

2026 LSBC 20
Hearing File No.: HE20250005
Decision Issued: October 19, 2026
Citation Issued: May 23, 2025
Citation Amended: June 3, 2025
Citation Further Amended: February 23, 2026
Citation Further Amended: May 27, 2026

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

DESMOND GREG FRIEDLAND

RESPONDENT

**DECISION OF THE HEARING PANEL
ON A JOINT SUBMISSION PURSUANT TO RULE 5-6.5**

Written materials: July 21, 2026

Panel: Tim Delaney, KC, Chair
Julie Mantini, Lawyer
Ruth Wittenberg, Public representative

Discipline Counsel: Ilana Teicher
Glen Krueger

Appearing on his own behalf: Desmond Greg Friedland

Introduction

[1] The Law Society issued a citation against the Respondent on May 23, 2025. It was amended on June 3, 2025, February 23, 2026, and May 27, 2026 (“Citation”). In short, the Citation alleged the Respondent failed to make reasonable inquiries concerning an estate matter, mishandled his firm’s trust accounts on multiple occasions, and provided answers to one or more questions on his annual trust report that he knew or ought to have known were false or misleading.

[2] In compliance with Rule 5-6.1(1) of the Law Society Rules (“Rules”), we determine that the Respondent was served with the Citation in accordance with Rule 4-19. This Citation was set to be heard on July 21, 22, and 23, 2026 in person.

[3] Just before the hearing, the parties applied under Rule 5-6.5 to request that this Panel accept their agreed statement of facts (“ASF”), the Respondent’s admission of professional misconduct outlined in a letter dated July 13, 2026, and their proposed disciplinary action as follows:

- (a) a suspension for a period of ten weeks, commencing 60 days from the date of this decision or another date the parties may agree to in writing;
- (b) a condition not to operate a trust account in the Respondent’s practice except in accordance with the terms of a Trust Supervision Agreement approved by the Law Society;
- (c) a condition to complete six hours of continuing legal education, approved by the Executive Director, in wills and estates within six months of this decision.

The parties also agreed to costs in the amount of \$1,000, payable by the Respondent within 30 days of the date of the Panel’s decision.

[4] Notably, Rule 5-6.5 provides that this Panel must not impose a disciplinary action that is different than that which is proposed unless we consider the proposed disciplinary action to be “contrary to the public interest in the administration of justice.” We must also give the parties an opportunity to make submissions on any substituted disciplinary action.

[5] The parties provided joint written submissions supporting their position that the Respondent’s conduct met the definition of professional misconduct and the proposed disciplinary action would satisfy the public interest in the administration of justice. The

parties also provided a draft copy of the Trust Supervision Agreement to this Panel for review.

Issues

[6] On an application pursuant to Rule 5-6.5, this Panel must decide whether to accept the Respondent's admissions and the jointly proposed disciplinary action. The two questions the Panel must determine are as follows:

1. Does the conduct to which the Respondent admits constitute professional misconduct?
2. If so, should we impose the disciplinary action the parties have jointly proposed?

Admitted Allegations in Citation

[7] The Law Society is seeking findings of professional misconduct in relation to allegations 2, 4, 6, 7, and 8 of the Citation. The Respondent admits to professional misconduct in relation to each of these allegations.

[8] Allegation 2 states that, between approximately March 15, 2018 and August 11, 2021, in the course of representing his client concerning an estate matter, the Respondent failed to make reasonable inquiries in relation to one or more of the following, contrary to rule 3.2-7 and the commentary of the *Code of Professional Conduct for British Columbia* ("Code"):

- (a) his client and the subject matter and objectives of the retainer;
- (b) the reason for the payment of some or all of \$1,008,877.79 into his firm's trust account;
- (c) the alleged agreements between the purported beneficiaries to have his client apply for letters of administration of the estate; and
- (d) the alleged agreements between the purported beneficiaries as to the disposition of the estate.

[9] Allegation 4 states that, between approximately November 23, 2018 and November 13, 2024, in one or more of the 29 instances in Schedule B, the Respondent misappropriated or improperly withdrew client trust funds from his firm's pooled trust account, contrary to one or more of Rules 3-63 and 3-64(3) of the Rules, and his fiduciary duties, by doing one or more of the following:

- (a) withdrawing funds from trust when there were insufficient funds on deposit to the credit of the clients, resulting in trust shortages;
- (b) withdrawing funds from trust when his trust accounting records were not current; and
- (c) making payments from trust when the payments should have been made from the firm's general account.

[10] Allegation 6 states that, between approximately January 8, 2020 and November 25, 2022, in one or more of the 16 instances listed in Schedule C, the Respondent received money into his firm's pooled trust account when he failed to do one or both of the following, contrary to one or more of Rules 3-64.2(b) and 3-68(a) and (b) of the Rules:

- (a) identify and record the source of funds received into his firm's pooled trust account; and
- (b) identify and record the identity of the client on whose behalf trust funds were received into his firm's pooled trust account.

[11] Allegation 7 states that, between approximately March 31, 2021 and September 30, 2022, in one or more of the 18 instances listed in Schedule "D", the Respondent failed to do one or both of the following, contrary to Rule 3-73 of the Rules:

- (a) prepare a monthly trust reconciliation for his firm's pooled trust account within 30 days of the effective date of the reconciliation; and
- (b) maintain a listing of balances of each separate trust account or savings, deposit, investment or other account identifying the client for whom each is held.

[12] Allegation 8 states that, on or about April 20, 2021, the Respondent provided answers to one or more of questions C14, C18, C20, C24, C26, C30, and C31 on his annual trust report for the period ending December 31, 2020, that he knew or ought to have known were false or misleading.

Issue 1: Does the conduct to which the Respondent admits constitute professional misconduct?

[13] We accept the ASF. It is detailed and comprehensive. Documents are appended to it which support its contents. The Respondent had the opportunity to obtain independent legal advice before he signed a letter dated July 13, 2026, which outlines the actions the Respondent admits are professional misconduct.

[14] Rule 5-6.5 does not obviate the need for the panel to consider whether the ASF proves the admitted misconduct on the balance of probabilities. Professional misconduct is not defined in the *Legal Profession Act* (“*Act*”) or the Rules or the *Code*. The test for professional misconduct is found in *Law Society of BC v. Martin*, 2005 LSBC 16. Professional misconduct is conduct that is a “marked departure from that conduct the Law Society expects of its members.” The test for professional misconduct is an objective test.

[15] The hearing panel in *Law Society of BC v. Lyons*, 2008 LSBC 09, at paras. 32 and 35, distinguished between a breach of the Rules and professional misconduct:

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.

Allegation 2: Failure to make reasonable inquiries

[16] The Respondent had not seen or obtained any documentation setting out any authority that his client had to provide instructions in relation to an estate. The Respondent was aware that his client was not mentioned in the will, and she was not an executor or beneficiary of the estate. The extent of the Respondent’s understanding of his client’s role in relation to the estate was based on his client’s representations to him that she was communicating the wishes of the deceased’s family members. These family members were potential beneficiaries who lived on another continent. The Respondent did not obtain any confirmation from these family members that his client could provide him with instructions on their behalf. In addition, the Respondent did not have a signed retainer agreement with his client specifying what legal services he was providing.

[17] The Respondent did receive documents for the sale of the deceased’s apartment and a trust cheque which represented the net proceeds of the sale of this apartment in the amount of \$1,006,947.44. The sale documents were signed by the Respondent’s client purportedly as the executor for the estate. The Respondent deposited those funds in trust.

[18] The Respondent also received from a liquidator a cheque in the amount of \$1,930.35 representing the distribution of the remainder of the strata funds in relation to the sale of the apartment. In an e-mail to various individuals, including the lawyer who drafted the will, the Respondent stated that he was not exactly sure what these funds represented. The Respondent also deposited these funds in trust.

[19] The Respondent did not provide any services in relation to the sale. He did not take any steps to apply for probate, and he did not confirm who the intended beneficiary or beneficiaries of the estate were. He did not have any instructions from the estate's intended beneficiary or other persons named in the will. The intended beneficiary and potential beneficiaries were located on another continent. The Respondent communicated with other lawyers involved with the estate as if the Respondent's client had the authority to provide instructions for the estate.

[20] The Respondent relied on his client's own representations as to her authority. The Respondent also relied on his own belief that the will would be declared invalid.

[21] On April 27, 2021, the BC Supreme Court ordered that the will was rectified and confirmed the intended beneficiary of the will, who lived on another continent, was the sole heir. The BC Supreme Court also ordered that the lawyer who initially drafted the will and was named as the executor would be granted probate once he filed the necessary paperwork.

[22] Rule 3.2-7 of the *Code* states that 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. The commentary to this rule specifically states that lawyers should be on guard against becoming the "tool or dupe" of an unscrupulous client or of others. Commentary [3] to rule 3.2-7 states that, if lawyers have suspicions or doubts whether they might be assisting a client in any dishonesty, crime or fraud, lawyers should make reasonable inquiries to obtain information about the client and about the subject matter and objectives of the retainer.

[23] In *Law Society of BC v. Gurney*, 2017 LSBC 15, at para. 79, lawyers' duties regarding the use of their trust accounts are summarized:

- (a) A lawyer's trust accounts are to be used for legitimate commercial purposes for which they are established, the completion of a transaction, where the lawyer plays the role of legal advisor *and* facilitator. They are not to be used as a convenient conduit. Even where other authorities, such as FINTRAC, may be aware of the source of the funds entering an account, the effect of solicitor-client privilege is that the parties to whom the funds are disbursed and the purpose for which the funds are

disbursed are shielded by the privilege. It is for this reason that a lawyer's trust account cannot be used only for the purpose of facilitating the completion of a transaction, but the lawyer must also play a role as a legal advisor with regard to the transaction. This is the requirement to provide legal services.

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

[emphasis in original]

[24] *Gurney* establishes an objective test to trigger the requirement for lawyers to make reasonable inquiries into the legitimacy of a transaction. We agree with the parties that *Gurney* imparts an objective test to commentary [3] of rule 3.2-7. We note that the approach in *Gurney* was recently used in *Law Society of BC v. Wang*, 2024 LSBC 42.

[25] We conclude that the Respondent failed to make reasonable inquiries in objectively suspicious circumstances. This conduct was a marked departure from the conduct expected of lawyers, and, therefore, constitutes professional misconduct.

[26] The Respondent took instructions from a client to accept a large amount of money into trust on behalf of an estate when this client had no evidence, other than her own representations, that she had the authority to act on its behalf. Although the Respondent was of the opinion that the will was invalid, his client still did not have authority to act at the time he accepted over a million dollars into trust. At that time, the Respondent also had not confirmed with any of the deceased's family members, who were located on another continent, what his client's role was intended to be.

[27] The Respondent should have realized that his client had no right to the proceeds from the sale of the deceased's apartment. However, he accepted the proceeds and held them in trust. He did so even after providing no legal services connected with the sale or taking steps to apply for probate. We find the Respondent's actions in this situation to be reckless, and he failed to be an effective gatekeeper for his trust accounts.

[28] The Respondent's conduct harms public confidence in the profession. The trust account is not to be used for administrative convenience, whether that convenience is for clients or lawyers.

[29] Lawyers have an obligation to use trust accounts for receipt and disbursement of funds directly related to the legal services provided. This obligation plays an important role in preventing lawyers from unknowingly facilitating money laundering, fraud, or other illegal activities.

Allegations 4, 6 & 7: Misappropriation or improper trust withdrawal and trust accounting Rule breaches

[30] With respect to allegation 4, the Respondent misappropriated and made improper withdrawals from his law firm's pooled trust account in one or more of the 29 instances listed in Schedule B of the Citation between approximately November 23, 2018 and November 13, 2024. He did so when one or more of the following was true: withdrawing funds from trust when there were insufficient funds on deposit to the credit of the clients which resulted in trust shortages, withdrawing funds from trust when the trust accounting records were not current, and making payments from trust which should have been made from his firm's general account.

[31] The improper withdrawals totaled over \$38,000 and each of the improper withdrawals resulted in trust shortages, which remained outstanding between eight and 1,653 days. The Respondent eliminated trust shortages by depositing various cheques from the firm's general account or by subsequent deposits of new retainers or payments from clients. We find, and the Respondent admitted, this conduct was contrary to Rules 3-63 and 3-64(3) and his fiduciary duties.

[32] With respect to allegation 6, the Respondent admitted that between January 8, 2020 and November 25, 2022, in one or more of the 16 instances set out in Schedule C of the Citation, he received client funds into trust, but he did not identify and record the source of funds received into the firm's pooled trust account. He also admitted to failing to identify and record the identity of the client on whose behalf the trust funds were received into his pooled trust account. We find this conduct is contrary to Rule 3-64.2(b) and Rule 3-68(a) and (b).

[33] With respect to allegation 7, the Respondent admitted that, between approximately March 31, 2021 and September 30, 2022, in one or more of the 18 instances listed in Schedule “D” of the Citation, he failed to do one or both of the following: (a) prepare a monthly trust reconciliation for his firm’s pooled trust account within 30 days of the effective date of the reconciliation; and (b) maintain a listing of balances of each separate trust account or savings, deposit, investment or other account identifying the client for whom each is held. We find this conduct is contrary to Rule 3-73 of the Law Society Rules.

[34] The ASF and the Respondent’s admissions of the conduct in allegations 4, 6, and 7 of the Citation demonstrate a breach of the Rules. However, we find the Respondent’s conduct goes beyond a mere breach. It is professional misconduct.

[35] With respect to allegation 4, we find that the Respondent misappropriated funds which constitutes professional misconduct. With respect to allegations 6 and 7, we find when considering all of the relevant circumstances, including the factors set out in *Lyons*, the Respondent’s conduct was a significant breach of the Rules that constitutes professional misconduct. It is a marked departure from the conduct expected of lawyers in this province: *Martin*.

[36] “Misappropriation” is not defined in the Rules. A review of the case law indicates that “misappropriation” has been defined broadly, as any unauthorized use of client trust funds. The hearing panel in *Law Society of BC v. Gellert*, 2013 LSBC 22 at paras. 71 to 73 discussed misappropriation as follows:

Misappropriation of a client’s trust funds occurs where the lawyer takes those funds for purpose unauthorized by the client, whether knowingly or through negligence or incompetence so gross as to prove a sufficient element of wrongdoing. As this definition indicates, there must be a mental element of wrongdoing or fault, yet this mental element need not rise to the level of dishonesty as that term is used in the criminal law. See *Law Society of BC v. Ali*, 2007 LSBC 18 (“*Ali*”), paras. 79-80, 105; *Law Society of BC v. Harder*, 2005 LSBC 48 (“*Harder*”), para. 56.

In determining whether a lawyer has misappropriated trust funds, it matters not whether the lawyer received any personal benefit from taking the funds. Nor does it matter that the lawyer intended to or did return the funds in short order, that he or she was acting in response to severe personal financial pressures, or that the amount of money taken was relatively small. See *Ali*, para. 104; *Harder*, para. 56.

The definition of misappropriation, and in particular its mental fault element, is driven by a recognition that the proper handling of trust funds is one of the core

parts of the lawyer's fiduciary duty to the client. An unauthorized use of trust funds harms or risks harming the client, undermines the client's confidence in counsel, and has a seriously deleterious impact on the legal profession's reputation in the eyes of the public. Because of the sacrosanct nature of trust funds, removing a client's trust funds is and should always be a memorable, conscious and deliberate act that a lawyer carefully considers before carrying out (*Ali*, para. 104, 106).

[37] In *Law Society of BC v. Sahota*, 2016 LSBC 29 at paras. 73 and 74, the hearing panel clarified that the unauthorized use of a client's funds to cover a shortage in another sub-ledger meets the definition of misappropriation. Further, misappropriation does not require a finding of a respondent's subjective intent to borrow or steal, and it is not displaced by the presence of a respondent's good character or absence of dishonesty. Taking client trust funds by gross negligence and careless inattention to trust accounting obligations constitutes misappropriation.

[38] In *Law Society of BC v. Edwards*, 2022 LSBC 27, the lawyer was alleged to have misappropriated or improperly withdrawn approximately \$2,000 in client trust funds from a trust account to the general account, thereby eliminating an overdraft for the general account. The transfer was completed by the firm's bookkeeper, who acted further to the lawyer's instructions and authorization. The panel found professional misconduct and at para. 46 said as follows:

However, given there is no evidence that the Respondent took any reasonable steps to determine that he was entitled to the trust funds prior to authorizing their withdrawal, this failure was reckless and grossly negligent and amounts to misappropriation of client trust funds.

[39] As a result of not keeping accurate client trust ledgers, the Respondent was unable to accurately determine how much money was held in trust for each client. The failure to keep proper accounts in turn contributed to the improper withdrawals and trust shortages. Many of the accounting errors were not found and corrected on a timely basis, due to the failure to ensure that trust reconciliations were completed as required and any issues promptly identified and addressed. The Respondent's conduct revealed a continuing course of action. The Respondent's breaches were numerous and repeated over a long period of time.

[40] The decisions discussing misappropriation we have referred to are clear. A lawyer must take the utmost care in accounting for clients' funds held in trust. A lawyer is personally responsible, even when the day-to-day accounting for funds held in trust is delegated to someone else. The amount also does not matter. The presence or absence of *mala fides* is also insignificant.

[41] Although in the Respondent's circumstances, his conduct did not lead to any actual financial loss to his clients, his failure to comply with the Rules for the firm's trust accounts led him to, on multiple occasions, take clients' trust funds for purposes other than those his clients had authorized. The Respondent's conduct was reckless. It could also be described as gross negligence. This conduct created a risk of harm to his clients.

[42] The operation of trust accounts is a privilege that ordinary citizens do not have. It is one of the core elements of a lawyer's fiduciary duties to clients. Any improper handling of trust funds risks harm to clients and has a serious negative impact upon the reputation of the legal profession.

Allegation 8: False or misleading answers on annual trust report

[43] When the Respondent submitted his annual trust report for the period ending December 31, 2020 ("2021 Trust Report"), he electronically signed a certification that all the information in the 2021 Trust Report was true and correct.

[44] However, the Respondent answered seven questions that he should have known were false or misleading:

(a) the Respondent incorrectly answered "yes" to the following questions in the 2021 Trust Report:

(i) *C14: Are all funds deposited into, being held in, or withdrawn from trust directly related to the provision of legal services by the reporting firm or a lawyer of the reporting firm?*

In fact, the estate funds referred to in the Citation were held in trust and were not related to the provision of legal services;

(ii) *C18: Are withdrawals from trust only made when trust accounting records are current and sufficient funds are held to the credit of the client?*

In fact, trust accounting records were not kept current and various adjusting entries were not posted on time;

(iii) *C20: Does the practice prepare a bill for fees showing the amounts and the dates charges are made, and deliver the bill to the client prior to withdrawing funds from trust?*

In fact, bills were not delivered to the client prior to withdrawing payments from trust;

- (iv) *C24: Does the practice reconcile the trust account within 30 days of month end?*

In fact, trust reconciliations were not completed in a timely manner;

- (v) *C26: Has the practice retained for each monthly trust reconciliation the following documentation? ...*

Listing of balances of each separate trust account or savings, deposit, investment or similar form of account, identifying the client for whom each is held.

In fact, the monthly trust reconciliations were not supported by a listing of balances of each separate trust account;

- (b) the Respondent incorrectly answered “no” to the following questions on the report:

- (vi) *C30: During the reporting period, did your client trust ledger disclose any trust shortages that remained uncorrected for more than one month?*

In fact, various trust shortages were not corrected within one month; and

- (vii) *C31: During the reporting period, at any month end, did you have outstanding trust deposits noted as a reconciling item on a trust bank reconciliation that were not deposited as soon as practicable?*

In fact, the trust reconciliations contained a number of outstanding deposits.

[45] Rule 7.1-1 of the *Code* says that lawyers must comply with the Law Society’s regulation of the lawyer’s practice. It includes replying promptly and completely to correspondence from the Law Society, providing documents as required, and complying with Law Society investigations, audits, and inquiries.

[46] In *Law Society of BC v. Hu*, 2010 LSBC 10 at para. 13, the hearing panel considered a lawyer’s failure to provide accurate answers on two trust reports when he knew that the answers to several questions were not true. The hearing panel concluded that the lawyer’s conduct constituted professional misconduct because the evidence

demonstrated the lawyer's conduct was "culpable." The lawyer had prepared the reports personally.

[47] In *Law Society of BC v. Van Twest*, 2011 LSBC 9 at para. 41, the hearing panel commented as follows:

...the Trust Report is an important document in respect of the administration of the audit function of the Law Society. It is relied upon to confirm the ongoing compliance of lawyers relating to their accounting functions. With very few exceptions, a breach of the Rules relating to the portion of the Trust Declaration that deals with those accounting functions cannot be said to be "insignificant".

[48] The Respondent admitted to knowing that the answers in his 2021 Trust Report were false or misleading. While a finding of deliberate deceit is not required, we find that the Respondent's conduct amounted to recklessness or gross culpable neglect, as the Law Society submitted. The Law Society relies on lawyers to be truthful and forthcoming in self-reporting matters concerning their practice. The Respondent's conduct in providing information to the Law Society that he knew was false or misleading constitutes a marked departure from the standard expected of lawyers and warrants a finding of professional misconduct. False or misleading information precludes the Law Society from effectively regulating its members and fulfilling its statutory mandate to protect the public.

Issue 2: Should we impose the disciplinary action the parties have jointly proposed?

[49] The parties have agreed to the following disciplinary action:

- (a) a ten-week suspension to commence 60 days from the date of the Hearing Panel's decision, or such other date as the parties may agree to in writing;
- (b) a condition not to operate a trust account in his practice except in accordance with the terms of a Trust Supervision Agreement approved by the Law Society;
- (c) a condition to complete six hours of Continuing Legal Education, to be approved by the Executive Director, in the areas of wills and estates within six months of the date of the Hearing Panel's decision; and
- (d) the Respondent will pay costs to the Law Society in the amount of \$1,000, within 30 days of the date of the Hearing Panel's decision.

[50] In the Respondent's letter date July 13, 2026 admitting to the disciplinary violation, he consented to this disciplinary action. As we pointed out earlier, the Respondent had the opportunity to obtain independent legal advice before he signed the letter.

[51] Under Rule 5-6.5 we must accept the disciplinary action consented to by the Respondent unless it is "contrary to the public interest in the administration of justice." In interpreting those words, we are guided by *R v. Anthony-Cook*, 2016 SCC 43. This case dealt with a criminal sentence, and the Supreme Court of Canada found at para. 33 that a joint sentencing recommendation may be considered contrary to the public interest if it is "so markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning of the criminal justice system."

[52] We accept that the proposed sanction for the Respondent's professional misconduct falls within the range of disciplinary actions imposed in other cases involving similar discipline violations. It is not so out of line with expectations, and it cannot be said to bring the administration of justice into disrepute or to be contrary to the public interest.

[53] In *Law Society of BC v. Ogilvie*, 1999 LSBC 17, the panel listed 13 factors to consider when determining an appropriate sanction. The hearing panel also stated at paragraphs 9 to 10:

Given that the primary focus of the *Legal Profession Act* is the protection of the public interest, it follows that the sentencing process must ensure that the public is protected from acts of professional misconduct. Section 38 of the *Act* sets forth the range of penalties, from reprimand to disbarment, from which a panel must choose following a finding of misconduct. In determining the appropriate penalty, the panel must consider what steps might be necessary to ensure that the public is protected, while also taking into account the risk of allowing the respondent to continue in practice.

... In the context of a self-regulatory body one must also consider the need to maintain the public's confidence in the ability of the disciplinary process to regulate the conduct of its members ...

[54] In *Law Society of BC v. Dent*, 2016 LSBC 5 at paragraph 14, the hearing panel examined the 13 factors. It noted:

The review panel in *Lessing* observed that not all the *Ogilvie* factors would come into play in all cases and the weight to be given these factors would vary from cases to case. But the review panel noted that the protection of the public (including public confidence in the disciplinary process and public confidence in

lawyers generally) and the rehabilitation of the member, were two factors that, in most, cases, would play an important role. The panel stressed, however, that, where there was a conflict between these two factors, the protection of the public, including protection of the public confidence in lawyers generally, would prevail.

[55] The hearing panel in *Dent* consolidated the 13 *Ogilvie* factors into a list of four general categories:

- (a) the nature, gravity and consequences of the conduct;
- (b) character and professional conduct record of the respondent;
- (c) acknowledgement of the misconduct and remedial action; and
- (d) public confidence in the legal profession including public confidence in the disciplinary process.

The nature, gravity and consequences of the misconduct

[56] The Respondent's misconduct was serious due to the nature of the discipline violations. It involved failing to make reasonable inquiries for funds held in trust and other trust accounting failures. Trust funds are sacrosanct.

[57] However, the parties maintain that the violations were not at the higher end of the spectrum of cases involving lawyers who breached their trust accounting gatekeeper duties. The parties point out that the client in the estate matter was not intending to act illegally. Money laundering was not being facilitated, and no crime was being committed. According to the parties, the Respondent's professional misconduct is distinguishable from the more serious precedents involving a failure to make inquiries under rule 3.2-7 of the *Code*.

[58] Nonetheless, through recklessness and gross negligence, the Respondent misappropriated client trust funds in 29 instances, creating trust shortages. He also failed to maintain systems that would accurately account for funds he held in trust. In turn, he provided information to the Law Society on the 2021 Trust Report that he knew or ought to have known was false or misleading.

[59] In circumstances involving misappropriation, cases have pointed towards disbarment as the appropriate remedy. Disbarment would certainly protect the public and preserve its confidence in the profession's ability to govern itself. At paras. 35 and 38, in *Law Society of BC v. Tak*, 2014 LSBC 57, the panel stated as follows:

Misappropriation of client trust funds is perhaps the most egregious misconduct a lawyer can commit....The public is entitled to expect that the severity of the

consequences reflect the gravity of the wrong. In the absence of multiple, significant mitigating factors, public confidence in the profession and its ability to regulate itself would be severely compromised if anything short of disbarment is ordered for misappropriation of client funds....There should be no doubt that a strong message of general deterrence should be sent to other members of the Law Society in respect of misappropriating funds, and it should be unequivocal that such misconduct will almost certainly result in the revocation of the right to practice law.

[60] However, the parties submit that it is also recognized that disbarment is an extreme remedy and should be ordered in cases where it is the only means by which the public and the public's interest can be protected. In *Law Society of BC v. Ali*, 2007 LSBC 57, the hearing panel considered whether disbarment was necessary in the case of misappropriation and reviewed authorities such as *McGuire v. Law Society of BC*, 2007 BCCA 442, and *Law Society of BC v. Hammond*, 2004 LSBC 32. After reviewing the authorities, the hearing panel in *Ali*, at paras. 13, 21 and 29, concluded that the respondents in misappropriation cases who were not disbarred demonstrated significant mitigating factors, such as an absence of any dishonest intent or an underlying medical problem or marital break-up. The panel also concluded that, in cases of misappropriation, disbarment is normally the appropriate disciplinary action unless there is evidence that this sanction is not required to protect the public.

[61] The Respondent's misappropriation was not intentional or knowingly dishonest. We have found it grossly negligent and reckless. It was a result of the Respondent's many failures with the daily administration of trust accounts.

[62] In *Law Society of BC v. Guo*, 2023 LSBC 6 at paras. 116 and 117, the review panel made the following helpful comments regarding circumstances where disbarment may not be required despite a finding of misappropriation:

What constitutes exceptional circumstances in cases of misappropriation? The law Society says exceptional circumstances generally involve situations where the dollar figure of the misappropriation was relatively modest, there was no dishonest intent (e.g., administrative convenience for dormant files and small amounts remaining in trust) or there were compelling personal health circumstances that caused the misappropriation. The Law Society also says where exceptional circumstances were found, the Law Society did not seek disbarment.

However, while exceptional circumstances identified in past disciplinary actions may be informative, they do not define the meaning of exceptional circumstances. After reviewing the disbarment case law, we conclude exceptional circumstances

are situations that lead a panel to find disbarment is not required to protect the public from future acts of misconduct.

[63] The parties propose that a departure from the sanction of disbarment is justified in the Respondent's circumstances because the public will be sufficiently protected by a ten-week suspension and the following two conditions:

- (a) a condition not to operate a trust account in the Respondent's practice except in accordance with the terms of a Trust Supervision Agreement approved by the Law Society; and
- (b) a condition to complete six hours of Continuing Legal Education, to be approved by the Executive Director, in the area of wills and estate within six months of the Hearing Panel's decision.

[64] With respect to the condition to complete Continuing Legal Education, we accept that the Respondent's inexperience in wills and estates played a role, albeit a small one, in his professional misconduct. We accept that further education in wills and estates will at least point out the complexities involved in this area of the law and the importance to proceed with caution, including seeking the advice of practitioners who are experts in wills and estates for guidance.

[65] We have reviewed the Trust Supervision Agreement, which was in draft, and we are satisfied that this document will protect the public. This agreement does prevent the Respondent from operating a trust account on his own. Another signatory is necessary to be able to do anything with any funds in trust. We find the Trust Supervision Agreement to be a significant and pervasive protective measure for the public's trust and confidence.

[66] We will address the length of the suspension in more detail further below in our reasons. However, we agree with the parties that a suspension of ten weeks is appropriate in these circumstances.

Character and professional conduct record of the Respondent

[67] The Respondent is a senior lawyer. He has been practicing law for over 25 years.

[68] The Respondent does have a professional conduct record ("PCR") which contains several instances of conduct similar to the allegations to which he has admitted in the Citation. The Respondent was also the subject of a finding of professional misconduct and disciplinary action in 2021. We find that the Respondent's PCR is an aggravating factor, as the Law Society pointed out in the joint written submissions.

[69] The Respondent underwent a conduct review in March 2017 for failing to comply with the Law Society's trust accounting rules. In particular, he had failed to prepare

monthly trust reconciliations, to promptly correct trust shortages, and to report trust shortages over \$2,500. He also failed to provide an accurate trust report for 2011.

[70] A Conduct Review Subcommittee found that the Respondent's conduct was due to inattentiveness. The Respondent acknowledged his errors and accepted responsibility. He cooperated fully during the investigation. The Subcommittee pointed out that the Respondent had taken steps to improve his accounting systems. The Subcommittee noted the Respondent still had to put in place other systems that would ensure his trust reconciliations were fully compliant with the Rules, but the Subcommittee accepted he would take these additional steps in the future. Therefore, the Subcommittee recommended their conduct review would be recorded on the Respondent's professional record and that it would serve as appropriate and sufficient disciplinary action.

[71] The Respondent's PCR also notes a restriction placed on his practice in 2017 because of these accounting failures. The Respondent was unable to have more than one articulated student, unless the Credentials Committee approved.

[72] In the joint written submissions, the parties acknowledged that the Respondent never took the additional steps necessary to ensure his accounting systems were fully compliant with the Rules. We find the Respondent failed to keep his word to the Subcommittee.

[73] In November 2019, the Respondent was the subject of an administrative suspension for three days. He failed to provide an investigator from the Law Society with information and documents. This prior conduct demonstrates to us that the Respondent did not fully appreciate rule 7.1-1 of the *Code*, as in this Citation.

[74] In *Law Society of BC v. Friedland*, at 2021 LSBC 13 and at 2021 LSBC 53, the Respondent was found to have committed professional misconduct and disciplinary action was taken. The particulars are as follows.

[75] The Respondent misappropriated \$825 from his clients by withdrawing funds from trust when he was not entitled to them. He also failed to identify and record the source of funds received into his pooled trust account and the identity of the client on whose behalf trust funds were received. He failed to maintain proper client trust ledgers and detailed monthly listings to support his monthly trust reconciliations. These documents did not show for which client the unexpended balance of trust funds were held. The Respondent also maintained more than \$300 of his own funds in his pooled trust account. The hearing panel noted that the misappropriation was the result of unconventional and non-compliant trust accounting practices where the Respondent had proceeded in an "honest but misguided belief" in his systems. The Respondent was suspended for two months. The Respondent also had to cease operating his trust account and handling trust funds until he

completed trust accounting courses. For a minimum of three years, he was to retain a CPA to maintain his records and file an Accountant's Report with his trust reports.

[76] In December 2022, the Respondent was administratively suspended from practice for one day for failing to provide a Law Society auditor with requested records and explanations. Six months later, in June 2023, the Respondent had a condition/limitation placed on his practice which is still in effect. The Respondent undertook not to open or to operate a trust account, including making or authorizing withdrawals, or to handle trust funds, except in compliance with a trust supervision agreement approved by the Executive Director.

[77] We note that these prior interventions have not deterred the Respondent and they have not encouraged him to pay more attention to his accounting. The Law Society submits and the Respondent agrees, that additional reinforcement is necessary. We agree as well.

[78] The Respondent has had multiple opportunities to correct his conduct. In our view, he should have fulfilled his word to the Subcommittee to make changes to his accounting systems so that they were fully compliant with the Rules. He should have corrected his practices at that time, in 2017, when the issues were first brought to his attention. He did not. Instead, he was the subject of a similar citation and disciplinary action in 2021.

[79] In *Law Society of BC v. Lessing*, 2013 LSBC 29, at paras. 71 to 74, a review panel outlined the significance of the PCR as it relates to the concept of progressive discipline in determining the appropriate disciplinary action. While the review panel in *Lessing* cautioned that progressive discipline should not be applied in all cases, they noted that it would be a rare case for a panel not to consider a lawyer's PCR.

[80] The Respondent's PCR demonstrates that a lengthy suspension with conditions is necessary to satisfy the concept of progressive discipline and to protect the public. A ten-week suspension is substantial and exceeds the suspension imposed for his 2021 professional misconduct. Conditions must also be placed on the Respondent's practice to protect the public, particularly because he has been cited for misappropriation and Rule breaches in trust accounting for the second time. A condition such as the proposed Trust Supervision Agreement will meet that requirement.

[81] In that Trust Supervision Agreement, the Law Society seeks a permanent condition. The Respondent would not be allowed to continue to operate a trust account in the future at all except with ongoing trust supervision. We are satisfied with this condition.

Acknowledgement of the professional misconduct and remedial action

[82] The Respondent has admitted to professional misconduct in more than one instance alleged in the Citation. He cooperated with the joint written submissions. His admissions to professional misconduct have saved time and resources. Also, his consent to a ten-week suspension with conditions permits the Law Society to publish the misconduct and outcome for the benefit of the profession and public much more expeditiously than a hearing in person, which was initially set for three days. We find that the Respondent's admissions and consent to the jointly proposed disciplinary action is a mitigating factor.

Public's confidence in the legal profession and its disciplinary process

[83] Public confidence in the profession and the disciplinary process is fostered by sanctions that are proportionate to the misconduct. They must be fair and reasonable in the circumstances.

[84] The parties directed our attention to cases which support their proposed disciplinary action. The Law Society submits the sanction will ensure that the Respondent is held accountable for his actions. It will enforce that the Respondent's approach to practicing law is not sustainable, and it will deter others from similar misconduct.

[85] We conclude the public interest requires that a clear message be sent to the legal profession that allowing funds to run through a lawyer's trust account without making reasonable inquiries or handling trust accounts with their own personal convenience as a primary objective is unacceptable.

[86] We summarized below the cases which we found were most similar to the conduct admitted to in this Citation. The Law Society's governance of trust accounts is at the heart of its mandate to provide the public with assurances regarding the financial trustworthiness and legal ethics of the profession. A significant suspension is necessary to address the serious nature and the gravity of the Respondent's misconduct. Also, a significant suspension will be necessary to deter other lawyers from managing trust accounts with less than the meticulous attention that they demand. It is unacceptable, even when no real harm has occurred.

[87] In *Law Society of BC v. Uzelac*, 2020 LSBC 58, the respondent received and disbursed \$1,167,000 through his trust account on behalf of a client without making reasonable inquiries about the circumstances and without providing substantial legal services in relation to those funds. There were multiple red flags, and he had the duty to inquire and investigate the source and use of the funds. As a result of the respondent's misconduct, his client was able to use his trust account to dupe an individual into investing funds in a fraudulent investment scheme. The respondent also had a PCR, including four prior citations, a previous suspension, Practice Standards

recommendations, and practice conditions. The hearing panel found that the respondent's failure to exercise his gatekeeper function warranted a strong sanction, and the panel ordered a four-month suspension.

[88] In *Law Society of BC v. Sahota*, 2016 LSBC 29 (Facts and determination) and 2017 LSBC 18 (Disciplinary action), the respondent was cited for seven allegations for failing to maintain appropriate accounting practices. These allegations included misappropriation or trust fund shortages, improper withdrawals, failure to deposit trust funds as soon as possible, and maintaining more than \$300 of his own funds in trust. The hearing panel noted that the state of the financial records was "beyond description" and overwhelming evidence was present of trust account abuse and mismanagement. The hearing panel found professional misconduct and imposed a suspension of one month along with a restriction on his practice and costs. However, a review board, at 2018 LSBC 20, increased the suspension to 90 days.

[89] In *Law Society of BC v. Reith*, 2018 LSBC 23, the respondent breached several trust accounting rules, including issuing payments from trust when his trust accounting records were not current, failing to maintain trust account records, and failing to meet monthly trust reconciliation requirements, among others. The hearing panel found that the respondent's breaches revealed his prolonged disregard for trust accounting rules, his lack of appreciation for the special character of a lawyer's trust account, and his indifference to the public confidence placed in lawyers to properly handle trust funds. As at the date of hearing, he had not produced a trust reconciliation or provided the necessary documents for Law Society staff to complete the reconciliation. The respondent had a PCR which included two previous findings of professional misconduct, resulting in a \$3,000 fine and \$7,500 fine. The hearing panel in *Reith* ordered a 30-day suspension and prohibited the Respondent from the use of his trust account until the Law Society determined the owners of the funds.

[90] In *Law Society of BC v. Edwards*, 2022 LSBC 27 (Facts and determination) and 2023 LSBC 25 (Disciplinary action), the respondent misappropriated or improperly withdrew \$2,354 in client trust funds, made false or misleading representations in a Law Society trust report, and failed to prepare monthly trust reconciliations in ten instances in the time required, resulting in a trust shortage, among other misconduct. The respondent was previously advised by a compliance auditor of the requirement to complete trust reconciliations as required and to correct any discrepancies. The hearing panel accepted that there was no active dishonesty, but his failure to take any reasonable steps to determine whether he was entitled to the trust funds prior to the withdrawal was reckless and grossly negligent. The respondent had a PCR, including a conduct review and Practice Standards recommendations which addressed his recordkeeping and office systems. He acknowledged the misconduct and was remorseful, took remedial actions,

and cooperated with the investigation. The sanction was a two-month suspension and conditions: quarterly bookkeeping review by an accountant and a CPA audit semi-annually.

Costs

[91] The parties agreed that the Respondent would pay \$1,000 to the Law Society, within 30 days of this decision. We agree that this amount is reasonable and appropriate given the way the matter proceeded pursuant to Rule 5-6.5. The parties essentially proceeded by consent.

Decision and Order

[92] Pursuant to section 38(4) of the *Legal Profession Act*, we find that the Respondent committed professional misconduct.

[93] Pursuant to section 38(5) of the *Legal Profession Act*, we order the following:

- (a) a ten-week suspension to commence 60 days from the date the Hearing Panel's decision is issued, or such other date as the parties may agree to in writing;
- (b) a condition not to operate a trust account in his practice except in accordance with the terms of a Trust Supervision Agreement approved by the Law Society;
- (c) a condition to complete six hours of Continuing Legal Education, to be approved by the Executive Director, in the areas of wills and estates within six months of the date of the Hearing Panel's decision; and
- (d) the Respondent will pay costs to the Law Society in the amount of \$1,000, within 30 days of the date the Hearing Panel's decision is issued.