2024 LSBC 11
Hearing File No.: HE20200088
Decision Issued: February 23, 2024
Citation Issued: October 7, 2020

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL

HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

HONG GUO

RESPONDENT

DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION

Hearing dates:	January 8, 2024
Panel:	Herman Van Ommen, KC, Chair Nicole Byres KC, Lawyer David Dewhirst, Public representative
Discipline Counsel:	J. Kenneth McEwan, KC Saheli Sodhi
Appearing on her own behalf:	Hong Guo

BACKGROUND

[1] Having found in our reasons issued July 21, 2023 (*Law Society of BC v. Guo*, 2023 LSBC 28) that the Respondent committed professional misconduct as set out in five allegations, we must now determine the appropriate disciplinary action.

[2] The Law Society, having given the appropriate notice, seeks a finding that the Respondent is ungovernable and should thus be disbarred. Alternatively, the Law Society submits that if she is not found to be ungovernable, she should nonetheless be disbarred based on the seriousness of the findings against her in this case and the Respondent's extensive professional conduct record ("PCR").

[3] The Respondent asserts that she is not ungovernable and that it would not be in the public interest to disbar her. She did not suggest what disciplinary action would be appropriate in these circumstances.

[4] Section 38 of the *Legal Profession Act*, SBC 1998, c.9 (the "*Act*"), sets out the powers of a panel to impose sanctions ranging from a reprimand to disbarment. The purpose of disciplinary action imposed after a finding of professional misconduct is to further the Law Society's statutory duty to uphold and protect the administration of justice which includes maintaining public confidence in the profession and the effectiveness of the Law Society's disciplinary process. As was stated in *Law Society of BC v. Hill*, 2011 LSBC 16, at paragraph 3, as cited in *Law Society of BC v. Gurney*, 2017 LSBC 32, at paragraph 5:

> It is neither our function nor our purpose to punish anyone. The primary object of proceedings such as these is to discharge the Law Society's statutory obligation, set out in section 3 of the *Act*, to uphold and protect the public interest in the administration of justice. Our task is to decide upon a sanction or sanctions that, in our opinion, is best calculated to protect the public, maintain high professional standards and preserve public confidence in the legal profession.

[5] The Respondent was disbarred by a panel in reasons issued November 17, 2023 (*Law Society of BC v. Guo*, 2023 LSBS 46 (the "*First Ungovernability Decision*")) and is thus a former member. For the purpose of misconduct that took place while a member, the *Act* defines a "lawyer" to include a former member and "disbar" includes a declaration against a former member. Thus, this Panel has the jurisdiction to proceed with disciplinary action under section 38 of the *Act* even though the Respondent is now a former member.

[6] In this case we must consider imposing disciplinary action on the basis of ungovernability. Rule 5-6.4(6) of the Law Society Rules provides that "[r]egardless of the nature of the allegation in the citation, the panel may take disciplinary action based on the ungovernability of the respondent by the Society."

[7] A finding of ungovernability is made where there is evidence of a consistent unwillingness or inability to comply with the Law Society as a regulator, or a wanton disregard and disrespect for the regulatory processes that govern the Respondent's conduct. Put differently, if a lawyer consistently conducts themselves in a manner that obstructs the Law Society's ability to govern that lawyer, the lawyer is ungovernable.

THE RESPONDENT'S REGULATORY HISTORY

[8] The Law Society produced the Respondent's PCR and an Affidavit of C. Anderson, both of which were entered as exhibits by consent. The Respondent produced two volumes of reference letters as well as two additional separate letters which were also entered as exhibits by consent.

[9] The Respondent's PCR is lengthy and a close review of it is necessary to determine the proper outcome in this case. This summary is taken substantially from the Law Society's submissions.

(a) 2012 to 2013 Practice Standards Review 1 - The Practice Standards Committee made recommendations requiring the Respondent to implement a monthly file review practice, join and attend certain CBA subsection meetings, and refer out all new criminal, family, and litigation files (except joint divorce petitions).

(b) 2015 to 2016 Practice Standards Review 2 -The Practice Standards Committee made recommendations requiring the Respondent to continue to network with other lawyers and attend subsection meetings, continue to reach out to lawyers or practice advisors to obtain advice where she feels uncertainty about what to do as a lawyer, and enter into a formal mentorship agreement within 60 days.

(c) December 2015 Conduct Review 1- A Conduct Review was ordered to discuss the Respondent's conduct in breaching a trust condition imposed on her when she received funds in trust under a settlement of an action and released those funds without complying with the trust conditions. The conduct in issue occurred in 2012. The Subcommittee found that the Respondent's breach of a trust condition was an issue of competence.

However, the Subcommittee was "troubled" by the Respondent's "refusal to acknowledge that she handled the transaction in an inappropriate manner" and the fact that the Respondent "demonstrated no insight into how a situation could be prevented or avoided in the future". This resulted in a referral to the Practice Standards Committee.

(d) March 2016 Conduct Review 2- A Conduct Review was ordered to discuss the Respondent's conduct in presenting a release without discussion to an unrepresented party who was not proficient in English and was opposed in interest, in a manner inconsistent with her duty to act honourably and with integrity. The conduct in issue occurred in 2013. The Subcommittee concluded that the Respondent's conduct was inappropriate because: (i) she had her assistant prepare a document that she did not review before presenting it to an unrepresented opposing party; (ii) the document contained a release that had not been discussed with the opposing parties, which release was in English despite all communications being in Mandarin; and (iii) her interests (and her clients' interests) were adverse to the unrepresented party and the release created an advantage for the Respondent and her clients.
The Respondent "acknowledged that she understood the issues and concerns that the Subcommittee raised but that she did not agree with them". Only after being prompted by her lawyer did the Respondent make a limited acknowledgment that it was her obligation and responsibility to review all documents prepared under her direction. The Subcommittee expressed concern about the Respondent's professional conduct history and that "a pattern may be emerging of the Lawyer dealing inappropriately with unrepresented parties."

(e) April 2016 Undertaking- Arising from a $7,506,818 trust shortage due to theft by the Respondent's bookkeeper reported to the Law Society in April 2016, the Respondent made several undertakings to the Executive Director. The undertakings included requiring the Respondent to do the following: (i) cease depositing funds to the trust account affected by the shortage; (ii) open a new trust account for all new client's matters; (iii) only operate trust account(s) with another practising lawyer as a second signatory, and; (iv) provide documents and information to the Law Society related to the trust shortage.

(f) August 2016 Order - When the Respondent did not fulfill the April 2016 Undertaking, the Law Society sought and obtained a Rule 3-10 order imposing substantially the same obligations on the Respondent and

appointing a Custodianship over the part of her practice affected by the trust shortage. The Benchers identified several concerns with the Respondent's conduct that justified the order, including that: (i) the Respondent was unable or unwilling to fully comply with the April 2016 Undertaking; (ii) the Respondent had not fully cooperated with the Law Society; and (iii) the Respondent had no concrete plan to eliminate the trust shortage.

(g) March 2017 Order - Concerns about the Respondent's non-compliance with the April 2016 Undertaking and the August 2016 Order led the Law Society to seek (and the Benchers to grant) another Rule 3-10 order imposing further practice conditions and limitations on the Respondent, including prohibiting the Respondent from operating a trust account and requiring the Respondent to enter into and comply with the terms of a practice supervision agreement. In granting the March 2017 Order, the Benchers continued to have "significant concern" about the same deficiencies identified in granting the August 2016 Order, which included the Respondent's failure to cooperate with the Law Society and inability or unwillingness to comply with the April 2016 Undertaking. Finally, the Benchers expressed concern with the Respondent's working relationship with the Custodian and emphasized the Respondent's obligation to cooperate with the investigations and the Custodian.

(h) April 28, 2017 Order - The Benchers granted an order, sought by consent, extending the deadline for the Respondent to enter into a practice supervision agreement.

(i) May to June 2019 Administrative Suspension- The Respondent was subject to an administrative suspension for failing to respond to the Law Society during an investigation. The Respondent's conduct during this suspension is the subject of a separate citation, but no findings have yet been made.

(j) October 2020 Undertaking Not to Practice - Arising from an order holding the Respondent in contempt made by Justice Weatherill on October 14, 2022, in a civil proceeding in the BC Supreme Court, the Respondent entered into a voluntary undertaking in lieu of a proceeding before an interim action board under Rule 3-10. The Respondent undertook not to engage in the practice of law while serving a term of imprisonment arising from the contempt order. Ultimately, the Respondent was not imprisoned under the order.

(k) November 4, 2020 Facts and Determination Decision re Bookkeeper Theft - The citation arose from the 2016 trust theft and from errors in accounting practices revealed during the forensic audit that followed. The hearing panel found that the Respondent committed professional misconduct in respect of all the alleged misconduct including: (i) breach of trust accounting rules; (ii) failure to properly supervise her bookkeeper, thereby facilitating the trust theft; (iii) misappropriation or improper withdrawal of funds; (iv) breach of the April 2016 Undertaking; and (v) breach of the August 2016 Order. The hearing panel found that the Respondent exercised "virtually no supervision" over her bookkeeper and that "[t]he repeated failure, over a long period of time, to properly record and process the trust deposits and disbursements" created the environment for the trust theft. The hearing panel noted the Respondent's "intentional, repeated disregard over 150 days of the clear and unequivocal obligations imposed by the Undertaking." The panel found that the Respondent provided no explanation for the breach of the April 2016 Undertaking and August 2016 Order except that she was "overwhelmed and unfocused". (*Law Society of BC v. Guo*, 2020 LSBC 52)

(l) April 19, 2021 Conduct Review 3 -. Conduct Review 3 was ordered on December 10, 2020 to discuss broadly the Respondent's conduct in failing to maintain proper accounting records, failing to record each transaction involving her immigration clients promptly or at all, engaging in improper billing practices, and making misrepresentations to the Law Society during its investigation. The Subcommittee identified "recurring and endemic problems" in the Respondent's immigration practice, including the incomplete, disorganized, or entirely absent client files, accounting records, and client communications. The Subcommittee also identified several issues with the Respondent's cooperation with Law Society investigations, including that: (i) the Respondent "has little or no records to establish her compliance with her professional obligations" and no reliable records of payments made in China; (ii) the Respondent did not produce bank records for her account in China at the Industrial Commercial Bank of China despite her obligation to do so, and provided only incomplete records for her TD general account in Canada; and (iii) the Respondent repeatedly provided "inconsistent responses that could often not be reconciled with documentary records and made representations that she ought to have known were not accurate". The Respondent admitted that she was unable to produce full accounting records to the Law Society and that her responses to the Law Society

"were not always correct and accurate". The Subcommittee expressed that the lack of records and the Respondent's changing and incomplete responses to the Law Society "removed the LSBC's ability to oversee and regulate her practice in the protection of the public interest." The Subcommittee also noted the Respondent's lengthy history of similar issues, including providing inaccurate or incomplete responses to the Law Society.

(m) April 30, 2021 Conduct Review 4 - Conduct Review 4 was ordered on September 24, 2020 to discuss the Respondent's conduct when preparing a BC Provincial Nominee Program (BC PNP) application, including accepting $230,000 of trust funds into a personal bank account ($20,000 for legal fees, $210,000 for a proposed investment), failing to maintain proper general account records, failing to record the transactions, and making misrepresentations to the Law Society. The Subcommittee noted that, during the investigation into the conduct under review, the Respondent was "not forthcoming with information as requested by the LSBC" and was at times "careless and misleading in her responses to questions". The Respondent explained that she did not intend to mislead the Law Society, tried to answer questions even when she did not know the answers, rushed to prepare answers instead of taking time to double check, and that she would never again give Law Society investigators answers "just because she believes it is an answer the investigator wants to hear." The Respondent further apologized to the Law Society and the Subcommittee for her conduct and stated that "in the future she will only give the LSBC precise and accurate answers and she knows the importance of doing so". The Subcommittee discussed the importance of maintaining records for all client files (which the Respondent acknowledged), and the Respondent stated that she was unaware that funds received from a client for investment and legal fees should have been deposited into trust. The Respondent refused to acknowledge wrongdoing with respect to her failure to deposit the $230,000 of client funds into trust. She asserted that the amount related to BH's investment was not related to legal services, and that the flat fee retainer was not "trust funds". The Subcommittee was not in a position to resolve the issue as a similar issue was before a hearing panel on another citation, but expressed its continued concern about the Respondent's failure to deposit these funds into trust.The Subcommittee recommended no further action in part because of the existing practice conditions on the Respondent and its conclusion that a practice standards referral would

not be useful because the Respondent had already been referred twice before and had outstanding practice recommendations.

(n) May 20, 2021 Facts and Determination Decision re Breach of Order - The citation alleged that the Respondent breached trust accounting rules and handled trust funds contrary to a term of the March 2017 Order prohibiting her from doing so by receiving cash advances into her general account from six clients in relation to work pursuant to fixed fee agreements. The Respondent argued that advance payment made pursuant to a fixed fee agreement becomes the lawyer's property on receipt, and therefore does not constitute trust money and need not (indeed, must not) be deposited into the lawyer's trust account.
The hearing panel found that the Respondent breached the March 2017 Order. It concluded that advance payments made under a fixed fee agreement are received in trust and do not become the lawyer's property on receipt, absent informed client consent otherwise. The six clients did not provide their informed consent, and thus the Respondent breached the March 2017 Order. The hearing panel found that the Respondent "should have had a significantly heightened sensitivity to the importance of handling trust funds in strict compliance with Rule 3-58(1) and the Rule 3-10 Order", but that there was "no evidence to suggest the Respondent took any steps to ascertain whether her handling of the Cash Funds was permissible". (*Law Society of BC v. Guo*, 2021 LSBC 20)

(o) Oct. 26, 2021 Disciplinary Action Decision re Bookkeeper Theft - The hearing panel found the Respondent's conduct in breaching the April 2016 Undertaking and the August 2016 Order amounted to "extremely negative and significant circumstances" that were not mitigated. The hearing panel observed that the Respondent's failure to properly observe the Law Society's trust accounting rules was the foundational problem that led to the trust theft and the consequent citation, and further, that "the sheer magnitude of the Respondent's practice was such that proper supervision of the employees and the work product was simply not possible". The hearing panel accepted the Respondent's late admission of responsibility but remarked that "for the most part, the Respondent continues to maintain that she was the victim of her bookkeeper's theft and continues to minimize her role in creating the environment that led to the theft, in particular by providing numerous pre-signed blank trust cheques to her bookkeeper while on vacation." Although the presumptive sanction was disbarment, given the misappropriation

findings, the hearing panel concluded that a one-year suspension was appropriate. (*Law Society of BC v. Guo*, 2021 LSBC 43)

(p) Jan. 17, 2022 Disciplinary Action Decision re Breach of Order - The hearing panel found that the misconduct was serious, but mitigated by the global amount of funds mishandled and the absence of a finding that the Respondent knowingly breached the Rules. The hearing panel found that the Respondent's misconduct was a continuation of a pattern of non-compliance with Law Society trust accounting rules, putting into question the Respondent's ability to comply with regulatory requirements in the future. Although accepting the Respondent's evidence of efforts to improve herself as a lawyer, the hearing panel found that: "her efforts in taking these courses do not support the conclusion that, each time a criticism has been made regarding her practice, she has taken sufficient steps to adapt her practices to Law Society standards. Had the Respondent's attempts been sufficient, her PCR would not be so lengthy or concerning." The hearing panel imposed a one-month suspension on the Respondent (on the higher end of the range), in light of the Respondent's "history of failing to comply with Law Society regulation concerning trust matters." (*Law Society of BC v. Guo*, 2022 LSBC 03)

(q) April 28, 2022 BCCA Decision re Breach of Order - The Respondent appealed the professional misconduct findings, arguing (as she did before the panel) that the definition of "trust funds" was not broad enough to include advance payments under fixed fee agreements, and that the cash advances were not impressed with a trust. The Court of Appeal dismissed the appeal, finding that cash advances under fixed fee agreements are trust funds within the meaning of the Rules absent a specific agreement with the client permitting the lawyer to treat the funds as their own. (*Law Society of British Columbia v. Guo*, 2022 BCCA 154)

(r) August 24, 2022 Facts and Determination Decision re Conflict of Interest - The hearing panel found that the Respondent acted in a conflict of interest while representing several clients in respect of a business operation, provided legal services in connection with that business operation when she had a financial interest in the transaction, and failed to respond fully and substantially to the Law Society and made false or misleading statements. In remarking on her credibility, the hearing panel was concerned by: (i) the Respondent's apparent "total lack of knowledge of, or a failure to comprehend the requirements of, a lawyer's

obligations and relationship to a client"; (ii) her failure to produce or explain why documents and files either did not exist or had not been produced to the Law Society; and (iii) the fact that she demonstrated a lack of understanding of the problems exposed by the Law Society's investigation. The hearing panel found that the Respondent's testimony and positions during the hearing demonstrated a "transactional", "peculiar", and "untenable" understanding of the obligations owed to a client as a result of the solicitor-client relationship, several years after the underlying conduct that gave rise to the hearing. The hearing panel found that the Respondent "clearly involved herself, her firm, and her family members in the running and financing of her clients' operations", contrary to her professional obligations. Most significantly, however, the hearing panel found that the Respondent repeatedly "sought, whether consciously or otherwise, to avoid the obligation to answer fully, truthfully and completely". The Respondent's actions "unnecessarily lengthened the Investigation", which is contrary to the public interest as it undermines the effectiveness of the Law Society's investigation. (*Law Society of BC v. Guo*, 2022 LSBC 30)

(s) March 1, 2023 Review Board Decision re Bookkeeper Theft - The Law Society sought to set aside the Disciplinary Action Decision re: Bookkeeper Theft (*Law Society of BC v. Guo*, 2021 LSBC 43) on the basis that the hearing panel erred in not disbarring the Respondent. The Review Board concluded that disbarment was not necessary to protect the public interest, and expressly observed that ungovernability was not in issue. However, the Review Board found that the one-year suspension ordered by the hearing panel was insufficient to ensure specific and general deterrence from future acts of misconduct and to address concerns about public confidence in the legal profession and the disciplinary process. It ordered that the Respondent enter into and comply with a practice supervision agreement before returning to practice. The Review Board also ordered the Respondent to pay the Law Society's costs as ordered by the hearing panel in instalments of $1,000 per month. (*Law Society of BC v. Guo*, 2023 LSBC 06)

(t) March 8, 2023 Facts and Determination Decision Re M Inc. - The hearing panel found that the Respondent breached the *Act* or Rules by making misrepresentations to the Law Society. During the hearing, the Respondent admitted that her responses to the Law Society investigator were "not always accurate" but that the inaccuracies arose because "her language could have been better". The hearing panel found that the

Respondent knowingly made false representations to the Law Society investigator. However, it found that in the circumstances the conduct did not rise to the level of professional misconduct. The decision is currently subject to a review by the Law Society, heard in February 2024, but reasons have not yet been issued.
(*Law Society of BC v. Guo*, 2023 LSBC 09)

(u) July 21, 2023 Facts and Determination Decision re SO Ltd. - This is the decision in this case which is not a part of the Respondent's PCR as it is the current case being considered. It is summarized here as part of the chronology for ease of reference. We found the Respondent reviewed a share purchase agreement for a client (the "First Client") who she knew was going to use that document to attract investors in China who would use the investment to support an application under the BC Provincial Nominee Program for immigration status. The share purchase agreement required the investor to deposit funds into the Respondent's trust account. The Respondent would then act for the investor on their application for immigration status and against the First Client in relation to the purchase of shares. In effect she had one client recruiting other clients for her to act against them. She testified that she did not appreciate that she was in a conflict. We made findings against her regarding acting in conflict, failing to comply with trust accounting rules, failing to act as a gatekeeper, providing false answers to the Law Society and failing to respond at all to the Custodian's inquiries. More specific details of our findings will be referred to later in these reasons.
(*Law Society of BC v Guo*, 2023 LSBC 28)

(v) July 27, 2023 Facts and Determination Decision re M Project - The hearing panel found that the Respondent acted in a conflict of interest and committed professional misconduct. The hearing panel found that the Respondent demonstrated a "transactional" view of the solicitor-client relationship. Although ultimately dismissing the allegations concerning misrepresentations to the Law Society, the hearing panel found that two of the alleged misrepresentations were "wrong on almost every level", and that her explanations during the hearing were "completely unconvincing" and at odds with a volume of clear evidence to the contrary. The hearing panel found that the Respondent's "apparent complete lack of memory" when answering the Law Society was "frankly astounding, even given the other professional and personal fires she was facing". The hearing panel concluded that the Respondent's "failure to do any file or other review or to take any care in her response"

was reckless. The hearing concluded the conduct did not amount to professional misconduct in the circumstances, but said that if the panel had the option to find a breach of the *Act* or Rules, it would have done so. (*Law Society of BC v. Guo*, 2023 LSBC 30)

(w) Nov. 17, 2023 Disciplinary Action Decision re Conflict of Interest - The hearing panel concluded that the Respondent is ungovernable. Its reasons for doing so will be reviewed later in these reasons. The hearing panel further found that disbarment was also appropriate on application of the *Ogilvie* factors, as there was no other effective way to protect the public. The hearing panel found the following aggravating factors: (i) the seriousness of the misconduct; (ii) the fact that the Respondent should have been familiar with the relevant obligations given her seniority, experience, prior discipline, mentorship, and supervision; (iii) the Respondent's PCR; (iv) although there was no evidence of a direct financial gain, there were indirect gains; (v) the length of the misconduct and the number of misrepresentations; (vi) the absence of steps taken to acknowledge the misconduct or redress the wrong; and (vii) the theme of continued non-compliance with the practice supervision agreement and requests from her supervisors, which demonstrated that the Respondent "does not take her responsibilities to the Law Society seriously." The hearing panel rejected the assertion that Respondent's misrepresentations to the Law Society was "the result of the fallibility of human memory, unintentional and the result of a busy practice." It found the need for both specific deterrence (i.e., the public needs to be protected from the Respondent) and general deterrence (i.e., that lawyers "need to know that the Law Society will take steps to vigorously protect the public interest"). The hearing panel rejected the Respondent's argument that she was servicing an under-serviced community (Mandarin and Cantonese speakers), and found that: "The Chinese-Canadian community needs and deserves lawyers who practice in compliance with the Law Society's oversight. No client needs a lawyer who bends the rules and disregards the Law Society's rules and regulations. This puts the individual client at risk and lowers the public confidence in the integrity of the profession and the ability of the Law Society to regulate lawyers."
(*First Ungovernability Decision*)

(x) Sept. 1, 2023 Failure to Pay Costs - The Respondent had been ordered to pay costs and disbursements of $47,329.44 in $1,000 per month instalments. The Respondent had not paid the $1,000 instalment due September 1, 2023.

(y) November 20, 2023 Facts and Determination Decision re Client ZZ– The hearing panel found that the Respondent misappropriated and improperly handled trust funds and failed to provide the appropriate quality of service to her clients. In relation to the mishandling of trust funds the panel referred to her use of a Beijing bank account as "careless" and found there was "a pattern of willful disregard for the sanctity of a client's trust in placing funds with a lawyer."
(*Law Society of BC v. Guo*, 2023 LSBC 49)

[10] In summary the Respondent has been subject to:

(i) two Practice Standard Reviews;

(ii) four Conduct Reviews;

(iii) seven citations that have reached the facts and determination stage (including the Citation in the instant case), three of which have reached the disciplinary action stage (not including this disciplinary action decision); and

(iv) she has been suspended for one year, in addition she has been suspended for one month to be served consecutive to the prior suspension, and further she has been found to be ungovernable and thus ordered disbarred.

[11] In addition to the Respondent's PCR, the Law Society asked us to consider two further citations. The hearings on facts and determination of both citations have been concluded but the hearing panel's decision has not yet been issued. The definition of "professional conduct record" in the Law Society Rules does not include citations against a lawyer prior to a decision being made on facts and determination under section 38 of the *Act*. Further a citation is, until decided by a hearing panel, only an unproven allegation. These two citations are only relevant as an indication of the extent of the resources the Law Society has expended on the Respondent.

[12] The Law Society also provided affidavit evidence of the difficulties encountered while the Respondent was subject to practice supervision. As a result of the August 2016 Order and the March 2017 Order made pursuant to Rule 3-10 against her, the Respondent was required to enter into a practice supervision agreement (the "Practice Supervision Agreement"). The evidence of the administration of the Practice Supervision Agreement or the Respondent's failure to comply with the terms of that agreement is not part of the Respondent's PCR as that term is defined. We find that it is relevant to our consideration

of ungovernability but not for determining an appropriate disciplinary action if ungovernability is not found.

[13] The Respondent entered into the Practice Supervision Agreement on June 13, 2017. Under that agreement the supervisors were to supervise her law practice. Supervision of her practice included: reviewing all open files to asses their status; supervising and reviewing the Respondent's work and work done by others at her law office; having access to communication, computer, accounting, and calendar systems; and reviewing "all aspects of the practice." It was the Respondent's responsibility and obligation to provide complete and accurate information to the supervisors. The supervisors and the Respondent were to meet at least every ten days to review each file on which the Respondent provided legal services in the immediately preceding ten days to ascertain whether her work was being completed accurately, appropriately and in a timely fashion. The supervisors were to provide reports to the Law Society at least every three months summarizing the status of the practice, and any concerns arising from their review.

[14] Many difficulties were encountered under this arrangement. In particular the Respondent did the following:

(a) failed to provide complete and accurate information to the supervisors;

(b) failed to maintain up-to-date file lists or complete client files;

(c) maintained an informal or inadequate conflict check system;

(d) had inconsistent file opening and billing practices;

(e) facilitated a suspicious transaction and failed to record sufficient information about the source of funds in transactions;

(f) did not obtain appropriate consents when acting on files where the other party was unrepresented or consented to be represented by the Respondent;

(g) showed a lack of appreciation or understanding of a lawyer's gatekeeper obligations with respect to trust funds; and

(h) failed to provide files for review to the supervisors that she did not consider to be "transaction" files including files involving the filing of Land Owner's Transparency Reports.

[15] The Respondent did not challenge the evidence of C. Anderson concerning the difficulties experienced under the Practice Supervision Agreement.

UNGOVERNABILITY

[16] Ungovernability is not defined in the rules but there are a number of previous Tribunal decisions that are of assistance on this issue and are a useful resource to guide panels when determining whether to make a finding of ungovernability. A leading decision is *Law Society of BC v. Hall*, 2007 LSBC 26. While not finding ungovernability in that case, the panel identified some indicia of ungovernability after reviewing decisions from other provinces. These indicia have been followed in most decisions since. The indicia the panel identified are as follows:

1. A consistent and repetitive failure to respond to the Law Society's inquiries.

2. An element of neglect of duties and obligations to the Law Society with respect to trust account reporting and records.

3. Some element of misleading behaviour directed to a client and/or the Law Society.

4. A failure or refusal to attend at the discipline hearing convened to consider the offending behaviours.

5. A discipline history involving allegations of professional misconduct over a period of time and involving a series of different circumstances.

6. A history of breaches of undertaking without apparent regard for the consequences of such behaviour.

7. A record or history of practicing while under suspension.

[17] The panel in *Hall* noted that it would not be necessary to find all of the factors identified in the decision to support a finding of ungovernability.

[18] The central rationale for making a determination of ungovernability was explained by the panel in *Law Society of BC v. Spears*, 2009 LSBC 28, at paragraph 7, as follows:

> … It is a fundamental requirement of anyone who wishes to have the privilege of practising law that that person accept that their conduct will be governed by the Law Society and that they must respect and abide by the rules that govern their conduct. If a lawyer demonstrates that he or she is consistently unwilling or unable to fulfill these basic requirements of the privilege to practise, that lawyer can be characterized as "ungovernable" and cannot be permitted to continue to practise

[19] As noted previously the Respondent has already been found to be ungovernable. In the *First Ungovernability Decision* the panel concluded at paragraph 214:

> For years now, the Law Society has invested extensive resources into investigating, reviewing and monitoring the Respondent's practice to ensure that the public is protected. This level of supervision and support is not sustainable. The Law Society's mandate of "supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law" does not extend infinitely and it is for the protection of the public and not the protection of the lawyer. This Panel has no confidence that the Respondent is rehabilitating herself or improving her methods of practice. She has very little insight into her conduct and continues to believe that she is a victim. The Respondent either cannot or will not conform to Law Society regulation. Her overall pattern of conduct is entrenched non-compliance and non-cooperation. The Respondent is ungovernable.

[20] The Respondent has sought a review of that decision, as a result the Law Society, consistent with past practice, has decided to proceed with this hearing to obtain a second declaration.

[21] The hearing leading to the *First Ungovernability Decision* took place in March 2023. The evidentiary basis in this case differs in that there are three additional adverse facts and determination decisions made against the Respondent since the argument in that case. This matter is one of the three additional facts and determination decisions. The panel in the *First Ungovernability Decision* was aware of two of the decisions but because those decisions were issued after argument the panel declined to rely on them. The third decision was issued after the *First Ungovernability Decision* was issued.

[22] While we will consider and rely on those facts and determination decisions, we are mindful of the fact that decisions concerning the appropriate disciplinary action have not yet been made but will be made subsequent to this decision. We rely on the facts and determination decisions in the ungovernability analysis because that analysis requires an assessment of the Respondent's relationship with her regulator at present, not just at the time of the offending conduct that is the subject of the Citation.

Consistent and repetitive failure to respond

[23] We agree with and adopt the findings made at paragraph 206 of the *First Ungovernability Decision* which sets out five instances of the Respondent's failures to respond to Law Society's inquiries or her providing incorrect or misleading information.

[24] In addition, the panel in the facts and determination decision *Law Society of BC v. Guo*, 2023 LSBC 30, found that the Respondent made misleading statements and failed to substantially and fully respond to the Law Society. The panel found her answer to a question from the Law Society was "wrong on almost every level" and that her explanation for that answer in the hearing was "completely unconvincing." The panel concluded that the Respondent's failure to take any care in her answers to an important question, given her duty of candour and care reached the level of recklessness. The misrepresentations in issue there were made in September 2018.

[25] In this case we found that the Respondent was "evasive and untruthful" in her responses to the Law Society, and "motivated by a concern that the Law Society was investigating her for money laundering". While we found some of the Respondent's answers were incorrect (as opposed to false), we still concluded that she fell "far short of her obligation to cooperate with an investigation and her duty to respond fully to questions from the Law Society". The misrepresentations were made between September 2016 and July 2020.

[26] In addition, we found the Respondent failed to respond to a request for information made by the Custodian in August 2018. She also failed to respond to several reminders. Her failure to respond was never answered satisfactorily during the investigation in 2019 or at the hearing.

Neglect of duties regarding trust accounts

[27] We agree with and adopt the findings made in paragraph 207 of the *First Ungovernability Decision* which sets out eight instances of the Respondent's neglect of duties and obligations to the Law Society with respect to trust account reporting and records.

[28] We found that between August 2014 and February 2016 the Respondent showed an almost complete and utter disregard for the trust accounting rules by failing to do the following: (i) identify the source of funds from people who had not been properly identified; (ii) record funds in a separate client ledger; (iii) deposit some funds in trust; and (iv) record the terms under which some funds were held.

[29] In addition, we found in the same time period that she permitted her trust account to be used by a number of people without providing any substantial legal services, without making reasonable inquiries and making a record of those inquiries. Showing a complete lack of understanding of her obligations as a gatekeeper, she asserted that she was only a "moneyholder" in respect of some of the deposits.

[30] In the decision issued November 20, 2023 (*Law Society of BC v. Guo*, 2023 LSBC 49), the panel found the Respondent committed professional misconduct as described in four allegations of misappropriation and/or improper handling of trust funds. In that case the Respondent failed to deposit funds into a trust account. The panel stated that her "careless use of the Beijing Account to receive trust funds … is serious misconduct." The panel also found her "conduct shows a lack of knowledge of or a blatant disregard for [her] professional obligations."

Misleading behaviour toward client or Law Society

[31] We agree with and adopt the findings made in the *First Ungovernability Decision* at paragraph 208 which sets out five instances of the Respondent's misleading behaviour directed to a client and/or the Law Society.

[32] The findings made above in paragraphs 24 and 25 are also relevant to this factor.

[33] We found the Respondent generally to be an unreliable witness. We did not accept her evidence given at the hearing on matters of importance. Not only did we find that her answers during the investigation were false or in one case "incorrect" we did not accept her evidence given at the hearing on several points.

Discipline history over a period of time in different circumstances

[34] We agree with and adopt the findings made in paragraph 209 of the *First Ungovernability Decision* which addressed the Respondents discipline history involving allegations of professional misconduct over a period of time and involving a series of different circumstances. Her PCR summarized above is important under this heading.

[35] The Respondent has been found to have committed professional misconduct in relation to:

(a) breaching of trust accounting rules;

(b) mishandling and misappropriation of trust funds;

(c) failing to perform her duties as gatekeeper in relation to her trust account;

(d) acting in a conflict of interest;

(e) acting for a client while having a financial interest in the matter;

(f) failing to properly advise a client and provide the quality of service expected;

(g) failing to respond or cooperate with Law Society investigations;

(h) misleading the Law Society;

(i) failing to supervise staff; and

(j) breaching Law Society orders and undertakings.

Breaches of undertaking without regard to the consequences

[36] We agree with and adopt the findings made in paragraph 210 of the *First Ungovernability Decision* which sets out three instances of the Respondent's history of breaches of undertaking without apparent regard for the consequences of such behaviour.

History of practicing while under suspension

[37] The panel in the *First Ungovernability Decision* made a finding under this heading in paragraph 211. The decision of three Benchers they relied on was not put in evidence before us. As a result, we make no findings with respect to this factor.

THE RESPONDENT'S POSITION

[38] The Respondent submits that she is not ungovernable and that it is not in the public interest to disbar her.

[39] She submits that her license to practice law is valuable to her and that she would not do anything to put it in jeopardy. With respect to answering questions from the Law Society she said she always did her best but that she was overwhelmed by the volume of questions from several concurrent investigations. This occurred while she was seeking justice in China and dealing with the trust shortage resulting from the bookkeeper theft.

[40] She said that because the Law Society had her records as well as mirror images of her computers and cell phone that it would make no sense for her to give false answers.

[41] In our previous decision we did not accept her assertion that she did not intend to mislead. We also found that the pressure of many investigations was not the reason false answers were given. We found that she gave false answers because she was concerned that the Law Society was investigating her for money laundering and in her answers she sought to distance herself from certain named parties.

[42] In support of her submission that it was not in the public interest to disbar her she provided two volumes of "support letters", as well as two separate letters. In the first volume there were 19 letters as well as a petition signed by over 100 people. These letters and petition are all dated in 2021 and were submitted in the disciplinary action hearing leading to the one-year suspension (*Law Society of BC v. Guo,* 2021 LSBC 43).

[43] As all of the first volume of letters and the petition predate five subsequent facts and determination decisions, they are not helpful.

[44] The second volume, containing 9 letters, and the 2 separate letters are current and prepared for this matter. Of those 11 letters, 8 are form letters which contain the following statements:

> The charges imposed by the Law Society on her are baseless, and there is plenty of evidence to refute them. The main point is that she has not committed professional misconduct and has not caused any losses to clients.

[45] One letter refers to the "unfair treatment" of the Respondent. The remaining two letters speak highly of her character and integrity but show no awareness of the findings made in this case or in any of the other decisions about the Respondent.

[46] We give little or no weight to any of these letters. We also note and agree with the comments the panel in *Law Society of BC v. Guo*, 2022 LSBC 03, made at paragraph 40:

> There is another reason why we give these eight letters reduced weight. Many lawyers have done good work in the community, whether legal or otherwise, and consequently enjoy a positive reputation among their colleagues and in society more generally. However, our task is not to gauge the Respondent's popularity, but rather to impose a disciplinary action that appropriately furthers the objectives of protecting the public and its confidence in the justice system and the legal profession. Character letters can only go so far in this regard where, as in the case before us, the Respondent's misconduct comprises part of an extensive PCR evincing a pattern of failing to comply with Law Society regulation. See 14 MacKenzie, at p. 26-45; *Law Society of BC v. Hordal*, 2004 LSBC 36, at paras. 68- 69.

[47] The Respondent also asked us to consider her mental health. During the hearing she said she wanted to refer us to an Ontario decision dealing with mental health and lawyers, but could not identify it for us. She was given leave to locate that decision and make written submissions on it. She did so the following day. She provided an article by the former Chief Justice Strathy of the Court of Appeal for Ontario titled "The Litigator and

Mental Health", a Globe and Mail article about it, and references to various reports about mental health from the Law Society of BC website.

[48] Her written submissions included the following:

> With hindsight, however, it has become abundantly clear to me that I have had to struggle with a progressive form of PTSD not only because of the trauma created by the theft, but because of the stress that came Post-Theft given the relentless persecution from more than a few malevolent evil doers which followed the April 2016 disaster.
>
> Although I have attempted to disguise my growing "disorder" by increasingly referring to it as "depression" - especially given the relentless allegations associated with the recent disbarment hearings - I now have to appeal to the LSBC and your hearing panel to not only respect that I have been suffering from PTSD, but also to honestly consider the role the LSBC may have unwittingly played in causing this syndrome to worsen ever since the trauma caused by the theft.

[49] In the context of an adjournment application in December 2023 the Respondent's counsel provided some medical evidence. He provided a letter dated November 24, 2022 from T. Chan, Registered Clinical Counsellor, who said that the Respondent "continues to present with significant depressive symptoms although she does not meet the full criteria for a diagnosis of Major Depressive Disorder."

[50] A Discharge Summary of the Respondent's hospitalization between September 21 and 26, 2023 was provided. That Summary stated: "In summary, this 57-year-old woman presents with depressive symptoms in the context of substantial psychosocial stressors resulting in suicidal ideation. She has responded well to support in hospital and at this point is suitable for ongoing care in the community."

[51] Shortly after her hospitalization in BC the Respondent travelled to be with family in China. An Outpatient Medical Record was provided concerning a consultation on November 2, 2023. That record shows a diagnosis of depressive state and anxiety state. Hospitalization was recommended but refused. A further Outpatient record for November 14, 2023 was also provided. The medical history in that record states:

> Medical History: After the last visit, hospitalization was suggested, but the patient did not follow the medical advice and left the hospital. Previously received treatment in Canada, details of medication unknown; has been taking medication for 2 months with no effect. Continues to feel low mood, lethargic, unwilling to

> do things, and has suicidal thoughts. Poor appetite, weight loss details unknown. Mental clarity is not good. Poor sleep, easily awakened, difficulty falling asleep.

[52] The record shows a diagnosis of depressive state, anxiety state, and sleep disorder. Hospitalization was again recommended and refused.

[53] Despite her self diagnosis, there is no medical evidence that the Respondent is suffering from post traumatic stress disorder. All the medical evidence that she has provided relates to depression and anxiety. None of the medical evidence relates to the time in which the conduct we are considering occurred. Importantly none of the medical evidence shows how her mental health affected the conduct with which we are concerned.

[54] We considered the medical evidence provided in the December 2023 adjournment application and granted the adjournment sought. The Respondent appeared at this hearing in January 2024 by video link from China and made submissions. Having considered the medical evidence submitted we conclude that it does not provide an excuse for her conduct or provide a basis for a mitigating factor to consider when determining the appropriate disciplinary action.

CONCLUSION ON UNGOVERNABILITY

[55] As early as 2016 the Conduct Review Subcommittee expressed a concern that there might be "a pattern emerging" of the Respondent failing to act appropriately. In the disciplinary action decision in *Law Society of BC v. Guo*, 2022 LSBC 03, the panel expressed a concern, when reviewing the Respondent's PCR at that time, about her "ability to comply with regulatory requirements in the future." The panel's concerns were warranted and subsequent decisions against the Respondent show that she is not able to do so.

[56] The evidence shows the Respondent is unwilling or unable to comply with regulatory requirements. She has shown a complete disregard for the regulatory processes that govern her conduct such as trust accounting rules, conflict of interest rules and her obligation to be a gatekeeper. She has obstructed the Law Society's ability to regulate her practice in the public interest by refusing to respond to inquiries, by providing false, inaccurate and incomplete answers, and by failing to comply with orders made by the Law Society. Allowing her conduct to continue would undermine the public's confidence in the integrity of the profession.

[57] She has not shown that she is capable of rehabilitation. Further, with respect to one of the fundamental obligations to be candid, honest and responsive to the Law Society she has shown no change.

[58] In the *First Ungovernability Decision* the panel noted that the Respondent testified that since 2018 she had learned her lesson and improved in regard to answering questions from the Law Society. The answers to questions from the Law Society in this matter, that we have found were false, were made in March 2019. In the hearing before us, which occurred after the disciplinary action hearing leading up to the *First Ungovernability Decision*, the Respondent testified that her answers given to the Law Society that were the subject of the Citation before us were truthful. We did not accept her evidence in that regard. Despite her assurance to prior panels that she has learned her lesson she continues to provide evidence that cannot be believed.

[59] The Respondent has also failed to show any insight into her failings; failings which have been found by several previous panels. Her description of the one event that is a central part of the narrative as described by the Respondent is revealing. The event is the theft of approximately $7.5 million from her trust account by her bookkeeper. The panel in *Law Society of BC v. Guo,* 2021 LSBC 43, found that the Respondent facilitated the theft by failing to appropriately supervise her bookkeeper, failing to ensure strict compliance with the trust accounting rules and leaving a series of blank previously signed trust cheques with the bookkeeper.

[60] In the Respondent's direct evidence at the facts and determination hearing in this matter she described at great length the details of the theft, her efforts to seek justice in China against the bookkeeper and his accomplice, and the efforts she made to ensure her clients were not harmed. She repeated the same story during her submissions in this hearing. At no time did she refer to the fact that she had facilitated the theft. Nor did she acknowledge that her efforts to avoid loss for her clients involved misappropriation from other clients, breach of an undertaking given to the Law Society and breach of a 3-10 Order.

[61] The fact that she can not be trusted to be truthful, accurate and responsive, and that she shows no insight which would enable her to rehabilitate herself makes her ungovernable. The totality of the numerous findings made against her for conduct spanning more than a decade show that she cannot be trusted to comply with her obligations as a lawyer in the future.

[62] We find that the Respondent is ungovernable.

[63] The consequence of that finding is that the Respondent must be disbarred. Numerous panels have concluded that disbarment is necessary following a finding of

ungovernability. We are not aware of any case where a lawyer who has been found to be ungovernable was permitted to continue to practice. It would be illogical to do so. In *Spears*, the panel stated at paragraph 8:

> The Law Society's mandate to regulate lawyers in the best interests of the public cannot be fulfilled if it permits lawyers who have demonstrated ungovernability to continue to practice.

[64] We order that the Respondent be disbarred.

APPROPRIATE SANCTION ABSENT UNGOVERNABILITY

[65] If we are wrong in our finding that the Respondent is ungovernable, it is necessary to consider the appropriate disciplinary action in the absence of a finding of ungovernability. Accordingly, we will determine the appropriate sanction in the absence of such a finding.

[66] A disciplinary action imposed following a finding of professional misconduct must fulfill the Law Society's statutory duty to uphold and protect the administration of justice. This duty includes protecting the public from professional misconduct and maintaining public confidence in the profession and the Law Society's discipline process.

[67] *Law Society of BC v. Ogilvie*, [1999] LSBC 17, sets out a non-exhaustive list of factors to be considered in assessing the appropriate disciplinary action. Not all factors need to be considered in every case, and the weight given to each depends on the circumstances. The relevant factors for the present purposes are considered below under the broader headings identified by the panel in *Law Society of BC v. Dent*, 2016 LSBC 5, namely:

(a) nature, gravity and consequences of conduct;

(b) character and PCR of the Respondent;

(c) acknowledgement of the misconduct and remedial action; and

(d) public confidence in the legal profession.

[68] As recognized by the review panel in *Law Society of BC v. Lessing*, 2013 LSBC 29, the *Ogilvie* factors reflect the object and duty of the Law Society as set out in section 3 of the *Act*. Where there is a conflict between the protection of the public and rehabilitation of the respondent, the protection of the public including protection of the public confidence in lawyers generally will prevail.

Nature, gravity. and consequences of misconduct

[69] The findings of professional misconduct arising from acting in a conflict of interest are especially significant. The duty of loyalty owed to a client is one of the core values of the legal profession.

[70] We found the Respondent acted in a clear conflict of interest that was "an elephant in the room." The Respondent either turned a blind eye to, or did not see, that conflict. This conduct strikes at the core of the solicitor-client relationship and justifies imposing a significant sanction.

[71] Often breaches of trust accounting rules are considered to be less serious in the spectrum of misconduct. The breaches we found in this case are serious because of the Respondent's "almost complete and utter disregard" for the trust accounting rules.

[72] The proper handling of trust funds is an integral part of the practice of law and the integrity of, and public confidence in, the legal profession. The public must be able to entrust property, and particularly money, to members of the legal profession knowing that it will be properly accounted for. In these circumstances a significant sanction is justified.

[73] We found the Respondent failed to act as a gatekeeper of her trust account to ensure it was only used for its intended purposes. A lawyer's trust account is impressed with solicitor-client privilege and the Respondent's failure to act as a gatekeeper creates serious risk to the public interest.

[74] We found that the Respondent was required to make reasonable enquiries arising from the objectively suspicious circumstances, including: that the individuals were all residents of China who the Respondent never met and had no direct contact with; the individuals were referred to the Respondent by her contact person with the SO clients; the Respondent did not know whose funds she actually received; there was no evidence of a transaction for two individuals; and the fact that the Respondent was only acting as a "money holder".

[75] The absence of evidence of harm to anyone does not assist the Respondent. We found that because of her failures no one involved with this matter knew whether or not actual harm occurred. The harm we found was that the Respondent did not know whether the purpose for which the depositors used her trust account was legitimate.

[76] We found the Respondent showed a concerning lack of appreciation of her ethical obligations. This conduct, especially in the context in which it occurred, is extremely serious and justifies a significant sanction

[77] Lastly, we found the Respondent provided false information to the Law Society that was "motivated by a concern that the Law Society was investigating her for money laundering" with a view to distancing herself from her clients. We also found that she provided inaccurate answers without making any sincere effort to ensure their accuracy. In general, we found that the Respondent was evasive and untruthful and disingenuous in her dealings with the investigator. The investigation in which those misrepresentations were made arose out of her failure to respond to the Custodian's request for information.

[78] The failure to respond to Law Society inquiries and the failure to provide complete and honest answers is one of the most serious forms of professional misconduct. The panel in *Law Society of BC v. Guo*, 2022 LSBC 30, stated at paragraph 227:

> … this Panel finds that the failure to respond or cooperate fully with the Law Society, and the provision of incorrect or misleading information in the course of an investigation as set out above, is among the gravest forms of misconduct; the Law Society's ability to investigate client complaints and lawyer misconduct goes to the heart of its obligations under section 3 of the *Act* to protect the public. These breaches were numerous, lasted throughout the Investigation over a number of years, and the implicit harm to public interest by hampering or delaying the Investigation cannot be overstated.

Character and PCR of the Respondent

[79] When considering the appropriate sanction outside of an ungovernability analysis we must consider the Respondent's PCR at the time of the offending conduct. The underlying conduct in this matter occurred between August 2014 and February 2016. The failure to respond to the Custodian occurred between August and December 2018. The false and evasive answers occurred between February 2019 and July 2020.

[80] Prior to the underlying conduct the Respondent had been subject to one Practice Standards Review. During the underlying conduct the Respondent was subject to another Practice Standards Review and two Conduct Reviews.

[81] In the second Practice Standards Review it was recommended that she reach out to other lawyers and practice advisors to obtain advice when she was uncertain what to do as a lawyer. In the first Conduct Review the Subcommittee expressed concern about her refusal to acknowledge that she had not handled the transaction appropriately and that she demonstrated no insight into how such a situation might be avoided in the future. In the Second Conduct Review the Subcommittee noted that a pattern of inappropriate conduct might be emerging.

[82] At the time of her failure to respond to the Custodian and providing false and evasive answers to the investigator (August 2018 to July 2020), in addition to the matters referred to above, she had been subject to:

1. the April 2016 Undertaking;
2. the August 2016 Order;
3. the March 2017 Order;
4. two citations issued in September and December 2018;
5. the May to June 2019 Suspension; and
6. three citations issued May and June 2020.

[83] The Respondent was, during this time, fully involved in the disciplinary process of the Law Society and had to have known of the importance of responding fully and truthfully to the Law Society. Of note is the March 2017 Order which specifically directed her to provide information requested by the Custodian within three business days.

[84] We find that at the time of the offending conduct in this matter the Respondent's PCR must be considered to be an aggravating factor.

Progressive discipline

[85] When a lawyer has a series of adverse findings made against them it may be appropriate to consider imposing more significant sanctions because the lawyer is apparently not modifying their behaviour in response to earlier disciplinary action.

[86] As noted previously, at the time of the underlying conduct (August 2014 to February 2016) the Respondent had been subject to two Practice Standards Reviews and two Conduct Reviews. Prior to failing to respond and providing false answers (August 2018 to July 2020) the Respondent was subject to the April 2016 Undertaking and two 3-10 Orders. She was also administratively suspended in May to June 2019 for failing to provide answers.

[87] In *Law Society of BC v. Batchelor*, 2013 LSBC 09, the panel applied progressive discipline where the respondent's PCR consisted of only one conduct review and one practice standards review. At paragraph 52 of the decision the panel referred to Gavin MacKenzie, *Lawyers and Ethics: Professional Responsibility and Discipline* (Carswell, 1993), paragraph 26.17, at page 26 to 43, as follows:

> Although most participants in the discipline process might agree that similar penalties should be imposed for similar cases of misconduct, the penalties imposed for similar misconduct differ widely, both within and among jurisdictions. This is largely due to the fact that one of the main purposes of the process is to protect the public. It may be entirely appropriate that a lawyer who has proven to be incorrigible be disbarred for the same conduct for which a different lawyer is reprimanded if the discipline hearing panel is reasonably satisfied that the likelihood of recurrence is minimal in the latter case.

[88] We find that it is appropriate to apply progressive discipline in this case.

Acknowledgement of misconduct and remedial action

[89] The Respondent has not acknowledged the misconduct in this matter.

[90] The Respondent's failure to acknowledge wrongdoing has been noted previously. It was noted in three of the Conduct Reviews and the three other disciplinary action decisions note either a complete failure to acknowledge wrongdoing or only a partial acknowledgement.

[91] Although when testifying in the facts and determination hearing in this matter the Respondent said she would do better in the future, we do not accept that late assurance, particularly when during that hearing we rejected other of her evidence as untruthful.

Public confidence in the legal profession

[92] In this regard the Respondent's conduct in failing to respond to the Custodian and providing false and evasive answers to the investigator directly challenged the Law Society's ability to regulate the profession in the public interest.

[93] Where a lawyer's conduct impairs the Law Society's ability to undertake comprehensive investigations of alleged misconduct and to seek appropriate disciplinary action, public confidence in the disciplinary process and the legal profession is also impaired and thus a very serious sanction is required.

Appropriate sanction

[94] The Law Society submits that even absent a finding of ungovernability a sanction of disbarment is necessary.

[95] Where there are multiple findings of professional misconduct arising from a single citation or the findings are significantly intertwined a global disciplinary sanction is appropriate (*Law Society of BC v. Gregory*, 2022 LSBS 17, at para 21).

[96] In this matter professional misconduct was found in relation to five separate allegations. The facts in all five allegations are interrelated although the allegations concerning failure to respond and providing false and evasive answers are more separate from the other three.

[97] Prior decisions concerning only breach of trust accounting rules, acting in conflict or failing to act as a gatekeeper are not helpful. The same is true of prior decisions dealing only with failing to respond or providing false answers. We will approach the appropriate sanction on a global basis.

[98] In *Law Society of BC v. Huculak*, 2023 LSBC 05, the lawyer was disbarred on the basis of the following:

(a) failing to make inquiries of his client in the face of suspicious circumstances;

(b) failing to identify and verify one client;

(c) misappropriating $4,711;

(d) a PCR of one conduct review; and

(e) a finding that he lacked insight into his misconduct and that he was not amenable to rehabilitating his practice to avoid such conduct in the future.

[99] Except for the misappropriation, the underlying facts in this case are more serious and extensive. The Respondent's PCR is more aggravating and we made specific findings of a failure to respond and providing false, inaccurate and evasive answers.

[100] In *Law Society of BC v. Hall*, 2007 LSBC 26, the lawyer was disbarred on the basis of the following:

(a) findings of professional misconduct with respect to 11 allegations involving failing to abide by Practice Standards directions, failing to keep records required by the Law Society, providing false and misleading reports, and practicing while suspended;

(b) a PCR consisting of one conduct review, four citations that had proceeded through disciplinary action, and an interim suspension; and

(c) the panel noted a "fundamental lack of honesty" on the part of the lawyer and that he showed "a general indifference and even contempt for matters of significance involving the Law Society".

[101] In *Hall* the findings of dishonesty are more serious although we found that the Respondent provided false answers and we did not believe her on material points of her evidence. In *Hall*, the respondent's failure to respond was more significant than the specific findings in this case and his PCR was more serious than the Respondent's PCR at the time of the offending conduct in this case.

[102] In *Law Society of BC v. Lessing*, 2022 LSBC 07 ("*Lessing 2022*"), the lawyer was disbarred on the basis of the following:

(a) findings of professional misconduct with respect to five allegations of failing to respond to the Law Society;

(b) a PCR consisting of six conduct reviews, practice standards recommendations, five administrative suspensions, two citations in which disciplinary actions had been imposed; and

(c) the panel found that his pattern of misconduct was escalating and that prior "remedial efforts have had no meaningful effect."

[103] In *Lessing 2022* the lawyer's PCR was more serious when considering the Respondent's PCR at the time of the offending conduct. His failure to respond to the Law Society was more numerous than the findings in this case but no less serious.

[104] Finding disbarment to be appropriate in this case is consistent with the decisions referred to above.

[105] The misconduct we found in relation to each of the five allegations in the Citation was very serious. The Respondent's proven conduct, in its totality, reveals a lawyer who does not know or does not care about her professional responsibilities to clients or the Law Society's rules and regulation of her. We find based on the Respondent's conduct that she has shown the inability to rehabilitate herself. Her lack of insight and failure to acknowledge her wrongful conduct shows that she will not even make a serious attempt to reform.

[106] The public interest requires that the Respondent not be permitted to practice law. We order that she be disbarred.

COSTS

[107] Under section 46 of the *Act* and Rule 5-11 of the Law Society Rules, a hearing panel may order that a respondent pay the costs of the hearing of a citation. Under Rule 5-11(3), the hearing panel must have regard to the tariff when calculating costs although under Rule 5-11(4) the hearing panel may order no costs or costs in an amount other than that permitted by the tariff, if in the judgment of the panel it is reasonable and appropriate to so order.

[108] The Law Society seeks its costs and disbursements under Rule 5-11 of the Law Society Rules. It submitted a bill of costs in accordance with the tariff in the amount of $45,497.95.

[109] Costs are not ordered as punitive measures for misconduct and are separate and independent from any sanction imposed. They are not intended to address the conduct that is the subject of the citation, but rather the costs resulting in the hearing of the matter.

[110] Although we may deviate from the tariff, no circumstances were brought to our attention that suggested it was reasonable and appropriate to deviate from the tariff in this case. The Respondent referred to the fact that she could no longer afford a lawyer to act for her but did not provide us with any evidence disclosing her assets and current financial circumstances. As a result, we are not prepared to deviate from the tariff.

[111] We order the Respondent to pay costs in the amount of $45,497.95 within 30 days of the issuance of these reasons.