2025 LSBC 20
Hearing File No.: HE20220036
Decision Issued: July 9, 2025
Citation Issued: December 9, 2022

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL

HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

DANIEL JAMES BARKER

RESPONDENT

DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION

Written materials:	May 13, 2025
Panel:	Jennifer Chow, KC, Chair Darlene Hammell, Public representative Sean Rowell, Lawyer
Discipline Counsel:	Lisa M. Low
Counsel for the Respondent:	William B. Smart, KC

OVERVIEW

[1] Following a contested hearing on facts and determination, the parties have requested that the Panel proceed with joint submissions in writing regarding disciplinary action and costs. The Panel has now considered the parties' joint submissions dated May 13, 2025 on disciplinary action.

[2] This disciplinary action decision follows the Panel's decision on facts and determination made February 5, 2025. In that decision (*Law Society of BC v. Barker*, 2025 LSBC 4), the Panel found that the Respondent had committed professional misconduct by (a) failing to be on guard against becoming the tool of an unscrupulous client or other persons and (b) failing to make reasonable inquiries with respect to the 11 client matters set out in Schedule "A" of the Citation, and the 26 trust transactions set out in Schedule "B" of the Citation. The Panel dismissed allegation 1(c) for failing to make records of inquiries under rule 3.27 of the *Code of Professional Conduct for British Columbia* and its Commentary, as we found that no such inquiries were made.

[3] The Panel accepts the parties' joint submission that the appropriate disciplinary action for the proven misconduct is an order that the Respondent be suspended for six months and pay costs in the amount of $19,339.70, inclusive of disbursements, payable within one year of the date this decision is issued.

[4] The Respondent is currently a retired member, thus the suspension would take effect immediately if and when the Respondent resumes practising law.

BACKGROUND

[5] On February 5, 2025, the Panel determined that the Respondent committed professional misconduct in relation to 1(a) and 1(b) of the allegations set out in the citation issued December 9, 2022 and amended July 27, 2023 ("Citation"). In our decision on facts and determination ("F&D Decision"), we found the following misconduct to be proven:

> Between approximately January 2018 and September 2019, in the course of acting in the matters set out in Schedule "A", the Respondent provided legal services and used or permitted the use of his firm's trust account in the instances set out in Schedule "B", in circumstances where he failed to do the following:
>
> (a) be on guard against becoming the tool or dupe of an unscrupulous client or other persons;
>
> (b) make reasonable inquiries about the circumstances, including:
>
> (i) the identity of his clients and other parties;
>
> (ii) the relationships between the parties and certain agents or intermediaries;

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

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

(v) the nature and purpose of the transactions;

(vi) the source of funds received;

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

(viii) the reason for the funds to go through his firm's trust account.

[6] The Panel dismissed allegation 1(c) that the Respondent failed to keep a record of the results of inquiries made, as the Respondent failed to make any inquiries (F&D Decision, para. 479).

THE LAW ON JOINT SUBMISSIONS

[7] Having made an adverse determination against the Respondent, the Panel must now impose an appropriate disciplinary action under sections 38(5) and (7) of the *Legal Profession Act*, SBC 1998, c. 9 (the "*Act*").

Applicable Considerations for Joint Submissions

[8] The joint written submissions set out the parties' position on the appropriate disciplinary action in light of the findings in the F&D Decision and the law as set out in previous Tribunal decisions. The parties propose: (a) a sanction of a six-month suspension and (b) a costs order of $19,339.70, inclusive of disbursements, payable by the Respondent to the Law Society within one year of the date the Panel's disciplinary action decision is issued.

[9] The joint written submissions were presented to the Panel after a contested hearing on facts and determination. Accordingly, Rule 5-6.5 of the Law Society Rules ("Rules") that governs joint submissions consisting of an agreed statement of facts, admission of a discipline violation and consent to a specified disciplinary action is not applicable. The parties in the joint submission suggest the Panel should apply the test set out in *Law Society of BC v. Laughlin*, 2020 LSBC 47 when determining whether to accept the joint proposal on sanction. However, the review board in *Laughlin* specifically declined to determine which test applies. In that case, the Law Society submitted that there were Tribunal decisions that had assessed joint submissions made outside of Rule 5-6.5 based on whether the jointly proposed sanction was "fair and reasonable". The Law Society

urged the review board to instead apply the test as articulated in *Anthony-Cook* which endorsed a "public interest" test. The review board found the following at para. 38:

> In this case, the Review Board does not have the benefit of written submissions from the Respondent regarding whether the "fair and reasonable" or "public interest test" is the correct test to apply in determining when it is appropriate for a hearing panel to depart from a joint submission on [sanction]. In addition, the Review Board does not have the benefit of oral argument on this point. As set out below, the Review Board finds that the hearing panel was incorrect in departing from the joint submission regardless of what test is applied. For all these reasons, the Review Board determines that this is not an appropriate case in any event to consider which test should be followed in British Columbia.

[10] The parties also referred to *Law Society of BC v. Seeger,* 2022 LSBC 29, in which the hearing panel also considered the test to be applied in determining whether to accept a joint proposal on sanction. *Seeger* also involved a joint proposal where Rule 5-6.5 did not apply. The parties encouraged the panel to apply the "public interest test" as articulated in *Anthony-Cook* and subsequently applied in a professional regulatory decision in *Law Society of Upper Canada v. Archambault*, 2017 ONLSTH 86. The panel found the following at para. 11:

> We do not find it necessary to decide whether the sanction proposed in the Joint Submission meets the formulation of the "public interest" test set out in *Anthony-Cook*, either *per se* or as applied in *Archambault*. For the reasons set out in more detail below, we are satisfied that the proposed disciplinary action protects the public interest within the meaning of s. 3 of the *Act* and as developed in this Tribunal's case law. We are also persuaded that the proposed disciplinary action is fair and reasonable in all the circumstances.

[11] The focus for the Panel is to determine whether to accept or reject the jointly proposed sanction. The Panel is not required to address whether it agrees with the entirety of the joint submissions: *Law Society of BC v. Seeger,* 2022 LSBC 29 at paras. 11 and 13.

[12] The Panel agrees with *Seeger*, that the jointly proposed sanction should be accepted as it is fair and reasonable in all of the circumstances and serves the Law Society's mandate to "uphold and protect the public interest in the administration of justice" in s. 3 of the *Act*. Therefore, the Panel finds it is unnecessary to consider the "public interest" test as articulated in *Anthony-Cook* and applied in other Tribunal decisions: *Seeger*, para. 11.

Determining the Appropriate Sanction

[13] The parties submit that the appropriate sanction must be considered on a "global" basis where the sanction is appropriate for the entire scope of the proven misconduct rather than determining sanctions on a piecemeal basis: *Law Society of BC v. Lessing*, 2013 LSBC 29 at paras. 75 to 78.

[14] In this case, there is one allegation of misconduct covering multiple client matters and transactions. The connecting thread is the involvement of the notorious alleged fraudster AB and the Respondent's failure to make the necessary inquiries that would have prevented him from being the dupe of that alleged fraudster when performing legal services and using his trust account. Both allegations 1(a) and (b) arise from the wording of commentaries to rule 3.2-7 of the *Code of Professional Conduct for BC* which requires a lawyer to "not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud".

[15] Commentary 1 notes that a "lawyer should be on guard against becoming the tool or dupe of an unscrupulous client, or of others, whether or not associated with the unscrupulous client." Commentary 3 provides that "…if a lawyer has suspicions or doubts about whether [they] might be assisting a client in any dishonesty, crime of fraud, the lawyer should make reasonable inquiries …." Commentary 3 sets out actions the lawyer must take to "be on guard". The Panel's findings with respect to allegation 1(a) sets out the red flags that triggered the Respondent's duty to inquire as alleged in allegation 1(b)(i) to (viii). Any global sanction must take into account the connection and overlap between allegations 1(a) and (b).

[16] *Law Society of BC v. Ogilvie,* [1999] LSBC 17, provides a non-exhaustive list of factors that can assist in determining an appropriate disciplinary action ("*Ogilvie* Factors") as follows:

(a) the nature and gravity of the conduct proven;

(b) the age and experience of the respondent;

(c) the previous character of the respondent, including details of prior discipline;

(d) the impact upon the victim;

(e) the advantage gained, or to be gained, by the respondent;

(f) the number of times the offending conduct occurred;

(g) whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;

(h) the possibility of remediating or rehabilitating the respondent;

(i) the impact upon the respondent of criminal or other sanctions or penalties;

(j) the impact of the proposed penalty on the respondent;

(k) the need for specific and general deterrence;

(l) the need to ensure the public's confidence in the integrity of the profession; and

(m) the range of penalties imposed in similar cases.

[17] Not all of the *Ogilvie* Factors are applicable in every case. Which ones apply will depend on the particular circumstances of the lawyer and the misconduct that led to the disciplinary proceeding: *Lessing* at para. 56; *Law Society of BC v. Faminoff*, 2017 LSBC 4 at paras. 83 to 85. As the review board held in *Faminoff* at para. 84, a decision on sanction is an "individualized process that requires the hearing panel to weigh the relevant factors in the context of the particular circumstances of the lawyer and the conduct that has led to the disciplinary proceedings." The review board also held at para. 86, that disciplinary actions "may need to evolve over time to ensure the public continues to have confidence in the integrity of the profession".

[18] Additionally, the review board noted that the consideration of mitigating or aggravating circumstances will assist in determining the appropriate range of sanctions: *Faminoff* at para. 87; *Seeger* at para. 16. Where there is a conflict between rehabilitation of the lawyer and the protection of the public, the latter prevails: *Lessing* at paras. 57 to 61.

DISCUSSION ON APPLICABLE *OGILVIE* FACTORS

[19] The joint written submissions adopted the reasoning in *Law Society of BC v. Dent*, 2016 LSBC 5 at para. 19 and made submissions on the basis of the following consolidated *Ogilvie* Factors set out in *Dent*:

(a) nature, gravity and consequences of the misconduct;

(b) character and professional conduct record of the respondent;

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

(d) public confidence in the legal profession including public confidence in the disciplinary process.

Nature and gravity of the misconduct

[20] The proven misconduct is serious as lawyers serve a gatekeeping role in managing their trust accounts and must take care not to be duped by unscrupulous persons. The Respondent's failure to make reasonable inquiries and be on guard against becoming the tool of an unscrupulous client or other persons occurred, not because the Respondent was inexperienced or negligent, rather because the Respondent was wilfully blind to numerous red flags (F&D Decision, para. 429). The finding of wilful blindness elevates the seriousness of the Respondent's misconduct.

[21] "Wilful blindness" means that a lawyer suspects the dishonest activity, but deliberately refrains from making further inquiries for fear of confirming those suspicions: *Law Society of Ontario v. Barnwell,* 2024 ONLSTA 15 at para. 92 citing Appeal Division, *Purewal v. Law Society of Upper Canada*, 2009 ONLSAP 10. The lawyer is aware that he should open his eyes and become knowledgeable as to both the risk and the possible consequences of engaging in the risk, but chooses not to, preferring to remain blind to the risk and possible consequences: *Barnwell* at para 88.

[22] Wilful blindness is tantamount to knowledge in the administrative law context. The Appeal Division panel in *Barnwell* quoted with approval the Appeal Division panel in *Purewal*, in the context of lawyers possibly assisting clients with dishonesty, crime or fraud. *Purewal* stated at paras. 32 and 33, as follows:

> "Willful blindness" means that a licensee actually suspects the dishonest activity, but deliberately refrains from making further inquiries for fear of confirming these suspicions. "Recklessness" means that a licensee is aware of the risk that the activities in which he/she is participating or assisting are dishonest, but continues on despite the risk.
>
> It is obvious why these states of mind, properly understood, are tantamount to knowledge. Where they exist, the licensee actually suspects fraud and deliberately refrains from confirming it or sees the danger that this is fraud, but takes the chance and proceeds anyway.

[23] The parties jointly submitted that a sanction for wilful blindness should attract a higher sanction than conduct that was merely reckless. The Panel agrees that the degree of culpability is relevant to sanction; in this case the red flags were so obvious the

conduct in turning a blind eye and failing to make inquires approaches knowingly assisting the alleged fraudster.

[24] The Respondent was wilfully blind to the red flags. His obligation in the circumstances was to make inquiries and yet despite the obvious red flags he deliberately refrained from making those required inquires. The sanction chosen should be one that sends a strong message of general deterrence to the legal profession that wilful blindness towards obvious suspicious activities will not be tolerated. Failing to do so risks losing the public's confidence in the legal profession and disciplinary process.

[25] In this case, the Panel's finding of wilful blindness applied to events that occurred over a 20-month period, between January 2018 and September 2019. During this time, the Respondent was not acting for 1 but 13 clients with respect to 11 real estate litigation matters such as foreclosures, specific performance and promissory notes.

[26] The Panel found in the F&D Decision that the Respondent was wilfully blind not just to a few, but to numerous red flags (paras. 348 to 350, 354, 374 to 421) including:

(a) The involvement of notorious alleged fraudster, AB, in all of the Schedule "A" files, even though he was not a client and was not named as a party to the litigation matters or transactions (paras. 375, 378, 386).

(b) Learning early on in his retainer that AB was the notorious alleged fraudster. The Respondent's articling student wrote him two memos identifying AB as the notorious alleged fraudster and included a link to a newspaper article addressing AB's alleged fraud. The articling student also passed along warnings received from opposing counsel that the Respondent's clients were dangerous people (paras. 376 to 377).

(c) Learning in or around April or May 2018 that AB was an undischarged bankrupt (para. 379).

(d) The allegations in court documents about AB, including the S Avenue litigation, the AA Bank litigation and the promissory note litigation, were serious and not trivial (para. 380). Four of the litigation files asserted that the Respondent's clients were merely agents for AB and that AB was the beneficial owner of the property that was the subject matter of the litigation (para. 380).

(e) Several corporate records of the Respondent's numbered company clients showed the corporations were incorporated by AB, with numerous historical changes of directors, sometimes including numerous

changes on the same day. The names of the directors changed from AB, AB's wife and the Respondent's client, EF. This ought to have been a red flag to the Respondent because, as an undischarged bankrupt, AB was not permitted to be a corporate director, yet was still giving instructions despite not being named as a director anymore (paras. 379, 387).

(f) Learning early on in his retainer that AB and the Respondent's client EF were subject to a default judgment order pertaining to a fraudulent cheque kiting scheme against AA Bank (paras. 30, 171 to 179).

(g) Accepting instructions from AB with respect to the 11 client litigation matters even though there was no indication that the clients were unable or unavailable to communicate and instruct the Respondent directly and failing to confirm AB's instructions directly with the clients (paras. 382 to 384).

(h) Receiving hundreds of thousands of dollars from AB despite not knowing what he did for a living and knowing that he was an undischarged bankrupt. These funds were received in the form of various bank drafts, which meant they were not traceable to the source. The funds received from AB were used to pay the Respondent's fees on the Schedule "A" files even though AB was not a named client. The rest of the funds received into the Respondent's trust account were disbursed to AB's associates (paras. 397 to 401).

(i) Receiving all of the important documentation and information that was needed to represent his clients from AB, without any explanation as to why AB would have access to such information (paras. 354(i), 374).

(j) Acknowledging potential conflicts of interest in representing both AB and EF but receiving instructions from AB on all of EF's files and preparing a Response to Civil Claim for AB in the promissory note action despite not representing AB (paras. 354(c), (d), 374).

(k) Receiving copies of $80,000 and $100,000 bank drafts on two different occasions and then receiving different bank drafts, with no explanation as to why the copies of the earlier versions were not being used, and from an entity with no apparent interest in the Respondent's files. Further, being asked to disburse those same funds to the Respondent's purported client MM and Number Company 13 without any explanation as to why they were provided (paras. 354(u), 374, 425-426).

(l) Receiving consent from his client EF to pay a $250,000 bonus in the Retainer and Contingency Agreement for one of the litigation matters (paras. 354(t), 374).

(m) Being retained by EF to represent him in the S Avenue litigation matter shortly before trial and only one month before scheduled cross examination (paras. 354(s), 374).

[27] While the Respondent argued that he did not need to be on guard about AB because he was dealing with the defence of litigation matters, the evidence showed that on various occasions he was asked by AB to place additional mortgages on the same properties that were subject to the litigation he was defending. This was also a red flag (para. 389 to 396).

[28] It is also aggravating that the Respondent received advantages and potential advantages as a result of being wilfully blind. The advantages included referrals of foreclosure work from AB's associate and articling student's father, PN (para. 48), and being taken on numerous international trips paid for by his client to "consider possible investments" (para. 396). The potential advantages included contingency fees in the amount of $250,000 for defending litigation matters (para. 97, 354).

[29] The Panel found that as a result of being wilfully blind, the Respondent failed to make reasonable inquires and to be on guard against becoming the tool of unscrupulous persons with respect to 26 trust account transactions listed in Schedule "B" of the Citation where he received and disbursed funds in the amount of $255,530 (paras. 399 to 400).

[30] The Panel found the Respondent failed to discharge his duty as a gatekeeper over his trust account stating:

> [423] In regard to all of the Schedule "B" transactions, the circumstances were such that AB was the individual providing funds directly to the Respondent rather than the Respondent's clients. In order to fulfill his gatekeeper function, whether AB was a notorious alleged fraudster or not, the Respondent was required to identify and verify the source of funds with his clients before the funds were deposited into his trust account.
>
> [424] Given that AB was a notorious alleged fraudster, there was an additional need for the Respondent to identify and verify that the source of funds was flowing from his clients, rather than from AB.
>
> …

> [427] In all of the circumstances, the Respondent was required to confirm directly with his clients that they were the source of the funds and to confirm their respective instructions on how the funds would be disbursed.
>
> [428] Since AB was a notorious alleged fraudster, the Respondent could not rely on AB's word. The Respondent was not on guard about AB's role in relation to his clients' litigation matters as the Respondent had no written agreement clarifying AB's role with his clients, had no information about AB's line of work and had no information to confirm that AB was in fact communicating all relevant information on his clients' or on his own behalf regarding the clients' funds or instructions on the Schedule "B" transactions.

[31] The Respondent's failure to discharge his duties as a gatekeeper over his trust account and make reasonable inquires is serious misconduct. A lawyer's trust account is impressed with solicitor-client privilege and the failure of the Respondent in his duty to act as a gatekeeper of his trust account creates serious risk to the public interest: *Law Society of BC v. Gurney*, 2017 LSBC 15 ("*Gurney facts and determination*"); and *Law Society of BC v. Gurney*, 2017 LSBC 32 ("*Gurney disciplinary action*"). As the hearing panel in *Gurney disciplinary action* explained:

> [36] …the legal profession has the responsibility for policing itself with regard to the use of lawyers' trust accounts. This means that there is a need for lawyers to understand the importance of their role in acting as gatekeepers to their trust accounts and to ensure that they make the necessary inquiries with regard to transactions that reasonably appear to be suspicious prior to their allowing funds to be deposited into their trust accounts. General deterrence requires the profession to understand that the breach of that professional duty will be treated as a serious breach.
>
> [37] For the reasons set out above dealing with the need for general deterrence, the fact that lawyers are constitutionally exempt from the Proceeds of Crime Regime requires breaches of the gatekeeper function with regard to lawyers' trust accounts be taken seriously to preserve the public confidence in the integrity of the profession.
>
> [38] In order to preserve the public confidence, the Respondent's professional misconduct must be considered a serious breach.

[32] The Panel agrees with the joint written submissions that the totality of evidence demonstrates serious failures on the part of the Respondent and calls for a significant sanction and clear message to the profession that wilful blindness towards one's legal obligations will not be tolerated.

Character and professional conduct record of the Respondent

[33] The Respondent was called as a lawyer in British Columbia on May 10, 1984, and retired, after the F&D Hearing and before issuance of the F&D Decision, on December 7, 2024. Between 2000 to 2011, he had active status as a lawyer in Québec. In 2011, he opened his own firm called "Barker & Company".

[34] While the Respondent had limited experience in foreclosure proceedings in early 2018 and primarily focussed on civil litigation (about 60 to 80 per cent), the Respondent was a senior 35-to-36-year call at the time of the proven misconduct. Given his level of seniority he ought to have known better: *Gurney disciplinary action* at para. 15, *Law Society of BC* v. *Gregory,* 2022 LSBC 17 at para. 117; *Law Society of BC* v. *Uzelac,* 2020 LSBC 58 at para. 64. As such, the appropriate sanction should be one that is higher than the three month suspension ordered against the "overly credulous" junior lawyer in *Law Society of BC v. Osei*, 2022 LSBC 43 at para. 56, and the four-month suspension ordered against the unwitting dupe lawyer in *Law Society of BC v. Hsu*, 2019 LSBC 29 at para. 25.

[35] The Respondent's professional conduct record at the time of the F&D Hearing included a conduct review from February 29, 1988, with respect to making allegations that opposing counsel had misled the court without sufficient evidence to justify the allegation. No citation or further disciplinary action was ordered. The parties submit that the Respondent's professional conduct record is neither aggravating nor mitigating because the entry is dated and unrelated to the proven misconduct in question. The Panel takes this submission to mean that there is no need to proceed on the basis of progressive discipline. On that basis, the Panel agrees.

Acknowledgement of misconduct and any remedial action

[36] The joint written submissions state that the Respondent has not acknowledged his misconduct nor taken any remedial action. During the investigation of this matter and the F&D Hearing, the Respondent refused to admit that his conduct was inappropriate and argued that he was not required to make reasonable inquiries because he was defending his clients in litigation matters.

[37] In *Law Society of BC v. Palmer*, 2023 LSBC 24 at para. 36, the hearing panel noted that the lack of an admission and the mounting of a robust defence do not justify the imposition of a more severe penalty. The hearing panel stated:

> [36] As a result, we find that the Respondent needlessly increased the length and complexity of this proceeding by disputing facts and leading evidence that was self-serving and had little or no merit. In making this finding, we recognize that

> the lack of an admission and the mounting of a robust defense does not justify the imposition of a more severe penalty; nevertheless, a failure to accept professional responsibility and a denial of the underlying misconduct in circumstances where the evidence proves that the misconduct occurred, is a relevant consideration in emphasizing the lack of extenuating factors that might justify a lesser penalty.

[38] The joint written submissions stated that in this matter, even though the Respondent has now reached an agreement with the Law Society as to the appropriate disciplinary action, this does not mandate or justify a lesser sanction. Therefore, the parties submit this factor is neither mitigating nor aggravating. The Panel agrees that this is a neutral factor.

Need to Ensure the Public's Confidence in the Integrity of the Profession and the Disciplinary Process

[39] Central to the over-arching Law Society mandate is maintaining public confidence in the legal profession, to ensure that the public interest in the administration of justice is upheld and protected: s. 3 of the *Act*; and *Seeger*, at paras. 11 and 13.

[40] The appropriate sanction for the Respondent's misconduct must reflect the Respondent's very serious misconduct in ignoring the multitude of red flags and being willfully blind to his professional responsibilities to make inquiries with the goal of avoiding assisting his clients in dishonesty, crime or fraud. Any sanction must send a clear message to the public and the legal profession that ignoring these obligations will not be tolerated. Such a sanction must ensure the public maintains confidence in the discipline process and the legal profession.

Range of Penalties Imposed for Similar Misconduct

[41] As an administrative tribunal, the Panel is not "bound" to follow previous decisions in the same way that a court might be. However, the Panel should consider whether the proposed disciplinary action falls within the range of sanctions previously ordered in similar cases (*Dent*, at para. 39). Doing so, and maintaining consistency in discipline sanctions, maintains public confidence in the self-regulation by the Law Society of the legal profession and in the disciplinary process.

[42] As set out below, the proposed suspension of six months is within the range of sanctions previously ordered for this type of proven misconduct.

[43] The suspension sought aligns with the same suspension ordered in *Gurney disciplinary action* where the lawyer failed to make reasonable inquiries about the

circumstances of the use of his trust account to receive and disburse $26M in offshore funds without providing substantial legal services.

[44] In *Gurney disciplinary action*, the panel found it aggravating that the respondent authorized four transactions (and seven deposits) over the course of two months involving $26M (para. 22). Although the panel in *Gurney disciplinary action* found that the frequency of the transactions and amount of money involved were aggravating factors, it is of note that the present circumstances are far more aggravated: the Respondent's misconduct included 26 impugned trust transactions over a 20-month period. While the amount that flowed through the trust account is less, the frequency of transactions and the prolonged time period over which they occurred make it more egregious: *Gurney disciplinary action* at paras. 19 to 22.

[45] The panel in *Gurney disciplinary action* found the lawyer's senior experience at the bar to be aggravating because he ought to have known that his trust account should have been maintained with integrity (para. 15). Similarly, the Respondent's senior experience meant that he should have known to make reasonable inquires and be on guard against becoming a tool of unscrupulous persons rather than being wilfully blind.

[46] In terms of mitigating factors, Mr. Gurney did not have a disciplinary record. The parties submit the Respondent's dated disciplinary record is not mitigating but rather a neutral factor in this case. The Panel also notes that the Respondent's one and only conduct review occurred early in the Respondent's legal career and that based on the joint written submissions, the Panel is not being asked to consider the application of the principle of progressive discipline.

[47] With respect to the nature and gravity of the misconduct, the panel in *Gurney disciplinary action* stated there was no defined victim, but the conduct exposed the public to the risk of the misuse of a lawyer's trust account and held "[t]hat is why the gatekeeper role is so important, and it is so even in the absence of a complaint from a victim." (para. 17). The Respondent's misconduct also exposed the public to the risk of the misuse of the Respondent's trust account. The risk to the public was heightened due to the red flags pertaining to the notorious alleged fraudster, AB, who is linked to one of the largest reported losses in the Law Society's history.

[48] After a thorough analysis, the panel in *Gurney disciplinary action* determined that the appropriate sanction was a six-month suspension. In addition, the panel ordered disgorgement of $25,845 representing the fees earned by the Respondent, payable to the Law Society, and trust conditions (paras. 46 to 65). It is of particular note that the panel stated that disgorgement was about deterrence (para. 62). In other words, the imposition of the disgorgement order helped to address the deterrence issue, thereby reducing the necessary suspension.

[49] The joint written submissions state that there is no additional disgorgement feature to a possible sanction that would assist in addressing the deterrence issue here. As a result, the need for an appropriate length of suspension is paramount. The Panel agrees.

[50] With respect to other cases involving wilful blindness, the three-month sanction ordered in *Law Society of BC v. Yen*, 2021 LSBC 30 ("*Yen disciplinary action*") is not comparable, as there was not an express finding of wilful blindness at the facts and determination hearing: *Law Society of BC v. Yen*, 2020 LSBC 45 ("*Yen facts & determination*"). The comment in *Yen disciplinary action* that Ms. Yen was "at best wilfully blind" was one of the issues considered at the s .47 review: *Yen disciplinary action*, at para. 24; *Law Society of BC v. Yen*, 2023 LSBC 2 ("*Yen review*").

[51] The board in *Yen review* rejected the respondent's argument that the language in *Yen disciplinary action* and *Yen facts and determination* was inconsistent with a finding of wilful blindness, and held that it was not necessary to make a finding of wilful blindness (paras. 24, 34 to 36, 52, 53). Rather, the review board held the respondent's failure to make the inquiries constituted "gross culpable neglect of her duties", and therefore upheld the panel's finding in *Yen facts and determination* that the respondent's actions constituted professional misconduct.

[52] Given that wilful blindness is a deliberate choice by a lawyer to ignore red flags and refuse to seek out the truth, a finding of wilful blindness should attract a higher sanction than one ordered for gross culpable neglect of duties such as in the *Yen review*. It is noteworthy that the board in *Yen review* stated, at paras. 108 to 109, that it might have been "inclined to impose a sanction longer than the three months imposed by the hearing panel", but the board declined to "tinker" with the hearing panel's decision and found the sanction was reasonable and fell within the range of appropriate sanctions. However, the board also declined to reduce the sanction from three months despite overturning the hearing panel's finding of professional misconduct for the failure to record the source of the funds (allegation 2).

[53] Disbarment is also within the range of appropriate sanctions where a lawyer is found to be wilfully blind. In *Law Society of BC v. Huculak*, 2022 LSBC 26 ("*Huculak disciplinary action*"), the lawyer was disbarred for his failure to be on guard against becoming the tool of unscrupulous persons, his failure to carry out his gatekeeper function, and misappropriating funds. In *Law Society of BC v. Huculak*, 2023 LSBC 5 ("*Huculak facts and determination*") the hearing panel found the lawyer either knew that some of the circumstances surrounding the impugned transactions were suspicious, or he was reckless or wilfully blind to them (para. 20). While the finding of misappropriation contributed to the disbarment sanction, the hearing panel in *Huculak disciplinary action* said it had little faith that the respondent, when faced with similar circumstances, would

be on guard against becoming the tool or dupe of unscrupulous persons, make reasonable inquiries, and decline to act until there was a reasonable basis that the transaction was legitimate (paras. 37). The hearing panel held that the conduct in this regard was serious, not isolated, and likely to occur again in the future, and therefore, the risk was too great to the public if the respondent were to continue to practice law (para. 62).

[54] In the present case, in considering the appropriateness of the joint proposed sanction, it is important to bear in mind that the circumstances of the proven misconduct are highly aggravated. The misconduct involved the Respondent being wilfully blind to numerous obvious red flags from various sources pertaining to not 1 but 11 client litigation matters, that took place over the course of almost two years, and included 26 transactions into and out of his trust account. The Respondent's actions, and at times inaction, impacted the reputation of the profession. The conduct is more serious than that of *Gurney* and, but for the joint submission, would have attracted a higher suspension.

[55] The parties submit that the proposed suspension of six months is a disciplinary action that:

(a) appropriately addresses the seriousness of the global misconduct in this instance;

(b) will be seen to promote and advance the public interest mandate of the Law Society; and

(c) would be consistent with the range of sanctions ordered in other cases with similar misconduct.

[56] The parties submitted that any sanction less than that proposed by the parties would not address the seriousness of the proven misconduct and would not sufficiently protect the public, including the public's confidence in the legal profession. We agree. The six-month suspension proposed by the parties falls at the lower end of the range of appropriate sanctions.

[57] Finally, the parties submitted that the Panel should not depart from the jointly proposed sanction because it meets the test set out in *Laughlin*/*Seeger.* We agree that the jointly proposed sanction meets the test set out in *Seeger:* it is within the range of a fair and reasonable disciplinary action in all the circumstances and serves the Law Society's mandate to "uphold and protect the public interest in the administration of justice" in s. 3 of the *Act*. As such it should be accepted.

DISCUSSION ON COSTS

[58] The parties also submitted that the Respondent be ordered to pay costs in the amount of $19,339.70, inclusive of disbursements, to be paid to the Law Society based upon the tariff in Schedule 4, pursuant to Rule 5-11(3) and s. 46 of the *Act*. Further, because the Respondent is retired, the parties propose that the costs be payable within one year of the date this decision is issued.

[59] Under Rule 5-11 of the Rules, the Panel must have regard to the tariff when calculating costs. The costs under the tariff are to be awarded unless under Rule 5-11(4) the Panel determines it is reasonable and appropriate to award no costs or costs in an amount other than that permitted by the tariff.

[60] The parties submitted that there is no reason to deviate from the application of the tariff in the circumstances of this case.

CONCLUSION AND SUMMARY OF ORDERS MADE

[61] The Panel accepts the parties jointly proposed sanction. Based on our discussion above, the Panel agrees that the total effect of the order of the costs and a suspension is not inordinate or out of proportion to the proven misconduct.

[62] Accordingly, the Panel makes the following orders:

(a) the Respondent is suspended from the practice of law for six months, effective immediately if and when the Respondent resumes practising law; and

(b) the Respondent is ordered to pay to the Law Society costs in the amount of $19,339.70, payable within one year of the date on which this decision on disciplinary action is issued.