

2023 LSBC 46
Hearing File No.: HE20180107
Decision Issued: November 17, 2023
Citation Issued: December 12, 2018
Citation Amended: October 21, 2019

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

HONG GUO

RESPONDENT

**DECISION OF THE HEARING PANEL
ON DISCIPLINARY ACTION**

Hearing dates: March 15, 2023

Panel: Sarah Westwood, KC, Chair
Gillian M. Dougans, Lawyer
Carol Gibson, Public representative

Discipline Counsel: J. Kenneth McEwan, KC
Saheli Sodhi

Counsel for the Respondent: David E. Gruber
Christina Joynt

Written reasons of the Panel by: Gillian M. Dougans

BACKGROUND

- [1] The facts and determination decision in this matter was issued on August 24, 2022 (*Law Society of BC v. Guo*, 2022 LSBC 30 (the “*F&D Decision*”). The Respondent was found to have committed professional misconduct in relation to all but one subparagraph of the four allegations in the Amended Citation concerning:
- (a) acting in a conflict of interest by representing several clients with conflicting interests;
 - (b) providing legal services while she had a direct or indirect financial interest in the transaction;
 - (c) failing to respond substantially to the Law Society and making false or misleading representations to the Law Society; and
 - (d) failing to serve her clients in a conscientious, diligent and efficient manner.

POSITION OF THE PARTIES

- [2] The Law Society submits that the appropriate disciplinary action is a declaration that the Respondent is ungovernable and thus disbarred. Alternatively, if the Respondent is not found to be ungovernable, then she should be disbarred applying the factors in *Law Society of BC v. Ogilvie*, [1999] LSBC 17. The Law Society also seeks costs against the Respondent.
- [3] The Respondent submits that the appropriate disciplinary action would be a one-year suspension to be served concurrently with the Respondent’s current suspension. The Respondent is serving a one-year suspension until March 9, 2024 as ordered by the panel in *Law Society of BC v. Guo*, 2021 LSBC 43 (“*Guo 2021 disciplinary action*”) and confirmed by a review board with the addition of a practice supervision order (*Law Society of BC v. Guo*, 2023 LSBC 06 (“*Guo 2023 review*”).
- [4] The Respondent acknowledged that she had been properly notified before this hearing that the Law Society intended to argue the issue of ungovernability. This is required under Rule 5-6.4(7) of the Law Society Rules (the “Rules”).

GENERAL PRINCIPALS WITH RESPECT TO DISCIPLINARY ACTION

[5] The Law Society's mandate, as set out in section 3 of the *Legal Profession Act* (the "Act"), is to uphold and protect the public interest in the administration of justice. There are five pillars to this mandate as follows:

- (a) preserving and protecting the rights and freedoms of all persons,
- (b) ensuring the independence, integrity, honour and competence of lawyers,
- (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,
- (d) regulating the practice of law, and
- (e) supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.

[6] In order for the Law Society to fulfill its mandate of protecting the public, it must be able to regulate lawyers in BC. Lawyers who cannot or will not be regulated may be declared ungovernable. A finding of "ungovernability" will lead to an order of disbarment.

[7] The ability to regulate lawyers in the public interest is at the heart of self-governance. The Law Society can only fulfill its object and duty to protect and uphold the public interest in the administration of justice if members of the profession abide by the rules governing their conduct and respond to the Law Society as a regulating authority.

[8] The primary purpose of these disciplinary proceedings is not to punish the Respondent but to protect the public and maintain its confidence in the legal profession. We agree with the panel in *Law Society of BC v. Denovan Hill*, 2011 LSBC 16, which stated at para. 3:

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

BACKGROUND/GUIDE TO RESPONDENT'S PROFESSIONAL CONDUCT RECORD

[9] The Respondent's professional conduct record ("PCR") as of March 9, 2023 was part of the evidence before this Panel. In considering the Respondent's PCR, this Panel notes that since this Panel's *F&D Decision* was issued there have been three other decisions on facts and determination released by other hearing panels on other citations against the Respondent. While we note the existence of these decisions, and of additional hearings to be set relating to additional citations, we are only considering those decisions that were issued prior to this hearing on disciplinary action ("DA Hearing"), such that counsel had opportunity to make submissions in respect of the import of those decisions to the matters herein. Regarding other unadjudicated citations, they have not yet been proved, and as such do not form part of our deliberations.

[10] The hearing panel in *Law Society of BC v. Guo*, 2022 LSBC 03 ("*Guo 2022 disciplinary action*") provided the following useful summary of the Respondent's PCR, at paragraphs 17 to 18, stating:

[17] Under Rule 4-44(5), in determining a disciplinary action, a panel may consider the respondent's professional conduct record ("PCR"). The definition section of the Rules defines a PCR as a record of all or some of a number of types of information, including: any conditions or limitations of practice imposed under the *Act* or Rules; recommendations made by a Practice Standards Committee; a Conduct Review Subcommittee report that has been delivered to the Discipline Committee; and findings of professional misconduct and associated disciplinary actions rendered by a panel under s. 38 of the *Act*.

[18] The Respondent's PCR is set out in chronological order below ...:

(a) *February 28, 2013 Practice Standards Recommendations:* On October 25, 2012, the Respondent was ordered to undergo a practice review, which was held on February 28, 2013 and resulted in recommendations related to: (i) ensuring that her real estate conveyancing staff were carrying out necessary tasks in a timely way; (ii) attending Canadian Bar Association ("CBA") real estate and immigration subsection meetings; and (iii) referring out all new criminal law, family law and litigation files, except for joint divorce petitions;

(b) *February 26, 2016 Conduct Review:* On December 3, 2015, a conduct review was held to discuss the Respondent's conduct in breaching a trust condition, imposed on her regarding \$4,000 received in trust for her client, by releasing \$3,000 of the funds to her client and withdrawing the remaining \$1,000 to pay her fees and disbursements without complying with the trust conditions, contrary to one or both of Chapter 11, Rule 7 of the *Professional Conduct Handbook*, then in force, and Rule 3-65(7) of the Rules. The Conduct Review Subcommittee's February 26, 2016 report states that the Subcommittee was "troubled" by the Respondent's "adamant refusal to acknowledge that she in any way handled the transaction in an inappropriate manner, even in hindsight." The report further noted that she "demonstrated no insight into how a situation could be prevented or avoided in the future." The Subcommittee therefore referred the Respondent to the Practice Standards Committee;

(c) *March 3, 2016 Practice Standards Recommendations:* On October 29, 2015, the Respondent was ordered to undergo a practice review, which was held on March 3, 2016 and resulted in recommendations that she: (i) continue to network with other lawyers and attend CBA subsection meetings; (ii) continue to reach out to other lawyers or practice advisors to obtain advice; and (iii) enter into a formal mentorship agreement with a lawyer satisfactory to the Practice Standards Department who will report back to that Department on a quarterly basis;

(d) *June 1, 2016 Conduct Review:* On March 4, 2016, a conduct review was held to discuss the Respondent's conduct in: (i) having her assistant prepare a document that was written in English and included a release, which she did not review prior to presenting it to a non-client for signature; and (ii) presenting the document to the non-client without discussion, even though the non-client was unrepresented, not proficient in English, and adverse in interest to her and her client. This conduct was inconsistent with the Respondent's duty to conduct herself honourably and with integrity under rule 2.2 of the [*Code of Professional Conduct for British Columbia*]. In its June 1, 2016 report, the Conduct Review Subcommittee noted that at the conduct review, the Respondent initially stated that she did not agree with the Subcommittee's concerns regarding her conduct, but that she agreed with those concerns after being prompted by her counsel. [The Subcommittee expressed a concern about the Respondent's professional conduct history noting a practice review in 2012, a second practice review earlier in 2016 resulting from a different Conduct Review and two Conduct Reviews in seven years. "The

Subcommittee noted that a pattern may be emerging of the [Respondent] dealing inappropriately with unrepresented parties [emphasis added].”

(e) *April 19, 2016 Undertaking to the Law Society* [(“April 2016 Undertaking”)]; [the Respondent entered into an undertaking following the employee theft relating to her operation of her trust account. The Respondent did not comply with this undertaking];

(f) *August 17, 2016 Rule 3-10 Order* [(“August 2016 Order”)]; [Following the Respondent’s breach of her April 19, 2016, undertaking to the Law Society, the Benchers issued an order relating to the operation of her trust account. The Respondent failed to follow this order];

(g) *March 30, 2017 Rule 3-10 Order* [(“March 2017 Order”)] *varying the August 17, 2016 Rule 3-10 Order*; [The Law Society sought a variation of the August 2016 Order to address the Respondent’s failure to comply with the August 2016 Order and new evidence that the Respondent had misappropriated funds from her trust account. The Benchers imposed further conditions on the Respondent’s practice, including a provision that the Respondent not handle trust funds or operate a trust account, and that she practise only under the direction of a practice and trust supervisor. This Practice Supervision Agreement [(the “PSA”)] was in place until March, 2023, when the Respondent began serving a one-year suspension];

(h) *May 30, 2019 Administrative Suspension*: On May 30, 2019, the Respondent was administratively suspended under Rule 3-6 for failing to substantively respond during the course of an investigation. The suspension was lifted on June 6, 2019;

...

[11] In addition to the above-noted disciplinary action, and by the time of the conclusion of the DA Hearing in this matter, the Respondent was required to attend at two additional Conduct Reviews, on September 24, 2020 (“Conduct Review 3”) and December 10, 2020 (“Conduct Review 4”), and had a further undertaking imposing limitations on her practice from October 20, 2022.

[12] Conduct Reviews 3 and 4 both dealt with additional instances of the Respondent not complying with the trust accounting rules, orders, and related matters.

- [13] Finally, by the time of the DA Hearing in this matter on March 15, 2023, the Respondent had amassed a total of nine citations, five of which had been adjudicated to at least the facts and determination stage, as follows:
- (a) citation issued September 4, 2018 containing allegations that relate to the Respondent's employees' theft of trust funds (the "Theft of Trust Funds") and accounting errors revealed during the forensic audit that followed the discovery of the theft, resulting in the November 4, 2020 facts and determination decision, reported as *Law Society of BC v. Guo*, 2020 LSBC 52 ("*Guo 2020 facts and determination*") and the October 26, 2021 disciplinary action decision (*Guo 2021 disciplinary action*), and the March 1, 2023 review decision (*Guo 2023 review*);
 - (b) Citation dated December 13, 2018 regarding conflict of interest and false or misleading representations, resulting in the decision of this Panel released on August 22, 2022 ("*F&D Decision*") which is the subject of this DA Hearing;
 - (c) citation issued November 1, 2019 regarding breach of a Law Society order and breach of accounting rules, resulting in the May 20, 2021 facts and determination decision, reported as *Law Society of BC v. Guo*, 2021 LSBC 20 ("*Guo 2021 facts and determination*") and the January 17, 2022 disciplinary action decision, reported as *Law Society of BC v. Guo*, 2022 LSBC 03 (*Guo 2022 disciplinary action*); and
 - (d) citation issued November 10, 2020 regarding conduct unbecoming and false or inaccurate representations to the Law Society, resulting in the March 8, 2023 facts and determination decision, reported as *Law Society of BC v. Guo*, 2023 LSBC 09 ("*Guo 2023 facts and determination*") (no finding of professional misconduct).
- [14] The remaining citations, as described in our reasons above, were not considered in the Panel's determination in the instant case. Those citations address conduct, the latest of which dates from July 23, 2021, as follows:
- (a) Citation issued July 23, 2021, not yet adjudicated, regarding conduct between 2019 and 2021, including practising while suspended, breaching a Law Society order, misrepresentations to the Law Society and others, and conflict of interest.
 - (b) Citation issued October 7, 2020 regarding conduct between 2014 and 2020, including conflict of interest, failing to comply with trust

accounting rules, misleading the Law Society and failing to respond to the Law Society. The decision on facts and determination included findings of professional misconduct and was issued in July 2023, after the DA Hearing in this matter.

- (c) Citation issued June 8, 2020 regarding conduct between 2013 and 2016, and in 2018, including conflict of interest, failure to respond or misleading the Law Society, and failure to provide quality of service. The decision on facts and determination included a finding of professional misconduct with respect to conflict of interest and was issued in July, 2023, after the DA Hearing in this matter.
- (d) Citation issued May 22, 2020, amended June 16, 2020, not yet adjudicated, regarding conduct between 2011 and 2015, including failure to comply with trust accounting rules and failure to provide quality of service, in 2015 making misrepresentations and failure to respond, and between 2016 and 2020 making false or misleading representations to the Law Society.
- (e) Citation issued May 22, 2020 regarding conduct between 2012 and 2013, including misappropriation or improper handling of trust funds and between 2012 and 2017, failure to provide quality of service. The hearing on facts and determination has concluded but reasons have not yet been issued.

[15] The panel in *Guo 2020 facts and determination* and *Guo 2021 disciplinary action* was concerned primarily with allegations regarding the breach of the Law Society’s trust accounting rules in relation to a well-publicized Theft of Trust Funds perpetrated by the Respondent’s bookkeeper and another employee. In the course of that decision the panel also observed that, for the most part, the Respondent “continues to minimize her role in creating the environment that led to the theft,” even though the theft was “largely based on blank trust cheques being provided to her bookkeeper and the Respondent’s failure to properly supervise him”: *Guo 2021 disciplinary action*, at paras. 36 and 81. The Respondent was found to have committed professional misconduct, and ordered suspended from practice for a year. On review, this penalty was amended to include the requirement, in *Guo 2023 review*, at para. 154, that the Respondent “enter, and comply with, a practice supervision agreement or another arrangement acceptable to the Practice Standards Committee before returning to practice after her suspension. The practice supervision agreement or other arrangement acceptable to the Practice Standards

Committee will remain in place until the Respondent is relieved of this requirement by the Practice Standards Committee.”

[16] The panel in *Guo 2021 facts and determination* and *Guo 2022 disciplinary action* dealt with a citation arising from the findings of a trust audit, wherein the Respondent was found to have handled trust funds contrary to the March 2017 Order, which in part prohibited her from operating a trust account or handling trust funds. The Respondent’s argument, that the funds were received pursuant to a “fixed fee” agreement, and therefore were not subject to the trust accounting rules and were available for immediate deposit to her general account, was wholly rejected by the hearing panel. The Respondent was found to have committed professional misconduct first by breaching the March 2017 Order, and second by breaching the trust accounting rules by failing to deposit funds received on account of the purported “fixed fee” agreements into a trust account.

[17] The panel in *Guo 2022 disciplinary action*, at para. 54, referred specifically to the report of the Conduct Review Subcommittee from Conduct Review 4, as follows:

... [the findings in the] report further support the conclusion that the Respondent has shown a pattern of not complying with the Law Society’s regulatory requirements. Ultimately, however, [Conduct Review 4] simply confirms what the Respondent’s PCR already reveals, namely, that she has a history of failing to comply with Law Society practice requirements.

[18] In declining to grant the Respondent’s submissions that a fine would be an appropriate penalty, the panel in *Guo 2022 disciplinary action*, at para. 65, found that:

... First, she breached not only the Rule 3-10 Order, but also the rules regarding the proper handling of trust funds. Second, and most importantly, she has an extensive PCR that reveals a pattern of failing to comply with Law Society regulations, including in relation to trust matters. As explained further below, we conclude that a suspension of some length is required to fulfill our mandate of imposing a sanction that protects the public.

[19] The allegations of professional misconduct in the citation issued November 10, 2020, *Guo 2023 facts and determination*, were dismissed. That panel found that, while in two instances the Respondent had breached the *Act* or Rules, the conduct did not amount to professional misconduct or conduct unbecoming, stating, at para. 149:

This decision is not to be taken as the Panel condoning the actions of the Respondent. However, we are bound by the Citation and not all of the factual elements as alleged in the Citation have been proven. Also, the proven factual elements do not amount to conduct unbecoming or professional misconduct. We find that two of the Respondent's misrepresentations were a breach of the [Act](#) or Rules as the Respondent's conduct was not insignificant and arose from insufficient attention paid to administrative requirements.

[20] The Respondent has been practicing under a practice supervision agreement dated June 24, 2017 (the PSA) as a result of the March 2017 Order imposed by three Benchers after a Rule 3-10 proceeding. The two approved supervisors are ES and RFZ ("Practice Supervisor(s)"). As noted above, the PSA was in place until March 2023 when the Respondent began serving a one-year suspension from practice.

EVIDENCE

[21] The Law Society submitted the following evidence:

- (a) the Respondent's PCR to March 9, 2023; and
- (b) the affidavit of Megan Nicholls sworn March 9, 2023.

[22] The Respondent submitted the following evidence:

- (a) an email from the Law Society dated April 15, 2016;
- (b) a volume of new materials;
- (c) affidavit of ES sworn June 16, 2020;
- (d) three affidavits and six letters as character references;
- (e) a volume of supplementary materials – five letters of support; and
- (f) the Rule 3-10 ruling of August 31, 2020.

[23] The Respondent also testified in person. She requested to be able to give her evidence after the submissions of the Law Society. Her request was based on the seriousness of the sanction of ungovernability, having new counsel at the DA Hearing and fairness. There was no objection from the Law Society and the Panel agreed the Respondent could testify after the Law Society's submissions.

[24] There are a number of other persons who did not testify and other entities who are mentioned in these reasons and they are as follows:

- (a) AS – an unrepresented opposing party and complainant in a conduct review;
- (b) JY – the complainant in this matter;
- (c) QY – the complainant in the citation issued June 8, 2020. His wife is KY;
- (d) ES – a Practice Supervisor;
- (e) F Corp. – purchaser of shares of M Ltd which was the initial investment of JY (By the end of 2014, F Corp. was owned 90 per cent by ZZ and 10 per cent by JY);
- (f) RZF – a Practice Supervisor;
- (g) TE – a lawyer covering the Respondent’s practice while she is suspended; and
- (h) GLC or G Corp. – the Respondent’s law firm.

LAW SOCIETY’S EVIDENCE

[25] The Law Society relied on the affidavit of Megan Nicholls, Manager, Professional Conduct, Monitoring and Enforcement at the Law Society, sworn March 9, 2023. Her affidavit attached the PCR of the Respondent as at March 9, 2023. It also included the current citations and various decisions related to them.

[26] Ms. Nicholls deposed that it has been “extremely challenging” for the Law Society to monitor the Respondent’s and her Practice Supervisors’ compliance with the Rule 3-10 practice supervision order (the March 2017 Order) and it has consumed a significant amount of Law Society resources. The Practice Supervisors are required to meet with the Respondent every ten days and report to the Law Society every three months.

[27] The Practice Supervisors began acting as the two signatories to the Respondent’s trust accounts on June 1, 2017 and began acting as her Practice Supervisors on June 13, 2017.

[28] The Law Society wrote to the Practice Supervisors on December 6, 2018 to outline various concerns and warn that the Law Society was considering whether to revoke its approval of them as trust signatories and practice supervisors noting the following:

- (a) The concerns included the late delivery of reports and meetings with the Respondent being held approximately every 20 days, instead of every 10, due to the Respondent being away from the office and her commitments in relation to running for Mayor of the City of Richmond.
- (b) An investigation started by the Law Society concerning work that the Respondent was doing for individuals related to drug crimes as revealed in an article in the Globe and Mail on February 16, 2018. The article quoted the Respondent as saying: “I am the biggest Chinese lawyer in the Chinese community. We do \$600 million a year in transactions. Maybe that is why we are a target for criminal activities. They know we are doing (*sic.*) lot of work.” Transactions involving the suspicious clients were conducted by the Respondent but there was no evidence in the reports that the newspaper article or any concerns related to it was discussed. The investigation was also not discussed. A request from the Law Society to be advised of any dealings with the suspicious clients was also not followed.
- (c) On November 4, 2018, 16 months after the implementation of the PSA, the Respondent wrote to Kurt Wedel, a staff lawyer with Professional Conduct at the Law Society and advised him that there was no way for lawyers to launder money through real estate transactions because there are two lawyers involved and the Statements of Adjustment have to match. “No (*sic.*) one penny less and no (*sic.*) one penny more.” She also advised Mr. Wedel that: “Yes, I have realized that our filing system need (*sic.*) to be more organized and we need to keep better records. We are working to improve our office system.”

The concern was the adequacy and effectiveness of the supervision.

[29] The Practice Supervisors responded by letter dated December 13, 2018 as follows:

- (a) The Practice Supervisors explained why two of the last six quarterly reports were late, owing to a large file ES was involved in and a slowdown in the Respondent’s work while she was running for Mayor. They denied a pattern of non-compliance.

- (b) The Practice Supervisors decided to extend the meeting period to 20 days in light of the slowdown in the Respondent's practice and an effort to keep the cost to her lower. They did not get formal approval from the Law Society but they had informally discussed this with a staff lawyer who did not strenuously object. They would resume meetings every 10 days if the Law Society insisted.
- (c) The Practice Supervisors were not aware of the Globe and Mail article until late April 2018 and not aware that the Law Society had opened a related investigation.
- (d) The Practice Supervisors were not given a copy of Mr. Wedel's email by the Respondent and, in fact, disagreed with her statement about money laundering.

[30] The Law Society responded to the Practice Supervisors on December 21, 2018 advising them that they would not revoke their approval of the Practice Supervisors at this time. The letter went on to say that the PSA requires them to monitor the Respondent's practice and not just her trust accounts. *"Accordingly, you ought to be performing your supervision duties with a view to ensuring that Ms. Guo is not providing any legal services (whether or not there are any trust transactions on the file, and whether or not the file involves the Identified Names) in matters that raise potential red flags of money laundering or other illegal activity, without adequate inquiry [emphasis added]."*

[31] The Law Society wrote to the Practice Supervisors on June 12, 2019 with concerns about their supervision of the Respondent's immigration files. Apparently, the Respondent was opening immigration files but not disclosing them on the file list. "Ms. Guo explained that she did not consider a person to be a client if they have not paid her a retainer or fees. This is despite her office requesting and reviewing documents and providing the person with legal advice on options/next steps." In response to the Law Society's letter, the Practice Supervisors advised that they had requested a list of open immigration files a number of times and were only provided a list after three months.

[32] The Practice Supervisors' response also noted several deficiencies in the Respondent's file management system and the recommendations they had made to her and her staff. The Respondent told them that she did not open files for potential clients who were still "shopping around" and for whom she had not started providing services. She also advised that she was "consumed" with responding to Law Society information requests.

- [33] The Law Society met with the Practice Supervisors on October 9, 2019 and provided an account of the meeting. Specific concerns included:
- (a) TD Canada Trust had advised that they were terminating their relationship with the Respondent and therefore her general and trust accounts would be closed. The Respondent would not be able to receive trust monies.
 - (b) The Respondent was not always present when the Practice Supervisors visited her office every ten days.
 - (c) The Respondent was not maintaining an open file list in PC Law. The staff reported that they did conflict checks by asking the Respondent and she would know if there was a conflict.
 - (d) The Respondent's conveyancing practice had decreased substantially. Two title insurers would not provide her with title insurance.
 - (e) On an unannounced visit the Practice Supervisors were advised that the Respondent was in China. The Law Society was concerned about the supervision of her seven staff members.
 - (f) The Practice Supervisors had made many recommendations to the Respondent about practice management but some recommendations were not followed such as:
 - (i) keeping an open file list in PC Law;
 - (ii) opening files even if no retainer funds were received; and
 - (iii) retainer agreements were not clear resulting in the Practice Supervisors refusing to sign trust cheques for payment of fees.

[34] The Practice Supervisors responded to clarify that: the Respondent's firm does maintain an open file list in PC Law; that the Respondent uses a master list for conflict checks and that the receptionist has access to the master list as well; the Respondent is following recommendations for closing files; when the Respondent is away the number of staff in the office is reduced; and the Practice Supervisors have recommended to the Respondent's staff how to record digital communications to the file. The response further stated that so much time was taken up with reconciliations, updates, and obligations to reply to letters from the Law Society that there was little time left to review files with no trust transactions. Now that the Respondent's practice had slowed, the Practice Supervisors would be able to catch

up. One of the reasons they could not review files for closing was because the Respondent's staff had not prepared them for review.

- [35] The Law Society wrote to the Practice Supervisors again on November 23, 2020 with concerns about the following:
- (a) the Practice Supervisors were not aware of five real estate files and did not review those files; and
 - (b) there was no review of the general account reconciliations for the period of May to October 2019.
- [36] The Practice Supervisors replied, in a letter dated December 1, 2020, that they are entitled, under the terms of the PSA, to rely on information provided by the Respondent and that it is the Respondent's responsibility to provide complete and accurate information to the Supervisors. Before the pandemic, they could personally ask every assistant and staff member for files they were working on. During the pandemic they had to rely on phone calls and emails to the Respondent. "Under the circumstance, there is no guarantee, or less likelihood, that we will receive all open files from GLC or Ms. Guo if they do not or are not able to, provide the said files to us upon our requests." The Practice Supervisors said they had several discussions with the Respondent about the missing files and reminded her of her obligations to accurately and completely provide that information. They were told by the Respondent that her staff was not able to organize and provide those files due to her vacation during that period.
- [37] As a result of the above, the Law Society wrote to the Respondent on December 11, 2020 about the five active real estate files that the Practice Supervisors were not aware of and therefore did not review with her despite being advised by the Respondent that they had been provided all open files for their review. The Law Society asked for a response on or before January 4, 2021.
- [38] The Respondent replied by letter dated January 6, 2021. She said that due to COVID she had let go the majority of her employees and since July 2020 she had two employees and the full-time employee was on holiday for two weeks. She said her employees missed scanning seven files. In addition, she was fully occupied in court for three weeks on Law Society matters. She said, "I will make further efforts to comply with the requirements and obligations under the Agreement."
- [39] The Law Society wrote to the Practice Supervisors on January 19, 2022 with concerns about the January report that stated:

- (a) “We have not received general account reconciliation statements ... for this reporting period.”
- (b) “We have reminded Ms. Guo on legal representation for both parties with consent, as well as to obtain necessary documents for source of funds or payment of funds made directly between the parties.”
- (c) “We obtained digital file copies from GLC for active files handled during this reporting period, but we did not receive a formal list of open or active files for this period.”

[40] The Practice Supervisors advised on February 2, 2022 that the general account reconciliation statements were provided January 12, 2022. The reminder about legal representation was to avoid a possible conflict. The open file list still had not been provided.

[41] The Law Society wrote to the Practice Supervisors on July 14, 2022 regarding their July 2022 report saying:

- (a) We did not receive account reconciliation for the months of March and April, 2022.
- (b) There were file review notes as follows: “No client information, individual IDs other than partial corporate records, file copy does not include copies for payment of invoice, statement of adjustment or authorization to pay, or retainer. Assuming represent the Vendor as the invoice is issued to the vendors.”

[42] RZF replied by email on July 21, 2022 that the Respondent’s bookkeeper recently left the firm and had told the Respondent that she had sent the March and April account reconciliations which “we did not receive.” RZF was following up to have them resent. She also advised that they had “now obtained copies of the ID for the directors.”

[43] RZF sent an email to the Law Society on January 13, 2023 to advise that after making enquiries with the Respondent she had sent copies of the 16 additional files not previously disclosed. RZF said she would review these files as soon as she could and send an updated review summary.

[44] RZF sent an email to the Law Society dated January 17, 2023 attaching the summary of the 16 additional files and advising that she had discussed the following with the Respondent:

- (a) The Respondent might not officially open all files in PC Law, on the assumption that those are not legal files.
- (b) The Respondent did not send RZF certain files that she did not consider to be “transaction” files.
- (c) That the Respondent might have received cash payments on certain legal accounts but those payments were not deposited to GLC’s general account but were used to pay GLC’s mortgage.

[45] Ms. Nicholls was cross-examined on her affidavit, but her evidence was not challenged.

LAW SOCIETY’S SUBMISSIONS

Ungovernability

[46] The Law Society submits that this Panel must consider the Respondent’s misconduct as well as her PCR and ask if we can have any confidence that rehabilitation and remediation are working. Or, to paraphrase the panel in *Law Society of BC v. Pyper*, 2019 LSBC 21, at para. 67, is there no realistic hope that the Respondent can or will effectively come to terms with her professional obligations? The Law Society submits that a declaration of ungovernability is appropriate because the Respondent has failed to alter her conduct. Whether the Respondent continues to not understand her obligations or she does understand them but refuses to comply, the problem is the same.

[47] The Law Society submits that the Respondent’s professional misconduct engages five factors of the test for ungovernability:

1. a consistent and repetitive failure to respond to the Law Society’s inquiries;
2. an element of neglect of duties and obligations to the Law Society with respect to trust account reporting and records;
3. misleading behaviour directed to a client and/or the Law Society;
4. a lengthy discipline history of conduct issues in different circumstances; and
5. a history of breaches of undertaking.

[48] In addition, the Law Society argues that the Respondent's non-compliance with her obligations under the Rule 3-10 orders and the PSA demonstrates her inability or unwillingness to accept that her conduct will be governed by the Law Society.

Lengthy disciplinary history and breach of undertaking

[49] The Law Society submits that the Respondent's discipline history is extremely serious. Four hearing panels, including this one, have made wide-ranging findings of professional misconduct including the following:

- (a) breach of trust accounting rules;
- (b) conflict of interest;
- (c) misrepresentations to the Law Society;
- (d) failure to supervise staff;
- (e) misappropriation and mishandling of trust funds;
- (f) breach of Law Society orders;
- (g) breach of an undertaking to the Law Society; and
- (h) knowingly making false representations to the Law Society.

Additionally, the Respondent has a PRC history involving Law Society concerns with practice and file management, competence, dealings with unrepresented litigants, breach of trust conditions, mishandling trust funds, breach of trust accounting rules and cooperation with the Law Society.

[50] The Law Society submits that the Respondent's PCR reveals several themes including:

- (a) a persistent failure to comply with regulatory oversight;
- (b) a failure or refusal to recognize and admit wrongdoing in different contexts;
- (c) a failure to modify her practices in response to the Law Society's attempts to regulate and discipline her practice; and
- (d) ongoing competence and practice management concerns.

Non-cooperation with or misleading the Law Society

[51] The Law Society gave several examples of the Respondent's failure to comply with oversight:

- (a) Following the theft of \$7.5 million from her trust account in April 2016 the Respondent made several undertakings to the Executive Director of the Law Society including undertakings to open a new, "clean" trust account, to only operate trust accounts with another practicing lawyer as a second signatory and to provide documents and information to the Law Society related to the trust shortage (the April 2016 Undertaking). The Respondent offered no excuse or explanation other than that she was "overwhelmed and unfocused" and that she did not intentionally breach this undertaking. The Respondent's breach of the April 2016 Undertaking was found to be "intentional, repeated disregard over 150 days of the clear and unequivocal obligations imposed by the Undertaking." The panel noted that the Respondent's breach of undertaking was more significant and more troubling since it was given to her regulatory body.
- (b) When the Respondent breached this undertaking the Law Society obtained a Rule 3-10 order for the same obligations and appointing a Custodianship over the part of her practice affected by the trust shortage (the August 2016 Order). The panel found that the Respondent's breach of the April 2016 Undertaking and the August 2016 Order amounted to "extremely negative and significant circumstances" that were not mitigated by her explanation that she was overwhelmed by circumstances, distracted by the magnitude of the problems created and simply unable to comply within the time limits provided by the Orders."
- (c) The Respondent did not comply with the August 2016 Order and the Law Society sought a further Rule 3-10 order prohibiting the Respondent from operating a trust account and requiring the Respondent to enter into and comply with the terms of the PSA (the March 2017 Order). The Respondent breached the March 2017 Order resulting in another citation issued on November 1, 2019. That hearing panel found professional misconduct and in the *Guo 2022 disciplinary action* decision, at para. 34, found that the breach of the March 2017 Order was serious and part of a "continuation of a pattern of failing to comply with Law Society requirements governing the proper handling of trust monies and trust accounts. The common theme is a marked failure to adhere to the

standards expected of lawyers with respect to these matters. This larger context of misconduct puts into real question the Respondent's ability to comply with regulatory requirements in the future."

[52] The Law Society also gave examples of the Respondent failing to respond and providing false or misleading responses to the Law Society:

- (a) the Respondent's administrative suspension for failing to respond to the Law Society during an investigation between May 30 and June 6, 2019.
- (b) In the Conduct Review authorized September 24, 2020 (Conduct Review 3), the subcommittee stated that the Respondent was "not forthcoming with information as requested by the LSBC" and was at times "careless and misleading in her responses to questions."
- (c) In the Conduct Review authorized December 10, 2020 (Conduct Review 4), the subcommittee, in a report dated July 9, 2021, identified several issues with the Respondent's cooperation with the Law Society investigations including:
 - (i) "[L]ittle or no records to establish her compliance with her professional obligations" and no reliable records of payments made in China.
 - (ii) No bank records produced for her account in China and only incomplete records for her general account in Canada.
 - (iii) The Respondent repeatedly provided "inconsistent responses that could often not be reconciled with documentary records and made representations that she ought to have known were not accurate."
 - (iv) "[The Respondent] has a lengthy and considerable history of similar issues in failing to keep proper or any accounting records, failure to supervise office staff and providing inaccurate or incomplete responses to the LSBC."
- (d) The Panel in the instant *F&D Decision*, at para. 221, found that the Respondent repeatedly "sought, whether consciously or otherwise, to avoid the obligation to answer fully, truthfully and completely, only acknowledging a delict when the Law Society could produce documentary evidence of it."

- (e) In the *Guo 2023 facts and determination* decision concerning making false representations to the Law Society during an investigation between October 2019 and August 2020, the hearing panel found that the Respondent made representations to the investigator that were knowingly false. That hearing panel went on to find that the Respondent's intention was not to frustrate the investigation and determined that the Respondent's conduct was a breach of the *Act* or Rules, but not professional misconduct.

[53] The Respondent is currently serving a one-year suspension which began in March 2023. Prior to that she was practicing under a supervision order (the March 2017 Order).

[54] The Law Society submits that the Respondent has persistently failed or refused to comply with the Law Society's attempts to regulate her and points to the following examples:

- (a) Providing false and misleading responses in Law Society investigations.
- (b) Admitting to deficiencies in her correspondence with the Law Society including:
 - (i) responses that were not always correct and accurate;
 - (ii) providing responses when she did not know the answer; and
 - (iii) providing responses to Law Society investigators that were what she thinks the investigator wants to hear.
- (c) Frustrating Law Society investigations by failing to produce or explain why documents or files either do not exist or have not been produced, including trust accounting records and client files.
- (d) Two hearing panels have found the Respondent in breach of undertakings to, and orders made by, the Law Society and a finding that the Respondent has shown a pattern of non-compliance with regulation that calls into question her ability to comply with regulatory requirements in the future.
- (e) Poor practice management issues have been raised repeatedly over a number of years in the context of practice standards recommendations, conduct reviews, Rule 3-10 orders, disciplinary decisions and as part of

her practice supervision. However, the Respondent has failed to modify her practices.

- (f) Three hearing panels, including this Panel, have identified deficiencies in the Respondent's credibility in proceedings before the Law Society.

[55] The Law Society submits that the public's confidence in the integrity of the legal profession is undermined by the Respondent's failure or refusal to rehabilitate herself despite the significant amount of regulatory intervention over the years.

Non-cooperation with or misleading the Law Society

[56] The Law Society submits that the Respondent's failure to cooperate fully with the Law Society's investigations is pervasive.

[57] The Law Society relies on the expectation stated in *Law Society of BC v. Geronazzo*, 2006 LSBC 50, at para. 21, where the panel stated: "Being truthful is a basic requirement when considering whether a person is suitable to practice law."

[58] The Law Society also relies on previous hearing panels which have noted that the public's confidence in the Law Society is undermined when lawyers fail to cooperate with Law Society investigations.

Non-compliance with and ineffectiveness of supervision

[59] The Law Society submits that the Respondent's practice supervision history demonstrates that she has not and cannot rehabilitate her conduct. Her history, from June 2017 to the start of her suspension in March 2023, has shown the following:

- (a) failure to provide complete and accurate information to her Practice Supervisors;
- (b) file and practice management concerns, including failing to maintain up-to-date file lists or complete client files, maintaining informal or inadequate conflict check systems and inconsistent file opening and billing practices;
- (c) facilitating a suspicious transaction and failing to record sufficient information about the source of funds in transactions;

- (d) the risks of conflict of interest where the Respondent is the only lawyer on a transaction, either because the other party was unrepresented or consented to be represented by the Respondent;
- (e) a lack of appreciation or understanding of a lawyer's gatekeeper obligations with respect to money laundering; and
- (f) a failure to provide files for review to the Practice Supervisors that she did not consider to be "transaction" files including files involving the filing of Land Owner's Transparency Reports.

[60] The Law Society submits that one would expect the Respondent's conduct after various practice standards committee recommendations, undertakings, Rule 3-10 orders, conduct reviews and the discipline proceedings to date to be "cleaner than clean".

[61] The Law Society submits that much of the Respondent's misconduct has occurred while she was subject to the Rule 3-10 orders and the PSA including:

- (a) The breaches of the Rule 3-10 orders in 2018, as found in the *Guo 2021 facts and determination* decision.
- (b) The failure to advise the Law Society of her representation of multiple clients over the course of the investigation underlying this proceeding, which continued through October 2018.
- (c) False representations to the Law Society made in October 2019 and August 2020 as found in the *Guo 2023 facts and determination* decision.
- (d) The administrative suspension in May and June 2019 for failure to respond to the Law Society
- (e) Conduct Review 3 - the Conduct Review Subcommittee Report was dated June 24, 2021 concerning the Respondent accepting trust funds in the amount of \$230,000 into her personal account in China and not placing those funds in to trust or following the Law Society's accounting rules; and making misrepresentations to the Law Society.
- (f) Citations issued May 22, 2020, June 8, 2020, October 7, 2020, November 20, 2020 and July 23, 2021. This Panel is not considering these citations or any decisions made which were not part of the Respondent's PCR as of March 9, 2023.

- (g) The October 2022 Undertaking arising from Justice Weatherill’s finding of contempt against the Respondent. This Panel notes that this was a voluntary undertaking given by the Respondent to the Law Society not to practise law during any term of imprisonment arising from the order of Mr. Justice G.C. Weatherill (the “Contempt Order”). Since no term of imprisonment was ordered this undertaking did not come into effect.

[62] The Law Society argues that the Respondent’s challenges with the PSA are proof that there are no conditions or limitations on the Respondent’s practice that could effectively address her conduct and ensure protection for the public. It submits that the Respondent has consistently failed to comply with her professional obligations despite attempts to regulate her.

[63] The Law Society submits that the Respondent is plainly ungovernable and must be disbarred.

Application of disciplinary action principles: the *Ogilvie* Factors

[64] The Law Society submits that if a finding of ungovernability is not appropriate then disbarment is still the appropriate disciplinary action based on an assessment of the factors set out in *Ogilvie*.

[65] A non-exhaustive list of factors was set out in the *Ogilvie* decision. These factors assist panels to determine the appropriate disciplinary action. Factors are assessed as mitigating or aggravating. The subsequent decision in *Law Society of BC v. Dent*, 2016 LSBC 05, set out a consolidated list of *Ogilvie* factors grouped under broader headings. The Law Society submits that the following factors should be considered:

- (a) the nature, gravity and consequences of the conduct including:
 - (i) Failing to respond or cooperate fully with the Law Society or the provision of incorrect or misleading information. The Law Society submits this is “among the gravest forms of misconduct” because it impacts the Law Society’s ability to investigate lawyer misconduct and obstructs the Law Society’s ability to protect the public.
 - (ii) Acting in a conflict of interest is less serious than misleading the Law Society but the Law Society submits it is still serious as the duty of loyalty owed to a client is one of the core values of the profession.

- (iii) Acting in a conflict of interest from having a direct or indirect financial interest in the transaction the Law Society submits also goes to the heart of the solicitor client relationship and justifies a significant sanction.
- (b) the character and professional conduct record of the Respondent;
 - (i) The Law Society submits that this is a significantly aggravating factor. It argues that the Respondent displays patterns of failing to comply with Law Society regulation, repeated provision of false or misleading information to the Law Society, that there are serious concerns about the Respondent's honesty or integrity, and her failure to respond to remedial and disciplinary action attempts to address her ethical and professional obligations which demonstrates that progressive discipline has little impact on the Respondent.
- (c) The Respondent's acknowledgement of the misconduct and remedial action;
 - (i) The Law Society submits that the Respondent does not acknowledge the misconduct at issue in this hearing. That she has failed to take remedial steps and that this is an aggravating factor.
- (d) The public confidence in the legal profession;
 - (i) The Law Society notes that it must be able to rely on the accuracy of information provided by lawyers. Otherwise, the ability to regulate lawyers and the public confidence in the integrity of the legal profession is undermined.

[66] The Law Society submits that disbarment is the only appropriate sanction given the Respondent's highly aggravating conduct history and the need for progressive discipline that would send a clear message, of both specific and general deterrence, that the Law Society will not tolerate lawyers who repeatedly ignore their professional responsibilities.

RESPONDENT'S EVIDENCE

[67] The Respondent testified that she was called to the bar of Saskatchewan in 2000 and to the bar of British Columbia in 2009. She said that she moved from Beijing, a city of 20 million people, to Regina and it was a shock. She also said that she felt

very welcomed in Regina, it felt warm and she loved it. She went back to Regina after attending law school in Windsor, Ontario. She worked very hard as a new lawyer, up to 12 hours a day. She learned a lot and was treated well. She said she had a very good relationship with the Law Society. There was a lot of courtesy extended to members. If someone was late with a payment the Law Society would just remind them. If the Law Society needed answers to a question, they would just phone. She said they were “lovely people”. She had no professional conduct issues in Saskatchewan.

- [68] The Respondent said that she has 22 years of education including a Masters in Sociology, a JD and that she graduated from a top university in China.
- [69] The Respondent was referred to her PCR and was asked about the following and gave the following evidence:
- (a) the Minutes of the October 25, 2012 Practice Standards Committee Meeting;
 - (i) This was the first interaction with the Law Society since her call in 2009. She testified that she had made a mistake on a real estate transaction and registered a charge too soon. She called the lawyer on the other side and he said it was “OK”. She said that they discharged the charge immediately with no cost to anyone but he filed a complaint. JN, a Law Society staff member, helped her to make her practice better and was happy with her practice and referred clients to her. She said she improved with this review and appreciated it very much.
 - (b) the Minutes of the February 28, 2013 Practice Standards Committee;
 - (i) The Respondent corrected herself and said that this was the time that JN helped her with her real estate practice. He also advised her to socialize with other lawyers and attend lawyers’ events. This review by the Practice Standards Committee ended in 2018.
 - (c) the Report of the Conduct Review Subcommittee, dated February 26, 2016;
 - (i) This review was related to the Respondent’s handling of trust monies in respect of a settlement. She did not comply with the trust conditions, contrary to one or both of Chapter 11, Rule 7 of the *Professional Conduct Handbook* then in force and Rule 3-65 of

the Law Society Rules. The Respondent said that as a result of this report she followed the recommendations of the Subcommittee.

- (d) the Report of the Conduct Review Subcommittee, dated June 1, 2016;
- (i) The complainant was identified as AS. The Respondent testified in this hearing that AS was someone who extorted money from her, who threatened her and her children, who made defamatory statements about her to the Law Society and to the media telling them that she lied, cheated clients, was a money launderer and a spy.
 - (ii) The Respondent was asked about the subject of this review which was “to discuss her conduct in presenting without discussion a release to a non-client who was not proficient in English, unrepresented and opposed in interest, in a manner that was inconsistent with her duty to conduct herself honorably and with integrity under [r]ule 2.2 of the *Code of Professional Conduct for British Columbia*.” The background according to the Report was that AS had introduced the Respondent and her client to someone selling a water business. AS claimed that he was owed commission fees for his role in this negotiation and other negotiations or financings. He attended at her office on a number of occasions. He claimed that the Respondent offered him \$10,000 on account of this debt. She gave him a personal cheque for \$10,000 and had her assistant draft a document in English that she called a “receipt” or a “promissory note.” The assistant also included a release of all claims against the Respondent if AS failed to repay the loan. The Respondent knew AS only spoke Mandarin.
 - (iii) The Subcommittee advised the Respondent that her conduct was inappropriate because:
 - 1. She had her assistant prepare a document that she did not read before presenting it to an unrepresented opposing party.
 - 2. That document contained a release which had not been discussed with or pointed out to the opposing party, which document was in English when all communications between AS and the Respondent to that point had been in Mandarin.

3. The Respondent's interests and those of her clients were adverse to AS, and the release contained in the document drafted by the assistant created an advantage for the Respondent and her clients.

- (iv) The Respondent testified at this hearing that this was a very different situation because AS was not a client and he came to her office to borrow money and he came every day for two weeks. He came at 9 pm and the Respondent said she was frustrated and terrified so she wrote him a cheque for \$10,000 and told him to leave her alone and not to come back. He came back in three months so she reported him to the police. He told her he was going to kill her. He told her he would disbar her. She said he was a tall man and she did not know how to deal with him.
 - (v) The Report of the Subcommittee also stated that the Respondent said she was not scared but was frustrated with AS' behaviour.
- (e) the Report of the Practice Standards Committee, dated March 3, 2016;
- (i) The Committee made orders including that the Respondent network with other lawyers and attend subsection meetings; reach out to other lawyers and practice advisors for advice when she feels uncertainty about what to do as a lawyer; and enter into a formal mentorship agreement with quarterly reports to the Practice Standards Department by the mentor with the first report due May 4, 2016 until relieved of this requirement by the Committee.
 - (ii) The Respondent agreed that she recognized this report. She was asked what she did to implement these recommendations and she said that she took courses for management, accounting, and money laundering but was not sure if this was at that time. She was not asked about the mentorship and did not comment on it.
- (f) the Undertaking and Consent of Hong Guo, dated April 19, 2016 (the April 2016 Undertaking);
- (i) The April 2016 Undertaking required the Respondent, *inter alia*, to immediately cease depositing any client funds into her CIBC account that had the trust shortage and open a new trust account for all new client matters; and as of May 1, 2016, to only operate her

trust account with a second signatory who was approved by the Executive Director of the Law Society.

- (ii) The Respondent was asked how the Law Society got involved in the theft of funds from her trust account. She said she reported the theft right away. She called every department and spoke to a lady for 56 minutes. She was told the Law Society does not deal with this because it was a criminal matter. She reported it to the RCMP but they did not do anything. So, she went to China herself to try to catch the thieves. The Law Society came to her office and copied everything. She gave them her phone, her computer and her files. They took boxes of files from the office and no one knows where they are. The Respondent said that this created difficulties for her but that she knows she has a duty to protect the reputation of the Law Society but she did not have the files and her computer and accounts were so “messy.” She said the situation was “unbelievable” but the Law Society did not help her. She said she was her own “police.” She said she got the thieves in jail but they got out. She got them back and last year the final judgment was that one of the thieves got 30 years in jail and one got 15 years.
- (iii) The Respondent was asked about the Law Society’s submission that she did not abide by the terms of the April 2016 Undertaking. The Respondent said she apologized to the Law Society. She said they wanted her to open a new trust account as of April 1, 2016 but she went after the thieves. She said she was too naïve. She thought that if she could catch the thieves, she could get the money back. Her focus was to close the transactions. She had 100 clients and she closed all of them. She said that no one suffered a loss. She called the Law Society on June 28, 2016 and came back and tried to open a new trust account. The bank was very careful and took longer to open the account. “I tried hard to comply.” She said the new trust account was finally opened in July, 2016. In the meantime, she continued to use the old trust account and “everything went well.” She said she closed all the transactions and no one got hurt or suffered a loss. The Respondent said again that she sincerely apologizes and that she opened the new trust account as soon as she could.

- (g) the Rule 3-10 Order, dated August 17, 2016 (the August 2016 Order);

- (iv) It ordered that the Respondent was only allowed to practice on the following conditions and limitations, including that she must:
1. retain and instruct a Chartered Professional Accountant who specializes in forensic accounting and litigation and who is approved by the Executive Director of the Law Society to perform a reconciliation of all of her trust accounts for January 1, 2016 to September 30, 2016;
 2. give consent to the Law Society appointing a custodian over the trust account that was stolen from and any files or client matters affected by the theft;
 3. eliminate the trust shortage by November 17, 2016 or deliver a report identifying the reasons why not with a proposed alternate payment plan;
 4. only operate trust accounts with a second signatory until the affected clients had been paid; and
 5. ensure that all trust transactions relating to new client matters were handled through the new trust accounts with a second signatory.
- (ii) The Respondent said that she did hire a forensic accountant. She said her former accountant, (the thief), was very good at accounting and also very good at making a mess. She said that the forensic accountant took six months to rebuild her accounts. She said that two accountants, one she hired and one from the Law Society, produced two reports but there was a \$600,000 difference and she does not know which one is right.
- (iii) The Respondent was asked about her failure to get two signatures on her cheques. She said there were two cheques that she signed but that the other signatory did not. The bank accepted them and they went through. She does not know how that happened.
- (h) the Rule 3-10 Order, dated March 30, 2017 (the March 2017 Order);
- (i) This new order not only prohibited the Respondent from being a signatory or co-signatory on any trust account and from having a trust account in her name or her firm's name, it also imposed further conditions on the Respondent's practice including that the

Respondent had to bring all aspects of her immigration practice into strict compliance with the *Act* and the Rules. *“In particular, but without limitation, all trust monies received by or on behalf of the [Respondent] or her law firm in respect of, or relating to, immigration matters must be deposited into one of the Trust Accounts [set up with two other lawyers as signatories] [emphasis added].”* The new order also required the Respondent to submit a proposed practice supervision agreement and the name of the proposed practice supervisor and their agreement to act as such. The practice supervision agreement was to be in place by May 1, 2017.

- (ii) The Respondent was asked about this order and she testified that the Law Society was trying to disbar her. After this order, she said she did not have a trust account any more. She said the old trust account is under the control of the custodian and her new trust account was closed by the bank.
- (i) the Rule 3-10 Order April 28, 2017;
 - (i) This order extended the time to have a practice supervision agreement in place to May 10, 2017.
 - (ii) The Respondent testified that she signed a practice supervision agreement with ES (the PSA). He reviewed her files every 10 days until COVID started. She could not meet in person but said her files were reviewed by email and through phone calls.
 - (j) the Reporting of Members Suspended May 30, 2019;
 - (i) The Respondent was suspended effective May 30, 2019, for failing to “produce or permit the copying of files, documents and other records and to provide information or attend an interview and answer questions” as required.
 - (ii) The Respondent testified that someone sent her a letter that she did not see and she missed a deadline. She had a phone call from the Law Society and she was told she was suspended for not answering the letter. She provided the information requested and the suspension was lifted on June 4, 2019. She said she should have been more careful.

- [70] The Respondent put in evidence a Decision of Three Benchers dated August 31, 2020 on a Rule 3-10 application. This was an application by the Law Society for an interim suspension until the final disposition of the last of any citations. The application was based on the Law Society's allegations of practicing while suspended during the administrative suspension from May 30 to June 6, 2019; non-compliance with the March 2017 Order; and misleading the Law Society. The benchers do not hold a hearing on this type of application but only determine if the evidence establishes a *prima facie* case and if so, whether a suspension is required to protect the public. The Benchers decided that in respect of the allegations of a breach of the March 2017 Order, the Law Society had not made out a *prima facie* case. They agreed there was a *prima facie* case for practicing while suspended and misleading the Law Society. They declined to order an interim suspension because the administrative suspension was very short, the non-cooperation with the Law Society was not extensive and a suspension of the length sought by the Law Society would have a devastating effect on the lawyer's practice.
- [71] The Respondent was asked about how promptly she answers requests for documents and other matters for the Law Society. She testified that she always tries hard to answer as soon as possible and before the deadline at least. She said there were so many investigations and she was a single mom with two young children, just 10 and 14, and she had clients and staff. She said it was just too much on her. She said she made progress with regard to the judgment against the two criminals and that was a big relief. She said that her son was in university now and her daughter would be in university.
- [72] The Respondent was asked about other times she was asked to get records for the Law Society, in addition to the Rule 4-55 order when the Law Society came to her office to get records. She testified that she always made a good effort to provide the documents. One time Mr. John Forstrom, a Law Society investigator, asked her for an original copy of her ICBC account [a bank in China] and she flew to China to get an original copy and delivered it to Mr. Forstrom.
- [73] The Respondent was asked about the Law Society's comment that there were times when she was asked to provide files and she did not. She testified that she did not remember that she did not. She said that if she did not, it might have been because she did not have the files because the Law Society took them.
- [74] The Respondent was asked if she had ever disposed of documents. She replied "of course not, why would I do that."
- [75] The Respondent was asked if she had ever given an investigator from the Law Society a document that was not genuine. She said "no."

- [76] The Respondent was asked about how she used her memory answering questions over the years during the investigations. She testified that her memory was not that good and she had too much going on and that it was a long time ago. She said she submitted the written records.
- [77] The Respondent was asked about the Law Society's submission that she told Law Society investigators what she wanted them to hear. The Respondent testified that she did not say that. She said she wanted to help. She said she told Mr. Forstrom her practice area was different because her clients were Chinese but she knows they need to follow the law. She tried to explain to him but sometimes she probably did not say things very accurately. She said she was trying to help him to understand the case.
- [78] In the *F&D decision*, this Panel found that the Respondent provided inaccurate information, consciously or unconsciously. The Respondent testified that if she did, if she provided information that was not very accurate then she apologized to Mr. Forstrom. She said that in the interview with him she should have had representation. She said she should have referred to her files and notes. She said she has learned now and next time she would qualify her statements. She was trying to help him understand and she did not refer to her documents or records. She said that later she did provide the documents to support and correct what she had said.
- [79] The Respondent was asked what differences there have been in her approach to answering questions from the Law Society since 2018. She testified that since 2018 she had improved and she had learned her lesson. She did not fully understand before then. Now she would add "to my best recollection" or "to my best knowledge" and refer to the documents. She said she has learned that and will continue to improve.
- [80] The Respondent was asked if she had ever failed or refused to attend any of the disciplinary hearings. She testified no, never, that she always attends.
- [81] The Respondent was asked about the circumstances of her practice from 2012 to 2016, the period of time covered by this Citation. She testified that her children were small and her husband beat her up quite a few times and broke her finger. He beat her son so she called the police and he left. He was with another woman and has two children with her. She said she was on her own although her husband was making a very good income, about \$1 million a year as the VP of a big bank. She said she did not ask for anything, she just took her kids. She said she started her practice and it was surprisingly very successful. It was very busy and sometimes the clients were waiting outside her office in the street. She said that in 2014, 2015

and 2016 she was closing hundreds of millions of dollars of real estate transaction. Her practice was growing very quickly and she was too busy. She had 97 immigration files in one year. She hired more people to help, about 20 people. She said this was a hectic time. She also said that she does not have that many clients now and that she is trying to reduce her workload.

- [82] The Respondent was asked how her practice has changed since 2016 and whether she is doing anything differently. She testified that she has taken courses in office management, accounting and money laundering. She no longer does real estate transactions except transfers with no money involved such as a mother to son. She does not do any business real estate which was a big part of her practice.
- [83] The Respondent was asked if the experience of practice supervision had changed how she practices. She said yes because ES is a senior lawyer and she has learned to be more organized.
- [84] The Respondent was asked if she was permitted to come back to practice after her current suspension, how did she want to practice. The Respondent testified about herself in the plural as though talking on behalf of her firm. She said that they have a large client base and they support her. They feel sorry for her, her suspension is their loss because she can do quite a few things no-one else can. She said she was in school for 22 years and has practiced for 23 years. She said she had decent experience. She knows she cannot do things like litigation, personal injury, and family law. She said they can do very well in other areas such as drafting wills, business structures and business immigration. She said that they can focus on their strengths and avoid their weaknesses. She said she thinks they will do well and her clients are looking forward to her coming back.
- [85] The Respondent was asked if she had any strategies for avoiding future issues with the Law Society if she comes back to practice. The Respondent testified that she has very good supervisors and she has learned a lot such as procedures and format.
- [86] The Respondent was asked what she is doing since her suspension started last week. She said she is trying to make a few dollars by trading. She has a friend who wants to buy flax seed from a Canadian farm. She has not been successful yet.
- [87] The Respondent was asked if she was going to practice law while she was suspended and she said “no, of course not.”
- [88] The Respondent was asked about the cross-examination of Ms. Nicholls and complaints from clients or other members of the public. She was asked about her understanding of other complaints. The Respondent testified that there have been

complaints from JY in this matter, and QY and ZZ in other matters; only three complaints. The rest of the complaints are from the Law Society. She said they opened an investigation into money laundering but it was closed because they found nothing. Among 100 clients in the trust account theft matter, nobody filed a complaint and no one suffered a loss. All of their transactions were closed and everyone was happy. The Respondent testified that the three complaints before the trust account theft were all caused by AS who extorted money from her. She gave him \$10,000 and three months later he came back for more.

- [89] The Respondent was asked about some testimony in the facts and determination (“F&D”) hearing about a civil lawsuit with JY. The Respondent testified that “they” heard from JY that the Respondent had stolen money and a civil claim was filed against her. She said that “they” later found out they were wrong so her name was out of that lawsuit.
- [90] The Respondent was asked about a civil lawsuit by JY. She said it was dismissed and settled. The terms of the settlement were that she paid JY \$25,000 with no admission of liability. She was asked if she was aware of any loss suffered by JY in respect of the transaction. The Respondent testified that JY did not suffer any loss because of her. She was trying to help him to save his deposit. “From beginning to end I was in good faith trying to help him save his money.”
- [91] The Respondent was asked if she made a profit or earned any fees from F Corp. She said no that they only charged for some routine work, \$10,000.
- [92] The Respondent was asked if her sister made a profit from F Corp. She testified that her sister did not make a profit. She was a director but was not paid and did not ask to be paid.
- [93] The Respondent testified regarding the order of Justice G. C. Weatherill dated October 14, 2022. This Contempt Order found the Respondent in contempt of the orders of Master Muir made May 3, 2022 and April 8, 2021. The Respondent was ordered to serve a term of imprisonment of 40 days for contempt but that was stayed until October 21, 2022 at which time the Respondent was ordered to appear before the Court and if she had fully complied with the orders of Master Muir then the Court would consider modifying her period of incarceration.
- [94] The Respondent testified that Mr. Forrester, counsel for the Plaintiffs before Mr. Justice G.C. Weatherill, was asking for documents. She invited him to her office with her accountant and in front of her computer and she told him he could have whatever he wanted. She said she was not very good at the computer or with accounting but that what Mr. Forrester wanted did not exist. They spent three

hours and got nowhere. The Respondent said she is very bad at accounting and she hates accounting so she had her bookkeeper try to explain. The Respondent told Mr. Forrester to please invite his accountant and he did and the Respondent and her bookkeeper spent two hours trying to explain procedures to Mr. Forrester. She said he was answering phone calls and not listening.

- [95] The Respondent testified that next Mr. Forrester, went to Court to apply for the contempt order for non-production of documents. The Respondent said this was shocking because they tried their best to provide the documents he was looking for but they do not exist because “it did not happen.” The Judge issued this contempt order and there was another hearing.
- [96] At this subsequent hearing, the Respondent said the judge realized something was wrong. The Respondent hired E Forensics to search for what Mr. Forrester was looking for and they could not find anything. She had E Forensics copy all of her computers. She did this to show that she was being cooperative. She also offered her cell phone to copy. The October hearing was adjourned to December, then January, then February, and then adjourned generally. The Respondent did not go to jail.
- [97] The Respondent testified that she has not been given any criminal sanctions or penalties.
- [98] The Respondent testified that she had been interviewed about money laundering by the Law Society. She said they opened a file then closed it because they found nothing. She said she was interviewed by two different investigators for two hours each and their conclusion was that she was the victim of money laundering.
- [99] The Respondent testified about the effect of COVID-19 precautions on her practice under supervision. She said she was not allowed to meet with her supervisor every ten days but could only do phone calls and email. She said she might have been late getting documents to her supervisor but he accepted this and understood.
- [100] The Respondent was asked about Law Society Counsel’s reference to her doing conflict checks in her head. She said she did conflict checks at the front desk and then a second confirmation by herself.
- [101] The Respondent was asked about letters between the Law Society and her Practice Supervisors saying there were issues raised about “when you put clients into PC Law.” The Respondent said that she puts client files into PC Law after she receives payment. She said that sometimes clients shop around and she will not open a file until they decide to retain her.

- [102] The Respondent testified about her experience as a Chinese woman lawyer serving the Chinese community. She said that in China a lawyer is a job like a realtor. The public does not respect lawyers that much. They do not use lawyers much. They just shake hands and draft something simple; reach an agreement then they have a drink and that is how to do business. As a woman and a lawyer, she said she likes Chinese culture but not that part.
- [103] She also testified that in China, women are servants to men. Her ex-husband's mother thinks she should stay home and serve her son. Once, when she was breastfeeding her son, her husband wanted to go visit his brother. The Respondent wanted to go home. He stopped the car and beat her up. No one cared and no one stopped him. Her knees were broken, her finger was broken and it is still sore, her face was cut. She went to the police and they told her to go home and solve her problem. When her children were little and she was scratching the ice off the car in the morning, her husband would just stand and watch. She asked him to help and he would not. She stayed with him until he beat her son. That was her bottom line and he left. This was in 2012. She said maybe she made the wrong decision and she should have stayed at home but she wanted to use her knowledge and have some freedom to work.
- [104] The Respondent testified that in the Chinese culture women are not respected. She said that QY, one of the men who filed a complaint against her, had a wife and two daughters but he was not happy so he went to another woman and had a son. She also had a call from a woman who told her she was dating her husband. She asked her husband to stop dating the other woman and he said it was none of her business.
- [105] The Respondent testified as to how being a woman has made her experience different from other lawyers. She said she had been bullied all the time for years by AS and JY. She bought a German Shepherd to guard her house and protect her and her children. Then she bought an apartment and moved her sister and daughter there to keep them safe.
- [106] The Respondent testified about the challenges the Mandarin speaking community has in obtaining legal representation and what their expectations are. She said most of them have a different understanding because in China they just want something very simple, one page with just the major points. If you try to tell them they need more paperwork they just refuse.
- [107] The Respondent testified that Chinese clients have different expectations in the way certain transactions will work. She gave an example that in China the land title offices are booths in banks. The seller, buyer and realtor go to these land title offices and will finish in an hour. Chinese clients in Canada don't understand that

here it takes two weeks. They think you are not efficient. She educates them and once they understand they accept immediately.

[108] The Respondent was asked what impact her disbarment would have on the Mandarin community. She testified that she had a large number of people, friends and clients who support her and rely on her services because she understands their background and they feel comfortable with her. There is no language barrier because she can speak Mandarin. The Respondent says that she has a lot of experience and value to the community. Even with rumours and penalties, they still trust her and have confidence in her. Even when the theft happened in 2016, they still trusted her.

[109] The Respondent said that she tells her children that we have two things to do in life: we learn and we help. She said that she has tried her best to help her community. When people first land in Vancouver she goes to the airport to receive them. Sometimes they have no place to stay so they stay in her home for a couple of weeks. She helps them find schools. It is very important for them to have a lawyer who understands them, can communicate with them, and have the legal work done properly. She said they need her very much and she needs them too. She said she has done nothing else but be a lawyer and this is her only job. She said her children are still in school and they need her income too.

[110] The Respondent was asked if there was anything else she wanted to tell the Panel about how she would be affected if she was disbarred. She said that she cares about her reputation and her dignity and that if she were to be disbarred she does not know how she would survive.

Cross-examination of the Respondent

[111] The Respondent was asked on cross-examination about the question in direct examination about what difference has there been to her approach in answering questions from the Law Society since 2018 and her response that she has improved and that she is more careful. She was referred to the decision of the hearing panel dated March 8, 2023 in which it was alleged that between October 19 and August 2020 she had made three representations to the Law Society that she knew or ought to have known were false or inaccurate. That panel found that she made false and inaccurate representations to the Law Society in respect of two of the three allegations. The Respondent was asked if she disputes these findings and she replied: "Probably, yes."

[112] The Respondent was asked about the Contempt Order of Justice Weatherill made October 14, 2022 finding her in contempt of court. She was asked if she appealed

this order. She replied that she had not because her lawyer told her it was not a final order. She agreed that the Contempt Order applies to her today. She agreed that the Contempt Order was also the subject of a Law Society investigation and citation and that a hearing has been held but no decision has been made.

[113] The Respondent was asked about Master Muir's orders on May 3, 2022 and April 8, 2021 related to non-production of documents. The Respondent said those documents do not exist. She said that Justice Weatherill realized that something was wrong and that is why the contempt hearing was adjourned again and again. She said there was a further order from Justice Weatherill ordering Mr. Forrester to produce documents but she does not have that order.

[114] The Respondent was asked about the letters of support that she was relying on in this DA Hearing. She agreed they were from previous proceedings and were old. She agreed she had no current letters of support from 2023 and that the affidavit of ES, her Practice Supervisor, was from 2020. The Respondent pointed out that was after three years of being her Practice Supervisor. She told Counsel for the Law Society that she could update her letters if he wanted her to but she did not think they would change a thing. She was asked to agree that there were no letters of support that were current and that considered the findings made by this Panel. The Respondent said that even though there are lots of rumours in the newspaper and lot of findings by the Law Society, the public are supporting her. She said the public were supporting her and that just this morning she sent her lawyer an email from a client the night before saying: "I support you and I love you and you have been very good". She agreed that ES had continued to have involvement with her after 2020.

[115] The Respondent was referred to an email from RZF dated January 13, 2023 to Ms. Nicholls. RZF was the Respondent's Practice Supervisor along with ES. The email states:

...I have just received the copies of 16 files from Ms. Guo in response to our additional enquiries made pursuant to your letter to us dated January 4, 2023. As I am not able to review those files just received and include the review summary to the attached report, I will review those files as soon as I can and send you an updated review summary of those files.

She was asked if she viewed these files as not being subject to her PSA. The Respondent said these were landowners' transparency registrations for 16 people that "doesn't really require legal advice" and that they were helping them to register the transparency reports. She said the document they drafted does not really require supervision. The Respondent stated that the PSA clearly stated it

only refers to opened files and legal transactions. She was asked if she checked with the Law Society as to whether supervision was required. She said she checked with her Practice Supervisor and was told that a written signature did not require supervision. She was asked if this was written down anywhere and she said “no” and that she thought the Practice Supervisor should know.

[116] The Respondent was referred to another email from RFZ dated January 17, 2023 to Ms. Nicholls. This email included a file review of the 16 additional files referred to in the email of January 13, 2023. This email stated:

Around the time I received those additional files, I had a couple of phone calls with M[s]. Guo on the matter and learned (not clear as to which files and to what extent nor the correctness or accuracy of our interpretation of the phone conversations) that:

1. She might not officially open all files in PC Law (on the assumption that those are not legal files);
2. She did not send me certain files that she considered not to be “transaction” files, on which she did not, in her view, provide legal advice, including files for filing of landowner’s transparency report at the land title office;
3. She might have received cash payment on certain legal accounts, but such payment was not deposited to GLC’s general account before she used those amounts for GLC’s payment of its mortgage.

Further to my phone conversations with her, I sent over an email reminder regarding the appropriate process for managing her files and stated that certain short cuts on the procedures are not acceptable.

That being said, I have no written records nor other evidence as to the correctness or accuracy of the statements made by Ms. Guo as noted above. Further, upon review of the additional file copies received from her, as summary of which is attached herein, we discovered that the additional files sent to us were all opened in the PC Law system and invoices issued upon completion or substantial completion of the file.

[117] The Respondent was asked about her advice to her Practice Supervisor that she might not always open files in PC Law because they are not legal files. The Respondent said that as a solicitor, if it is just a signature, “you don’t open a file.” She was asked about not sending her Practice Supervisor files that she did not

consider “transaction files”. The Respondent said that she did not consider the transparency report registration to be legal advice. She was asked if she was deciding, all on her own, which files fell within the PSA and which did not. The Respondent replied yes, she made the judgment according to her previous experience and discussions with her Practice Supervisor and as soon as they found out they were wrong, they corrected it. Law Society Counsel put it to the Respondent that her previous experience is the reason she has a PSA and she said no, that it is because of the theft. She said: “I made one mistake. I left pre-signed cheques with my accountant.” She was asked how many pre-signed cheques and she said she could not remember but it was not as many as the Law Society said.

[118] Law Society Counsel put it to the Respondent that if she has only made one mistake then does she dispute the findings of this Panel about conflict of interest. The Respondent stated that to some extent she does not agree and that this was a special situation. JY was her best friend’s husband and she should have done better and should have taken more time but she was in a rush and it was a special relationship. If JY had not been her best friend’s husband, she would not have helped him and things would have been different. She said she has learned and will not do this again but will treat everyone the same and to the proper standard.

[119] The Respondent was asked about the reference to her not putting cash payments into GLC’s general account but using them for GLC’s mortgage. The Respondent said that her Practice Supervisor told her to put all of the money into the general account and then pay the mortgage. She said she has learned and is correcting this. She said that this money is her money and she just took a shortcut. It was not proper but it was not wrong. She did not take advantage of anyone and no-one suffered a loss.

[120] The Respondent was cross-examined on the PSA. She was referred to para. 3 which states:

Supervision of the Practice will include:

(a) reviewing all of the Practice’s open files so the Supervisors may assess their status...

The Respondent testified that if a file was not open then the PSA did not apply. She said that for “small things we don’t open files”.

[121] The Respondent was asked about her counsel’s question to her about what differences there have been in answering questions since 2018. She said she had learned and improved. The Respondent said that “this was all started by the Law

Society.” She agreed that a number of the citations allege that she made false and inaccurate statements to the Law Society. She was asked if, since the decision of this Panel issued in August 2022, she had provided any corrections to the Law Society or given further advice regarding the matters under investigation since this Panel found that she had made misrepresentations. She said she has asked her lawyers to help with that. She said she does not know what procedures she should take.

[122] Law Society Counsel rephrased the question and asked if, in light of the Respondent’s knowledge that she made misrepresentations, had she gone back to ensure that her representations are true and accurate. The Respondent said that she does not agree that at any time she knowingly made misrepresentations. She said she gave documents to support her statements and that she said it wrong but she provided documents to correct that. She said she did not knowingly mislead anyone and that she did not want to mislead anyone. She said the Law Society had everything. She offered her computer and cell phone and was “totally open.” She said she could not hide anything and why would she hide and mislead and make trouble for herself. She said the trouble is that “I am so busy. I have so much on my mind and on my shoulders.” She said she did try to make a good effort and try to deliver the Law Society’s requirements. She said there were so many investigations and thousands of questions that she did not eat, she did not sleep and just delivered what she could. She said if there was only one investigation and she did not answer accurately that could be a problem. But there was “lots of things going on” and she was “up to her eyeballs trying to survive.”

[123] The Respondent was asked about the Report of the Conduct Review Subcommittee dated June 1, 2016 which concerned the Respondent giving a release to an unrepresented opposing party who did not speak English. Law Society Counsel put it to the Respondent that she still disagreed that her conduct was inappropriate. The Respondent said that if the Law Society had fully understood the situation that they would have had a different opinion about what she did. She added that she agrees with the Law Society that it does not matter what the special situation is, she should always “keep the standard.” She added that AS told people he knew someone at the Law Society and was talking to them and she did not know what these other communications were but she thinks that they influenced this decision.

[124] The Respondent was asked about the April 2016 Undertaking and her evidence in this Hearing that she went to China to catch the thieves, that this really created difficulties for her, but that she had a duty to protect the reputation of the Law Society. The Respondent was asked if she gave this explanation to the panel hearing the citation issued September 4, 2018. In that citation the breach of the

April 2016 Undertaking was one of the allegations against the Respondent along with allegations with respect to the Theft of Trust Funds (*Guo 2020 facts and determination*; *Guo 2021 disciplinary action*; and *Guo 2023 review*). The Respondent said she did not remember what she said but “this was her version.” She was referred to *Guo 2020 facts and determination*, para. 119, which says that “*there is no real explanation for the misbehavior. ... While the Respondent may have been too stressed or distracted to comply with the Order, the Respondent should have recognized that the Undertaking was not required to address the Respondent’s own concerns; rather, the Undertaking was required to protect the public’s interest in light of the massive trust account theft that had occurred under the Respondent’s watch. [emphasis added]*” In *Guo 2020 facts and determination*, at para. 84, the panel summarizes the Respondent’s explanation for the delay in opening a new trust account and there is no mention of her trip to China to catch the thieves or a delay caused by the bank in opening the new trust account.

[125] The Respondent was asked about the decision in *Guo 2020 facts and determination* where the Respondent had complained about a lack of assistance from the Law Society following the Theft of Trust Funds. She said the Law Society did not provide assistance and the Lawyers Insurance Fund did not cover the theft and that she covered the loss for all of her clients. She was referred to the decision that stated at para. 124: “The Panel finds that the Law Society did all that it could do in the circumstances in terms of providing support and assistance.” The Respondent said that the way she was cooperative with the Law Society was to give all her computers and cellphone and all her files. She said the Law Society took her files but nobody knows where they are. She said that she reported the theft to the Law Society right away and talked to someone for an hour. She was told the Law Society does not cover this (employee theft). She said that she covered for her clients. The Respondent said that she caught the two criminals herself and sentenced them to jail. “All by myself. The Law Society did not help.”

[126] Law Society Counsel asked the Respondent about her evidence in this hearing consisting of narratives and explanations that have already been considered by panels and rejected. The Respondent said that this Panel should have this information even if another panel rejected it as they may have a different opinion or come to a different conclusion.

[127] The Respondent said that she had 100 clients when the Theft of Trust Funds occurred. She does not have that many clients now. A lawyer who testified at the F&D Hearing, TE, is covering her practice now that she is suspended.

[128] Law Society Counsel asked the Respondent at this hearing about her memory and then asked if she told Law Society investigators what she thought they wanted to hear. She denied this and said that she wanted to help. On cross-examination the Respondent said “maybe I did, I do not remember.” She said she was trying to help Mr. Forstrom with the investigation. The Respondent said she should have said it more accurately like Ms. Nicholls expressed in her evidence at this hearing. The Respondent said she should have said that she needed to “check her records.” However, Law Society Counsel referred the Respondent to the Report of the Conduct Review Subcommittee dated June 24, 2021 which stated at para. 21:

Regarding her correspondence with the LSBC, the [Respondent] indicated that she never intended to mislead the LSBC. Initially, she tried to help investigators by answering them even when she did not know the answer to specific questions. She guessed at answers as her paperwork was not in a good state. She realizes now that she must never guess at an answer to the LSBC or answer in any way inaccurately. She says that she will never again give the LSBC an answer just because she thinks it is an answer that the investigator wants to hear.

[129] The Respondent agreed that the courses she said she has taken, practice management, accounting and money laundering, are the same courses she has referenced to several panels. She would not agree she took those courses in 2017 and said she could not recall when she took them.

[130] The Respondent was challenged on her testimony that she no longer does real estate transactions except for family transactions which she agreed are also real estate transactions. She also admitted she is still dealing with financial transactions without getting GLC involved. These are private lending files where the funds are paid directly from the lender to the borrower.

Affidavits and letters of support

[131] The Respondent placed in evidence the Affidavit of her Practice Supervisor, ES, sworn June 16, 2020. ES deposed to the following:

- (a) He has never seen any evidence that any records or documents at the Respondent’s practice have been altered or deleted for illegitimate reasons and that he has never seen any evidence that the Respondent has taken deliberate steps to avoid the scrutiny and oversight of the Law Society.

- (b) That the Respondent has made some mis-steps and mistakes over the years, and her practice at times has been chaotic and disorganized. He may have questioned her judgment with respect to particular matters but he has no reason to doubt that she is a fundamentally honest person.
- (c) He is aware that the Law Society is making submissions to the effect that the Respondent's continuing to practice is a threat to the public and that he does not agree and the Law Society has not consulted him on that subject.

The Law Society did not request to cross-examine ES on his affidavit.

[132] There were three affidavits of support and ten letters of support:

- (a) The affidavits were all sworn on March 14, 2023. None of them refer to the findings in the *F&D decision* on this or any other Law Society proceeding.
- (b) One affiant swears that the Respondent is a very kind person and a good lawyer who helps new immigrants to settle down and find business opportunities and even schools for their children. She tells people about Canadian laws and culture. "We love her, we need her and we support her!"
- (c) Another affiant swears that everything JY says is untruthful and that he takes advantage of people's kindness and that he did not suffer any economic loss from the Respondent.
- (d) The third affidavit is from the former wife of JY who says she is a close friend of the Respondent. She swears that it was always JY's intention to run the sawmill himself and that he did not suffer any economic harm because he did not have the financial ability to close on the transaction and that he has been taking advantage of the Respondent to enrich himself. She also swears that she does not believe that the Respondent ever answered JY's questions with an intent to mislead him and that she did not have a direct or indirect financial interest in this matter.
- (e) The 11 letters of recommendation were all written in 2021.
 - (i) Six of them were written for the DA hearing of the citation issued September 4, 2018 with allegations related to the Theft of Trust Funds. All of the writers were aware of the theft and some had read the *Guo 2020 facts and determination* decision. All described

the Respondent in glowing terms as innocent, upright, kind, a good person and someone with integrity. All praised the Respondent for her efforts to catch the thieves and ensure that no clients lost any money. All considered the Respondent a victim of the theft. A few acknowledged that she needed to improve her internal management and financial supervision and one writer was aware that she had left pre-signed trust cheques with the bookkeeper who stole her trust monies.

- (ii) Five of the letters were written for the DA hearing of the citation issued November 1, 2019 relating to the breach of a Law Society order and breach of accounting rules (*Guo 2022 disciplinary action*). The Respondent's conduct included receiving "fixed fees" that she did not deposit into her trust account ("Mishandling of Trust Funds"). All of the writers expressed a preference for fixed fees and all said that they were happy with the services provided. None of the writers appeared to know that the issue involved the handling of trust monies and not the fixed fees themselves. All praised the Respondent, including as a good lawyer, highly respected in the community with a good heart and doing a lot of volunteer work.

[133] The panel in the *Guo 2021 disciplinary action* decision (addressing the Theft of Trust Funds) stated the following, at para. 24 and 25, about the letters of reference that were submitted:

... We agree with the review panel in *Law Society of BC v. Johnson*, 2016 LSBC 20, at paras. 45 and 46, that when there is a question of whether the authors knew all of the circumstances of the lawyer's misconduct or professional conduct record, the panel should not put too much weight on those letters since doing so would put the lawyer's friends and colleagues in the place of the panel and detract from the panel's duty to protect the public interest.

Generally, we accept that the letters and media reports provide some indication of community support for the Respondent. However, we place little weight on those character letters and media reports. We note that most of the letters and media reports do not address the issue of the bookkeeper's theft or the Respondent's role in failing to properly supervise the bookkeeper. The few letters that do address the bookkeeper's theft also clearly state that the Respondent was the victim of

theft rather than the lawyer who enabled the theft through her non-compliant trust accounting system.

[134] The panel in the *Guo 2022 disciplinary action* decision (addressing Mishandling of Trust Funds), at para. 39, 40 and 43, stated the following about 13 letters of reference that were submitted, 8 which were used in the DA hearing for the citation issued September 4, 2018 with respect to the Theft of Trust Funds and 5 that were written in respect of the fixed fees that were the subject of the hearing of the citation issued November 2, 2019 with respect to Mishandling of Trust Funds:

... we are unable to conclude that the signatories of the eight letters submitted at the disciplinary action hearing in Guo No. 1 were sufficiently aware of the relevant facts so as to permit them to give an informed opinion as to the Respondent's character as a lawyer and, in particular, whether she is likely to be compliant with Law Society regulations in the future. This deficiency has led us to give these letters reduced weight ...

There is another reason why we give these eight letters reduced weight. Many lawyers have done good work in the community, whether legal or otherwise, and consequently enjoy a positive reputation among their colleagues and in society more generally. However, our task is not to gauge the Respondent's popularity, but rather to impose a disciplinary action that appropriately furthers the objectives of protecting the public and its confidence in the justice system and the legal profession ...

...

Second, the Respondent relies on the Client Reference Letters in support of the submission that she has a good reputation in the community. In this regard, the Client Reference Letters suffer from the same frailties described regarding the other eight letters, described at paragraphs 38 to 40 above. For this reason, we give them reduced weight regarding the Respondent's character as a lawyer and, in particular, whether she is likely to be compliant with Law Society regulations in the future.

[135] There is no doubt that the Respondent has many supportive clients and colleagues in the community who appreciate her efforts in the Chinese community. This Panel places little weight on these letters and affidavits on the issue of ungovernability as they are of little assistance in determining whether the Respondent is likely to be compliant with Law Society regulation and oversight in the future. None of the writers are aware of the Respondent's full PCR. To place more weight on these letters would be to consider popularity ahead of protection of the public. Lawyers

who disregard Law Society rules and regulation in order to assist their clients often have no complaints from those clients.

[136] The Respondent did not submit any current evidence from her Practice Supervisors who remained in place until she started her suspension in March 2023.

RESPONDENT'S SUBMISSIONS

[137] The Respondent's submissions set out background information to the events leading to this Citation, issued on December 12, 2018. This Panel has already made specific findings of fact in the *F&D decision* so no further evidence or submissions can be considered in respect of those findings. This DA Hearing is not a venue to re-argue the issues determined at the F&D Hearing.

[138] The Respondent seeks to put those F&D findings in a context that considers the following:

- (a) the Respondent's misconduct did not detrimentally impact her clients;
- (b) the Respondent did not financially benefit from her misconduct;
- (c) this Panel should consider the impact of systemic-discrimination, gender-based discrimination; and
- (d) the impact of a harsh disciplinary sentence on the Respondent.

[139] The Respondent submits that when these factors are considered in their entirety it is clear that nothing beyond a concurrent suspension is required to maintain public confidence in the legal profession.

Misconduct: The *Ogilvie* Factors

[140] The Respondent also relies on the leading decision in *Ogilvie*, both for the factors to be considered in determining the appropriate disciplinary action and the test for disbarment. In *Ogilvie*, the panel stated "[t]he ultimate penalty of disbarment is reserved for those instances of misconduct of which it can be said that prohibition from practice is the only means by which the public can be protected from further acts of misconduct."

[141] The Respondent submitted that the following *Ogilvie* factors should be considered as mitigating factors.

The nature and gravity of the conduct proven

[142] The Respondent submits that the Respondent's conduct was not "grave" for the following reasons:

- (a) The Respondent did not intentionally mislead the Law Society in its investigation. She submits that this Panel should consider her conduct "through the lens of emerging psychological and scientific understanding about the fallibility of human memory and should be contrasted with the conduct of lawyers who have egregiously misled the Law Society, by taking actions such as tendering forged evidence."
- (b) The Respondent's misconduct did not strike at the heart of the solicitor-client relationship. The Respondent submits that there was no *mala fides* with respect to her clients and that her actions were done to protect the economic best interests of those that she was serving. She says her actions were not malicious and she was not taking advantage of those who were unable to care for themselves.

The age and experience of the respondent

[143] The Respondent submits that she has been dutifully serving the Chinese-Canadian and Chinese immigrant communities since her call to the BC bar on May 4, 2009. Since 2010, she has been a sole practitioner. She submits that for the vast majority of her years of practice she has been without supervision or mentoring by other lawyers. She has benefited from her interactions with her practice supervisors and submits that her practice standards have improved and continue to improve as a result of this supervision.

The previous character of the respondent

[144] The Respondent submits that the majority of her previous serious citations are related to the misappropriation of trust funds and that the circumstances of this Citation involve numerous mistakes related to the purchase and lease of the sawmill and as such are an isolated incident and largely not connected to the other citations, or her previous disciplinary record.

[145] The Respondent also submits that the letters of support produced in this hearing are evidence of her good character and must be factored into the analysis in her favour.

[146] The Respondent submits that her current misconduct is different from her previous misconduct and therefore, her previous misconduct is neither an aggravating factor nor a mitigating factor.

The impact on the victim

[147] The Respondent submits that the only victim who ought to be considered, is the complainant, JY. She further submits that there is no direct evidence of any economic harm to JY from her conduct. She says he put up \$25,000 as a deposit and thanks to her actions to close the purchase of the sawmill by sourcing funds from ZZ through F Ltd. he did not lose his deposit. The Respondent argues that JY ended up with 10 per cent of the shares of F Ltd. which he continues to own to date.

[148] This Panel notes that JY's evidence in the F&D Hearing was that he invested a further \$80,000 by way of a bank draft to G Corp. The Respondent testified that she thought the further \$80,000 was paid by JY to receive his 10 per cent shareholding in F Ltd. This Panel did not accept the Respondent's evidence and found that JY did not consent to, or even realize that he was being sold 10 per cent of the shares in F Ltd.

[149] The Respondent asks this Panel to assume that since JY started a civil suit against the Respondent which was later settled, resulting in a dismissal, then presumably if there was any economic harm done to JY, it was remedied through that settlement.

[150] The Respondent submits that JY did not complain that she failed to provide him with any advice that he expected to receive from her and that this is a relevant factor in assessing the extent, if any, to which he was harmed by her conduct.

[151] The Respondent submits that this Panel should consider the cultural context in which her services were provided. She submits that the role of lawyers in China is "materially different than what one would expect in Canada due to the reliance on informal enforcement methods. As a result of the intermingling between interpersonal relationships, business relationships, and legal relationships, the 'moral world' oftentimes governs the regulation of business relations."

[152] The Respondent submits that to the extent that JY did not receive the legal advice he was entitled to receive from a BC lawyer, it is relevant to consider that he did not bargain for, nor expect to receive, such advice.

The advantage gained, or to be gained, by the respondent

[153] The Respondent submits that there is no evidence of a financial benefit to her from any of the acts of misconduct. She submits that this is a case where “the lawyer acted as she did solely out of a desire to help others, consistent with her overall character.” She submits that the lack of any financial gain is a mitigating factor.

The number of times the offending conduct has occurred

[154] The Respondent submits that all of the findings of misconduct in the *F&D decision* results from a single event and therefore the Law Society’s argument must be dismissed.

Whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances.

[155] The Respondent argues that she did make various admissions regarding her conduct, including that:

- (a) she never obtained informed consent from JY regarding the F. Corp purchase of the M. Ltd shares;
- (b) she did not inform or get the consent of JY, ZZ or any of the BC PNP clients regarding the inclusion or use of M Ltd. in the BC PNP application process;
- (c) she never sought, nor obtained, consent for involving M Ltd. as the subject business for BC PNP for CL, JZ and YZ’s applications, nor informed her clients of the conflict of interest; and
- (d) loaning money to her clients was inappropriate, despite the fact that she viewed herself as “helping” clients and keeping them happy.

[156] The Respondent also submits that she made admissions during cross-examination that should be considered:

- (a) She acknowledged her wrongdoing and remorse for not doing “better work” because the work she did was done “in a big rush.” She also should have insisted that her clients obtain independent legal advice.
- (b) She displayed remorse that her actions and provision of information to the Law Society during the investigation was “not entirely accurate.”

She submits that she was trying to provide assistance to the Law Society while balancing a busy practice. She says her actions were not malicious or deceitful. She has acknowledged her wrongdoing and displayed remorse for any perceived uncooperativeness.

[157] The Respondent submits that her admissions are a mitigating factor or alternatively, that they should negate the Law Society's argument that the lack of admissions is an aggravating factor.

The possibility of remediating or rehabilitating the respondent

[158] The Respondent submits that she has a high probability of remediation and rehabilitation. She says she has dedicated her career as a lawyer to helping the Chinese-Canadian community. She greatly values her identity as a lawyer. She also needs to support her family financially.

[159] The Respondent submits that her wrongdoing was largely due to her busy practice and not to any intentional or premeditated malice, or deceit.

[160] The Respondent submits that she is committed to improvement, through the implementation of a supervision order. As well, the suspension will provide time for reflection and the implementation of better practice management skills. The Respondent submits that with better practice management skills the opportunity for rehabilitation is high and this is a mitigating factor.

The impact of the proposed penalty on the respondent

[161] The Respondent submits that she has already suffered from the stress and embarrassment that has come with the Law Society's disciplinary process. She says there has been intensive media focus from multiple news outlets and journalists. The panel in *Law Society of BC v. Faminoff*, 2015 LSBC 20, considered the stress and embarrassment to be a mitigating factor. Previous panels have considered the effect on a sole practitioner and on the respondent's family. The Respondent says that she supports her two children who are 17 and 21 and need tuition and living expenses while in university. Her practice was already hurt by a lack of business precipitated by the outbreak of COVID-19 and was just beginning to recover. A lengthy suspension or disbarment would jeopardize her ability to recover her practice.

The need for specific and general deterrence

[162] The Respondent submits there is no need for deterrence in this case because the misconduct was related to an isolated incident in which she was trying to help her clients from an economic point of view. The inaccurate information provided to the Law Society was the result of a busy practice and the “fallibility of human memory” and was unintentional.

[163] The Respondent submits that since she is already serving a one-year suspension then a concurrent suspension is adequate for specific and general deterrence.

The need to ensure the public’s confidence in the integrity of the profession.

[164] The Respondent submits that this Panel should consider the decision in *Law Society of Upper Canada v. Robinson*, 2013 ONLSAP 18, in which the appeal panel took into consideration the lawyer’s Indigeneity and the fact that the lawyer was serving an underserved community. The appeal panel said at para. 56, that these factors had “relevance to what penalty is required to maintain public confidence in the legal profession.”

[165] The Respondent submits that she is a hardworking, well respected professional in the Chinese community in the Lower Mainland. She submits that she is a Mandarin and Cantonese speaking lawyer, that she employs Mandarin and Cantonese speaking members of the community and that she provides pro bono work in the Chinese community in the Lower Mainland to the elderly and vulnerable. She submits that the public’s best interest should be considered in light of the services provided by the Respondent to the Chinese-Canadian community.

The range of penalties imposed in similar cases

[166] The Respondent submits that “similar cases” are cases involving conflicts of interest and the failure to obtain the consent of clients. But this Panel notes that the Respondent’s professional misconduct in this matter also includes failing to respond substantially to the Law Society and making false or misleading representations to the Law Society so cases concerning only conflict of interest and consent will be of little relevance.

[167] The Respondent submits that the decision of the review board in her own case of *Guo 2023 review*, will provide a guide to the appropriate sanction since many of the same factors were being considered in the context of her life circumstances and legal practice.

- [168] The Respondent submits that findings of conflict of interest rarely lead to disbarment, even in serious cases. The Respondent cites several cases of lawyers found to have acted in a conflict of interest that attracted a range of penalties from a modest fine to suspensions of one to five months. In one of the cases cited, the panel found that the lawyer's altruistic intention to help his client overcome financial and lifestyle challenges was a mild mitigating factor: *Law Society of BC v. Laughlin*, 2019 LSBC 42.
- [169] The Respondent also submits that failing to obtain a clients' informed consent is also not a presumptive case for disbarment. She cited a case in which the lawyer acted for more than one party in a series of related real estate transactions including one in which he had a personal interest. He failed to get his clients' consent to act for more than one of them, failed to advise that he was acting for other parties and failed to advise his clients to get independent legal advice. The panel noted that no party suffered a loss, the lawyer did not obtain a benefit other than legal fees; the lawyer had no previous complaints, expressed remorse and cooperated with the Law Society investigation. He was suspended for two weeks: *Law Society of BC v. Van Twest*, [1994] LSDD No. 129.
- [170] The Respondent submits that the decision in *Guo 2023 review* provides a useful analysis of the *Ogilvie* factors in the face of conduct that carried the presumptive penalty of disbarment. That panel concluded that there were exceptional circumstances that explained and mitigated the Respondent's misconduct and ordered a one-year suspension. The review board agreed that disbarment was not required but added a condition that prior to returning to practice after her suspension the Respondent must enter and comply with a practice supervision agreement acceptable to the Practice Standards Committee. This agreement is to remain in place until it is removed by the Practice Standards Committee.
- [171] The Respondent submits that the circumstances before the review board on this issue of disbarment are essentially the same now. The Respondent submits that, in this case, a concurrent suspension is the appropriate penalty for the following reasons;
- (a) The Respondent's misconduct here, is the same as in *Guo 2023 review*, namely a desire to help her clients. The Respondent maintains that but for her intervention the complainant, JY, would have lost his deposit.
 - (b) Neither the hearing panel (*Guo 2020 facts and determination, Guo 2021 disciplinary action*), nor the review board (*Guo 2023 review*), found the Respondent to be ungovernable.

- (c) The review board was aware of the Respondent's current disciplinary proceedings and still upheld a one-year suspension.

[172] The Respondent submits that this Panel should consider several other factors as discussed below.

Discrimination against racialized lawyers

[173] The Respondent submits that systemic discrimination may be a mitigating factor in cases where there is a proper evidentiary foundation to show that it influenced the lawyer's misconduct.

[174] The Respondent quoted the appeal panel in *Law Society of Upper Canada v. Robinson*, concerning the discipline of an Indigenous lawyer. That appeal panel said, at para. 73, that the "consideration of unique systemic and background factors, as they reflect upon the seriousness of a licensee's conduct, and his or her culpability or moral blameworthiness, is necessary to enhance respect for, and confidence in our profession and the self-regulation of all of its members."

[175] The Respondent also relied on the Court of Appeal in *Howe v. Nova Scotia Barristers' Society*, 2019 NSCA 81, at para. 179, which set out the factors to be considered when disciplining a racialized lawyer:

- (a) a decision-maker can give mitigating effect to systemic discrimination when it impacts on misconduct and influences the lawyer's actions, if there is a causal connection between the systemic racism and the lawyer's actions that gave rise to the finding of misconduct;
- (b) when sanctioning a racialized lawyer, it is appropriate to consider the needs of the community to have access to lawyers from their community in the justice system; and
- (c) the overarching considerations are the requirements for a self-governing profession to govern itself in the public interest, and maintain public confidence in the integrity and trustworthiness of members of the legal profession.

[176] The *Howe* factors have been adopted by Law Society panels in BC including the review board in *Guo 2023 review*.

[177] The Respondent submits that she faces systemic discrimination because she is an Asian-Canadian woman with children. She further submits that lawyers who are Asian women are underrepresented in the legal profession, especially at the senior

level. She quotes from the Background Report for a CBABC event entitled “On the Path to Equity for Women in Law” (29 April 2022) which said that women lawyers face several forms of bias which hinder their careers such as:

- (a) maternal wall bias - mothers are assumed to be not as committed or competent as others;
- (b) double standards - when men are praised for assertiveness but women are criticized for the same conduct;
- (c) ambivalent sexism – where women are stereotyped in to “feminine roles” or assumed to not want to become leaders or partners; and
- (d) prove-it-again bias – where women have to work harder to get the same recognition and respect as men.

[178] The Respondent submits that gender-based discrimination led to the complaint against her by JY. She refers to evidence from the F&D Hearing that JY was accompanied by AS when he made his complaint and that AS had bullied the Respondent. The Respondent submits that the complaint against her was part of an “apparent vendetta.”

[179] The Respondent submits that discrimination against Asian-Canadians is downplayed because of the myth of the “model minority” which depicts Asian Canadians as hardworking and business oriented; as having achieved relative socio-economic success; and as having a proximity to “whiteness.” In fact, the Respondent argues that historical discrimination against Asian-Canadians who could not become lawyers in the 1920s because they were not allowed to be on the voting lists, continues today because excluding Asian-Canadians from the legal profession has contributed to the “normalcy” of lawyers being white men.

[180] The Respondent submits that as a leader in her community she faces this downplayed discrimination and the effect of the “bamboo ceiling.” The “bamboo ceiling” is a term that refers to the barriers faced by Asian professionals as they are stereotyped as non-assertive and therefore unfit for leadership positions.

[181] The Respondent submits that any disciplinary penalty must take account of the oftentimes unconscious bias of how non-Asian lawyers perceive Asian lawyers.

Addressing the needs of the Chinese-Canadian community in British Columbia.

[182] The Respondent submits that the second *Howe* factor took into account the fact that the lawyer was serving an underserved community and that she does as well.

[183] The Respondent set out the many ways in which she serves the Chinese-Canadian community:

- (a) provides legal services for individuals;
- (b) does volunteer work with nonprofit organizations;
- (c) assists Chinese immigrants after they arrive in Canada to find business opportunities, enroll in school, and teach them about Canadian law and culture;
- (d) speaks Mandarin and therefore can serve her clients in their first language;
- (e) employs staff who speak Cantonese and Mandarin; and
- (f) understands the Chinese civil legal system and the Canadian common law system and is able to anticipate problems that most Canadian-born lawyers cannot. She can explain the differences between the two systems to her clients.

The Respondent's current suspension is sufficient to maintain public confidence in the integrity and trustworthiness of the legal profession.

[184] The Respondent submits that her current one-year suspension, to which the review board added a supervision order upon return to practice, already prevents her from practicing law for a year and ensures that she will not commit professional misconduct in the future. She states that the one-year suspension will allow her to recuperate from her strenuous and busy practice. She asks this Panel for a concurrent disciplinary penalty to be served at the same time as the one-year suspension.

Ungovernability

[185] The Respondent submits that her conduct does not meet the test for ungovernability.

[186] The Respondent sets out the eight factors from the *Law Society of BC v. Hall*, 2007 LSBC 26, and *Law Society of BC v. Welder*, 2015 LSBC 35, decisions and notes that all eight factors need not be present for a lawyer to be ungovernable. The Respondent says that the test is defined by a consistent unwillingness to comply with the Law Society, and a disregard or disrespect for the regulatory process.

[187] The Respondent submits that her conduct should be considered in light of *Welder* factors 1, 3, 4, 6 and 7.

***Welder* factor 1: a consistent and repetitive failure to respond to Law Society inquiries**

[188] The Respondent says she did not consistently or repetitively fail to respond to the Law Society. She says she voluntarily provided documents and data; she attended a number of interviews and answered thousands of questions in this and numerous other investigations. She submits that throughout the investigation process she has “balanced the needs of the Law Society and the investigator, with the requirement to keep up with her busy practice.”

***Welder* factor 3: some element of misleading behaviour directed to a client and/or the Law Society**

[189] The Respondent says that her behaviour was not intentionally misleading to the Law Society or to her clients. She says she has “consistently complied with the regulatory and investigative process to the best of her ability.” She submits that as a popular lawyer with a busy practice her intent was never to “mislead.” She says she was working to serve the best interests of her clients, by also accommodating their business interests.

[190] The Respondent submits that in considering and applying *Welder* factor 3, this Panel needs to be aware of the developing psychological understanding of the fallibility of memory. The Respondent refers to a decision from the United Kingdom, *Gestmin SGPS SA v. Credit Suisse (UK) Ltd.*, [2013] EWHC 3560 (Comm), in which the judge concludes that memory is fallible and that the legal system has not sufficiently absorbed the lessons of psychological research.

[191] The Respondent submits that academic literature also acknowledges that memory is inherently fallible and is influenced by misinformation, personal bias, the phrasing of a question designed to provoke recollection, discussions with a co-witness and the retelling of an event from a different perspective. “All of us possess constructed memories that our minds have formed to fit internal narratives we tell

about ourselves. When we recount those constructed memories, we are not being intentionally untruthful or misleading. We are telling the truth as our minds understand the truth to be.”

[192] The Respondent goes on to say “... this Tribunal risks being on the wrong side of history if it fails to exercise appropriate compassion and indeed mercy when assessing whether a member is ungovernable on the basis of the member having provided incorrect information based upon memory.”

[193] The Respondent points to several circumstances that would affect her memory during the investigative process:

- (a) She was a busy lawyer with a demanding practice. She had approximately 90 immigration clients, most of whom were looking to participate in the BC PNP process. Her office dealt with hundreds of millions of dollars of real estate transactions.
- (b) She was dealing with several investigations. “The sheer number of investigations she was dealing with simultaneously appears to have been almost unprecedented.”
- (c) She earnestly believes that she is a good person; with the best of intentions; a person of high moral standards. Her memory of events is coloured by this internal narrative.

Welder factor 4: a failure or refusal to attend at the discipline hearing convened to consider the offending behaviours

[194] The Respondent submits that she has consistently attended the disciplinary hearings to consider her offending behaviours.

Welder factor 6: a history of breaches of undertakings without apparent regard for the consequences of such behaviour

[195] The Respondent submits that she has not consistently breached undertakings or demonstrated a disregard for the consequences of such behaviour. The Respondent says that she takes the allegations and findings against her very seriously.

***Welder* factor 7: a record or history of practicing law while under suspension**

[196] The Respondent notes that she is serving a suspension now and does not object to the supervision order as a condition of returning to practice.

[197] The Respondent argues that the test for ungovernability has not been met and that when this Panel takes into account the mitigating *Ogilvie* factors, the appropriate disciplinary action is a one-year suspension to be served concurrently with the current suspension.

ANALYSIS

Ungovernability

[198] The Panel finds that the Law Society has clearly proven, on a balance of probabilities, that the Respondent is ungovernable. Her PCR is lengthy, serious and highly aggravating. She has shown little insight into the findings made against her and continues to see herself as a victim. She has taken almost no steps to educate herself on her responsibilities, to train her staff or organize her practice. She is quick to apologize and offer to improve but even with a reduced practice, no access to a trust account and the supervision of two experienced lawyers, she has failed to adhere to the PSA.

[199] This Panel agrees with the parties regarding the test for ungovernability as found in the decisions of *Hall* (see para. 27) and *Welder* (see para. 21):

- (a) A consistent and repetitive failure to respond to the Law Society's inquiries;
- (b) An element of neglect of duties and obligations to the Law Society with respect to trust account reporting and records;
- (c) Some element of misleading behaviour directed to a client and/or the Law Society
- (d) A failure or refusal to attend at the discipline hearing convened to consider the offending behaviours;
- (e) A discipline history involving allegations of professional misconduct over a period of time and involving a series of different circumstances;

- (f) A history of breaches of undertaking without apparent regard for the consequences of such behaviour; and
- (g) A record or history of practicing while under suspension.
- (h) The decision in *Welder*, at para.32, added an eighth factor, the number of citations and conduct reviews in the respondent's PCR.

[200] These factors are not a checklist that has to be met before a finding of ungovernability can be made. These factors provide a guide for consideration. It is possible that repeated breaches of a single factor, such as responding to inquiries from the Law Society, could amount to a “wanton disregard and disrespect of the lawyer for the regulatory processes that govern his or her conduct.” See *Hall*, para. 28.

[201] The Respondent's conduct meets all but subsections (d) and (g). She has attended every hearing, conduct review, and subcommittee meeting. Prior to her current suspension, the Respondent had an administrative suspension that lasted from May 30 to June 6, 2019.

[202] The ability to regulate lawyers' conduct is at the heart of self-regulation and the ability of the Law Society to protect the public interest. Lawyers cannot choose to ignore their obligations even when they believe they have a good reason or a client's best interests at heart. Excuses such as being too busy or too distracted are not acceptable. Lawyers are expected to organize their practices so that they can give clients the attention they deserve which includes adhering to the Law Society's rules and regulations.

[203] Practicing law is a privilege. Lawyers must accept that their conduct will be governed by the Law Society. They must respect and abide by the rules that govern their conduct. They must deal with the Law Society in an honest, open and forthright manner at all times. The Law Society's mandate to regulate lawyers in the best interests of the public cannot be fulfilled if it permits lawyers to continue to practise who have demonstrated ungovernability (*Law Society of BC v. Spears*, 2009 LSBC 28).

[204] A review of cases involving other lawyers in BC who were found to be ungovernable show the following:

- (a) In *Law Society of BC v. McLean*, 2015 LSBC 30, (“*McLean 2015*”) the respondent's misconduct included failing to respond to the Law Society and failing to comply with an order imposing practice conditions,

including a practice supervision agreement. The respondent's PCR included a conduct review, a practice standards referral, two administrative suspensions and an order imposing practice conditions. The hearing panel found no evidence of mitigating circumstances. The respondent was declared ungovernable.

- (b) In *Law Society of BC v. McLean*, 2016 LSBC 06, ("*McLean 2016*"). further findings of misconduct were made against the same respondent for inappropriate dealings with a self-represented litigant, misrepresentations to the court, failing to respond to opposing counsel, failing to file documents, failing to attend scheduled court appearances, failing to provide information to the court, offering to settle an action in exchange for the withdrawal of a Law Society complaint and failing to respond to the Law Society. At this point the respondent's PCR included 20 findings of professional misconduct. The hearing panel found the respondent "demonstrated both a consistent unwillingness to be regulated and a disregard, disrespect and disdain for the governing and regulatory processes". The respondent was declared ungovernable for a second time.
- (c) In *Welder*, the respondent was found to have committed professional misconduct in connection with his involvement in a Ponzi scheme. His PCR was described by the panel as "extensive" and "abysmal" and dated back to 1991. It included six conduct reviews, six citations resulting in findings of professional misconduct and a lengthy practice standards referral. The panel added an eighth factor to the list in *Hall*: the number of citations and conduct reviews the respondent has acquired in their PCR. The panel said this of Mr. Welder, at para.32:

There comes a point where a lawyer has been found to have misconducted himself too many times to warrant another chance. As with any privilege, a licence to drive a motor vehicle for example, too many infractions will eventually mean that you will lose your privilege because it is no longer safe or prudent to allow you to continue to practise. This Panel is certain that, if the Respondent were permitted to return to practise, it is not a matter of "if" but "when" the Respondent will commit a further deed of professional misconduct.

- (d) In *Law Society of BC v. Pyper*, 2019 LSBC 21, the respondent was found to have committed professional misconduct for failing to provide an

adequate quality of service, incompetence and a failure to recommend his client obtain legal advice after he had committed a professional error. The respondent's PCR included Practice Standards recommendations on three occasions, three citations resulting in findings of professional misconduct (including the present case) a conduct review, an order made by three Benchers imposing restrictions and conditions on the respondent's practice, an injunction issued by the Supreme Court prohibiting the respondent from practicing. The panel observed, at para. 67:

We conclude that the Respondent has been shown to be ungovernable. His failures to adhere to his professional obligations extend over a range of matters and over a period of years. His principal response throughout the proceedings on the three citations has been, not a recognition of his wrongdoing, but attempts to deny wrongdoing coupled with repeated arguments that the disciplinary proceedings were unfair and that the Law Society acted without jurisdiction and was biased against him. The evidence before us offers no realistic hope that the Respondent can or will effectively come to terms with his professional obligations. We agree with the panel in the proceeding on Citation 2 that "rehabilitation and remediation will be unlikely" in the Respondent's case.

- (e) In *Law Society of BC v. Lessing*, 2022 LSBC 07 ("*Lessing 1*"); *Law Society of BC v. Lessing*, 2022 LSBC 28; and *Law Society of BC v. Lessing*, 2022 LSBC 28 there were three hearings in 2022 and the respondent was found ungovernable and disbarred in all three hearings. His lengthy PCR included six conduct reviews, practice standards recommendations, five administrative sanctions, and three citations resulting in professional misconduct. As well, he had failed to comply with three court orders and had been declared in contempt of court. He has a history of failing to comply with Law Society orders, directions and recommendations. The panel in the first hearing, *Lessing 1*, said this, at para. 22:

...the Respondent has accrued a grossly disproportionate number of complaints over his career, has failed to reform his behaviour in the face of multiple conduct reviews, steps in the progressive discipline process and remedial interventions, and has exhibited repeated instances of poor judgment, blaming others for his

misconduct and disregard for his professional obligations. This amounts to a consistent unwillingness to submit to, and a wanton disregard and disrespect for, the regulatory process.

[205] Using the *Hall* factors as a guide, this Panel finds the following to support the finding that the Respondent is ungovernable.

[206] This Panel finds a consistent and repetitive failure by the Respondent to respond to the Law Society's inquiries. The Respondent has been found by several panels and conduct review committees to have provided incorrect or misleading information:

- (a) On May 30, 2019, the Respondent was suspended for failing to produce records to the Law Society and attend an interview. The Respondent testified that she did not receive notification of this suspension and that once she did, she rectified the situation. This suspension was lifted on June 6, 2019.
- (b) The Report of the Conduct Review Subcommittee dated June 24, 2021 stated at para. 11 and 21:
 - (i) "In the course of the investigation, the [Respondent] was not forthcoming with information as requested by the LSBC. At times she was careless and misleading in her responses to questions by the LSBC."
- (c) The Report of the Conduct Review Subcommittee dated July 9, 2021 stated, at para. 15: "During the investigation, the [Respondent] provided inconsistent responses that could often not be reconciled with documentary records and made representations that she ought to have known were not accurate."
- (d) At para. 227 of the *F&D decision* issued August 24, 2022, this Panel found that the Respondent failed to respond or cooperate fully with the Law Society; and provided incorrect or misleading information in the course of an investigation. This was found to be among the gravest forms of misconduct. The breaches were numerous and lasted throughout the investigation over a number of years.
- (e) In the *Guo 2023 facts and determination* decision issued March 8, 2023, the panel found that the Respondent gave false and inaccurate information to the Law Society investigator. The panel decided this was a breach of the Rules but fell short of professional misconduct. The

panel concluded that her answers were not intended to frustrate the investigation. “*We find that two of the Respondent’s misrepresentations were a breach of the Act or Rules as the Respondent’s conduct was not insignificant and arose from insufficient attention paid to administrative requirements.* [emphasis added]”

[207] This Panel finds an element of neglect of duties and obligations to the Law Society with respect to trust account reporting and records. This neglect includes:

- (a) As far back as the December 3, 2015, the Conduct Review noted that the Respondent paid out trust funds without complying with the trust conditions.
- (b) In 2016 the Respondent’s failure to supervise her bookkeeper, failure to follow the Law Society’s trust accounting rules, and giving staff members pre-signed blank trust cheques, led to the theft of approximately \$7.5 million from her trust account while she was on vacation.
- (c) Subsequent to this theft of trust funds, the Respondent misappropriated trust funds by using trust money from some clients to cover trust shortages for other clients.
- (d) The Respondent breached the April 2016 Undertaking and the August 2016 Order by continuing to use her CIBC Trust Account and failing to open a new Trust Account.
- (e) The August 2016 Order was modified in March 2017 to include a term that prohibited the Respondent from handling trust money. The Respondent breached this order as well.
- (f) On November 4, 2018 the Respondent wrote to Mr. Wedel, a staff lawyer at the Law Society and stated that real estate transactions could not be used for money laundering. The Respondent is wrong and real estate transactions are at risk for being used to launder money.
- (g) In the *Guo 2021 facts and determination* decision issued May 20, 2021, the panel found that the Respondent had committed professional misconduct for depositing the fees for prepaid legal services from six clients into her general account instead of her trust account. The Respondent’s appeal to the BC Court of Appeal was dismissed: *Law Society of British Columbia v. Guo*, 2022 BCCA 154.

- (h) The Report of the Conduct Review Subcommittee dated June 24, 2021 found that in 2015 or 2016 the Respondent deposited \$230,000 from a client into her personal bank account in China instead of into a trust account. Then she used her own funds in BC for the client's investment in BC's Provincial Nomination Program. She did this to help her client who was not allowed to remove more than \$50,000 from China to Canada. The subcommittee advised the Respondent that these funds should have been placed in a trust account. The Respondent did not agree. This process was not a hearing so no decision could be made. The subcommittee took no further steps because the Respondent was already not permitted to operate a trust account and the hearing panel had not yet determined the appropriate disciplinary action for the Mishandling of Trust Funds as determined in *Guo 2021 facts and determination*.

[208] This Panel finds some element of misleading behaviour directed to a client and/or the Law Society. This behaviour includes:

- (a) Providing incorrect or misleading information to the Law Society as outlined above.
- (b) The misappropriation of trust monies following the theft of trust funds was done without the Respondent's clients' knowledge or consent.
- (c) This Panel found, at para. 185 of the *F&D decision*, that "[t]he Respondent admitted she never, for example, obtained informed, or indeed any, consent from JY regarding the F Corp. purchase of the M Ltd. shares, the transfer of those shares, nor the involvement of ZZ in that deal. The Respondent admitted that she did not inform or get the consent of JY, ZZ or any of the BCPNP clients regarding the inclusion or use of M Ltd. in the BCPNP application process."
- (d) At para. 199 of the *F&D decision*, this Panel stated that "[b]y informing ZZ that JY was a poor risk for investment, by advising JY that if he did not provide the funds his shareholding would be diluted, by transferring JY's shares to ZZ without his consent, and by papering at least the appearance of a transfer of M Ltd. to CZ and JZ, the Respondent acted against JY's interests."
- (e) At para. 200 of the *F&D decision*, this Panel stated that "[t]he Respondent owed a similar duty of undivided loyalty to ZZ, F Corp, CZ, JZ and CL. As such, by acting so as to actually or potentially

compromise their interest, real or potential, in the business or operations of M Ltd. and without their consent, she acted in conflict with that duty.”

[209] This Panel finds a discipline history involving allegations of professional misconduct over a period of time and involving a series of different circumstances.

- (a) The Respondent’s PCR is lengthy and serious as previously set out. It contains findings of professional misconduct for breach of trust accounting rules, mishandling and misappropriation of trust funds, acting in a conflict of interest, acting for a client while having a financial interest in the matter, failing to respond or cooperate with Law Society investigations, failing to supervise staff, breach of Law Society orders and undertakings.

[210] This Panel finds a history of breaches of undertaking without apparent regard for the consequences of such behaviour as follows:

- (a) The Respondent breached undertakings given to the Law Society to stop using the trust account involved in the theft and to open a new trust account for all new client matters. She argued that new matters for former clients could continue to use her old trust account. However, it was clear that the intent of the undertaking was to isolate any new transactions from the trust account involved in the theft. The Respondent also breached the April 2016 Undertaking by failing to have a second signatory on her trust account. The Respondent’s explanation for the breaches was that she was “overwhelmed and unfocussed.” The panel in *Guo 2020 facts and determination* and *Guo 2021 disciplinary action* found no real explanation for the Respondent’s misbehaviour.
- (b) The Respondent breached the Rule 3-10 August 2016 Order to protect the public interest in relation to her trust accounts and trust funds.
- (c) The Respondent breached the March 2017 variation of the August 2016 Order. The new order imposed an absolute prohibition on the Respondent operating a trust account or handling trust money. She breached this by handling trust funds from six clients in the nature of prepaid services that she deposited into her general account.

[211] This Panel finds a record or history of practising while under suspension. In the Decision of Three Benchers dated August 31, 2020 the Benchers found a *prima facie* case of practising while suspended, contrary to Rule 3-6 of the Rules (as they

then were) and section 15 of the *Act*. The administrative suspension was in place from May 30 to June 6, 2019.

[212] The panel in *Lessing I* stated at para. 13:

The threshold to find ungovernability is high. Where the lawyer's willingness to submit to Law Society governance is inconsistent, with instances of both compliance and cooperation and non-compliance and non-cooperation, the hearing panel must consider the overall pattern of conduct and whether the conduct is worsening or becoming entrenched over time.

[213] In addition, this Panel notes that the Respondent has practised under a PSA since 2017 to which she frequently fails to adhere.

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

[215] The only remedy at this stage that will protect the public is disbarment. Disbarment must follow a finding of ungovernability as there can be no right to practice unless a lawyer submits to Law Society regulation.

***Ogilvie* Factors**

[216] The parties also presented alternate submissions based on the *Ogilvie* factors. This is the framework hearing panels have used in disciplinary action hearings when ungovernability is not argued.

[217] Having considered alternate disciplinary action the Panel finds that disbarment is the only penalty that will protect the public and preserve the public confidence in the Law Society's ability to regulate lawyers.

[218] The panel in *Ogilvie* stated at para. 18 to 19:

The ultimate penalty of disbarment is reserved for those instances of misconduct of which it can be said that prohibition from practice is the only means by which the public can be protected from further acts of misconduct....

The public must have confidence in the ability of the Law Society to regulate and supervise the conduct of its members. It is only by the maintenance of such confidence in the integrity of the profession that the self-regulatory role of the Law Society can be justified and maintained.

[219] The *Ogilvie* test is a list of factors to consider when assessing the appropriate disciplinary action for a lawyer who has been found to have committed professional misconduct. A condensed list of *Ogilvie* factors was proposed in the *Dent* decision but for this hearing we will consider the following *Ogilvie* factors:

- (a) the nature and gravity of the conduct proven;
- (b) the age and experience of the respondent;
- (c) the previous character of the respondent, including details of prior discipline;
- (d) the impact upon the victim;
- (e) the advantage gained, or to be gained, by the respondent;
- (f) the number of times the offending conduct occurred;
- (g) whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;
- (h) the possibility of remediating or rehabilitating the respondent;
- (i) the impact of the proposed penalty on the respondent;
- (j) the need for specific and general deterrence;
- (k) the need to ensure the public's confidence in the integrity of the profession; and
- (l) the range of penalties imposed in similar cases.

[220] All of these factors are considered in light of the overall mandate of protection of the public and of maintaining the public's confidence in lawyers.

The nature and gravity of the conduct proven

[221] The Respondent was found to have committed professional misconduct in relation to all but one subsection of the four allegations in the Amended Citation concerning acting in a conflict of interest by representing several clients with conflicting interests; providing legal services while she had a direct or indirect financial interest in the transaction; failing to respond substantially to the Law Society and making false or misleading representations to the Law Society; and failing to serve her clients in a conscientious, diligent and efficient manner. The Respondent's conduct was serious. She failed in her responsibilities to her clients and showed little insight into her responsibilities. This is serious misconduct. She failed in her obligations to the Law Society by providing incorrect and misleading information on numerous occasions over a period of years. This is very serious misconduct and a highly aggravating factor.

The age and experience of the respondent

[222] The Respondent has practised law since 2000. She is not a newly called or inexperienced lawyer. She is fluently bilingual in English and Mandarin. She has practised in real estate and immigration law since she was called in BC in 2009. She was a senior and experienced lawyer who should have been familiar with the Law Society's rules around trust accounting, conflicts of interest and the duty to cooperate with Law Society investigations. She has had the benefit of several conduct reviews, mentorship and supervision. This is an aggravating factor.

The previous character of the respondent, including details of prior discipline

[223] The Respondent's reputation in the community appears to be very good according to the letters and affidavits of support that she filed. These letters are of limited assistance in assessing the Respondent's character as most of the writers were not aware of the extent and significance of the Respondent's practice and discipline history. The Respondent's PCR was reviewed in our reasons above, and it is lengthy, serious and covers many types of misconduct. This is a highly aggravating factor.

The impact upon the victim

[224] The Respondent says that no clients were harmed by her behaviour because she actually saved JY's deposit from being forfeited and that she settled a civil suit from him and therefore the Panel can conclude that he suffered no loss. However, JY was harmed as he was not advised that his investment in the sawmill was being turned into a 10 per cent shareholding in F Ltd. without his consent. That JY had to start a civil action against the Respondent suggests that he believed he was harmed, but this Panel cannot draw any conclusions from the fact that this action was settled. We have no other information about the impact on JY. This is not a mitigating factor.

The advantage gained, or to be gained, by the respondent

[225] The Respondent says that there was no direct financial gain to her and that her misconduct was the result of her desire to help others and that this should be a mitigating factor. We have no evidence of a direct, financial gain. However, there are indirect gains for lawyers who choose to run their practices without regard for the Law Society's rule and regulations through savings in time and costs. Lawyers who are too busy or whose practices are too big to handle should be turning clients away or referring them to other lawyers instead of keeping the work to themselves. This is an aggravating factor.

The number of times the offending conduct occurred

[226] The complaint of JY concerned a single event but the misconduct in misleading the Law Society and providing inaccurate information occurred many times over a long period. This is an aggravating factor.

Whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances

[227] The Respondent maintains that she was trying to help JY and that he did not suffer any loss. Prior to the F&D Hearing the Respondent did not acknowledge the misconduct or take any steps to redress the wrong. This is an aggravating factor.

The possibility of remediating or rehabilitating the respondent

[228] This is one of the most significant factors to consider in this case as it is relevant to the question of whether a sanction short of disbarment would sufficiently protect

the public. From June 24, 2017 to March 2023, the Respondent was practising under a practice supervision agreement. As Law Society Counsel observed “you would expect her to be cleaner than clean”. However, the evidence from Ms. Nicholls shows a pattern of failing to abide by the terms of the PSA; of not preparing files for review, of not disclosing files to the Practice Supervisors, of not being present for meetings with the Practice Supervisors, and, of not instructing her staff on what to provide to the Practice Supervisors. The Respondent’s conduct that is relevant to this factor includes the following:

- (a) In December 2018, the Respondent advised Mr. Wedel “Yes, I have realized that our filing system needs to be more organized and we need to keep better records. We are working to improve our office system.” This was 16 months after the PSA was signed.
- (b) In June 2019, the Practice Supervisors noted several deficiencies in the Respondent’s file management system and the recommendations they had made to her and her staff. This is two years after the PSA was signed.
- (c) In October 2019, the Practice Supervisors advised that they could not review the Respondent’s files for closing because her staff had not prepared them for review.
- (d) In November 2020, the Law Society wrote to the Practice Supervisors about five files that had not been reviewed. The Practice Supervisors responded by saying “Under the circumstance, there is no guarantee, or less likelihood, that we will receive all open files from GLC or Ms. Guo if they do not or are not able to, provide the said files to us upon our requests.” They said they had several discussions with the Respondent about the missing files and reminded her of her obligations to accurately and completely provide that information. They were told by the Respondent that her staff was not able to organize and provide those files due to her vacation during that period. The Respondent’s response to this in January 2021 was to say in part: “I will make further efforts to comply with the requirements and obligations under the Agreement.”
- (e) In February 2022, the Practice Supervisors advised that the Respondent had not provided the open file list.
- (f) RZF sent an email to the Law Society on January 13, 2023 to advise that after making enquiries with the Respondent she had sent copies of the 16

additional files not previously disclosed. RZF said she would review these files as soon as she could and send an updated review summary.

[229] During the time of the PSA, the Respondent had a much-reduced practice, no trust account and access to two senior lawyers acting as her Practice Supervisors. There is a theme of continued non-compliance with the PSA and requests from her Practice Supervisors. This includes a failure to organize her practice, supervise her staff and various attempts to avoid the conditions such as not opening files until a retainer was paid, deciding herself that certain services were not legal services, and depositing client funds in her general account instead of a trust account because they were for prepaid services. All of this shows that the Respondent does not take her responsibilities to the Law Society seriously. This is a highly aggravating factor which leads this Panel to the conclusion that a sanction short of disbarment, even with strict practice conditions, would not sufficiently protect the public.

The impact of the proposed penalty on the respondent.

[230] The Law Society seeks disbarment and the Respondent seeks a one-year suspension concurrent with her current suspension that began in March 2023. The Respondent's proposed penalty would have no additional impact on the Respondent as she is already serving a one-year suspension and is ordered to abide by another practice supervision agreement if she practices again after the suspension. The Respondent's proposed disciplinary action would not be in keeping with the Law Society's practice of progressive discipline and it would send the wrong message to the public: that further findings of professional misconduct will attract no further redress. While the penalty of disbarment should only be used where there is no other effective way to protect the public, in this case it is the appropriate disciplinary action. Protection of the public is more important than concerns over public embarrassment or the loss of income for a lawyer.

The need for specific and general deterrence.

[231] This Panel does not accept the Respondent's characterization of her conduct as an isolated incident in which she was trying to help her clients from an economic point of view. This Panel also does not agree that the Respondent's conduct in repeatedly providing inaccurate information to the Law Society over a period of years was the result of the fallibility of human memory, unintentional and the result of a busy practice. This Panel therefore rejects the Respondent's submission that there is no need for specific or general deterrence. The public needs to be protected from the Respondent and that is the specific deterrence. Lawyers need to know that

the Law Society will take steps to vigorously protect the public interest and that is the general deterrence.

The need to ensure the public's confidence in the integrity of the profession

- [232] The Respondent asks the Panel to consider this factor in light of her being a Mandarin speaking lawyer who employs Mandarin and Cantonese speaking staff, who uses her privilege as a lawyer to do pro bono work and provide legal services to the elderly and vulnerable.
- [233] There was no evidence regarding how much of the Respondent's practice is or was pro bono work for elderly and vulnerable clients. The only mention of this type of work was found in a letter of support signed on April 26, 2021. The letter included numerous photos and media reports. One of these, in 2016, noted that the Respondent had accepted an appointment as the legal advisor for the 900 member CCSA Senior's Association to "provide free services to us vulnerable groups."
- [234] Most of the evidence regarding the Respondent's practice described a very busy immigration and real estate practice for immigration clients with funds to invest in the province's PNP program and real estate transactions involving hundreds of millions of dollars. The Respondent often blamed her inaccurate or misleading responses to the Law Society on trying to balance her responsibilities with the demands of a busy practice. She was quoted in an article in the Globe and Mail on February 16, 2018 as saying "I am the biggest Chinese lawyer in the Chinese community. We do \$600 million a year in transactions. Maybe that is why we are a target for criminal activities. They know we are doing a lot of work."
- [235] There was no evidence led regarding the need for legal services in Mandarin and Cantonese or a lack of lawyers who could serve that community. It appears that the Respondent did what many lawyers do to give back to the community, raise their profile and market their services to prospective clients. This Panel concludes that the majority of the Respondent's practice was not assisting a vulnerable or underserved community.
- [236] The Chinese-Canadian community needs and deserves lawyers who practice in compliance with the Law Society's oversight. No client needs a lawyer who bends the rules and disregards the Law Society's rules and regulations. This puts the individual client at risk and lowers the public confidence in the integrity of the profession and the ability of the Law Society to regulate lawyers.

The range of penalties in similar cases

- [237] The Respondent relied heavily on the review board decision in *Guo 2023 review* involving the theft of trust funds. The hearing panel in *Guo 2021 disciplinary action* rejected the Law Society’s position that disbarment was the only appropriate penalty and gave the Respondent a one-year suspension. The Law Society applied for a review under section 47 of the *Act* and argued that the hearing panel had erred by not disbarring the Respondent. The review board decided to uphold the one-year suspension but added a requirement that the Respondent enter into a new practice supervision agreement.
- [238] The Respondent submits that the review board in *Guo 2023 review* recently considered all of the same *Ogilvie* factors and concluded that disbarment was not necessary to protect the public because of the “exceptional circumstances” that made disbarment an unreasonable penalty.
- [239] This Panel is not bound by the findings made or conclusions reached by other panels or review boards. The evidence and submissions before us, while obviously similar in many respects, are not identical to the evidence before the review board. The review board was assessing the decision made by the hearing panel on evidence led in May of 2021, nearly two years before the disciplinary hearing in this case. All this Panel can do is decide the issues before us taking into account all of the evidence and submissions made in this hearing.
- [240] The Respondent submits that in addition to the *Ogilvie* factors, which are non-exhaustive, this Panel should also consider discrimination against racialized lawyers. The Respondent argues that she experiences systemic discrimination as a result of being a Chinese Canadian lawyer and a woman. She says this should be viewed as a mitigating factor. However, there is no evidence the Respondent being Chinese and a woman has any relevance to the findings of professional misconduct against her. The Respondent did not lead any evidence that her racial background or her gender made it more difficult for her to succeed as a lawyer. There has to be a causal connection between the systemic racism and the lawyer’s actions giving rise to the finding of misconduct. Here, there is no evidence of systemic racism and no evidence of a causal connection.
- [241] The principles of specific deterrence, general deterrence and protection of the public interest require the sanction of disbarment.

COSTS

[242] The Law Society seeks costs at the Tariff but did not present a Bill of Costs to be considered at this hearing.

[243] An order for costs is not made to punish the Respondent for professional misconduct but to address the costs related to the F&D and DA Hearings.

[244] The Respondent is ordered to pay the Law Society's costs for the F&D and DA Hearings. If the parties cannot come to an agreement on costs, then the parties have 30 days from the date this decision is issued to make written submissions to this Panel on costs.

CONCLUSION

[245] This Panel orders that:

- (a) pursuant to sections 38(5) of the *Act* and Rule 5-6.4, the Respondent is declared ungovernable and is disbarred;
- (b) in any event of the finding of ungovernability, and pursuant to section 38(5) of the *Act*, the Respondent is disbarred;
- (c) pursuant to Rule 5-11, the Respondent shall pay the costs of the hearing;
- (d) If the parties are unable to come to an agreement on costs, they have 30 days from the date this decision is issued to make written submissions to this Panel on costs.