p. 4-7, provides case studies regarding the purchase and sale of real estate property, including scenarios involving the use of mortgages.¹²

¹⁰ "Money" is also defined broadly in Rule 3-98 to include cash, currency, securities, negotiable instruments, or other financial instruments and the electronic transfer of deposits at financial institutions.

¹¹ The Practice Checklists Manual for Client Identification and Verification Procedure specifically notes that verification and source of money obligations may be triggered in situations that do not involve the use of a trust account: <https://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/checklists/A-1.pdf>

¹² <https://flsc.ca/wp-content/uploads/2020/02/CasestudiesENv5.pdf>

September 16, 2020

- 4 -

FARRIS

- Federation of Law Societies of Canada AMLTF Working Group, "*Risk Advisories for the Legal Profession*", December 2019, p. 2-4, provides a list of potential risk factors which may indicate fraud or money laundering, with references to the use of mortgages.¹³
- Law Society of British Columbia, Discipline Advisory, "*Private Lending*", April 2, 2019, identifies risk factors related to private lending transactions, including where the lawyer is retained after the funds have been advanced.¹⁴

The LSBC also regularly refers lawyers to resources produced by other entities, such as the Financial Action Task Force's Report on Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals¹⁵ and its Guidance for a Risk-based Approach for Legal Professionals.¹⁶ Further, LSBC staff participate in workshops and seminars to educate the legal profession on a variety of issues, including anti-money laundering. Recent AML presentations given by staff have included reference to red flags arising in real estate transactions, such as the registration of a private mortgage where no funds are provided, or where funds were allegedly advanced prior to the lawyer's involvement. These presentations include:

- Presentation by Barbara Buchanan, QC (LSBC Practice Advisor) and Tina Kaminski (LSBC Audit Team Leader), "*Anti-Money Laundering Measures*," July 2020, includes information on money laundering, cash, client identification and verification, red flags and risk management.¹⁷
- CLEBC Presentation by Barbara Buchanan, QC (LSBC Practice Advisor), "*The Law Society of BC Anti-Money Laundering Measures*," April 24, 2019, includes a list of red flags such as "private mortgage registered but no funds provided."¹⁸
- CLEBC Presentation by Barbara Buchanan, QC (LSBC Practice Advisor) and Scott Bartos, "*Anti-Money Laundering Update for Lawyers and Law Firms*," December 3, 2018, includes a list of red flags such as "private mortgage registered but no funds provided."¹⁹

Yours truly,

FARRIS LLP

Per:


Catherine E. George

CEG/jw

¹³ <https://flsc.ca/wp-content/uploads/2020/01/RiskAdvisory6EN.pdf>

¹⁴ <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/discipline-advisories/april-2,-2019/>

¹⁵ <https://www.fatf-gafi.org/documents/documents/mltf-vulnerabilities-legal-professionals.html>

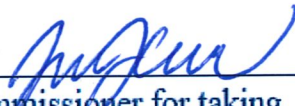
¹⁶ <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/rba-legal-professionals.html>

¹⁷ Available online, free of charge: https://youtu.be/d5yO_il58BM

¹⁸ LSB007283, p. 223

¹⁹ LSB000555, slide 71.

This is Exhibit "C" referred to
in the affidavit of Gurprit Bains
sworn before me at Vancouver, BC,
this 5 day of May, 2021


A Commissioner for taking
Affidavits for British Columbia

Discipline Advisory

Lawyers are gatekeepers

April 10, 2018

The Law Society takes its role in combatting money laundering and other illegal activity very seriously. A recent decision involving a member highlights the repercussions for lawyers if they allow their trust accounts to be used without making reasonable inquiries in suspicious circumstances.

LSBC v. Gurney

Between May and November 2013, Donald Franklin Gurney used his trust account to receive and disburse a total of \$25,845,489.87 on behalf of a single "client." He did so without making reasonable inquiries about the circumstances related to the funds, including the subject matter and objectives of his retainer, and without providing any substantial legal services in connection with the trust matters. Gurney was paid 0.1% (\$25,845) of the funds he handled.

The Law Society identified the transactions during a routine trust account audit, conducted an investigation and issued a citation.

In its decision ([2017 LSBC 15](#)), the hearing panel noted that lawyers have an important 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 in the course of legal services may be 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.

The gatekeeper function requires a lawyer to use trust accounts for legitimate commercial purposes that are connected to the lawyer's professional functions. Lawyers have a positive duty to make reasonable inquiries prior to becoming involved in a transaction. The hearing panel noted earlier Law Society decisions that stated that where the circumstances of a proposed transaction are such that a lawyer 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 satisfy the lawyer on an objective test that the transaction is legitimate. The Law Society need not prove illegality to prove misconduct.

In this case, the hearing panel found that Gurney committed professional misconduct by failing to make reasonable inquiries in the face of "a sea of red flags" before allowing his trust account to be used.

There were a number of factors that made the transactions objectively suspicious, including:

- Gurney had no previous dealings with any of the parties to the transactions;
- Gurney's practice did not involve unsecured commercial lending, as ostensibly took place in this case;
- all of the transactions dealt with offshore lenders to a new client;
- no legal advice was sought from Gurney;
- the transactions involved millions of dollars and did not require the use of a lawyer's trust account to complete;
- Gurney's fee was based on a percentage of the funds received and disbursed through his trust account.

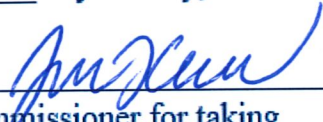
4/30/2021

April 10, 2018 | The Law Society of British Columbia

The hearing panel ordered Gurney to serve a six-month suspension from the practice of law and to pay to the Law Society \$25,845 as a disgorgement of the amount he was paid in order that he not benefit financially from his misconduct ([2017 LSBC 32](#)).

The Law Society's auditors actively look for suspicious trust account activity when conducting compliance audits. If you are concerned about a proposed transaction, ensure you perform your due diligence at the outset and do not hesitate to [contact a Law Society Practice Advisor](#) for advice.

This is Exhibit "D" referred to
in the affidavit of Gurprit Bains
sworn before me at Vancouver, BC,
this 5 day of May, 2021


A Commissioner for taking
Affidavits for British Columbia

Discipline Advisory

Private lending

April 2, 2019

While most private loans are legitimate, there is an increased risk of illegal activity with them. Private lending transactions are one means by which proceeds of crime can be laundered. Lawyers who are retained to draft loan or security documents, to register the same, or to assist with the advance or recovery of funds should take additional steps to protect themselves and maintain public trust in the profession. These steps include asking some additional questions that must be answered satisfactorily, ensuring that they know their clients, and knowing the subject matter of their retainers.

Lawyers should be on the lookout for some or all of the following factors before they act or continue to provide services:

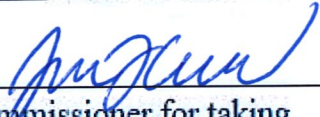
- There is no clear or plausible reason why the borrower is not borrowing from a commercial lender.
- The amount or fact of the loan seems inconsistent with the client's circumstances.
- Third parties are involved without apparent good reason.
- The funds advanced are in cash and the parties are unwilling or unable to provide basic details or documentation concerning the loan, including its source.
- The funds come from, go to, or are to be repaid offshore or to a jurisdiction that is known to be secretive or restrictive.
- There is no security for a large loan or the security is a subsequent mortgage or charge on a fully or near-fully encumbered property.
- The actual or agreed-to repayment period is unusually short.
- The interest rate exceeds the criminal rate or is above market.
- The lawyer is retained after the funds have been advanced.
- The lawyer is not experienced in the relevant area of law, or the client has been refused counsel or changed counsel recently or several times without apparent good reason.
- Any party to the transaction has an alleged or known history of drug trafficking, money laundering, civil forfeiture, loansharking, fraud, high-stakes gambling or similar activity.
- The client is unusually familiar with or resistant to client identification and verification requirements.

The Law Society Rules (including Part 3, Division 11 – Client Identification and Verification) and the *Code of Professional Conduct for British Columbia* (including rule 3.2-7 and commentary) establish lawyers' obligations when dealing with private loans.

Case decisions, including *Law Society of BC v. Elias*, (1996) 26 B.C.L.R. (3d) 359 (C.A.), *Re McCandless*, 2010 LSBC 3, *Re Gurney*, 2017 LSBC 15, have applied the principle that, where the circumstances of a transaction are such that a lawyer should reasonably be suspicious that the matter involves illegal activity under the laws of Canada or another country, it is professional misconduct to become involved until inquiries have been made to satisfy the lawyer on an objective test that the transaction is legitimate.

If you are concerned about a proposed transaction, ensure you perform your due diligence at the outset and do not hesitate to contact a Practice Advisor for advice.

This is Exhibit "E" referred to
in the affidavit of Gurprit Bains
sworn before me at Vancouver, BC,
this 5 day of May, 2021


A Commissioner for taking
Affidavits for British Columbia

Discipline Advisory

Country/Geographic risk

Feb 10, 2021

Be on guard against unwittingly facilitating any dishonesty, crime or fraud including money laundering. It is imperative to know your clients and understand the facts relevant to the retainer, including the source of funds sent or received and, where necessary, the source of the client's wealth. Where there are suspicious circumstances, you must make reasonable inquiries to ensure, on an objective basis, that the transaction is legitimate prior to acting or continuing to act.

One category of suspicious circumstances that you need to be on the lookout for is geographic risk. This Discipline Advisory discusses geographic risk, which may arise in a number of ways on a matter, including any of the following:

- The clients, including the instructing individuals, or other parties to the transaction reside in or have a material connection to a high risk country (e.g. the jurisdiction in which a corporate entity was created or in which it purports to operate).
- The transaction associated with the legal services being sought is in a high risk country.
- The funds received by the lawyer for the retainer or the transaction arise from or are to be distributed to a high risk country.

Identifying a geographic risk

It is important to recognize that the presence of a geographic risk may not, on its own, determine the legitimacy of the transaction. It may, however, require further inquiries before proceeding. Those inquiries should be documented in the client file.

There is no exhaustive list of countries or jurisdictions that are considered to be higher risk. In assessing the risk posed by a country or jurisdiction, those falling within any of the following categories may pose a higher risk:

- Countries with weak money laundering or terrorist financing controls, as identified by competent authorities, such as the Financial Action Task Force ("FATF") or FINTRAC. See for example, [FATF](#) and [FINTRAC Advisories](#).
- Countries subject to economic sanctions, asset freezes, export and import restrictions, arms and related materials embargoes, financial prohibitions, technical assistance provisions or related measures. See for example, the Government of Canada's website for [types of sanctions](#), [current sanctions against countries](#) and [listed persons](#) and entities. Note that individuals and entities may also be subject to sanctions.
- Countries with a reputation for significant levels of organized crime, corruption, financial secrecy or criminal activity such as drug trafficking, human trafficking or illegal gambling.

The risk may be elevated in circumstances where the involvement of the foreign jurisdiction seems unduly complicated, doesn't make sense or appears inconsistent with client's known activities or profile. Offshore activities may be used by individuals to obscure the activities that generated funds or the beneficial owner of the funds.

Lawyers are encouraged to review additional information on the Law Society's website including:

- Law Society Rules, [Part 3 – Division 11](#) – Client Identification and Verification (Rules 3-98 to 3-110)
- [Client ID & Verification resources webpage](#)
- *Code of Professional Conduct for British Columbia* (including [rule 3.2-7](#) and [commentary](#))
- [Anti-Money Laundering/Counter Terrorist Financing Risk Advisories](#)

- Anti-Money Laundering/Counter Terrorist Financing Case Studies

If you need advice on your ethical obligations, Law Society Practice Advisors are available to provide confidential advice to lawyers.

You may contact them at practiceadvice@lsbc.org or 604.443.5797.