2026 LSBC 08
Hearing File No.: HE20250009
Decision Issued: May 15, 2026
Citation Issued: October 18, 2023

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL

REVIEW BOARD

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

LAWYER 20

RESPONDENT

DECISION OF REVIEW BOARD

Hearing dates:	January 14 and 15, 2026
Written Submissions:	January 23 and 29, 2026 February 9, 2026
Panel:	Gurminder Sandhu, KC, Chair Christina J. Cook, KC, Bencher Robert J. C. Deane, KC, Lawyer Susan Kootnekoff, Lawyer Diane McRae, Public representative
Discipline Counsel:	William B. Smart, KC Maryanna T. Dinh
Counsel for the Respondent:	Richard C. Gibbs, KC

INTRODUCTION

[1] The Law Society has sought a review under s. 47 of the *Legal Profession Act*, SBC 1998, c. 9 (the "*Act*") of the facts and determination decision of the Hearing Panel in this matter, issued on July 9, 2025: *Law Society of BC v. Lawyer 20*, 2025 LSBC 19 (the "*F&D Decision*").

[2] In the *F&D Decision*, the Hearing Panel dismissed all of the Law Society's allegations against the Respondent set out in the citation issued on October 18, 2023 (the "Citation"). Before the Review Board, the Law Society now seeks a determination that the Respondent committed professional misconduct in respect of one of the allegations in the Citation, and that he breached the applicable Law Society Rules (the "Rules") in respect of two other allegations in the Citation.

[3] For the reasons set out below, a majority of the Review Board finds that the Hearing Panel erred in certain respects and that the Respondent did breach the applicable Rules, as alleged. A majority of the Review Board also finds that the Respondent did commit professional misconduct in one instance.

[4] With respect to the finding of professional misconduct, there is no suggestion that the Respondent knowingly engaged in any improper activities whatsoever, much less that he knowingly assisted in any dishonesty, crime or fraud, and we find that he did not do so. The Respondent also provided actual legal services in relation to the transactions which are the subject of the Citation. This is a case in which the objective circumstances suggested that caution was required, though, and that reasonable inquiries were required to be timely made. A majority of the Review Board finds that the Respondent did not do so, in breach of his obligations.

[5] In one instance, a majority of the Review Board finds that the Respondent's conduct in fact fell markedly short of the standard the Law Society expects of its members, and a finding of professional misconduct is substituted for the finding of the Hearing Panel under s. 47(5) of the *Act*.

[6] In all other instances, and while our reasoning differs from that of the Hearing Panel, we do not consider that the Hearing Panel erred in dismissing the allegations of professional misconduct. With that one exception in the assessment of a majority of the Review Board, the Respondent's conduct fell short of the conduct the Law Society expects of its members, but not in such a marked way that findings of professional misconduct are otherwise appropriate.

[7] With respect to the Hearing Panel's disposition of the Respondent's alleged breaches of the Rules, a majority of the Review Board considers that, while they can

fairly be described as technical breaches, they were nevertheless breaches, and it was not open to the Hearing Panel to refuse to so find, having regard to the facts the Hearing Panel found had been established in the evidence. We therefore substitute for the Hearing Panel's disposition a finding that the majority of the Review Board considers the Hearing Panel should have made, which is that the Law Society had established the alleged breaches of the Rules.

LAW SOCIETY'S APPLICATION FOR A RULE 5-8 ORDER

[8] At the commencement of the hearing before the Review Board, the Law Society sought an order pursuant to Rule 5-8(2) that:

> (a) no person may publish or broadcast any information that is protected by solicitor-client privilege or client confidentiality or the identity of the Respondent Lawyer 20; and,
>
> (b) if any person, other than the Law Society or the Respondent, seeks to obtain a transcript of this hearing, a copy of any exhibit marked during this hearing, or a copy of the Law Society's or the Respondent's written submissions, any information that is protected by solicitor-client privilege or client confidentiality and identity of the Respondent must be redacted from the document before it is provided to that person.

[9] The application was supported by the Respondent.

[10] We granted the application and made the order sought. At the time, the Respondent had not been found to have engaged in any professional misconduct or any breach of the Rules. We were persuaded that it was in the interests of justice to maintain the confidentiality of the information in a manner consistently with the approach taken by the Hearing Panel. To the extent circumstances are asserted to change in the future, or as may otherwise be appropriate, any party affected by this order may apply for a variation of it.

STANDARD OF REVIEW

[11] We turn then to our review of the Hearing Panel's decision.

[12] The Respondent submits that the appellate standards of review described by the Supreme Court of Canada in cases such as *Benhaim v. St-Germain*, 2016 SCC 48 and *Housen v. Nikolaisen*, 2002 SCC 33, apply, such that the correctness standard applies to questions of law, but the Hearing Panel's findings of fact, mixed fact and law and credibility assessments are subject to deference unless they exhibit palpable and

overriding error. The Respondent emphasizes that it is not the Review Board's role to intervene simply because it would have made findings different from those made by the Hearing Panel, or otherwise weighed the evidence differently.

[13] In our view, the approach required to be taken by a review board constituted under s. 47 of the *Act* to hear an internal review of a hearing panel's decision is well-established. The standard to be applied by a review panel under s. 47 of the *Act* is generally the correctness standard, except where the hearing panel has made findings of fact which are based on the *viva voce* evidence it heard and the opportunity to assess witnesses' credibility: *Harding v. Law Society of British Columbia*, 2017 BCCA 171 at paras. 42 to 43; *Law Society of BC v. Hordal*, 2004 LSBC 36 at paras. 8 to 11; *Law Society of BC v. Berge*, 2007 LSBC 7 at paras. 19 to 21; *Law Society of BC v. Wang*, 2024 LSBC 42 at paras. 9 to 11.

[14] Subject to that exception, the role of a review board is to determine whether the decision of the hearing panel was correct; if it was not, in the view of the review board, giving due regard to the reasoning of the hearing panel, the review board must substitute its own judgment as to the findings that should properly have been made or, as it is put in s. 47 of the *Act*, "substitute a decision the panel could have made under [the] *Act*".

[15] The approach taken under s. 47 of the *Act* is therefore similar to, but different in important ways from, the appellate standard applied to court decisions.

[16] At all times, the burden of proof remains on the Law Society to establish its allegations on the balance of probabilities: *Law Society of BC v. Wilson*, 2019 LSBC 25, at para. 14.

[17] We have applied this standard of review, and this burden of proof, in our consideration of the Hearing Panel's decision.

ISSUES ON THE REVIEW

[18] The Law Society has sought a review of the Hearing Panel's disposition of three of the five allegations in the Citation.

[19] The first allegation in the Citation ("Allegation 1") is a compendious one, and it reads as follows:

> 1. Between approximately August and November 2019, in the course of acting for your client [WFD Ltd.], you used or permitted the use of your firm's trust account to receive or disburse, or both, some or all of approximately

$3,026,204.01 (the "Funds"), and failed to do one or more of the following in connection with the Funds:

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

(b) make reasonable inquiries prior to acting or continuing to act in circumstances that were objectively suspicious, including failing to make inquiries in relation to:

(i) the client or other persons, or both;

(ii) the subject matter and objectives of the retainer;

(iii) the source of the Funds; and

(iv) the reason for the payment of the Funds to go through your firm's trust account;

(c) record the result of any inquiries made; and

(d) cease acting in the circumstances until there was a reasonable basis to believe that the transactions requested in connection to the Funds were legitimate.

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

[20] The issue before us in respect of Allegation 1 is whether the Hearing Panel erred in finding that the Respondent did not engage in professional misconduct, as alleged.

[21] The two other allegations in the Citation that are raised by the Law Society on this review are as follows ("Allegations 2 and 3"):

2. Between approximately April and November 2019, in relation to your client [WFD Ltd.]., you failed to make reasonable efforts to obtain and record the client's identification information, contrary to one or both of Rules 3-100 and 3-107 of the Law Society Rules.

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

3. In approximately July 2019, in relation to your client [PKJ], you failed to make reasonable efforts to obtain and record the client's identification information,

> contrary to one or both of Rules 3-100 and 3-107 of the Law Society Rules.
>
> This conduct constitutes professional misconduct, or a breach of the Act or rules, pursuant to s. 38(4) of the *Legal Profession Act*.
>
> …

[22] As noted, while the Citation alleges in the alternative that the conduct referenced in Allegations 2 and 3 constitutes professional misconduct, and that was the Law Society's position before the Hearing Panel was that the conduct constituted professional misconduct, the Law Society advances a more limited position on this review, and no longer maintains the allegation of professional misconduct. Rather, the Law Society maintains that the Review Board ought to find that, in respect of Allegations 2 and 3, the Respondent breached the Rules, but in a way that does not rise to the level of professional misconduct (although the Law Society nevertheless says that the latter finding is open to us, despite not seeking such a finding).

BACKGROUND

[23] The Hearing Panel made findings based on the record before it, which included the Respondent's responses to a Notice to Admit, evidence from a Law Society investigator, evidence from a court reporter (in relation to the admissibility of a transcript of the Respondent's interview by Law Society investigators), as well as the evidence of the Respondent, who was cross-examined at the hearing.

[24] The Hearing Panel found that "the witnesses in these proceedings were generally honest and reliable", *i.e.*, they were credible (*F&D Decision*, at para. 59). The Hearing Panel also said that "[w]ith one notable exception, we also find the documents that became exhibits in the proceeding credible and reliable and give them substantial weight" (*F&D Decision*, at para. 59).

[25] The one exception was the transcript of the Respondent's interview with the Law Society's investigators, which the Hearing Panel gave "less weight than the other exhibits and witness testimony" (at para. 61). The Hearing Panel found that the transcript contained errors, reflected answers by the Respondent which were open to different interpretations or which were vague as to the particular times being referenced, or which simply reflected what the Respondent retrospectively characterized as "subconscious" doubts (at paras. 62-65).

[26] We agree with the Hearing Panel that the issues with the transcript and the Respondent's answers reflected in the transcript mean that it is unsafe to rely upon

alleged "admissions" contained in the transcript. The Law Society now does not suggest otherwise, and withdrew its assertion that the Hearing Panel erred in refusing to admit the transcript as evidence of the truth of its contents. We have therefore simply weighed the transcript in the balance with the rest of the evidence, giving it comparatively less weight as the Hearing Panel correctly did.

[27] On review, and with some notable exceptions described below, most of the facts found by the Hearing Panel are not challenged by the Law Society, and therefore need not be re-assessed by the Review Board. The real issues are the implications of those facts and whether the circumstances amount to professional misconduct or a breach of the Rules, as alleged. Those are matters on which the Hearing Panel is required to be correct, failing which the Review Board may substitute its own findings, as we do below.

[28] That said, there are certain findings of fact with which the Law Society does take issue, and we address them below.

The Respondent's circumstances

[29] The Respondent was called to the bar in British Columbia on May 8, 2018 and, since that date, has practiced with the same small firm in Vancouver, British Columbia.

[30] The Respondent's practice involves members of the Chinese Canadian community, with whom he communicates in Mandarin. The events at issue on this Review occurred within the Respondent's first two years at the bar, and at a time when he was first building his practice.

The Respondent meets PKJ and is engaged in respect of a refinancing

[31] In early 2019, the Respondent provided certain legal services to LS. He understood that LS was pleased with the services he provided.

[32] In April 2019, LS invited the Respondent to attend a dinner in Richmond, British Columbia, which the Respondent recognized as a potential business development opportunity.

[33] Over the course of that dinner, the Respondent met PKJ, who he understood was a former boxer who now operated a gym in the area. The Respondent came to understand that the gym had some involvement in a loan which was coming due, and that PKJ was seeking to arrange a refinancing. PKJ indicated that he may require the Respondent's assistance with the transaction, and the two of them exchanged contact information. Relatedly, the Respondent also met a representative from a financial institution at the

April 2019 dinner. She told him that she was working with PKJ in relation to the refinancing of the gym business.

[34] The Respondent next met with PKJ in May 2019, at the Respondent's office. PKJ provided to the Respondent the address of the gym, and the Respondent learned that the property on which the gym was operated (the "Property") was owned by WFD Ltd.

[35] PKJ told the Respondent that the Property was in foreclosure, that a refinancing transaction was been sought, and that he wanted the Respondent to represent WFD Ltd. in connection with that transaction.

[36] The Respondent obtained a land title search on the Property, and saw the mortgage that PKJ had referenced, a certificate of pending litigation, and several builders' liens (which he subsequently arranged to have removed). He also obtained a copy of an order *nisi*, which had been granted by the Court on February 14, 2019. The order *nisi* provided a six-month redemption period, and the Respondent saw that approximately $2.8 million remained owing on the mortgage.

[37] The Respondent further researched the Property and determined that it was a large parcel of land with an active gym business operating on it.

[38] The Respondent also obtained the corporate records for WFD Ltd., including director's resolutions. He determined that, as of April 2019, TJW (not PKJ) was the sole shareholder and director of WFD Ltd. The Respondent also became aware that TJW had paid approximately $6.7 million to acquire the shares of WFD Ltd. in April 2019.

The Respondent reviews an application concerning a loan made by PKJ

[39] The Respondent also had dealings with PKJ that did not involve the gym or WFD Ltd.

[40] In May or June 2019, PKJ contacted the Respondent to discuss a default judgment he had personally obtained, but which the defendants to his debt action had applied to have set aside. The hearing of that application was approaching, and PKJ asked the Respondent to have it adjourned so that the settlement discussions he was conducting with the defendants could continue.

[41] The defendants' counsel sent to the Respondent a copy of the notice of application for the order setting aside the default judgment (the "Notice of Application"), together with the supporting affidavits. The Respondent briefly reviewed the materials in about July 2019. While the Hearing Panel said that the Respondent saw "that the defendants in the debt action alleged that PKJ had provided them with a loan in the form of a large

amount of cash in a casino parking lot" (*F&D Decision*, at para. 36), this was clearly a misapprehension of the evidence. Rather, it was PKJ who had alleged in the debt action that he had made a cash loan to the defendants in the casino parking lot, and had obtained default judgment accordingly. The defendants denied the loan, in fact making allegations that documents had been forged, and were seeking to set aside that default judgment.

[42] As such, the Panel's finding that the Respondent "says he asked PKJ about this allegation and PKJ said it was not true" (*F&D Decision*, at para. 36) is difficult to understand. Since the alleged cash loan in the casino parking lot was an allegation made by PKJ himself, and in respect of which he had obtained a judgment, the Review Board is not satisfied that PKJ "said it was not true", at least to the extent that statement is taken to refer to whether the specific loan in question was made. It would make no sense for PKJ to deny the loan on which he had sued and obtained a default judgment. Indeed, the thrust of the Respondent's evidence at the hearing, rather, was that he questioned PKJ about the defendants' denials that they had agreed to the loan alleged by PKJ, as well as about their assertions that signatures had been forged, and it was those allegations that PKJ denied.

[43] After a few emails between the Respondent and the defendants' counsel, an adjournment was arranged. The defendants' counsel filed a requisition to adjourn the application generally, and the Respondent had no further involvement with the matter.

[44] While the Respondent opened a file with PKJ as the client for this matter, he did not render an account to PKJ, given that the matter required very little work and he was trying to develop his client base.

The Respondent is engaged to assist in a bridge financing

[45] The refinancing matter involving WFD Ltd., that PKJ had discussed with the Respondent in May 2019, became active again in July 2019. At that time, the Respondent contacted the lawyer for the mortgagee and requested a payout statement for the mortgage. The Respondent later received a payout statement showing the amount owing on the mortgage, the interest that was accruing, as well as a claim for costs, taxes and insurance. The Respondent resisted the amount of the claim for costs and it was reduced accordingly.

[46] The mortgagee applied for an order absolute, but agreed to adjourn the application when the Respondent advised that refinancing was being sought by WFD Ltd. The mortgagee's counsel asked the Respondent repeatedly about the status of the financing, and the Respondent sought the same information from PKJ.

[47] On August 14, 2019, PKJ brought a bank draft to the Respondent's office, and he deposited it into his firm's trust account. The Respondent told PKJ that he would need

instructions from a director of WFD Ltd., as the mortgagor, so that person would have to attend his office too. PKJ and TJW, the sole shareholder of WFD Ltd., accordingly attended the Respondent's office together on August 15, 2019.

[48] The Hearing Panel did not make findings regarding these sequential meetings on August 14 and 15, 2019, and the Law Society raises this as an important point on review. Having reviewed the transcript of the Respondent's evidence at the hearing below, we find that the sequence of events is as set out above. Indeed, after the first day of his direct examination had concluded, the Respondent responsibly took the opportunity at the opening of the hearing the following day to expressly confirm that there were two separate meetings – one on August 14, 2019 attended only by PKJ, and a second one on August 15, 2019 attended by both PKJ and TJW – and we so find.

[49] During the first meeting on August 14, 2019, the Respondent was provided with a bank draft dated August 13, 2019, payable to his firm, drawn on an account at a national bank by ZZ, in the amount of $3,026,204.01. The Respondent considered this to be an ordinary bank draft issued by a major financial institution. He was told that ZZ was a partner or friend of PKJ, and was providing a bridge loan pending an institutional refinancing.

[50] The Respondent deposited the bank draft into his firm's trust account, paid out the mortgage and related charges, which totalled $2,924,817.39, and cleared the title to the Property.

[51] PKJ and TJW told the Respondent that WFD Ltd. would give security to the bridge lender. PKJ instructed the Respondent to register a mortgage in favour of a numbered company ("Company 1"). The Respondent was aware that Company 1 had been incorporated very recently, and did not know what its involvement was with ZZ or WFD Ltd., yet he registered a Form B mortgage over the Property in its favour. The terms of the mortgage reflected in the Form B he registered in favour of Company 1 contained terms that were favourable to WFD Ltd., the Respondent's client in the transaction, including providing for interest-only payments, with interest calculated by reference at the prime rate. The Respondent understood that Company 1 had not received independent legal advice. The Respondent himself never had any contact or dealings with ZZ or Company 1.

[52] After these transactions, there was $98,485.60 left in the trust account of the Respondent's firm. PKJ told the Respondent to keep those funds as a retainer for future work. The Respondent was at that point waiting to be retained for a longer-term institutional financing, rather than the private bridge loan that had been arranged to date.

The Respondent ceases his involvement with PKJ

[53] In about November 2019, PKJ returned to the Respondent and asked him to provide further assistance with the default judgment he had personally obtained. This caused the Respondent to review more fully the materials he had obtained when assisting PKJ with obtaining an adjournment several months earlier.

[54] After reviewing the application materials more closely, the Respondent became uncomfortable, and began to suspect that PKJ was involved in illegal activities. He did not want to be further engaged by PKJ. The Respondent told PKJ that he was not the right lawyer for the mandate, and that PKJ should retain someone else.

[55] PKJ instructed the Respondent to pay to another numbered company ("Company 2") the funds in the Firm's trust account left over from the mandate the Respondent had undertaken for WFD Ltd. (the "Trust Balance"), and the Respondent did so. He did not ask PKJ why the Trust Balance was to be paid to Company 2, and we find that he asked few if any questions about Company 2.

The Director of Civil Forfeiture initiates proceedings against PKJ

[56] In late 2020, the Director of Civil Forfeiture commenced forfeiture proceedings against PKJ, and there was considerable media attention. The news reports came to the Respondent's attention, and he learned of the allegations being made against PKJ.

[57] Alerted by the Director of Civil Forfeiture's proceedings, the Law Society commenced an investigation and requested that the Respondent provide a copy of his files in respect of PKJ and WFD Ltd.

[58] There is no suggestion that the Respondent did anything but cooperate fully and as best he could with the Law Society's investigation.

ANALYSIS AND FINDINGS

Allegation 1

[59] The first issue before us is whether the Hearing Panel erred when it found that the Law Society had not established that the Respondent engaged in the conduct alleged in Allegation 1.

[60] It is important to have careful regard to the conduct alleged. We have set out the terms of Allegation 1 of the Citation earlier. While it is a single paragraph in the Citation,

it alleges compendiously multiple acts and omissions by the Respondent, arising in different circumstances, involving different parties, and occurring at different times.

[61] We observe that it can be problematic when the Law Society frames citations in the way it set out Allegation 1 here. Allegation 1 includes conduct relating to different circumstances, different actors, and different time periods, and then makes the global allegation of professional misconduct. A respondent to such a compendious allegation must then break down the various allegations to respond to each one, and so do hearing panels (and, potentially, review boards). While the Respondent was able to effectively do so here, and the Law Society provided further particulars in the course of the proceedings, it would be more consistent with the orderly disposition of disciplinary proceedings for citations to set out discrete and specific allegations of fact and the requested findings serially, rather than in this compendious manner. No objections arise for decision here, so we will say no more about it.

[62] In brief, Allegation 1 of the Citation first alleges that, during a defined time period (between approximately August 2019 and November 2019), while acting for a particular client (WFD Ltd.), the Respondent used or permitted the use of his firm's trust account to receive or disburse, or both, some or all of $3,026,204.01 (defined in the Citation as the "Funds"). There is no dispute that at least these facts were established, and the Hearing Panel did not hold otherwise. We find that the Law Society has established the foregoing facts.

[63] Allegation 1 of the Citation then lists four specific things the Law Society alleges the Respondent failed to do in connection with the Funds. Whether the Law Society established some or all of these matters was disputed before the Hearing Panel, as well as before us. The Law Society alleges in particular that the Respondent failed to:

> (a) be on guard against becoming the tool or dupe of an unscrupulous client or other persons;
>
> (b) make reasonable inquiries prior to acting or continuing to act in circumstances that were objectively suspicious, including failing to make inquiries in relation to:
>
> (i) the client or other persons, or both;
>
> (ii) the subject matter and objectives of the retainer;
>
> (iii) the source of the Funds; and
>
> (iv) the reason for the payment of the Funds to go through your firm's trust account;

(c) record the result of any inquiries made; and

(d) cease acting in the circumstances until there was a reasonable basis to believe that the transactions requested in connection to the Funds were legitimate.

[64] The particulars of Allegation 1 are reflective of a lawyer's obligation under rule 3.2-7 of the *Code of Professional Conduct for British Columbia* (the "*Code*") which provides:

> 3.2-7 A lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud.

[65] As it read in 2019, the Commentary to rule 3.2-7 of the *Code* provided:

> [1] A lawyer should be on guard against becoming the tool or dupe of an unscrupulous client, or of others, whether or not associated with the unscrupulous client.
>
> [2] A lawyer should be alert to and avoid unwittingly becoming involved with a client engaged in criminal activities such as mortgage fraud or money laundering. Vigilance is required because the means for these, and other criminal activities, may be transactions for which lawyers commonly provide services…
>
> [3] Before accepting a retainer, or during a retainer, if a lawyer has suspicions or doubts about whether he or she might be assisting a client in any dishonesty, crime or fraud, the lawyer should make reasonable inquiries to obtain information about the client and about the subject matter and objectives of the retainer. These should include making reasonable attempts to verify the legal or beneficial ownership of property and business entities and who has the control of business entities, and to clarify the nature and purpose of a complex or unusual transaction where the nature and purpose are not clear.
>
> [3.1] The lawyer should also make inquiries of a client who:
>
> (a) seeks the use of the lawyer's trust account without requiring any substantial legal services from the lawyer in connection with the trust matter;
>
> . . .
>
> [3.2] The lawyer should make a record of the results of these inquiries.

[66] The Commentary to the rule has the same force as the substantive rule itself: *Law Society of BC v. Barker*, 2025 LSBC 4 at para. 9. The Commentary is also consistent with the authorities, including the judgment of the Court of Appeal in *Gregory v. The Law Society of British Columbia*, 2024 BCCA 350 ("*Gregory BCCA*"), at para. 3:

> Case law establishes that where there are suspicious circumstances, a lawyer is required to make reasonable inquiries to satisfy themselves that the client is not seeking assistance in breaking the law. The inquiries must be made and satisfactory responses received before the lawyer takes steps that could advance a client's intent to act unlawfully…

[67] Whether a particular circumstance is suspicious must be assessed objectively. It is not dispositive that the lawyer was not subjectively suspicious: *Law Society of BC v. Huculak*, 2022 LSBC 26, at para. 107; *Law Society of BC v. Gregory,* 2021 LSBC 34, at para. 104.

[68] The Law Society says that the Hearing Panel committed several related errors in its determination of Allegation 1. In particular, the Law Society alleges that the Hearing Panel erred by:

> (a) misapprehending material evidence and making inferences that were unsupported by the evidence adduced and the submissions made by the parties;
>
> (b) failing to address numerous suspicious circumstances raised by the Law Society that gave rise to a duty to make reasonable inquiries;
>
> (c) failing to give weight to relevant factors which supported the conclusion that the Respondent's conduct amounted to professional misconduct;
>
> (d) considering irrelevant factors in determining that the Respondent had not committed professional misconduct
>
> …

[69] The Law Society also raised as an error the Hearing Panel's alleged failure to admit the transcript of the Respondent's Law Society interview for the truth of its contents. At the hearing before us, as noted, the Law Society confirmed that it was no longer pursuing this alleged error.

[70] The Respondent says that the Hearing Panel's dismissal of Allegation 1 reflected a correct understanding of the law, was grounded in the evidence, and its conclusion was within the range of reasonable outcomes that was open to it. The Respondent says that the

Law Society is viewing the circumstances encountered by the Respondent with the benefit of hindsight, and seeks to convert ordinary events in a real estate or private-lending practice into suspicious "red flags" triggering a duty to make reasonable inquiries. The Respondent submits that the Law Society's approach would impose an unrealistic and unworkable standard upon lawyers engaged in ordinary commercial matters, and that this has no support in the law, the *Code*, or professional norms.

[71] In its submissions, the Law Society identified several particular circumstances which it maintained, whether individually or collectively, were objectively suspicious and should have put the Respondent on notice of the need to make further inquiries before continuing to advance the interests of WFD Ltd. These circumstances, which the Law Society characterized as "red flags", were addressed serially by the Hearing Panel. We will review and consider the Hearing Panel's findings in the same way, applying the standard of review appliable to review boards in these circumstances.

Allegedly inflated purchase price

[72] The Law Society asserted that it was objectively suspicious that TJW had paid $6.7 million to acquire the shares of WFD Ltd. at a time when the Property was in foreclosure.

[73] The Hearing Panel said that "[t]he Law Society referred in evidence to documents suggesting the property WFD Ltd. owned was worth more than $10 million" and, in that case, the price paid by TJW was "reasonable". In the Hearing Panel's assessment, "once the mortgage that was the subject of the foreclosure proceeding was paid off, WFD Ltd. would have paid about $9.6 million for a property worth $10 million" (*F&D Decision*, at para. 115).

[74] The Law Society submits there was in fact no evidence before the Hearing Panel that the Property was worth $10 million. Rather, the Respondent had said in his interview that he understood the assessed value of the Property to be "around $5 million or $6 million"; in his response to the Notice to Admit, the Respondent admitted that he understood the assessed value of the Property to be approximately $5 million to $6 million; and that the Respondent referred to a title search he obtained in May 2019 in which the Property was assigned a declared value of $4.88 million. The Law Society also notes that, in his closing submissions before the Hearing Panel, the Respondent said that the assessed value of the Property was $5 million to $6 million.

[75] We agree that the Hearing Panel did not have a sound evidentiary basis for finding that "[t]he Law Society referred in evidence to documents suggested the property WFD Ltd. owned was worth more than $10 million" (*F&D Decision*, para. 115). That was an error.

[76] However, in the absence of evidence (including expert evidence) regarding the value of WFD Ltd.'s business itself, we do not accept the Law Society's contention that it is objectively suspicious for one to purchase the shares of an operating business for $6.7 million when the Property on which that business is operated has a value of $5 million to $6 million. There was no evidence to support the economic equivalence for which the Law Society contends between the commercial value of the operating business (including its goodwill) and the value of the physical lands on which that operating business happens to be situated at the time, and which are owned by that business.

[77] We therefore do not find the price that TJW paid for the shares of WFD Ltd. to be an objectively suspicious circumstance.

Set-aside file

[78] The Law Society next relies on the information that was available to the Respondent in July 2019 in connection with PKJ's request that he seek an adjournment of the pending application to set aside the default judgment that PKJ had obtained. The Law Society relies in particular on the information in the Notice of Application describing the claim that PKJ had advanced to the defendants a cash loan in a casino parking lot, as well as the allegations made by the defendants that documents or signatures had been forged.

[79] The Hearing Panel did not consider the information available to the Respondent in the Notice of Application and the related materials to be objectively suspicious for several reasons, including because: (a) the Respondent was not involved in the alleged loan; (b) the alleged loan was not related to WFD Ltd.; and (c) the allegations in the Notice of Application were unproven (*F&D Decision*, at paras. 116 to 121).

[80] The Respondent says that the Hearing Panel correctly noted that the information in the Notice of Application reflected allegations, not findings; that they were made by PKJ's opponents in litigation; that the Respondent's retainer was limited to seeking an adjournment; and that the Respondent had no obligation to investigate unrelated facts in that litigation.

[81] In our view, contrary to the view the Hearing Panel took, in determining whether information available to the Respondent was objectively suspicious, it is irrelevant whether he was involved in the activity said to give rise to the suspicion. Indeed, it would likely rarely be the case that the lawyer was involved in the transaction giving rise to the concern: there is an element of circularity to the suggestion. Nor is it relevant that the loan was not related to WFD Ltd. The information was relevant because it related to the person from whom the Respondent was taking instructions on behalf of WFD Ltd.

[82] The Hearing Panel's statement that the allegations were unproven is also inapposite. As noted above, the Hearing Panel appears to have considered that it was the defendants who alleged that PKJ had made the loan in the casino parking lot. In fact, it was PKJ who made that allegation, it was PKJ who had sued upon it, and it was PKJ who had obtained a default judgment in respect of it.

[83] While we accept that a lawyer is not required to conduct a "shadow investigation" of every unproven allegation made in an application brought against his or her client, these circumstances are very different; here, at least some of the most concerning allegations were assertions being advanced by the client's instructing person, himself. The Hearing Panel misapprehended the circumstances of the allegation, and the circumstances of the transaction alleged by PKJ.

[84] These errors by the Hearing Panel mean that we are entitled to substitute our own finding.

[85] We note that the Hearing Panel acknowledged that the information in the Notice of Application was "a red flag concerning PKJ's character and the type of activities (loan sharking) PKJ may have been involved in" (*F&D Decision*, para. 116). The Hearing Panel was correct in so finding. But the Hearing Panel was wrong in finding that there was "no apparent connection between the PKJ loan matter and the business of WFD Ltd., aside from PKJ being a manager of the WFD Ltd.'s gym" (*F&D Decision*, at para. 116). PKJ was the primary person from whom the Respondent was taking instructions on behalf of WFD Ltd. There was a clear nexus between the information in the Notice of Application and the tasks the Respondent had been engaged to undertake, and on whose instructions he did so.

[86] It is notable that the Hearing Panel, despite its earlier findings, found that the information in the application to set aside the default judgment "meant the Respondent had to be careful with the WFD Ltd. foreclosure payout transaction but it would not prevent the Respondent from acting further if he made reasonable inquiries and was reasonably satisfied with the answers." While this appears to be inconsistent with what the Hearing Panel had earlier found, we agree that the information triggered an obligation make reasonable inquiries. However, at least in June and July 2019, we find that the Respondent did not do so.

[87] That changed in the early Fall of 2019, when PKJ asked the Respondent to become more involved in that litigation. At that point, the Respondent reviewed the information in the application materials more closely and became concerned that PKJ was engaged in illegal activities. The Respondent did not feel comfortable representing PKJ at that point and suggested that he find other counsel.

[88] The fact that PKJ may have been engaged in unsavoury activities does not mean he is disentitled from having counsel, of course. Everyone is entitled to legal representation. The quite different and more limited point is that, by the fall of 2019, the Respondent responsibly and properly recognized that the information in the application materials was objectively suspicious, and triggered the need to make further inquiries.

[89] There is no suggestion that the information available to the Respondent in the fall of 2019 was different from the information available to him in July 2019. The Respondent responsibly made the right judgment call in the fall of 2019. We find, though, that he should reasonably have come to the same conclusion, *i.e.*, that the information was objectively suspicious and triggered the need to make reasonable inquiries, in July 2019.

Company 1 Mortgage

[90] The Law Society relies upon, as a further objectively suspicious circumstance, that, while ZZ provided the bridge financing funds by way of a bank draft, PKJ instructed the Respondent to register a mortgage in favour of Company 1. As noted, the Respondent was aware that Company 1 had been incorporated very recently, and did not know what its relationship was with ZZ or WFD Ltd.

[91] The Respondent says that there was nothing suspicious about this transaction. It maintains that corporate lenders are common in private financing, and that a lender's choice of that vehicle is not inherently suspicious. ZZ was not the Respondent's client, and he was not required to provide advice to him or otherwise protect his interests.

[92] The Hearing Panel focused on whether the Respondent was in a conflict of interest in registering the mortgage, but found that this issue was beyond the scope of the Citation:

> [131] We do have some concerns regarding the Respondent's actions concerning the loan by ZZ and the registration of the mortgage in the name of a company controlled by ZZ. Clearly the Respondent was in a conflict of interest with respect to the funds provided by ZZ. He was acting for both the borrower and the lender. He did not talk to the lender (ZZ) and he did not advise ZZ to obtain independent legal advice. As this was not the conduct complained of in the Citation, however, we need not deal with this aspect of the matter further.

[93] While we accept the facts as found by the Hearing Panel above, the Law Society says, and we agree, that the Hearing Panel misapprehended the import of those facts. We also find that the Respondent's submissions similarly do not engage with what ought to have been apparent to the Respondent regarding this transaction.

[94] The issue, says the Law Society, is that the newly-incorporated Company 1 was granted the mortgage when the funds were advanced by a different party (ZZ), and the instructions to do so were given by PKJ (not ZZ), with no dealings occurring between the Respondent and ZZ, or between the Respondent and Company 1, at any time.

[95] Standing on its own, perhaps the registration of the Company 1 mortgage would only be unusual or give rise to concerns about conflicts of interest, rather than be an objectively suspicious circumstance. We agree with the Respondent and the Hearing Panel to that extent. However, viewed in the context of the other information reasonably available to the Respondent at the time, we find that PKJ's instructions to register a mortgage in favour of Company 1, in circumstances where Company 1 had not itself advanced the funds, Company 1 was newly-incorporated, and very little else was known about Company 1, was an objectively suspicious circumstance requiring further inquiries to be made.

Timing of the bridge loan and the deposit of the funds

[96] The Law Society also raised an issue concerning the timing of the bridge loan by ZZ. The Law Society alleged that PKJ had provided instructions to the Respondent to deposit the funds into the Firm's trust account on behalf of WFD, without having the apparent authority to do so.

[97] This appears to be a timing concern. The Law Society says, and we have found, that the Respondent received the funds into the Firm's trust account on August 14, 2019, before verifying PKJ's authority. He only confirmed with TJW that PKJ had authority to provide instructions on behalf of WFD Ltd. on August 15, 2019, says the Law Society, and as we have found.

[98] The Hearing Panel did not definitely find whether the relevant events occurred on August 14, 2019 or August 15, 2019 but, in any event, found that the Respondent had received confirmation of PKJ's authority to provide instructions on behalf of WFD Ltd. before receiving or disbursing the funds.

[99] While we accept that the Hearing Panel erred in not distinguishing what occurred on August 14, 2019 and August 15, 2019, we do not find that this circumstance itself, or in combination with others, represents an objectively suspicious circumstance. The Respondent testified that he understood at all material times that PKJ was authorized to give instructions on behalf of WFD Ltd., and what TJW told him on August 15, 2019 only confirmed what he already understood.

[100] We do not find that the timing of the bridge loan was a suspicious circumstance. We also decline to find that the Respondent deposited the funds into his Firm's trust

account without having verified the authority of the person providing him with instructions.

Source of funds

[101] The Law Society also submits that there were objectively suspicious circumstances concerning the source of the funds used to pay out WFD Ltd.'s mortgage. In many ways, this allegation collects together various of the circumstances set out above. The Law Society submits that the Respondent did not know the source of the funds, other than that they were from ZZ, who was an associate of PKJ in some respect. PKJ had told the Respondent that the mortgage should be paid out as soon as possible, and then instructed the Respondent to place a mortgage in favour of Company 1. The Law Society also says that the terms of the mortgage were unusual, in that only interest calculated by reference to the prime rate was required to be paid.

[102] The Respondent's evidence was that he had no reason to be suspicious because ZZ provided the funds through the vehicle of a bank draft from a national financial institution, that he had asked PKJ why the funds were not being advanced by a bank and he was told that bank financing had fallen through so this was a form of bridge financing. While the Respondent accepted that the terms of the mortgage in favour of Company 1 would be unusual in an arms-length transaction, he understood that this was not an arms-length transaction.

[103] The Hearing Panel accepted the Respondent's evidence, holding that the questions he posted to PKJ about the circumstances were sufficient (*F&D Decision*, at para. 126):

> These inquiries and the answers given were reasonable. These things can happen from time to time. It was important for WFD Ltd. to pay off the petitioner in the foreclosure proceedings. A bridging loan from a private lender is not unusual. A bridging loan from a non-arms length person may be less common but not unheard of.

[104] The Law Society says that this finding was in error for several reasons. Most importantly, the Law Society submits that the Hearing Panel failed to consider whether ZZ was in fact related to WFD Ltd. The evidence was that he was an associate of PKJ with some involvement in other matters in which PKJ was engaged, albeit not in respect of the business operated by WFD Ltd. and apparently managed by PKJ, and there was no evidence that ZZ had any role with respect to WFD Ltd. itself. In the circumstances, says the Law Society, it was objectively suspicious that ZZ would loan the funds to WFD Ltd.

[105] The Law Society also submits that it was suspicious that PKJ was the person who provided to the Respondent information on behalf of Company 1, and provided

instructions about the content of the mortgage granted to Company 1, the terms of which were very favourable to WFD Ltd. (as opposed to Company 1). The Respondent did not recommend that Company 1 obtain its own counsel and, in fact, never communicated with Company 1's representatives (other than PKJ, who appeared to be acting in that capacity).

[106] While we accept of course that private bridge financing is not unusual in itself, we agree with the Law Society that there were several aspects of this transaction, based on the facts found by the Hearing Panel itself, that were objectively suspicious. ZZ, a person with no apparent prior connection to WFD Ltd. (but having a separate relationship with PKJ), was lending several million dollars to WFD Ltd., on terms favourable to WFD Ltd. Yet all instructions and information were coming from PKJ, not ZZ and not anyone having any role with Company 1.

[107] We find that, collectively, these circumstances were objectively suspicious, and triggered an obligation to make reasonable inquiries. Simply relying upon PKJ's advice that bank financing had fallen through and that ZZ was a friend or associate who was providing bridge financing was not sufficient in the circumstances. While we consider the Law Society's submission that the Respondent should have contacted the representative of the financial institution he had met at the April 2019 dinner and somehow inserted himself into WFD Ltd.'s financing negotiations, to be commercially and practically unrealistic (and potentially inappropriate), we find that the Respondent should have been alerted about the need to make further inquiries about the nature of ZZ's business, the source of ZZ's funds, and ZZ's own reasons for advancing them to WFD Ltd.

Company 2 Issue

[108] The Law Society also alleged that it was a suspicious circumstance that PKJ instructed the Respondent to pay the left-over funds in the Firm's trust account, which we have defined as the Trust Balance, to Company 2, rather than to ZZ (from whom the Respondent had received the funds).

[109] The Respondent says that it is routine for corporate clients to direct that funds held in trust be directed to subsidiaries, affiliates or related entities. There was no dispute between the Law Society and the Respondent that the relevant client here was WFD Ltd., and the Trust Balance was being held on its behalf. The Respondent says that he had received instructions from the agent of the corporate client (WFD Ltd.), and was entitled to act on those instructions absent reason to doubt the scope of the agent's authority, and no such doubt existed here.

[110] The evidence was, and we have found, that the Respondent did not meaningfully question PKJ's instructions to send the Trust Balance to Company 2, nor did he seek any information regarding the nature of Company 2's involvement or its business.

[111] The Hearing Panel did not address this issue directly. It simply found that the Respondent "sent the retainer funds back and had no further contact with PKJ or WFD Ltd.", without noting that these funds (which were really the Trust Balance, rather than "retainer funds") were not sent "back" to the person from whom the Respondent had received them, namely ZZ, nor were they sent "back" to the client on whose behalf they were held (WFD Ltd.) but rather were sent to an unknown company, Company 2. They were not sent "back" to PKJ because they had not been received from PKJ in the first place, and PKJ was not the client in the financing and mortgage transactions to which they related.

[112] We find that, in the circumstances in which they were received, PKJ's instruction to pay the Trust Balance to Company 2 was objectively suspicious. By this time, the Respondent had more fully reviewed the information in the Notice of Application for an order to set aside the default judgment PKJ had obtained, he had become suspicious that PKJ was engaged in illegal activities, and he had concluded that he no longer found it appropriate to be involved with PKJ. In those circumstances, receiving those instructions from PKJ on behalf of WFD Ltd. or otherwise was objectively suspicious, and the Respondent was reasonably put on notice of the need to make further inquiries, which he did not do.

Did the Respondent fail to make the necessary inquiries and to record the information obtained?

[113] We have found that certain circumstances relied upon by the Law Society, but not all of them, were objectively suspicious and triggered the Respondent's obligation to make reasonable inquiries and to record the information he obtained.

[114] In particular, we have found that the following circumstances were objectively suspicious:

(a) the information made available to the Respondent in connection with the application to set aside the default judgment obtained by PKJ, which related to a cash loan PKJ alleged he had advanced to the defendants in a casino parking lot;

(b) the fact that ZZ, a person with no apparent prior connection to WFD Ltd. (but having a separate relationship with PKJ), was lending several million dollars to WFD Ltd., on terms favourable to WFD Ltd., yet all

instructions and information was coming from PKJ, not ZZ and not anyone having any role with Company 1;

(c) PKJ's instructions to register a mortgage in favour of Company 1, in circumstances where Company 1 had not itself advanced the funds, Company 1 was newly-incorporated, very little else was known about Company 1, and the terms were very favourable to WFD Ltd.; and

(d) PKJ's instructions to pay the Trust Balance to Company 2, rather than to ZZ (from whom the Respondent had received the funds) or to WFD Ltd. (the client on whose behalf the Trust Balance was held).

[115] Where there are suspicious circumstances, a lawyer is not prohibited from advancing the client's interests; rather, a lawyer is required to make reasonable inquiries and to be satisfied with the information received (and to record it) before taking further steps. "The lawyer's duty to make reasonable inquiries is a duty owed to the public interest, to the state and to others to ensure that the lawyer does not promote or participate in the client's unscrupulous activities. That duty arises when objectively, the lawyer should be suspicious. It is no defence to say that the lawyer was not subjectively suspicious" (*Gregory*, at paras. 104, 107).

[116] The Respondent says that he did make reasonable inquiries. He verified the corporate ownership of WFD Ltd.; he verified PKJ's authority with the sole director of WFD Ltd.; he obtained mortgage payout statements; he clarified why a private lender was being used instead of a financial institution; he reviewed relevant parts of the file relating to the set-aside application; he ensured the funds were used for discharging a legitimate mortgage; he held the excess funds in trust pending further direction; and he confirmed the source of the funds with his client.

[117] We have addressed above the inquiries the Respondent did and did not make. In the main, while he questioned PKJ from time to time, we find that his inquiries were limited and he accepted at face-value what he was told by PKJ. While we agree that a lawyer is not required to conduct a forensic inquiry into a client's circumstances, and the roles of all actors involved in the various transactions, the existence of objectively suspicious circumstances require a lawyer to exercise a healthy degree of scepticism. The duty to make inquiries is not simply one of form; rather, the inquiries must be meaningful and made in a way that responds to and address the circumstances that created the objective suspicion in the first place.

[118] In this case, the mounting number of red flags required the Respondent to engage directly with WFD Ltd., and its agents, in determining whether the suspicion raised by those red flags could be addressed. As we will further address by reference to the

particular allegations in the Citation, and apart from dealing with TJW on August 15, 2019, the Respondent did not do so. He did not make the required reasonable inquiries, and he therefore did not record the results of those inquiries.

[119] We have already found that the Law Society has established that, in the course of acting for WFD Ltd. between approximately August and November 2019, the Respondent used or permitted the use of his firm's trust account to receive or disburse, or both, some or all of the Funds. That is the foundation of the allegations which follow in the Citation.

[120] Sub-allegations 1(a) and (b) of the Citation, which are usefully considered together because sub-allegation 1(a) is essentially a different articulation of the more particularized allegation in 1(b), allege that, in the course of allowing his firm's trust account to be used for that purpose, the Respondent failed to:

> (a) be on guard against becoming the tool or dupe of an unscrupulous client or other persons;
>
> (b) make reasonable inquiries prior to acting or continuing to act in circumstances that were objectively suspicious, including failing to make inquiries in relation to:
>
> (i) the client or other persons, or both;
>
> (ii) the subject matter and objectives of the retainer;
>
> (iii) the source of the Funds; and
>
> (iv) the reason for the payment of the Funds to go through your firm's trust account;
>
> …

[121] With reference to sub-allegation 1(b)(i) of the Citation, we find that the Respondent failed to make reasonable inquiries in relation to PKJ, Company 1 and Company 2, *i.e.*, "other persons" in connection with the trust transactions referenced in Allegation 1.

[122] With reference to sub-allegation 1(b)(ii) of the Citation, we find that the Respondent failed to make reasonable inquiries in relation to the subject matter and objectives of the retainer by WFD Ltd. While, on its surface, the retainer was to facilitate the refinancing of a loan, and the placement of a mortgage in favour of Company 1, the objective circumstances suggested a need to make inquiries about whether that was indeed the true nature of the engagement.

[123] With reference to sub-allegation 1(b)(iii) of the Citation, we find that the Respondent failed to make reasonable inquiries about the source of the Funds paid into his firm's trust account by ZZ.

[124] With reference to sub-allegation 1(b)(iv), we also find that the Respondent failed to make reasonable inquiries about the reason for the payment of the Funds to go through his Firm's trust account. While the purpose was ostensibly to clear the mortgage to the lender foreclosing on the Property, and the Funds were in fact used in substantial part for that purpose (save for the Trust Balance paid to Company 2), the circumstances suggested that further inquiries were required to be made.

[125] The foregoing findings support a further finding that the Law Society has established sub-allegation 1(a) of the Citation, which we acknowledge reflects another way of describing the allegations collected in sub-allegation 1(b). The simple reality is that, by failing to make reasonable inquiries in objectively suspicious circumstances, the Respondent let his guard down, and created a risk that he could become the tool of an unscrupulous client or other person. That is the extent of the finding we make.

[126] Sub-allegation 1(c) of the Citation alleges that, in the course of allowing his firm's trust account to be used for the purpose set out above, the Respondent failed to record the result of any inquiries made. The Respondent admitted that he did not have any records or notes of any meetings, discussions or other communications with PKJ or any other representative of WFD Ltd., other than some WeChat messages with PKJ in April and May 2019. Coupled with our finding that the Respondent did not make the reasonably necessary inquiries, the results of the inquiries he did appear to make were not recorded, and we find that the Law Society has established this allegation in the Citation.

[127] Finally, sub-allegation 1(d) of the Citation alleges that the Respondent failed to cease acting in the circumstances until there was a reasonable basis to believe that the transactions requested in connection to the Funds were legitimate. The Respondent correctly acknowledges that sub-allegation 1(d) is derivative, in the sense that its resolution relies upon findings that the Respondent failed to make reasonable inquiries upon encountering objectively suspicious circumstances. We have found that, in the face of objectively suspicious circumstances, the Respondent did not make reasonable inquiries to confirm whether the transactions were legitimate, and therefore did not cease acting until there was a reasonable to believe that was the case. We therefore find that the Law Society has established this allegation in the Citation.

Did the Respondent engage in professional misconduct?

[128] The more difficult question is whether these shortcomings rise to the level of professional misconduct, as alleged by the Law Society in respect of the particular instances set out in Allegation 1 of the Citation.

[129] Professional misconduct is not defined in the *Act*. The authorities establish that a lawyer only engages in professional misconduct when his or her conduct is a marked departure from the standard the Law Society expects of its members, rather than a mere failure to exercise ordinary care: *Law Society of BC v. Martin*, 2005 LSBC 16 at para. 171; *Law Society of BC v. Edwards*, 2020 LSBC 21 at paras. 44-46; *Law Society of BC v. Lawyer 12*, 2011 LSBC 35 at paras. 49-51. Not every breach of the Rules amounts to professional misconduct, and a lawyer's conduct may fall short of what the Law Society requires of its members without being so deficient that it justifies a finding of professional misconduct. On the other hand, conduct that is professional misconduct "is not necessarily associated with moral turpitude or with intentional wrongdoing": *Gregory BCCA*, at para. 65.

[130] The question remains as stated in *Martin* and reiterated consistently in the authorities: whether the lawyer's conduct is a marked departure from the standard the Law Society expects of its members. Whether the lawyer's actions or omissions are properly characterized as falling short of that standard, and therefore justifying a finding of professional misconduct, depends on all the circumstances, including "the gravity of the misconduct, its duration, the number of breaches, the presence or absence of *mala fides*, and the harm caused by the respondent's conduct": *Law Society of BC v. Lyons,* 2008 LSBC 9, at para. 35; *Law Society of BC v. McKinley*, 2019 LSBC 20 at para. 33.

[131] The test is objective, and the standard must be assessed having regard to the *Act*, the Rules and the *Code*, and the duties a lawyer owes to, as the case may be, the client, the court, other lawyers', and to the public: *Law Society of BC v. Kim*, 2019 LSBC 43 at para. 45.

[132] The Hearing Panel correctly noted that the Citation itself does not refer to any particular rule, although the Law Society relied in its submissions before the Hearing Panel and before us, upon rule 3.2-7 of the *Code*. The Respondent did not say he was prejudiced by the absence of specific mention of this provision in the Citation. That position was well-advised because, in the circumstances, we find that the Respondent could not reasonably have been in any doubt about what was being alleged: *Gregory BCCA*, at paras. 56 to 62.

[133] The Respondent also correctly did not suggest that the fact that he was a relatively new lawyer at the time of these events meant that a different standard ought to be applied to his conduct.

[134] The majority of the Review Board finds that, the Respondent's conduct fell short of what the Law Society expects of its members, but, with one exception, that conduct did not amount to a marked departure. The majority of the Review Board considered the Respondent's conduct in the context of the circumstances in which the Respondent found himself (and not viewing the facts through the different lens available through the benefit of hindsight), and determined that, with that one exception, the Respondent's conduct was not so markedly deficient that a finding of professional misconduct is justified.

[135] The Respondent took care to learn basic information about PKJ and WFD Ltd., he obtained the latter's corporate records to determine who could properly provide instructions or identify the person from whom the Respondent could accept transactions, and the Respondent provided actual legal services to PKJ and to WFD Ltd. We have found that there were numerous red flags that should have led the Respondent to make further inquiries and to record the results of those inquiries: his failure to do so is why is conduct fell short of what the Law Society expects of its members. However, applying the factors set out in *Lyons* – "the gravity of the misconduct, its duration, the number of breaches, the presence or absence of *mala fides*, and the harm caused by the respondent's conduct" – we find that the Respondent's conduct was not so markedly deficient that it amounted to professional misconduct in all but one of the instances.

[136] It is notable in this regard that the Respondent ultimately declined to further represent PKJ, the person from whom he had been taking instructions on behalf of WFD Ltd., given his dissatisfaction with the information provided to him. The Respondent was clearly aware of his obligations and, while he fell short in several respects, generally sought to discharge them.

[137] In the view of the majority of the Review Board, the one exception relates to the payment of the Trust Balance to Company 2. By the time this payment was made, the Respondent himself had formed the view that there were sufficient red flags that he no longer considered it appropriate to assist WFD Ltd. (or PKJ) with their matters in the absence of sufficient information to allay his concerns. He sought to begin to disengage from both of them. The problem is that, when faced with a direction by PKJ – the individual from whom he was seeking to separate himself – that the Trust Balance being held for the benefit of WFD Ltd. be paid to a newly-incorporated company about which he knew virtually nothing (which we have found to be an objectively suspicious circumstance), he failed to make meaningful inquiries. He continued to act and simply paid to Company 2 the Trust Balance he was holding for the benefit of WFD Ltd.

[138] For a majority of the Review Board, the fact that WFD Ltd. was the client on whose account the Trust Balance was being held is inescapable on this record (and that fact did not appear to really be disputed between the parties). Whatever may have been the Respondent's relationship with PKJ otherwise, WFD Ltd. was clearly the Respondent's client for the purpose of the financing transaction, the mortgage discharge transaction, and the subsequent placement of a mortgage in favour of Company 1. PKJ was the instructing person on behalf of WFD Ltd., but the client for these transactions was clearly WFD Ltd.

[139] In fact, we do not understand the Hearing Panel to have found otherwise. Our conclusion in this regard would therefore be the same regardless of which standard of review we applied – the one urged by the Respondent, or the formulation (which we have found to be correct) advanced by the Law Society.

[140] In the view of a majority of the Review Board, the Respondent's payment of the Trust Balance to Company 2 in these circumstances did not merely display a lack of ordinary care, but rather was sufficiently grave and potentially harmful – this was WFD Ltd.'s money after all, and the Respondent by this time had serious concerns about the nature of the activities in which the person instructing him was engaged – that a finding of professional misconduct is justified in respect of it.

[141] Clients and the public are entitled to expect that, in the absence of making reasonable inquiries and being satisfied with the information obtained in response, a lawyer will not pay out funds to a third party being held on a client's behalf. This is especially important given that lawyers and their trust accounts are not subject to the anti-money laundering rules applicable to others. With that exemption comes a concomitant expectation that lawyers will be alert to objectively suspicious circumstances, make meaningful inquiries when those circumstances are present, record the information they learn as a result of those inquiries, and cease participating in the transaction if they are not satisfied by the information they obtain. A failure to abide by these requirements jeopardizes the exemption that exists in order to protect the zone of privilege applicable to lawyers' dealings with their clients, and is therefore essential to the continued independence of the profession and the proper administration of justice.

[142] A majority of the Review Board considers that the Respondent's conduct in respect of the payment of the Trust Balance to Company 2 fell markedly short of the standard the Law Society expects of its members. While it was not repeated or engaged in with *mala fides*, it was a profound breach of the expectations imposed on lawyers and the administration of their trust accounts in these circumstances.

[143] To this extent only, a majority of the Review Board finds that the Law Society has established Allegation 1, and substitutes that limited finding of professional misconduct

for the determination made by the Hearing Panel. We otherwise agree, for different reasons, with the Hearing Panel's dismissal of Allegation 1.

Allegations 2 and 3

[144] We next turn to Allegations 2 and 3, which allege breaches of the client identification requirements of the Rules. Each allegation asserts that, with respect to an identified person (WFD Ltd., PKJ and LS), and during specified time periods, the Respondent failed to make reasonable efforts to obtain the client's identification information and to record the information obtained, contrary to one or both of Rules 3-100 and 3-107 of the Law Society Rules.

[145] As noted, the Law Society does not allege that the Respondent's alleged breaches of these Rules amounted to professional misconduct (although it says that finding is open to us), but restricts itself to seeking a finding that the Respondent breached the applicable Rules.

[146] The client identification and verification Rules are designed to, among other things, prevent the fraudulent use of lawyers' trust accounts. They facilitate investigations by the Law Society. Strict compliance with the Rules is required: *Law Society of BC v. Wang*, 2023 LSBC 38, at para. 62.

[147] After the Hearing in this matter, we sought written submissions from the Law Society and the Respondent to confirm the version of Rule 3-100 that was said to be applicable, given that the alleged misconduct occurred in the summer and fall of 2019. In their written submissions, the Law Society and the Respondent agreed on which Rule applied, and we apply that agreement in this decision.

[148] As agreed by the Law Society and the Respondent, the version of Rule 3-100 applicable at the relevant time in 2019 provided as follows:

> Client identification
>
> 3-100 (1) A lawyer who is retained by a client to provide legal services must make reasonable efforts to obtain and, if obtained, record all of the following information that is applicable:
>
> (a) the client's full name, business address and business telephone number;
>
> (b) if the client is an individual, the client's home address, home telephone number and occupation;

> (c) if the client is an organization, the name, position and contact information for individuals who give instructions with respect to the matter for which the lawyer is retained;
>
> (d) if the client is an organization other than a financial institution, public authority or reporting issuer,
>
> (i) the general nature of the type of business or activity engaged in by the client, and
>
> (ii) the organization's incorporation or business identification number and the place of issue of its incorporation or business identification number.
>
> (2) When a lawyer has obtained and recorded the information concerning the identity of a client under subrule (1), the lawyer is not required subsequently to obtain and record that information about the same individual or organization.

[149] Rule 3-107 provided at the relevant time in 2019:

> Record keeping and retention
>
> 3-107 (1) A lawyer must obtain and retain a copy of every document used to verify the identity of any individual or organization for the purposes of Rule 3-102 (1) *[Verification],*
>
> (2) The documents referred to in subrule (1) may be kept in a machine-readable or electronic form, if a paper copy can be readily produced from it.
>
> (3) A lawyer must retain a record of the information and any documents obtained for the purposes of Rules 3-100 *[Client identification]* and 3-103 *[Identifying directors, shareholders and owners]* and copies of all documents received for the purposes of Rule 3-102 (2) *[Verification]* for the longer of
>
> (a) the duration of the lawyer and client relationship and for as long as is necessary for the purpose of providing services to the client, and
>
> (b) a period of at least 6 years following completion of the work for which the lawyer was retained.

[150] The Hearing Panel dismissed Allegations 2 and 3 the Citation, finding that "[t]o the extent the Rules were breached the breaches were insignificant and therefore do not warrant a finding against the Respondent" (*F&D Decision*, para. 68).

[151] We will address each of Allegations 2 and 3 in turn.

Allegation 2

[152] Allegation 2 relates to WFD Ltd. The Law Society alleges that the Respondent failed to obtain and record WFD Ltd.'s business telephone number, the nature of WFD Ltd.'s business, and PKJ's position with WFD Ltd.

[153] The Hearing Panel found that the Respondent failed to obtain and record WFD Ltd.'s business telephone number, and failed to record (although he knew it) what PKJ's position was with WFD Ltd. (*F&D Decision*, at paras. 82, 84) The Respondent does not dispute these facts, and we find the Hearing Panel was correct in so finding.

[154] Having found these facts, though, the Hearing Panel found that "[c]onsidering the gravity of the misconduct, the duration, the absence of *mala fides* and the absence of harm" that "the failure to get and record the business telephone number and PKJ's job title, to be too insignificant to qualify as a Rules breach" (*F&D Decision*, at para. 87). The Hearing Panel found that the Respondent had "largely complied with the Rules", and any omission was "an insignificant oversight" (*F&D Decision*, at para. 85). The Respondent supports this finding, characterizing the issue as one of administrative record-keeping, not client verification.

[155] In so finding, the Hearing Panel relied on the decision of the panel in *Lyons*, in which it was said (at paras. 32 to 33):

> A breach of the Rules does not, in itself, constitute professional misconduct. A breach of the Act or the Rules that constitutes a "Rules breach", rather than professional misconduct, is one where the conduct, while not resulting in any loss to a client or done with any dishonest intent, is not an insignificant breach of the Rules and arises from the respondent paying little attention to the administrative side of practice (*Law Society of BC v. Smith*, 2004 LSBC 29).
>
> In determining whether a particular set of facts constitutes professional misconduct or, alternatively, a breach of the Act or the Rules, panels must give weight to a number of factors, including the gravity of the misconduct, its duration, the number of breaches, the presence or absence of *mala fides*, and the harm caused by the respondent's conduct.

[156] In the view of a majority of the Review Board, the Hearing Panel misapprehended the focus of the panel's decision in *Lyons*. In the passages relied upon by the Hearing Panel, the *Lyons* panel was distinguishing between conduct that amounted to a "Rules breach" and conduct that amounted to professional misconduct (and the respondent in

Lyons had admitted to professional misconduct). The line between those two findings – a Rules breach or professional misconduct – is to be drawn by reference to, among other things, "the gravity of the misconduct, its duration, the number of breaches, the presence of *mala fides*, and the harm caused by the respondent's conduct": *Lyons* at para. 35. Those considerations distinguish between conduct amounting to a Rules breach (under s. 38(4)(b)(iii) of the *Act*) and conduct amounting to professional misconduct (under s. 38(4)(b)(i) of the *Act*). They do not first define conduct that does not amount to professional misconduct but is rather a Rules breach, and then create a third category of an "insignificant Rules breach".

[157] It is notable that, in *Lyons*, the lawyer admitted to professional misconduct, and the issue identified by the Hearing Panel here – a potential third category of an "insignificant" breach of the Rules that does not justify a finding under s. 38(4)(b)(iii) – was not required to be addressed by the *Lyons* panel at all.

[158] The Hearing Panel may have been led astray by the *Lyons* panel's reference to a "Rules breach" as conduct that "is not an insignificant breach of the Rules and arises from the respondent paying little attention to the administrative side of practice". The Hearing Panel fastened upon the *Lyons* panel's use of the phrase "not insignificant" in describing a Rules breach. Because the Hearing Panel found that the Respondent's failures, which it had found to be established on the evidence, were "insignificant", the Hearing Panel concluded that no Rules breach had been established under s. 38(4)(b)(iii) of the Act.

[159] A majority of the Review Board finds that the Hearing Panel erred in so finding. If a lawyer engages in conduct that is inconsistent with the applicable Rules, it constitutes a breach of the Rules for the purpose of s. 38(4)(b)(iii) of the *Act*. A breach is a breach. It may rise to the level of professional misconduct, or it may not, but it remains a breach of the Rules. As a matter of statutory interpretation, there is no third category under s. 38(4)(b) of the Act in which a lawyer may breach the Rules but do so in a manner that is too "insignificant" to be characterized as a Rules breach under s. 38(4)(b)(iii) of the *Act*.

[160] The Law Society confirmed at the hearing that it is not aware of any prior hearing panel adopting the interpretation reached by the Hearing Panel in this case. If a breach of the Rules is established, but the conduct does not rise to the level of professional misconduct, a hearing panel must make the necessary finding under s. 38(4)(b)(iii) of the *Act*.

[161] The applicable Rules, at the time, required that a lawyer make "reasonable efforts" to obtain and to record the required information, *i.e.*, it was not a strict liability regime. The Hearing Panel found correctly that the Respondent failed to obtain and record WFD Ltd.'s business telephone number, and failed to record (although he knew it) what PKJ's

position was with WFD Ltd. The Hearing Panel also found that these omissions breached the applicable Rules, which we take to include a finding, with which we agree, that the Respondent did not make reasonable efforts in that regard.

[162] Having determined that these omissions breached the applicable Rules, a majority of the Review Board finds that the Hearing Panel erred in not making the necessary finding under s. 38(4)(b)(iii) of the *Act*.

[163] We accordingly substitute a finding that, in respect of Allegation 2 and pursuant to s. 38(4)(b)(iii) of the *Act*, the Respondent breached Rule 3-100 and Rule 3-107. The Law Society does not seek to establish that this conduct amounted to professional misconduct, and we would not have so found in any event.

Allegation 3

[164] Allegation 3 relates to PKJ and, in particular, his engagement of the Respondent to seek an adjournment of the application to set aside a default judgment in May or June 2019.

[165] The Law Society alleged before the Hearing Panel that the Respondent failed to record PKJ's occupation and to take reasonable steps to obtain and to record his business and home telephone numbers. The Hearing Panel correctly found that Rules 3-100 and 3-107 do not require a lawyer to obtain and record an individual's business telephone number, and focused on whether the Respondent had failed to record PKJ's home telephone number (as opposed to his mobile phone number) and his occupation.

[166] There remains a distinction between a mobile phone number and a home (landline) telephone number. Communications conducted exclusively through mobile numbers or platforms such as WeChat are inherently more transient and less verifiable than are business numbers or home landlines. Mobile numbers can be readily changed, ported, or abandoned, and messaging platforms may lack reliable, accessible records that can be independently examined by the Law Society, law enforcement or other third parties. In our view, maintaining requirements that anchor client identification and communication in forms that are capable of audit remains critical to ensuring that lawyers do not, even inadvertently, become the instruments of unscrupulous clients.

[167] The Hearing Panel found that "[o]ne could argue the Respondent technically breached the Rule by failing to verify if PKJ had a landline phone number" (*F&D Decision*, at para. 94). The Rule required the Respondent to make reasonable efforts to obtain PKJ's home telephone number. We interpret the Hearing Panel's observation as a finding that the Respondent failed to make such reasonable efforts to obtain the

Respondent's home telephone number. A majority of the Review Board agrees, and also makes that finding.

[168] The Hearing Panel then found that it was sufficient compliance with the Rules that the Respondent had PKJ's mobile phone number (which, the Hearing Panel found, was recorded electronically in the WeChat contact entry the Respondent had for PKJ) (*F&D Decision*, at paras. 90, 94). Having a mobile phone number in a WeChat contact entry is not the same as recording an individual's home telephone number in the file that must be maintained by a lawyer. A majority of the Review Board finds that the Hearing Panel erred in finding otherwise.

[169] The Hearing Panel then found that, if its earlier findings regarding Allegation 3 were in error (and we have found they were in error), then "this was an insignificant failure to comply with the Rules that does not rise to a Rules breach or professional misconduct" (*F&D Decision*, at para. 95). For the reasons stated above in relation to the Hearing Panel's assessment of Allegation 2, a majority of the Review Board finds that this was an error. A breach of the Rules that does not rise to the level of professional misconduct remains a breach of the Rules pursuant to s. 38(4)(b)(iii) of the *Act*.

[170] A majority of the Review Board accordingly finds that the Respondent failed to take reasonable steps to obtain and to record PKJ's home telephone number in the file, and that this conduct constitutes a breach of Rule 3-100, pursuant to s. 38(4)(b)(iii) of the *Act*.

[171] Finally with respect to Allegation 3, the Hearing Panel found that "[w]hile the Respondent knew PKJ's occupation, he did not record it in the file" (*F&D Decision*, at para. 96). We agree, and also so find. However, the Hearing Panel then found that "[h]is failure to do so was also an insignificant failure to comply with the Rules" (para. 96). For the reasons we have stated, a majority of the Review Board considers that this was an error by the Hearing Panel. We therefore substitute a finding that this conduct constitutes a breach of Rule 3-100 and Rule 3-107, pursuant to s. 38(4)(b)(iii) of the *Act*.

DECISION AND ORDER

[172] For the reasons stated above, the Review Board finds, by a majority, that:

(a) with respect to Allegation 1, the Respondent engaged in professional misconduct when he failed to make reasonable inquiries, record the results of any inquires made, and cease acting, related to paying the Trust Balance to Company 2;

(b) with respect to Allegation 2 and 3 the Respondent breached Rules 3-100 and 107 of the Law Society Rules, pursuant to s. 38(4) of the *Act*; and

(c) the Citation ought to be and is otherwise dismissed.

DISSENTING REASONS OF CHRISTINA J. COOK, KC

[173] It is with the utmost respect I have for my fellow Review Board members and the excellently drafted decision of the Review Board; I do not concur with their determination of this matter.

[174] Pursuant to s. 47 of the *Legal Profession Act*, after hearing the matter, the Review Board may

(a) confirm the decision of the panel, or

(b) substitute a decision the panel could have made under this *Act*.

[175] After hearing this matter, in my opinion the Review Board should confirm the decision of Hearing Panel in the *F&D Decision*.

Allegation 1

[176] Specifically, regarding Allegation 1, I find that the Respondent's actions do not rise to a level of professional misconduct and confirm the Hearing Panel's determination.

[177] As stated by the Hearing Panel, there is no statutory definition of professional misconduct. Previous LSBC Tribunal hearing panels have held that the test for professional misconduct is whether the conduct under review is a marked departure from that expected of lawyers, and this is to be an objective test (*Martin* at para. 17. See also e.g. *Edwards* at paras. 44 to 46).

[178] The hearing panel in *Law Society of BC v. Daignault*, 2025 LSBC 22 recently stated, at para. 27:

> Determining whether a lawyer's behaviour warrants a finding of professional misconduct is context specific. Hearing panels must consider the circumstances surrounding the misconduct. This may include assessing the gravity of the misconduct, its duration, the number of breaches, the presence or absence of *mala fides* (bad faith) and harm caused by the conduct.

[179] In this matter, the Law Society submits in Allegation 1 that the Respondent committed professional misconduct by permitting the use of his firm's trust account between August and November 2019 in the course of acting for his client WFD Ltd.

[180] The Hearing Panel dismissed Allegation 1, finding that most of the so-called "red flags" identified by the Law Society did not give rise to objectively suspicious circumstances. To the extent that there were some red flags, they found the Respondent made reasonable inquiries.

[181] The Hearing Panel determined that the Respondent's actions were not ideal, however they determined that his actions did not rise to a level of professional misconduct.

[182] Importantly, the Citation does not allege any alternative adverse determinations (*i.e.* a breach of a Rule), it only contains an allegation of professional misconduct with respect to Allegation 1. Therefore, the Hearing Panel's jurisdiction was limited to a determination of professional misconduct or dismissal of the Citation (*Law Society of BC v. Wieser,* 2024 LSBC 43, at para. 27).

[183] Having reviewed material in this matter, hearing the submissions of the parties at the Review Hearing, and having considered the *F&D Decision*, I concur with the analysis and conclusion of the Hearing Panel that the Respondent's actions considered objectively, and in totality do not rise to the level of professional misconduct.

Allegations 2 to 3

[184] Regarding Allegations 2 and 3, the Hearing Panel determined that the Respondent's actions were too insignificant to constitute a breach of the Rules or a finding of professional misconduct. The Hearing Panel cited *Lyons*, which held that:

> [32] A breach of the Rules does not, in itself, constitute professional misconduct. A breach of the *Act* or the Rules that constitutes a "Rules breach", rather than professional misconduct, is one where the conduct, while not resulting in any loss to a client or done with any dishonest intent, is not an insignificant breach of the Rules and arises from the respondent paying little attention to the administrative side of practice (*Law Society of BC v. Smith*, 2004 LSBC 29).
>
> …
>
> [35] In determining whether a particular set of facts constitutes professional misconduct or, alternatively, a breach of the *Act* or the Rules, panels must give weight to a number of factors, including the gravity of the misconduct, its

duration, the number of breaches, the presence or absence of *mala fides*, and the harm caused by the respondent's conduct.

[185] The Hearing Panel considered a number of factors regarding the Respondent's actions, as they are required to do, and held the Respondent's actions did not constitute either a Rules breach or a finding of professional misconduct. Pursuant to s. 47 of the *Act,* I would confirm this decision.

Allegation 4

[186] I confirm that the Law Society advised they were not proceeding with allegation 4 in this review.

PARTIALLY DISSENTING REASONS OF SUSAN KOOTNEKOFF

[187] It is with the utmost respect that I have for my fellow Review Board members and the excellently drafted decision of the Review Board, that I do not concur with the majority's determination on Allegation 1. I agree with fellow Review Board member Cook that the Hearing Panel's jurisdiction was limited to a determination of professional misconduct or dismissal of the citation. Moreover, I am unable to conclude that the Hearing Panel erred, and would confirm its decision, with respect to Allegation 1.

[188] I agree with the majority of the Review Board to substitute a breach of the Rules in relation to Allegations 2 and 3 but would add that the lack of documentation was serious in this case.

Standard of review

[189] Where a hearing panel has heard *viva voce* evidence and has had an opportunity to assess witness credibility, a review board must show deference to the hearing panel's findings of fact (*Vlug v. Law Society of British Columbia*, 2017 BCCA 172, at paras. 2, 13, and *Harding*, at paras. 6, 12).

[190] In *Harding*, at paras. 7 and 8 the Court said the following:

> [7] In *Hordal,* the review board described the standard of review as follows:
>
> > [9] In *Hops*, while considering the appropriate scope of review for "findings of proper standards of professional and ethical conduct", the Benchers adopted the language of the Honourable Mr. Justice Branca when he wrote in *Re: Prescott* (1971) 10 D.L.R. (3d) 446, at 452:

> "The Benchers are the guardians of the proper standards of professional and ethical conduct. The definition in my judgment shows that it is quite immaterial whether the conduct complained of is of a professional character, or otherwise, as long as the Benchers conclude that the conduct in question is "contrary to the best interests of the public or of the legal profession". The Benchers are elected by their fellow professionals because of their impeccable standing in the profession and are [persons] who enjoy the full confidence and trust of the members of the legal professional of this Province."

[10] It follows from that observation that the Benchers must determine whether the decision of the Hearing Panel was "correct", and if it finds that it was not, then the Benchers must substitute their own judgment for that of the Hearing Panel as is provided in Section 47 (5) of the *Legal Profession Act.*

[11] There is a clear caveat articulated in the authorities to the general application of the correctness test in cases where the Hearing Panel has had the benefit of the *viva voce* testimony of witnesses and have had the opportunity to assess the credibility of those witnesses by observing their demeanor in the proceedings. In those cases the Benchers ought to accord some deference to the Hearing Panel on matters of fact where determinations have been made by a Hearing Panel on factual matters in dispute.

[8] In *Berge*, the review board described the standard of review in this way:

> [19] The standard of review to be applied by the Benchers on this Review is one of *correctness*. See *Law Society of BC v. Dobbin*, [2000] L.S.D.D. No. 12.
>
> [20] This standard permits the Benchers to substitute their own view for the view of the Hearing Panel as to:
>
> i) *whether the Applicant's conduct constitutes conduct unbecoming* a lawyer; and/or
>
> ii) *whether the penalty imposed was appropriate***.**
>
> [21] The standard of review described above is subject to one qualification, namely, *that where issues of credibility are concerned, the*

> *Benchers should only interfere if the Hearing Panel made a clear and palpable error.* See *Law Society of BC v. Hops,* [1999] LSBC 29 and *Law Society of BC v. Dobbin (supra)*.
>
> [emphasis added]

[191] The *Hordal/Berge* standard of correctness is the standard of review to be applied by this Review Board. However, as stated in *Harding*, deference will be accorded to the Hearing Panel for determinations of matters of fact based on the assessment of witness credibility absent any clear and palpable errors.

Allegation 1

[192] The Law Society bears the burden on review. It must demonstrate that the panel misstated the law, misapprehended critical evidence, or reached conclusions unavailable on the record.

[193] Where such an error is found, pursuant to s. 47 of the *Legal Profession Act*, the Review Board may substitute a finding of professional misconduct.

[194] In respect of Allegation 1, I am of the view that the Law Society has not established professional misconduct.

[195] The Hearing Panel heard *viva voce* evidence and had an opportunity to assess credibility. The decision of the Hearing Panel with respect to professional misconduct and Allegation 1 is interwoven with its findings of fact and therefore should be given deference absent a clear and palpable error.

[196] I do not find that the Hearing Panel made any such error with respect to Allegation 1.

[197] The Respondent was able to contact PKJ through WeChat and had PKJ's cell phone number but recorded little information regarding PKJ or his other client(s) who were associated with PKJ. He had no retainer agreements. He did not document his instructions. He maintained little if any documentation of what inquiries he made or the results of those inquiries. Although PKJ had informed the Respondent that he, PKJ, was a "manager" of WFD Ltd., I see no substantiation, independent of PKJ, of this on the record. It is not clear whether "manager" was used loosely or colloquially to convey that it was PKJ who pulled the strings behind WFD Ltd., as distinct from serving as a formal manager of WFD Ltd.

[198] The Respondent knew that XW remained the Secretary of WFD Ltd. and that she was PKJ's wife. He knew that PKJ's son, JJ, was a director of Company 2. He knew that

TJW was a director of WFD Ltd., and when he sought formal instructions, he sought them from TJW. He stated to Law Society investigators that "PJ [PKJ] advised that this [Company 2] is a sort of affiliate company of the client".

[199] On this record, I could envision a scenario in which PKJ may have been, among those involved, the Respondent's primary client, WFD Ltd., Company 2 and others may also have been clients, and PKJ may have had no formal authority but may have acted indirectly through one or more of his wife, XW, son, JJ, WFD Ltd., Company 1, Company 2, TJW, PJW, ZZ and others. The record is consistent with PKJ having potentially been the main player behind WFD Ltd., Company 1, Company 2, ZZ and others. For example, PKJ's wife, XW, remained the Secretary of WFD Ltd. and the President and Secretary of Company 2 and was an incorporating director of Company 2. PKJ's son, JJ, was a director of Company 2. When on the record the Respondent refers to WFD Ltd. he often refers to both WFD Ltd. and PKJ, and when he sought formal instructions from WFD Ltd., he did so from the director, TJW rather than from XW. PKJ and TJW informed the Respondent that ZZ was "a business partner or friend" of PKJ. PKJ, Company 1and ZZ had no independent legal representation. PKJ having had a pervasive yet indirect role is also consistent with the Hearing Panel's conclusion at paragraph 131 of the *F&D Decision* that, with respect to the loan by ZZ and the registration of the mortgage in the name of a company controlled by ZZ, "clearly the Respondent was in a conflict of interest with respect to the funds provided by ZZ. He was acting for both the borrower and the lender." The Respondent may indeed have "sent the balance of retainer funds" "back" to "the client", as the Hearing Panel concluded at paragraphs 46 and 151 of the *F&D Decision*. I read the record as being consistent with "the client" being PKJ and the various others he may have acted through, including WFD Ltd., Company 2, Company 1and ZZ.

[200] The obligation to make and record reasonable inquiries is a substantive safeguard to protect the public interest. Where a lawyer receives instructions from an individual, such as PKJ, who may be operating indirectly through a network of corporations or other people, and whose role is not transparent, the need for careful inquiry and documentation becomes particularly important. Indirect involvement can obscure who is truly directing the transaction, who stands to benefit, and whether the lawyer's services may be being used for improper purposes.

[201] In circumstances such as these, contemporaneous records of inquiries into the identity, role, authority, and objectives of the instructing individual and the instructing individual's specific connection to the others serve at least two important functions. First, they discipline the lawyer's own analysis by requiring that suspicions be identified and inquired about and to consider whether the responses are satisfactory, rather than simply accepting the responses at face value. Second, they create an auditable record that permits

the Law Society to assess whether the lawyer has remained on guard against becoming the tool or dupe of an unscrupulous client.

[202] This becomes especially important in matters involving complex or opaque financial arrangements, where legal services may be used to facilitate unlawful activity, including to move or launder funds. In the absence of recorded inquiries, there is no reliable way to determine whether a lawyer made the necessary inquiries or simply proceeded based on unverified assurances. The requirement to record inquiries is therefore integral to the regulatory framework. It is one of the primary means by which the profession protects the public and ensures that lawyers do not, even if inadvertently, become instruments of improper conduct.

[203] PKJ's pervasive involvement together with his absence of any clear or formal role including in WFD Ltd., Company 1 and Company 2, may have been an objectively suspicious circumstance. That in mid-August 2019 the Respondent sought formal instructions from TJW may have been an acknowledgement that PKJ lacked clear authority. Yet the Respondent did not document any inquiries he made, did not end his involvement with PKJ until November 2019 and in the meantime, continued to accept instructions from PKJ. As the Law Society did not advance the position that PKJ's ever-present involvement in giving instructions while lacking any clear role, was in itself an objectively suspicious circumstance that should have prompted the Respondent to make further inquiries, and to record the results of those inquiries, we need not determine this question.

[204] In my view, the Hearing Panel's decision is consistent with the facts and the law, and is deserving of deference with respect to Allegation 1.

[205] I therefore would find that the Law Society has not succeeded in establishing professional misconduct with regard to Allegation 1. I would confirm the Hearing Panel's decision with respect to Allegation 1.

Allegations 2 and 3

[206] I agree with the majority of the Review Board to substitute a breach of the Rules in relation to Allegations 2 and 3, however I wish to add that I consider the lack of documentation maintained by the Respondent in this case to be serious. I am mindful of the considerations highlighted by the majority at paragraph 166 of its decision, with which I agree.

[207] We need not determine whether the lack of documentation in this specific case was a marked departure from the standard of reasonably prudent lawyer that amounted to professional misconduct and whether the Hearing Panel erred in concluding otherwise,

because during the review hearing, the Law Society withdrew its allegations of professional misconduct in relation to Allegations 2 and 3 and alleged only a breach of the Rules.