2023 LSBC 28
Hearing File No.: HE20200088
Decision Issued: July 21, 2023
Citation Issued: October 7, 2020

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL

HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

HONG GUO

RESPONDENT

DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION

Hearing dates:	May 8,9,10,11,12,15 and 16, 2023
Panel:	Herman Van Ommen, KC, Chair Nicole Byres, KC, Lawyer David Dewhirst, Public representative
Discipline Counsel:	J. Kenneth McEwan, KC and Saheli Sodhi
Counsel for the Respondent:	David E. Gruber and Christina Joynt
Written reasons of the Panel by:	Herman Van Ommen, KC

INTRODUCTION

[1] In the Citation issued October 7, 2020, the Law Society alleges the Respondent:

(a) acted in a conflict of interest. The Respondent acted in a conflict of interest by representing two or more of S Ltd., SF Ltd., HL, LF and CL, in connection with the purchase of shares in S Ltd. or SF Ltd., or in connection to the British Columbia Provincial Nominee Program ("Allegation 1").

(b) acted contrary to the trust accounting rules. The Respondent failed to immediately deposit funds into a pooled trust account, identify and record the source of funds, identify and record the identity of the client on whose behalf trust funds were received, maintain a trust ledger separately for each client, keep a record of the terms and conditions under which the funds were being held in trust ("Allegation 2").

(c) permitted her trust account to be misused. The Respondent permitted her trust account to be used by S Ltd., SF Ltd., HL, LF, CL YW, TW, RL and YS without providing substantial legal services, making reasonable inquiries about the subject matter and objectives of the trust matter, and making a record of inquiries ("Allegation 3").

(d) made false or misleading statements to the Law Society. The Respondent made a variety of representations that she knew or ought to have known were false or misleading ("Allegation 4").

(e) failed to respond to the Law Society. The Respondent failed to respond substantively, or at all, to the Law Society on a number of occasions ("Allegation 5").

[2] The Citation further alleges that the conduct set out in Allegation 1, 3, 4 and 5 constitutes professional misconduct pursuant to section 38(4) of the *Legal Profession Act* (the "*Act*") and that the conduct set out in Allegation 2 constitutes professional misconduct or a breach of the *Act* or rules, pursuant to s. 38(4) of the *Act*.

[3] Paragraphs 1 and 2 above are a summary of the Citation, where necessary in the reasons below we will refer to the exact wording.

[4] The evidence submitted by the Law Society at this Hearing was a Notice to Admit ("NTA") containing 160 paragraphs and 96 documents, a Supplementary Book of

Documents containing 36 documents, as well as affidavits of Michael Rhodes and Anneke Driessen, both of whom are Law Society employees who were cross examined. The Respondent submitted 202 Documents and called a witness, AZ, as well as the Respondent, who gave oral evidence at the Hearing. The Supplementary Book of Documents and all of the Respondent's documents were marked as Exhibits by consent but without any agreement concerning the terms under which those documents should be admitted into evidence and the use to which they could be put. Under these circumstances, we will admit the documents, but will give the documents little or no weight for the proof of the truth of the document's contents, unless proven in the normal way by a witness. Similarly, we will give little weight to these documents as evidence that they were sent and received in the normal course, unless the authenticity of the document was admitted in the NTA or proven by a witness.

[5] As a preface to setting out the evidence it is necessary to identify the many persons and corporate entities that were involved in the underlying transactions leading to the Citation. While unfortunately it can make following the narrative more difficult, in accordance with the practice in decisions of the LSBC Tribunal, the names of clients, witnesses, or others, connected to privileged, confidential or personal information, with the exception of the Law Society investigators, are made anonymous by use of acronyms.

[6] The primary persons and entities involved are:

(a) S Ltd. a BC company seeking immigrant investors;

(b) SF Ltd. a subsidiary of S Ltd. whether wholly or in part;

(c) KS a director of S Ltd. and SF Ltd. at material times;

(d) AZ an employee of S Ltd. and/or SF Ltd.;

(e) CL and LF sought to immigrate to British Columbia ("BC"), deposited funds into the Respondent's trust account and the Respondent provided legal services to them;

(f) HL, YW, TW, RL, and YS all sought to immigrate to BC, and deposited funds into the Respondent's trust account. TW and RL are spouses; and

(g) XZ sought to immigrate to BC and deposited funds into the Respondent's bank account in China.

BACKGROUND

[7] The Respondent was born in China. She immigrated to Canada after attending Beijing University. She was hosted by a family in Regina, Saskatchewan. She later obtained a law degree from the University of Windsor and was called in Saskatchewan in 2000. She practiced there and then returned to China for a few years, marrying and having two children. She moved back to Canada and was called to the bar in BC in 2009. She started her own firm in Richmond in 2010. Her practice involves, among other things, residential and commercial real estate transactions, corporate transactions and immigration advice. Her practice became very busy with clients "lined up down the street" waiting to see her. English is her second language.

[8] During the material times there was a BC Provincial Nominee Program, an investment-based immigration program that allowed individuals to more quickly obtain residence in Canada in return for making qualifying investments (the "BC PNP"). It provided those who were interested in immigrating to BC, and in investing in businesses in BC, a path to permanent residency in Canada. Put simply and much condensed, if the investment by the person who sought to immigrate was approved by the BC PNP, it would then recommend to Canada that permanent residency status be granted to the investor.

[9] S Ltd. and SF Ltd. (together "the Companies") apparently owned or had rights to oilfields around Fort St. John. The Companies were seeking investors and sought potential immigrant investors in China.

[10] The Companies offered potential investors a form of share purchase agreement ("Share Purchase Agreement") whereby S Ltd. would sell shares of SF Ltd. to the immigrant investor which would then be used to support their BC PNP application. The Share Purchase Agreement provides that the investor pay a deposit of $100,000 to be held in the trust account of the Respondent.

[11] The Respondent was retained by S Ltd. and SF Ltd. to review the Share Purchase Agreement. She did so although the extent and purpose of her review are the subject of dispute which we will address later in these reasons.

[12] AZ was the person who communicated with the Respondent and her firm as well as the potential immigrant investors or in many cases their agents. AZ as an employee of S Ltd. and SF Ltd. referred the immigrant investors, that are included in the Citation, to the Respondent.

[13] CL and LF each signed a Share Purchase Agreement and then each deposited $100,000 with the Respondent on September 8, 2014. They also signed a retainer agreement with the Respondent retaining her to act with respect to the Share Purchase Agreement and a BC PNP application.

[14] During the next few months, the Respondent prepared and submitted CL and LF's BC PNP applications. CL and LF decided not to proceed with the investment and in February 2016 their funds were returned.

[15] HL apparently signed a Share Purchase Agreement and then deposited $100,037 with the Respondent on September 25, 2014. Whether he signed a retainer agreement with the Respondent, or retained her at all, is the subject of dispute to be addressed later in these reasons. His funds remain in trust.

[16] TW signed a Share Purchase Agreement and then deposited $100,000 with the Respondent on October 1, 2014. He did not sign a retainer agreement with the Respondent. His funds were returned in October 2018.

[17] Each of YS and YW deposited $100,000 with the Respondent in October 2014. Neither signed a retainer agreement nor is there any evidence that they signed a Share Purchase Agreement. Their funds were returned in March and April 2015.

[18] XZ deposited RMB 367,190 in the Respondent's bank account in China in February 2015. There is no evidence she signed a Share Purchase Agreement or a retainer agreement with the Respondent. These funds were returned (perhaps in part) in approximately June 2015.

[19] In early April, 2016 the Respondent's accountant stole approximately $6.6 million from the Respondent's CIBC trust account. This theft was enabled in part by the Respondent providing signed blank trust cheques to the accountant. The Respondent reported the theft and resulting trust shortage to the Law Society on April 4, 2016.

[20] On April 13, 2016 the Discipline Committee ordered pursuant to Rule 4-55 of the Law Society Rules that the Respondents physical files be seized and all of the Respondent's computers, hard drives and phones be examined and copied by mirror imaging.

[21] On August 23, 2016, by order of Mr. Justice Greyell, the Law Society was appointed custodian of part of the Respondent's practice limited to the CIBC Trust Account and any files related to or affected by shortages in that trust account. Also,

on that date the Law Society appointed Michael Rhodes to perform the duties and functions of custodian.

[22] The funds deposited by HL were in the CIBC trust account at the time of the theft and were affected by the theft.

[23] In August 2018 Mr. Rhodes, having identified a deposit of $100,037 on a trust ledger associated with CL and LF's file, wrote to the Respondent. The file associated with the deposit did not contain any information concerning the purpose of the deposit, and other than HL's name there were no documents verifying his identity, nor was there any contact information for HL. It was not known whether those funds should be returned to him.

[24] Mr. Rhodes wrote to the Respondent on August 24, 2018 asking for an explanation of the funds in trust, the current status of the funds (to whom they should be paid or for what purpose they were held), contact information for the client, and copies of any relevant documentation or further file material.

[25] After a reminder was sent to the Respondent on September 13, 2018, the Respondent's bookkeeper emailed back a copy of the trust ledger relating to the funds, which trust ledger Mr. Rhodes said he had already.

[26] Mr. Rhodes responded the next day advising that providing a trust ledger that he already had was not a sufficient response and requested a complete response. On November 6, 2018 he wrote again and set a deadline of November 13, 2018.

[27] The Respondent did not respond to any of these inquiries. This is the basis of part of Allegation 5.

[28] In December 2018 Mr. Rhodes referred the matter to the appropriate department in the Law Society and in February 2019 an investigation into the Respondent's failure to respond was commenced.

[29] On February 24, 2019 Ms. Driessen wrote to the Respondent explaining the Law Society's understanding of the facts concerning the $100,037 held in trust and asked seven questions. She asked for a response by March 11, 2019 and reminded the Respondent of her duty to cooperate with the investigation and respond fully.

[30] No response was received and on March 12, 2019, Ms. Driessen wrote again advising that unless a response was received by March 19, 2019 the Respondent's license to practice would be suspended effective March 20, 2019.

[31] The Respondent provided a response on March 19, 2019. It is the content of that response and responses to further questions that forms the basis of Allegation 4 and part of Allegation 5. We will review those questions and responses in detail when considering those allegations later in these reasons.

BURDEN AND STANDARD OF PROOF

[32] There is no controversy on this point.

[33] The onus of proof in disciplinary hearings is well known and consistently applied. The standard was articulated by the Supreme Court of Canada in *F.H. v. McDougall*, [2008] 3 S.C.R. 41, 2008 SCC 53. As stated in *F.H. v. McDougall*, the onus of proof is on the Law Society, and the standard of proof is a balance of probabilities. Evidence must be scrutinized with care and must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test.

[34] The onus is on the Law Society to prove on a balance of probabilities that the Respondent engaged in the conduct as alleged in the Citation and that the proved conduct amounts to professional misconduct, or alternatively for Allegation 2, a breach of the *Act* or rules, pursuant to s. 38(4) of the *Act*.

PROFESSIONAL MISCONDUCT

[35] The test as set out in *Law Society of BC v. Martin*, 2005 LSBC 16, and cited in many hearing decisions, is whether the established facts disclose a marked departure from that conduct the Law Society expects of lawyers. It is an objective test, where the panel must first consider the appropriate standard of conduct expected and then determine if a respondent lawyer falls markedly below that standard in the circumstances, bearing in mind the *Act*, the Rules, the *Code of Professional Conduct for British Columbia* (the "*BC Code*") and the duties and obligations owed to clients, the court, other lawyers and the public in the administration of justice.

[36] It is important to note that the presence of good faith intentions (*bona fides*) will not excuse conduct that is otherwise professional misconduct under this test. Similarly, bad faith intentions (*mala fides*) are not a necessary ingredient to prove professional misconduct.

[37] The panel in *Law Society of BC* v. *Harding*, 2014 LSBC 52, at para. 79, concluded on the issue of a respondent's culpability:

> Accordingly, it is not helpful to characterize the nature of blameworthiness with reference to categories of conduct that will or will not establish professional misconduct in any given case. Whether there was intention, or a "mere mistake", "inadvertence", or events "beyond one's control" is not determinative. While such evidence is relevant as part of the circumstances as a whole to be considered, absence of advertence or intention or control will not automatically result in a defence to professional misconduct because the nature of the conduct, be it a mistake or inadvertence, may be aggravated enough that it is a marked departure from the norm. On the other hand, such evidence, taken as a part of the consideration of the circumstances as a whole, may be part of an assessment that the impugned conduct did not cross the permissible bounds.

BREACH OF THE *ACT* OR RULES

[38] Whether lapses by a lawyer meet the test for professional misconduct or are instead a breach of the Rules has been considered in several cases. In *Law Society of BC v. Lyons*, 2008 LSBC 9, at para. 32 and 35, the panel considered the difference between a finding of a breach of the *Act* or Rules and a finding of professional misconduct and held:

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

CONFLICT OF INTEREST

[39] The general duty for lawyers to avoid conflicts of interest has been a longstanding fundamental ethical principle.

[40] It is improper for a lawyer to act or continue to act for a client in circumstances where the interests of that client conflict with that of another client. In *R v. Neil*, 2002 SCC 70 (CanLII), [2002] 3 SCR 631, the court stated, at para. 31, that a conflict of interest arises when "a 'substantial risk that the lawyer's representation of the client would be materially and adversely affected by the lawyer's own interests or by the lawyer's duties to another current client, a former client, or a third person.'"

[41] The duty to avoid conflicting interests is a component of the duty of undivided loyalty which every lawyer owes to their client as a fiduciary. The Supreme Court of Canada has held in a number of cases *MacDonald Estate v. Martin*, 1990 CanLII 32, [1990] 3 SCR 1235; *R. v. Neil*, *Canadian National Railway Co. v. McKercher LLP*, 2013 SCC 39; and *Strother v. 3464920 Canada Inc.*, 2007 SCC 24, that the duty of loyalty is essential to the integrity of the administration of justice and it is of high public importance that public confidence in that integrity be maintained. The duty of undivided loyalty includes:

(a) a duty to avoid conflicting interests in which issues of confidentiality may or may not play a role (*R v. Neil*, at para. 17, and *Strother*, at para. 58);

(b) a duty of candour / duty to provide candid, timely and complete legal advice to the client (*R. v. Neil*, at para. 19, and *Strother*, at para. 69); and

(c) a duty of commitment to the client's cause / zealous representation (*R v. Neil*, at para. 19, and *Strother*, at para 67).

[42] In particular, the Court in *R. v. Neil*, at para. 29, drew a "bright line" prohibiting lawyers from acting for a client whose interests were directly adverse to that of another client, even if the two mandates were unrelated, unless the client provided informed consent:

> … The bright line is provided by the general rule that a lawyer may not represent one client whose interests are directly adverse to the immediate interests of another current client – *even if the two mandates are unrelated* – unless both clients consent after receiving full disclosure (and preferably independent legal advice), and the lawyer reasonably believes that he or

> she is able to represent each client without adversely affecting the other. [emphasis in original]

[43] *R. v. Neil* addresses the circumstances of a lawyer acting against a current client. A lawyer is prohibited from acting unless the lawyer has informed consent from both clients *and* there is no substantial risk that the lawyer's loyalty to, or representation of, a client would be materially and adversely affected.

[44] In the case of acting against a former client the *BC Code* provides:

> **3.4-10** Unless the former client consents, a lawyer must not act against a former client in:
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> (a) the same matter,
>
> (b) any related matter, or
>
> (c) any other matter, if the lawyer has relevant confidential information arising from the representation of the former client that may reasonably affect the former client.
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> Commentary
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> **[1]** This rule prohibits a lawyer from attacking legal work done during the retainer, or from undermining the client's position on a matter that was central to the retainer. It is not improper, however, for a lawyer to act against a former client in a matter wholly unrelated to any work the lawyer has previously done for that person if previously obtained confidential information is irrelevant to that matter.

[45] There are situations in which determining the application of these rules is difficult and nuanced. But there are other circumstances where the application of the rules is obvious. Every lawyer knows, or should know, that a lawyer is not able to act on both sides of a transaction. If such a situation was to arise it would alert the lawyer of the need to proceed cautiously and obtain advice if necessary.

TRUST ACCOUNTING RULES

[46] Some of the relevant Rules that apply are:

1. Rule 3-51(1) [now Rule 3-58(1)] requires a lawyer who receives trust funds to deposit the funds in a pooled trust account as soon as practicable. Trust funds "includ[e] funds received in trust by a lawyer acting in the capacity of a

lawyer", which includes funds "received from a client for services to be performed or for disbursements to be made on behalf of the client" (Rule 1 "trust funds").

2. Rule 3-52 [now Rule 3-60] sets out requirements for a pooled trust account, including:

   (a) the account must be kept in a designated savings institution;

   (b) the account must be designated as a "trust" account on the records of the savings institution and of the lawyer; and

   (c) a lawyer must not deposit to a pooled trust account any funds other than trust funds.

3. Rule 3-60 [now Rule 3-68] prescribes minimum trust account recordkeeping standards, which include:

   (a) maintaining a book of entry or data source showing all trust transactions, including:

      (i) the date and amount of receipt or disbursements of all funds;

      (ii) the source and form of the funds received; and

      (iii) the identity of the client on whose behalf trust funds are received or disbursed; and

   (b) maintaining a trust ledger, or other suitable system, showing separately for each client on whose behalf trust funds have been received, all trust funds received and disbursed, and the unexpended balance.

[47] Proper handling of trust funds and proper record keeping with respect to trust funds received, held and disbursed is a basic requirement for lawyers. The public's ability and willingness to trust the profession with trust funds depends on these rules and lawyers abiding by those rules.

[48] In *Law Society of BC v. Chaudry*, 2018 LSBC 31, at para. 89, the hearing panel commented on the important role of proper record keeping and the risks of failure to comply with such rules:

> Proper record keeping through compliance with Part 3, Division 7 of the Rules is necessary to permit a lawyer to determine at any given moment how much money is held in trust for each client. Compliance substantially

> reduces the risk of loss and client dissatisfaction. For example, proper bookkeeping allows a lawyer to know whether there are sufficient funds held in trust to the credit of a client on whose behalf money is to be paid. It also permits discrepancies between trust ledgers and bank ledgers to be identified, which in turn, alerts the lawyer that the obligation to eliminate any trust shortages has been triggered. A failure to comply with accounting requirements may interfere with the Law Society's ability to fulfill its mandate of regulating lawyers in the public interest.

[49] There is no doubt that there will be minor errors in complying with the trust accounting rules from time to time and not every such error will attract sanctions.

APPROPRIATE USE OF TRUST ACCOUNT

[50] Lawyers' trust accounts are not ordinary bank accounts. In *Law Society of BC v. Daignault*, 2020 LSBC 18, at para. 65, the panel stated they exist "to complete transactions in which the lawyer acts as legal adviser and facilitator". These transactions are cloaked with solicitor-client privilege because they flow through a lawyer's trust account. The purpose of the privilege is to allow open and candid communications, not to facilitate suspicious transactions.

[51] To maintain public confidence in the profession, a trust account must only be used for the legitimate commercial purpose for which it was established. The lawyer is the gatekeeper of their trust account and has a duty to ensure their trust account is used for these intended purposes.

[52] Relevant provisions of the *BC Code* are:

> 2.2-1: A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity.
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> Commentary
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> [2] Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer's irresponsible conduct. Accordingly, a lawyer's conduct should reflect favourably on the legal profession, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety.

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

Commentary

[1] A lawyer should be on guard against becoming the tool or dupe of an unscrupulous client, or of others, whether or not associated with the unscrupulous client.

[2] A lawyer should be alert to and avoid unwittingly becoming involved with a client engaged in criminal activities such as mortgage fraud or money laundering. Vigilance is required because the means for these, and other criminal activities, may be transactions for which lawyers commonly provide services . . .

[3] (as it was before January 2021): Before accepting a retainer, or during a retainer, if a lawyer has suspicions or doubts about whether he or she might be assisting a client in any dishonesty, crime or fraud, the lawyer should make reasonable inquiries to obtain information about the client and about the subject matter and objectives of the retainer. These should include making reasonable attempts to verify the legal or beneficial ownership of property and business entities and who has the control of business entities, and to clarify the nature and purpose of a complex or unusual transaction where the nature and purpose are not clear.

[3.1] (as it was before January 2021): The lawyer should also make inquiries of a client who: (a) seeks the use of the lawyer's trust account without requiring any substantial legal services from the lawyer in connection with the trust matter . . .

[53] Currently Rule 3-58.1 states that, except as permitted by the *Act* or the Rules, a lawyer or law firm must not permit funds to be deposited to or withdrawn from a trust account unless the funds are directly related to legal services provided by the lawyer or law firm. However, this Rule was not added until July 2019. We must consider whether a similar obligation existed prior to this addition to the Rules.

[54] Dealing with facts that occurred in 2013, the panel in *Law Society of BC v. Gurney*, 2017 LSBC 15, at para. 79, described a lawyer's obligations concerning trust funds as follows:

…

(a) A lawyer's trust accounts are to be used for legitimate commercial purposes for which they are established, the completion of a transaction, where the lawyer plays the role of legal advisor *and* facilitator. They are not to be used as a convenient conduit (*Law Society of BC v. Skogstad*, 2008 LSBC 19, at para.61; *Code* 3.2-7). Even where other authorities, such as FINTRAC, may be aware of the source of the funds entering an account, the effect of solicitor-client privilege is that the parties to whom the funds are disbursed and the purpose for which the funds are disbursed are shielded by the privilege. *It is for this reason that a lawyer's trust account cannot be used only for the purpose of facilitating the completion of a transaction, but the lawyer must also play a role as a legal advisor with regard to the transaction.* This is the requirement to provide legal services.
[emphasis added]

(b) The Court of Appeal in *Elias v. Law Society of British Columbia* (1996), 26 BCLR (3d) 359, 1996 CanLII 1359, quoted the Bencher review decision at para. 9: "where the circumstances of a proposed transaction are such that a member should reasonably be suspicious that there are illegal activities involved under Canadian law or laws of other jurisdictions, it is professional misconduct to become involved until such time as inquiries have been made to satisfy the member on an *objective* test that the transaction is legitimate." It is clear that the duty to make inquiries is triggered prior to the lawyer becoming involved in the transaction, and the lawyer must be satisfied on an objective basis that the transaction is legitimate.
[emphasis added by the *Gurney* panel]

(c) The lawyer's duty to investigate arises when, on an objective basis, he becomes suspicious that the transaction is illegitimate. Professional misconduct can be found even if the underlying transaction cannot be proved to be illegitimate. A lawyer cannot delegate the duty to inquire to a third party such as a client and rely upon the client's assurance as to the legitimacy of the transaction (*Law Society of BC v. McCandless*, 2010 LSBC 3, at para. 43; *Law Society of Upper Canada v. Di Francesco*, [2003] LSDD 44, at paras. 25 to 27; *Holy v. Law Society*, [2006] EWHC 1034, at paras. 23 and 25).

[55] The issue of whether Rule 3-58.1 changed a lawyer's obligations was considered in *Law Society of BC v. Yen*, 2020 LSBC 45, at para. 36 and 37, where the panel stated:

In 2019 the Law Society Rules were amended to include Rule 3-58.1, which provides that funds paid into or out of a trust account must be directly related to legal services provided by the lawyer or the law firm. The Respondent argues that this is a significant change with respect to a lawyer's obligations. However, there is nothing in the code, the commentary or the case law to support the Respondent's position. Effectively what she is saying is that it is acceptable to receive and disburse large amounts of money into and out of trust if there is some indirect linkage to some legal work that is being done or may be done for that client. She argues that she was providing legal services with respect to the "trust matter" in this case, and that the "trust matter" was "investments in BC Real Estate." With respect to the Respondent, that is simply too broad of a characterization and would absolve a lawyer of making inquiries provided they were doing some legal work for the client, regardless of whether there was a correlation between the work that was being done and the deposits and withdrawals from trust.

The requirement that a lawyer be vigilant about the use of the trust account is not new. The Law Society put in evidence publications dating back as far as the late 1990's warning lawyers against getting unknowingly involved in illegal activities such as money laundering, and warning against becoming, in effect, a banker for the client. In 1999 a Notice to the Profession stated:

> For any transaction in which you are involved … it is always sound to think through the issues: Do you fully understand the transaction? Are you satisfied the investment is legitimate? ... Are you offering legal services and advice, and acting as a lawyer in the transaction? ... If the answer is "no" to any of these questions, why are you involved?

Similarly a 2002 *Benchers' Bulletin* stated:

> If you receive a request from a client for services that seem to mean that you are being retained to be the client's banker, or if you cannot precisely identify the legal services you are being retained to carry out, be vigilant to ensure that no person uses your trust account to deal with the proceeds of crime.

[56] The client identification and verification rules are an important part of ensuring lawyers use their trust accounts in appropriate situations. The panel in *Law Society of BC v. Huculak*, 2022 LSBC 26 stated at para. 111:

> The rules regarding client identification and verification exist to ensure that lawyers do not become inadvertent participants in money laundering, fraud and other criminal activities. They are an important extension of the lawyer's gatekeeper function as they prescribe the necessary steps for determining the legitimacy of a client's identity. They are particularly important when a lawyer is confronted with a client who is non-resident and/or outside of Canada. In the latter case, the lawyer must enter into a written agency agreement with a foreign lawyer or other qualified party to attest to the validity of the client identification documents.

[57] The relevant Rules at the time of the conduct at issue are:

1. Rule 3-93: A lawyer who is retained by a client to provide legal services must make reasonable efforts to obtain and record certain information about the client, including their name, address, telephone number, and occupation (for an individual), the name, position, and contact information for the instructing individual (for an organization), and the nature or type of business or activity engaged in by the client and the incorporation or business identification number.

2. Rule 3-95: Where a lawyer provides legal services in respect of a financial transaction, the lawyer must take reasonable steps to verify the identity of the client using what the lawyer reasonably considers to be reliable, independent source documents, data or information. For an individual, this may include government-issued identification, and for an organization, this may include copies of annual corporate records.

3. Rule 3-97: Where a lawyer provides legal services in respect of a financial transaction for a client who is not physically present before the lawyer and is not present in Canada, the lawyer must rely on an agent to obtain the information required to verify the identity of the client by obtaining an attestation of the identifying document, provided the lawyer and the agent have an arrangement in writing for this purpose.

4. Rule 3-98: The lawyer must verify the identity of the client who is an individual at the time of providing legal services in respect of a financial transaction.

5. Rule 3-100: A lawyer must obtain and retain a copy of every document used to verify the identity of any individual or organization for the purposes of Rule 3-95(1), and must retain a record of the information and documents obtained for the purposes of Rule 3-93 and copies of source documents under Rule 3-95 for

at least six years following the completion of the work for which the lawyer was retained.

DUTY TO COOPERATE AND FULLY RESPOND

[58] Rule 7.1-1 of the *BC Code* states:

> 7.1-1 A lawyer must
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> (a) reply promptly and completely to any communication from the Society;
>
> (b) provide documents as required to the Law Society;
>
> (c) not improperly obstruct or delay Law Society investigations, audits and inquiries;
>
> (d) cooperate with Law Society investigations, audits and inquiries involving the lawyer or a member of the lawyer's firm;
>
> (e) comply with orders made under the *Legal Profession Act* or Law Society Rules; and
>
> (f) otherwise comply with the Law Society's regulation of the lawyer's practice.

[59] Rule 3-5 (6) states:

> (6) A lawyer must co-operate fully in an investigation under this Division by all available means including, but not limited to, responding fully and substantively, in the form specified by the Executive Director
>
> (a) to the complaint, and
>
> (b) to all requests made by the Executive Director in the course of an investigation.

[60] The importance of the obligation to respond to the Law Society cannot be overstated. It is a fundamental duty of all lawyers that relates directly to the Law Society's ability to govern its members. In *Law Society of BC v. Dobbin*, [1999] LSBC 27, at para. 20, the Benchers on Review stated:

> The duty to reply to communications from the Law Society is in yet another category. While it is true that the duty to reply is only found explicitly set out in Chapter 13, Rule 3, of the Professional Conduct Handbook it is a cornerstone of our independent, self-governing profession. If the Law Society can not count on prompt, candid, and complete replies by members to its communications it will be unable to uphold and protect the public interest, which is the Law Society's paramount duty. The duty to reply to communications from the Law Society is at the heart of the Law Society's regulation of the practice of law and it is essential to the Law Society's mandate to uphold and protect the interests of its members. If members could ignore communications from the Law Society, the profession would not be governed but would be in a state of anarchy.

[61] As held in *Law Society of BC v. Guo*, 2022 LSBC 30, at para. 162, a lawyer has a positive obligation to cooperate with an investigation by the Law Society because it is a necessary feature of effective self-regulation. The hearing panel in that case referred to the Ontario Court of Appeal's decision in *Law Society of Ontario v. Diamond*, 2021 ONCA 255, at para. 67 and 68, where the court described the duty to cooperate as:

> . . . designed to ensure that there is a complete response and no inordinate delays in investigations by the self-regulated authority. It requires nothing more than prompt and complete responses when requested, which are essential to moving investigations forward. Delays in doing so can only serve to shake the public's confidence in the Law Society's self-regulatory authority . . . . As the Law Society points out in their factum, the "reputation of the ability of the profession to self-regulate would quickly be diminished if the obligation to cooperate could be subverted by a 'cat and mouse game' (as described by the Hearing Panel), that fell short of a clear refusal."

[62] In *Law Society of BC v. Macdonald Weiser*, 2022 LSBC 50, at para. 66, the hearing panel considered the factors identified in *Diamond* where there is an allegation of failure to cooperate, including:

(a) all of the circumstances must be taken into account when determining whether a lawyer has acted responsibly and in good faith to respond promptly and completely to the Law Society's inquiries;

(b) good faith requires the lawyer to be honest, open, and helpful to the Law Society;

(c) good faith is more than an absence of bad faith; and

(d) a lawyer's uninformed ignorance of their record-keeping obligations cannot constitute a "good faith explanation" of the basis for the delay.

CREDIBILITY

[63] The principles for the assessment of credibility are not in dispute. A starting point often begins with the BC Court of Appeal decision *Faryna v. Chorny*, [1952] 2 DLR 354, p. 357, 1951 CanLII 252 (BCCA) which states:

> The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

[64] *R. v. Taylor*, 2010 ONCJ 396, para. 58, provides a useful description of the two distinct aspects of credibility (honesty and reliability) as follows:

> "Credibility" is omnibus shorthand for a broad range of factors bearing on an assessment of the testimonial trustworthiness of witnesses. It has two generally distinct aspects or dimensions: honesty (sometimes, if confusingly, itself called "credibility") and reliability. The first, honesty, speaks to a witness' sincerity, candour and truthfulness in the witness box. The second, reliability, refers to a complex admixture of cognitive, psychological, developmental, cultural, temporal and environmental factors that impact on the accuracy of a witness' perception, memory and, ultimately, testimonial recitation. The evidence of even an honest witness may still be of dubious reliability.

[65] In *Bradshaw v Stenner*, 2010 BCSC 1398, para. 187, the methodology for assessing credibility was expanded on as follows:

> It has been suggested that a methodology to adopt is to first consider the testimony of a witness on a 'stand alone' basis, followed by an analysis of whether the witness' story is inherently believable. *Then, if the witness testimony has survived relatively intact, the testimony should be evaluated*

> *based upon the consistency with other witnesses and with documentary evidence.* The testimony of non-party, disinterested witnesses may provide a reliable yardstick for comparison. Finally, the court should determine which version of events is the most consistent with the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions" (*Overseas Investments (1986) Ltd. v. Cornwall Developments Ltd.* (1993), 1993 CanLII 7140, 12 Alta. L.R. (3d) 298 at para. 13 (Alta. Q.B.)). I have found this approach useful.
> [emphasis added]

[66] The credibility of Michael Rhodes and Anneke Driessen was not challenged. We found them both to be credible and reliable.

[67] The credibility of AZ was not seriously challenged. Both parties submitted that she had no apparent interest in the outcome and that her evidence was largely honest and reliable, and in accord with the contemporaneous documents. We agree but will consider closely some of her statements.

[68] The credibility of the Respondent was strongly challenged by the Law Society. Counsel submitted:

> The Respondent's evidence was neither credible nor reliable. The Respondent's evidence was, at various points, imprecise, confusing, self-serving, internally inconsistent, and contradictory with her responses during the investigation, the anticipated evidence described in her opening submissions, and her own evidence in this proceeding. The Respondent's uncorroborated, self-serving, and shapeshifting evidence ought to be approached with extreme caution. The Respondent's evidence should only be accepted where it is consistent with evidence provided by other credible witnesses, where it is corroborated by documentary evidence, or where it is consistent with the preponderance of probabilities in light of all the evidence adduced. Although usually where she saw advantage in it, the Respondent at various points in the hearing acknowledged that the documentary evidence was more reliable than her own.

[69] The Respondent admitted that she had a terrible memory. Her counsel concluded his submissions on credibility as follows:

> We acknowledge the Respondent's evidence on matters of detail where uncorroborated by other witnesses or contemporaneous documents is likely not reliable.

[70] In considering the Respondent's oral evidence we were asked to keep in mind that English is her second language and that she does not always understand subtle semantics such as the meaning of "review" in the context of reviewing a contract. She testified that to her "reviewing a contract means" sitting down with a client to go over each clause and then witness the signing.

[71] We note though, that in the Respondent's statement of account to S Ltd. she used the terms "review and amendment of the Share Purchase Agreement" yet this was not a situation in which she sat down with the client and witnessed the signing.

[72] We were also asked to consider the important Chinese cultural concept of saving face. It was suggested that because of her desire to avoid shame the Respondent would agree that she had supervised individuals in her office when in fact she had not. This is perhaps not the best example because lawyers understand that they have an obligation to supervise their staff. Consequently, a lawyer could be motivated due to their obligation to supervise, rather than due to saving face, to state that they have supervised staff when in fact they have not. In the situations where we do not accept her oral evidence, we were unable to see how "saving face" would be an explanation.

[73] The Respondent's counsel suggests that because the Law Society had mirror images of her computers and many physical files "it would be foolish of her to seek to deceive by providing false or misleading answers" and as a result we ought not to make findings of intentional misleading.

[74] We find that the Respondent is generally not a reliable witness. Aside from her poor memory which she admits, the more important question is the extent to which her poor memory was used as an excuse to explain incorrect and or evasive answers given during the investigation. We will address specific portions of her evidence when dealing with the specific allegations and make additional findings of credibility.

ALLEGATION 1

[75] The Citation states:

> Between approximately August 2014 and February 2016, you acted in a conflict of interest by representing two or more of your clients S Ltd., SF Ltd., HL, LF, and CL, in connection with the purchase of shares in S Ltd. or SF Ltd., or in connection with an application to the British Columbia Provincial Nominee Program, or both, contrary to one or more of rules

3.4-1 and 3.4-2 of the *Code of Professional Conduct for British Columbia* and your fiduciary duties.

[76] The first step is to determine whether she acted for any of the named persons or entities and in what respect.

[77] We find that the Respondent did act for S Ltd. and SF Ltd. In the NTA she admitted in paras 39 and 40 that they were her clients. She further admitted in para 62 that on or about August 25, 2014 she reviewed and amended a Share Purchase Agreement on their behalf.

[78] Notwithstanding that admission, the Respondent stated in her evidence from time to time that she did not remember seeing that particular agreement or reviewing it, and at one point insisted that she reviewed it only from the perspective of immigration, that is, whether it was suitable for an application under BC PNP. There is nothing in any file to suggest that her retainer was limited in any way.

[79] The Share Purchase Agreement provides for the sale of 5 per cent of the shares of SF Ltd. by S Ltd. to the investor for the price of $1 million. Three days after signing the agreement the investor is required to deposit in the Respondent's trust account the sum of $100,000. S Ltd. and SF Ltd. are required to then provide documents necessary for the investor's BC PNP application. Upon receiving approval from BC PNP, the investor will in 10 days pay the remaining $900,000 in exchange for the shares. If the BC PNP application is refused the Respondent is to release the deposit to the investor and if permanent residency is denied then the entire $1 million will be returned by S Ltd. and S F Ltd. Also, if the BC PNP application is refused due to the default of S Ltd. or SF Ltd. the funds will be returned.

[80] There are several provisions in the Share Purchase Agreement setting out circumstances under which the deposit or investment will not be returned to the investor even though the application is denied. These provisions are significant as they do not protect the interests of the investor. For example, if an investor withdraws their BC PNP application because of "personal issues", their BC PNP application is refused because they fail to meet the medical requirements or "criminal checks or requirements", or if the investor fails to meet the landing requirement stated in the issued Visa, they will not be entitled to the return of their deposit.

[81] At the time an investor signed the Share Purchase Agreement and paid the deposit, the investor had not yet received any advice concerning the Share Purchase Agreement or Canada's immigration policies. The Respondent's retainer agreement

with an investor provided that the Respondent would give the investor that advice, but according to the Respondent, that advice would only be given to the investor after they had already signed the Share Purchase Agreement and paid the deposit.

[82] The last provision of the Share Purchase Agreement states: "This agreement has been reviewed by Guo Law Corporation as per the instructions of the Company" (the "Review Provision"). AZ testified that the Review Provision was included because it was felt that the investors would trust the contract more knowing that it had been reviewed by the Respondent.

[83] The Respondent denied knowing that the Review Provision was in the document when she reviewed the Share Purchase Agreement. She said, "a normal lawyer would not do that." There is no evidence showing what version the Respondent reviewed but the Review Provision was in the Share Purchase Agreements signed by CL and LF. The Respondent received a copy of those Share Purchase Agreements in or around August 29, 2014 when she opened a file for CL and LF. We find that she knew that the Review Provision was in the Share Purchase Agreement at that time. It was also contained in all the subsequent Share Purchase Agreements signed by the investors and delivered to the Respondent.

[84] There is no evidence that the Respondent objected to the use of the Review Provision by S Ltd. and SF Ltd. in 2014 or 2015. It was not until later, during the Law Society investigation, that she expressed shock and horror that such a clause had been inserted in the agreement and demanded the Law Society investigate how the Review Provision ended up in the Share Purchase Agreement.

[85] AZ as an employee of S Ltd. and SF Ltd. was responsible for liaising with the potential immigrant investors or their agents and getting the necessary documents signed. She also acted as the conduit between the Respondent's firm and the potential investors or their agents. She referred CL and LF to the Respondent. She arranged for CL and LF to sign the Share Purchase Agreements and a retainer agreement with the Respondent.

[86] It is most probable that AZ delivered those documents to the Respondent in late August 2014. Whether AZ delivered the documents or not, does not really matter as she and the Respondent agree that AZ referred CL and LF to the Respondent. The Respondent received those documents in late August 2014 and the funds by September 8, 2014. The Respondent does not remember meeting CL or LF at the time of the retainer or before she opened a file and deposited the funds in a pooled trust account. In the Respondent's internal client ledger, the funds were recorded under the entry "AA", "A's clients". "A" is the first name of a person, it was later confirmed that "A" refers to AZ.

[87] The retainer agreement between the Respondent and CL and LF refers to: "Application of Permanent Residence Status by BC PNP Entrepreneur Program." The scope of engagement and duties includes: "Preparing and advising on immigration laws, regulations, policies, and programs", and "Acting on behalf of the client in future business purchase; preparing and attending to business purchase closing." In addition, the retainer agreement states, "we confirm that we will do everything reasonably expected of counsel in this type of transaction, including the provision of legal advices (*sic*), unless you specifically instruct us otherwise."

[88] After receipt of the trust deposit and the documents, the Respondent prepared BC PNP applications for CL and LF. AZ was the primary contact between the Respondent and CL and LF for obtaining the information needed for these applications. The applications were submitted to BC PNP but CL and LF did not proceed with them. It is not material whether the decision to withdraw was because S Ltd. and SF Ltd. decided not to proceed because of the low price of oil or CL and LF decided for their own reasons.

[89] The deposit funds were returned to CL and LF in February 2016.

[90] We find that the Respondent acted for S Ltd., SF Ltd. as well as CL and LF.

[91] The Respondent argues that the Respondent only performed discrete work for S Ltd. and SF Ltd. and that her review of the Share Purchase Agreement was only in the context of a BC PNP application not as a general commercial solicitor. We can find no basis for such a limitation on her retainer.

[92] The Respondent also suggests that no further work was done for S Ltd. and SF Ltd. after August 25, 2014. Whether S Ltd. and SF Ltd. were current clients or former clients when the Respondent accepted the retainer from CL and LF on August 29, 2014 determines what duties were owed.

[93] There is evidence that a solicitor and client relationship between S Ltd. and SF Ltd. continued well past August 25, 2014. On December 17, 2014 AZ emailed the Respondent's firm asking: "Would you take a look at the contract between our company and CL and LF?" What was done in response to this request is unknown but no evidence of a response such as "we cannot advise you on this matter" was put before us.

[94] On February 16, 2015 AZ forwarded to the Respondent an email from her superior which stated: "KS asked you to forward the attached agreement to Lawyer Guo. The agreement was drafted by me and KS wants Guo to revise it." The attachment is described as "Share Transfer Agreement." AZ's message forwarding the email

stated: "… The attached contract is the material required for preparing the trust." AZ testified that the trust referred to was an agreement for holding the deposit monies in trust. A copy of the agreement was not put in evidence nor was any response from the Respondent.

[95] On January 12, 2015 AZ sent an email to the Respondent stating in part: "Attached is the PNP contract with us [S Ltd.] Take a look for your reference and help them draft a contract for the environmental protection project." We do not know what the Respondent's response was, if any.

[96] On January 14, 2015 AZ forwarded four S Ltd. contracts to the Respondent. There were two contracts each in English and Chinese. They were described as "Contract for Share Purchase with 1 Million Capital Contribution" and "Contract for Share Buyback with 400K of Actual Capital Contribution."

[97] On March 6, 2015 the Respondent's office sent an email to AZ with the subject line: "PNP Contract drafts." The body of the email states: "Per Ms. Guo's instructions, I hereby send you the draft contracts for the PNP projects based on the templates you provided."

[98] While it is unclear precisely what work the Respondent did for S Ltd. and SF Ltd. after August 25, 2014, it is clear that the Companies considered the Respondent to be their lawyer and referred various tasks to the Respondent. There is no evidence of the Respondent refusing the work. In rule 1.1-1 of the *BC Code*, a client is defined as a person who "having consulted the lawyer, reasonably concludes that the lawyer has agreed to render legal services on his or her behalf."

[99] The fact that S Ltd. and SF Ltd. made requests to the Respondent or to her office for different work to be done over a period of months leads to the conclusion that the Respondent did not communicate that she could not act for S Ltd. and SF Ltd., and that the Companies did consider her to be their lawyer. In addition, the Respondent did do the work requested in March 2015.

[100] We find that S Ltd. and SF Ltd. remained clients of the Respondent while she acted for CL and LF. As a result, she owed a duty of undivided loyalty to all of them.

[101] As noted above, in *R v. Neil*, the court stated that a conflict of interest arises when there is "a 'substantial risk that the lawyer's representation of the client would be materially and adversely affected by the lawyer's own interests or by the lawyer's duties to another current client, a former client, or a third person.'"

[102] The Respondent was not entitled to act against S Ltd. and SF Ltd. for CL and LF:

(a) if CL and LF's interests were directly adverse to the immediate interests of S Ltd. and SF Ltd.;

(b) unless both clients consented, preferably with independent legal advice; and

(c) she reasonably believed that she would be able to represent each without affecting the other.

[103] The above noted test is the test for acting against a current client where the matters are unrelated. In this case the matters are related. The Respondent advised S Ltd. and SF Ltd. on the Share Purchase Agreement and then agreed to act for CL and LF to close the transaction under that agreement. The fact that they signed the Share Purchase Agreement before retaining the Respondent does not assist her. Under her retainer the Respondent agreed to do "everything reasonably expected of counsel in this type of transaction."

[104] Under the Share Purchase Agreement there are situations where notwithstanding the BC PNP application being refused, the investor would not be entitled to return of the deposit. As counsel for CL and LF the Respondent would be expected to advise CL and LF to avoid those situations to the detriment of S Ltd. and SF Ltd.

[105] The Respondent argued that her role was limited to using the Share Purchase Agreement to support the BC PNP application and that in that respect the investors and the Companies' interests were aligned. We do not agree that their interests were aligned. The BC PNP application could fail for a variety of reasons and the investors would want to ensure that it did not fail for reasons that disentitled them to a refund of their deposits.

[106] The Respondent's retainer included closing the transaction after the BC PNP application was accepted. The interests of CL and LF are definitely adverse to those of S Ltd. and SF Ltd. in that context. It is not an answer to say that the file had not proceeded that far and if a dispute arose the Respondent would withdraw. At the time of the retainer, she knew that CL and LF's interests would be adverse to S Ltd. and SF Ltd. on the closing, and that she could not represent them zealously against her other current client S Ltd. and SF Ltd. in relation to a form of contract that she reviewed for the Companies.

[107] There was evidence that S Ltd. and SF Ltd. understood or were aware that after an investor signed the Share Purchase Agreement, that the investor would retain the Respondent, however there is no evidence that S Ltd. and SF Ltd. provided informed consent for the Respondent to act both for the Companies and the

investors. It appears that the Companies, through AZ, arranged for the investors to sign the Respondent's retainer agreement. However, there is no evidence of the Companies being advised of the risks of the Respondent acting against them in relation to the Share Purchase Agreement. It is clear that the Respondent did not give such advice as she testified that she did not see a conflict in this arrangement.

[108] CL and LF also did not give informed consent. They can be presumed to have read s. 8 of the Share Purchase Agreement stating that the Respondent had reviewed the agreement on the instructions of S Ltd. But the Respondent did not communicate with them or meet with them prior to CL and LF signing the retainer so they would not have been given advice concerning the risks of consenting in this situation. CL and LF would also not have been advised that S Ltd. and SF Ltd. were current clients of the Respondent.

[109] In the circumstances, we need not decide whether the Respondent could properly act in this situation even if all parties provided informed consent.

[110] If S Ltd. and SF Ltd. were former clients at the time the Respondent was retained by CL and LF (which we do not find as we find they were current clients at that time), the Respondent also could not properly act against them in these circumstances. Having advised S Ltd. and SF Ltd. on the Share Purchase Agreement, the Respondent is presumed to have relevant confidential information from them in that regard (*Macdonald Estate v. Martin*). Even if her retainer ended August 25, 2014, she could not act against them in relation to an agreement about which she advised them.

[111] Allegation 1 also alleges that HL was a client of the Respondent.

[112] On March 19, 2019 the Respondent produced to the Law Society a retainer agreement purportedly signed by HL in August 2014. HL had deposited the sum of $100,037 in the Respondent's trust account in September 2014. It was recorded on the client ledger entitled "AA" "A's client".

[113] For the reasons set out below under Allegation 3, we are not prepared to find that HL had a solicitor client relationship with the Respondent such that the Respondent acted for him in conflict with her duties to S Ltd. and SF Ltd.

[114] We find that with the exception of HL, Allegation 1 is proved. We will now consider whether this conduct is professional misconduct.

[115] The Respondent argues that we should take notice that the law surrounding conflicts of interest is "often characterized as a minefield." Further, that a finding

of professional misconduct in relation to a conflict of interest should only be made where the lawyer has missed an "elephant in the room."

[116] Lawyers are required to be on the alert for conflicts and potential conflicts. There are situations where alarm bells should be ringing requiring lawyers to figure out if they are or are not in such a situation. They may need to consult others if they are uncertain. In our view the alarm bells ought to have been ringing loudly. Every lawyer knows that they cannot act on both sides of a transaction.

[117] The Respondent had reviewed the Share Purchase Agreement from the perspective of S Ltd. and SF Ltd. She knew that the Companies were going to find investors to sign that agreement and retain her to act on the opposite side. In effect S Ltd. and SF Ltd. were recruiting clients for her to act against them. In addition, S Ltd. and SF Ltd. would continue to be her clients. There was an elephant in the room and the Respondent did not see it or turned a blind eye to it.

[118] In deciding that the Respondent's conduct was a marked departure from that expected of lawyers, we place emphasis on the fact that the Respondent ought to have seen that it was problematic to act for clients, recruited by her current clients S Ltd. and SF Ltd., in respect of an agreement on which she had advised S Ltd. and SF Ltd. We do not consider the lack of *mala fides*, or that the harm caused was not significant, persuasive in this situation. The wrongful conduct was in accepting the retainer in these circumstances. This is a breach of an elemental duty and a clear act of professional misconduct. The duty to avoid conflicts of interest is part of the lawyer's duty of loyalty to a client. It lies "at the heart" of the ethical principles governing lawyers' professional conduct. By definition, a lawyer who departs from a fundamental professional duty departs markedly from the conduct expected of a lawyer.

[119] We find that the Respondents conduct was a marked departure from that expected and find that she committed professional misconduct.

ALLEGATION 2

[120] Allegation 2 of the Citation states:

> 2. Between approximately August 2014 and at least July 2020, in relation to one or more of the instances set out at Schedule "A", you failed to do one or more of the following, contrary to one or more of Rules 3-51, 3-52 and 3-60 [now Rules 3-58, 3-60 and 3-68] of the Law Society Rules, rules

> 3.5-4 and 3.5-5 of the *Code of Professional Conduct for British Columbia,* and your fiduciary duties:
>
> (a) immediately deposit funds into a pooled trust account kept in a designated savings institution;
>
> (b) identify and record the source of funds received into your pooled trust account;
>
> (c) identify and record the identity of the client on whose behalf trust funds were received into your pooled trust account;
>
> (d) maintain a trust ledger, or other suitable system, showing separately for each client on whose behalf trust funds have been received, all trust funds received and disbursed, and the unexpended balance; and
>
> (e) keep a record of the terms and conditions under which you were to hold the trust funds.

[121] Schedule A refers to seven deposits occurring between September 2014 and February 2015.

[122] In respect of Allegation 2 (a) we note that the rule requires the funds to be deposited "as soon as practicable" not immediately. Other than the funds for XZ we find that all other funds were deposited as soon as practicable.

[123] The funds for XZ were not. They never were deposited in a trust account. They were deposited in the Respondent's bank account in China which the Respondent admits was not a trust account. She asserts that trust accounts do not exist in China and that she was trying to assist XZ by taking her funds in the Respondent's own account. She of course is not permitted to do so. If trust accounts do not exist in China, she was not permitted to accept another person's funds by putting them in her own account.

[124] In respect of Allegation 2 (b) the Respondent failed to identify and record the source of funds in respect of any of the seven deposits. She testified that her clients owned businesses in China and the money was from their business. However, it is clear that the Respondent did not communicate with any of the seven depositors prior to the funds being deposited. In addition, there was no evidence of any record being kept of her identifying the source of funds.

[125] In respect of Allegation 2 (c) none of the clients were identified in accordance with the Rules. In the case of CL and LF there were photocopies of their passports and

the Chinese equivalent of a Social Insurance card in their file. However, because the Respondent did not meet them in-person she was required to use an agent to identify CL and LF who would then provide an attestation that they had seen the documents required to identify the clients. The Respondent was also required to have a written agreement with the agent. That agreement and the attestation are required to be kept for at least six years after completion of the work for that client.

[126] Photocopies of passports and other documents without an attestation from an agent do not comply with the Rules.

[127] With respect to HL, the Respondent produced photocopies of a passport and a Chinese equivalent of a social insurance card. These documents were not in the file that contained a copy of the trust ledger recording the deposit of HL's funds. The photocopies were produced during the Law Society investigation by the Respondent on March 19, 2019 without explanation as to how and when they were obtained and the Respondent did not further explain in her evidence. She did admit that she never met HL, so for the same reasons as set out above, concerning CL and LF, those documents do not constitute proper identification.

[128] With respect to WT, YS, YW and XZ, no client identification of any sort was produced nor was evidence provided of any efforts made to obtain such identifying documents.

[129] In respect of Allegation 2 (d), the Respondent was required to keep a trust ledger showing funds received and disbursed separately for each client. The funds of CL, LF, and HL were recorded on the same client ledger under the name "AA" "A's clients". While it may have been appropriate to keep the funds of CL and LF on one ledger because they were joint applicants and a joint file had been opened for them, that is not what occurred.

[130] The funds of TW, YS, and YW were recorded on a client ledger entitled "SO". "SO" referring to either or both S Ltd. and SF Ltd.

[131] The funds of XZ were not recorded on any client ledger put in evidence.

[132] None of the funds received were recorded on a separate client ledger.

[133] In respect of Allegation 2 (e), the Respondent was required to keep a record of the terms and conditions under which she held those funds.

[134] In the case of CL and LF, the Respondent had in her file the Share Purchase Agreement which sets out the terms under which the deposit would be paid by the Respondent to CL and CF or to S Ltd. and SF Ltd.

[135] When asked in The Notice to Admit to admit that those funds were received in respect of the Share Purchase Agreements, the Respondent declined to do so asserting that she knew they were in respect of an investment in those Companies but did not "recall knowing they were in respect of the Share Purchase Agreements." In cross examination after reviewing those agreements she testified that she then recalled that those funds were received in connection with those agreements.

[136] HL and TW also signed a Share Purchase Agreement that contained the terms under which the deposit was to be held. We find this to be sufficient.

[137] The Respondent did not admit the authenticity of the Share Purchase Agreement signed by HL and dated August 29, 2014 that was attached at Tab 13 of the NTA. The Respondent also did not admit para. 104 of the NTA which states: "On August 29, 2014, [HL] executed a Share Purchase Agreement with [the Companies] [Tab 13: LSBC000027]."

[138] In finding that HL signed a Share Purchase Agreement, we rely on an email chain from September 2014 between AZ and HL's agents that was put in evidence. In the email chain reference is made to receipt of HL's deposit and to a signed business contract which we find must have been the Share Purchase Agreement. AZ also identified the Share Purchase Agreement signed by HL that she obtained from his agent.

[139] HL's Share Purchase Agreement along with a retainer agreement was produced by the Respondent as part of her March 19, 2019 response to Ms. Driessen letter dated February 27, 2019. The Respondent failed to explain where and when she obtained either of these documents. Because of answers the Respondent gave subsequently to the Law Society investigator, Ms. Driessen, we find in relation to Allegation 3 that we can not rely on the retainer agreement. Despite the fact the Share Purchase Agreement was produced in the same circumstances, because of the email chain referred to above and AZ's identification of it, we conclude that it is more probable than not that HL signed a Share Purchase Agreement in August 2014.

[140] There is no documentary evidence with respect to the terms under which the funds of YS, YW or XZ were held by the Respondent. She testified that she was a deposit holder for these but gave no evidence concerning the transaction for which the deposit was paid to her or the terms under which she held the deposits.

[141] The Respondent testified that her bookkeeper decided how client trust ledgers were named and which ledger would be used to record the receipt of trust funds. She acknowledged that the bookkeeper carried out those tasks under her supervision

and that she was responsible for him. It is difficult to understand how one would name a client trust ledger anything other than the client's name or record the deposit of trust funds of a client in anything other than the trust ledger named for them.

[142] The Respondent asserts the bookkeeper responsible for these records is the person who committed the theft referred to earlier and suggests he destroyed some of the Respondent's records at the time of the theft to mislead any investigation. Other than this general assertion that her accountant destroyed records, the Respondent did not testify about any missing records specific to this case, nor did she produce any evidence (such as a forensic IT audit) to show that records had indeed been deleted or changed.

[143] The Respondent also argued that there are gaps in the documentary record and that the Law Society had not demonstrated evidence of continuity of the records.

[144] We do not agree that the Law Society has such a burden. In the investigation the Respondent was required to produce all records relating to these funds. When producing what she had, she did not say that there should be other additional documents or that documents were destroyed by her bookkeeper. Nor did the Respondent ever say that she believed such records were in the physical file which was in the possession of the Law Society and that she required access to the file. During the investigation the Respondent was obligated to produce records, which records she was required to have in her files under the trust accounting rules. The Respondent cannot in this Hearing assert that the Law Society has the onus to show that such documents do not exist.

[145] The Respondent testified that her "general practice" was to obtain the required client identification information. Her evidence however lacked particularity about her general practice especially regarding the identification of clients not present before the Respondent. We do not accept that, even if such a general practice existed, it was followed in this case. It is significant that the Respondent did not consider the depositors, other than CL and LF, as clients. She said she was a money holder only. She did not open client files for them so it is more likely than not that they were not identified because they were not considered clients.

[146] We find the facts alleged in Allegation 2 are proven to the extent described above. We now consider whether those facts constitute professional misconduct.

[147] We find that there was an almost complete and utter disregard by the Respondent for the trust accounting rules, including:

(a) the source of the funds was not identified and recorded in any of the cases;

(b) none of the funds came from people who had been properly identified;

(c) none of the funds were properly recorded on a trust ledger separately for each client;

(d) one deposit was never held in a trust account; and

(e) the terms under which the funds were held in three deposits are completely absent.

[148] The Respondent referred to *Law Society of BC v. Uzelac*, 2003 CanLII 52528, 2003 LSBC 35, and *Law Society of BC v. Van Twest*, 2011 LSBC 9, suggesting that her mistakes were small, not prolonged or intentional and that her conduct should be considered a breach of the Rules rather than professional misconduct. We also consider the factors set out in *Lyons*.

[149] We do not consider her mistakes to be small or minor. There was a complete failure to identify clients, to identify the source of funds, and keep a separate record for each client of funds held. The wrongful conduct need not be prolonged but in this case persisted throughout the entire time she held those funds. Intentional wrongdoing is not a necessary component of professional misconduct. Her failings were not a mistake but the result of a complete disregard of the trust accounting rules.

[150] We find that her conduct was a marked departure from that expected of a lawyer and find she committed professional misconduct in respect of Allegation 2.

ALLEGATION 3

[151] Allegation 3 of the Citation states:

> In the alternative to allegations 1 and 2(e), between approximately August 2014 and February 2016, you permitted your trust account to be used by one or more of S Ltd., SF Ltd., HL, LF, CL, YW, TW, RL and YS, without doing one or more of the following:
>
> (a) providing any substantial legal services;
>
> (b) making reasonable inquiries about the subject matter and objectives of the trust matter; and

(c) making a record of inquiries made.

[152] At the commencement of the hearing Law Society's counsel advised that they wished to amend this count of the Citation by deleting the opening words: "In the alternative to allegations 1 and 2(e)". Respondent's counsel was not prepared at the time to make submissions but agreed that the Hearing could proceed as the proposed amendment would not affect the evidence in the Hearing.

[153] At the conclusion of the Hearing Respondent's counsel argued that the amendment should not be allowed because implicit in the original wording was the admission that the Respondent could not be found to have acted for a client in conflict in Allegation 1, and then in Allegation 3 to have held trust funds without providing substantial legal services. Respondent's counsel conceded that this type of argument did not hold true for Allegation 2 (e). It is difficult to understand how Allegation 2 (e) could be an alternative to Allegation 3. Respondent's counsel acknowledged that the amendment would not cause prejudice in relation to the evidence.

[154] Law Society's counsel submitted that it is possible to act in conflict for a client as alleged in Allegation 1 and then under Allegation 3 be found to have held funds in trust for that client without providing substantial legal services in relation to those funds. In other words, the legal work referred to in Allegation 1 might not relate to the funds referred to in Allegation 3.

[155] We have decided to permit the amendment because there was no prejudice to the Respondent in terms of the evidence at the Hearing and because Allegation 1, 3 and 2(e) are in fact not alternatives.

[156] We will first consider Allegation 3 in relation to CL and LF. The Respondent carried out substantial legal work for CL and LF, the issue is whether that legal work was related to the funds held in trust. We have already found that the funds held were a deposit under the Share Purchase Agreement and that the Respondent's retainer included acting for them in relation to that transaction. Allegation 3 concerning CL and LF is not proven.

[157] It is clear that no legal services were provided to any of the remaining persons identified in Allegation 3 of the Citation. It was suggested by Respondent's counsel that they were all "prospective clients" in the sense that the funds were provided as a deposit in relation to a future transaction in which the Respondent would provide legal services. We accept that a lawyer could be retained in respect of a prospective transaction and take funds in trust for that transaction before beginning to provide legal services. But in our view there must be an actual retainer to provide legal

services in respect of an identified transaction before the funds are received. Even if we are wrong in this regard there must be a client for whom the lawyer holds trust funds and the terms and conditions under which those funds are held must be recorded.

[158] With respect to HL and TW, there is in evidence copies of Share Purchase Agreements we find were executed by them. It appears that the funds in trust are the deposits referred to in the Share Purchase Agreements. What is lacking is evidence that HL and TW were prospective clients in the sense that they intended to retain the Respondent. The Respondent on many occasions stated that they were not her clients and that she was only a deposit holder.

[159] There is evidence of a retainer letter signed by HL. The Respondent has taken completely contradictory positions on the issue of whether she was retained by HL and whether he signed a retainer agreement.

[160] Initially the Respondent provided a signed retainer agreement to the Law Society on March 19, 2019 and informed the Law Society that HL was a client. Later, the Respondent stated to Ms. Driessen: "HL signed an immigration retainer with some immigration firm. Exhibit 3. We acted as money holder for him only. LF and CL signed immigration agreements with us." The inference to be drawn from that is that HL did not sign a retainer with the Respondent. Still later the Respondent wrote: "TW and HL are not our immigration clients. TW and HL never signed immigration retainer agreements with us." Still later she wrote "AZ referred LF and CL as immigration clients and referred HL and TW to us as a 'deposit holder'."

[161] In cross examination the Law Society suggested that the retainer agreement provided on March 19, 2019 was fabricated by the Respondent to provide a response to the questions at the time and solve the problem of HL's trust funds. The Respondent was unable to show where and when she obtained that documentation and there was no email transmission of the agreement around that date. There is insufficient evidence for us to make a finding of fabrication, but there is sufficient doubt cast on that document that we do not accept it as proof that HL retained the Respondent.

[162] We are mindful of the fact that the Respondent's later answers to the Law Society investigator, Ms. Driessen, that HL had not retained her were given after she had retained counsel in this matter and we consider those answers to be more reliable. Accordingly, we accept the Respondent's assertion that she was not retained by HL except as a money holder.

[163] Because neither TW nor HL retained her it cannot be said that they were clients for whom she was holding a deposit for a transaction on which she would provide legal services. Other than providing the deposit funds to be held in trust there is no evidence that they consulted her in relation to the Share Purchase Agreements or sought immigration advice from her.

[164] The person identified as RL in this allegation in the Citation, is the wife of TW and was co-signatory to the Share Purchase Agreement. She did not separately deposit trust funds, or the funds deposited were joint, so we make the same findings in relation to RL as we do in relation to TW.

[165] There is no evidence of any proposed transaction in the case of YW and YS and no evidence of any intention on their part to retain the Respondent.

[166] With respect to S Ltd. and SF Ltd. using the Respondent's trust account, AZ described the payment of $1,500 to the Respondent as payment by the Companies for the use of the Respondent's trust account. We treat this with some caution as we have found that the payment related to an account which on its face was for the Respondent's review of the Share Purchase Agreement and we have also found that the Respondent actually did review Share Purchase Agreements.

[167] It is not alleged that S Ltd. or SF Ltd. were beneficial owners of the funds in the sense that the Respondent held the funds in trust for them.

[168] Except for TW and HL, for whom the Respondent had Share Purchase Agreements signed by them, the Respondent provided no evidence of making inquiries concerning the subject matter and objectives of the trust funds received from the other persons who made deposits and were identified in Allegation 3 of the Citation. It follows therefore that there is no record of those inquiries.

[169] We find that the facts alleged in Allegation 3, except in respect of CL and LF, are proven. We will now consider whether that conduct is professional misconduct.

[170] The Respondent had a duty to investigate the circumstances of a retainer where there were objective circumstances to suspect the purpose of the retainer was not completely legitimate. As stated in *Huculak,* at para. 107 and 108:

> As established in *Elias v. Law Society of British Columbia*, 1996 BCCA 1359 and confirmed in *Law Society of BC v. Gurney*, 2017 LSBC 15, a lawyer's duty to investigate the circumstances of their retainer arises when there is objective reason to suspect that the purposes of the retainer are not completely legitimate. The duty to make reasonable inquiries into

> objectively suspicious circumstances has been mandated by the Rules — and therefore known to BC lawyers — for more than a quarter century. It long predates the Law Society's heightened anti-money laundering measures of the past decade. The Respondent is incorrect in asserting that "hardly anyone was concerned about money laundering and proceeds of crime" when the Transactions took place.
>
> The central issue before this Panel is not whether one or more of the Transactions were, in fact, fraudulent or illegitimate, and it is not whether the Respondent knew that some of the actors in the Transactions had committed crimes. It is whether some of the circumstances surrounding the Transactions were sufficiently suspicious — on objective assessment — to trigger the Respondent's duty to make reasonable inquiries into their legitimacy. The Law Society has established, on a balance of probabilities, the facts to show that the Respondent had a duty to make reasonable inquiries and that he failed to make them.

[171] We find that there were objectively suspicious circumstances such that the Respondent was required to make reasonable enquiries but did not make those enquiries.

[172] It is significant that all of HL, TW, YW and YS were residents of China who the Respondent never met. They were never properly identified. They were referred to her by AZ who was the contact person at S Ltd. and SF Ltd. responsible for dealing with the potential investors. AZ was the primary conduit between the Respondent and these potential investor clients even though she was an employee of S Ltd. and SF Ltd., the party on the opposite side of the proposed transactions.

[173] Because the Respondent had no direct contact with HL, TW, YW and YS and did not properly identify them, the Respondent in fact did not know whose funds she actually received. In the case of YW and YS there is no evidence of a transaction for which the funds were to be used.

[174] The Respondent frequently referred to herself in connection with these deposits as only a money holder. We find that to be an accurate characterization. She was not retained to provide any legal services in connection with those funds and did not provide those services. They were not prospective clients in any meaningful way.

[175] The Respondent suggests this is not professional misconduct because the Law Society has not proven any of the deposits were for the purpose of money laundering. That misunderstands her role. Because of the circumstances the Respondent was obliged to make inquiries but did not. The Respondent said many

times in her evidence that the individuals depositing money in her trust account were "honest business people" despite the fact she did not demonstrate how she came to that conclusion given her lack of enquiries.

[176] Because the Respondent did not make enquiries and failed to identify any of these individuals, it is not known what precisely was the nature or purpose of the deposits. That is the harm, those making deposits were able to use the Respondent's trust account and she does not know whether or not the purpose was legitimate.

[177] The Respondent also asserts that her conduct was not grave, was without malice and caused no harm. We find that failing to make appropriate enquiries in this situation is grave. While there may be a lack of malice, the fact that she knowingly allowed others to use her trust account where she would be only a money holder shows a concerning lack of appreciation of her ethical obligations.

[178] The Respondent also argues that no harm was caused. In fact, no one involved with this Hearing knows whether or not actual harm occurred. We ought to know positively, when a lawyer's trust account is being used, that harm is not being caused and wrongdoing is not occurring. A lawyer's trust account must only be used for legitimate purposes. We do not know that in this case because of her failures.

[179] We find that the Respondent's conduct in relation to Allegation 3 constitutes professional misconduct.

ALLEGATION 4

[180] The Citation alleges:

> Between approximately September 2016 and July 2020, you made one or more of the following representations to the Law Society that you knew or ought to have known were false or misleading, contrary to rule 2.2-1 of the *Code of Professional Conduct for British Columbia*:
>
> (a) in relation to one or more of KS, S Ltd., and SF Ltd., you represented that you had never provided legal services to KS, S Ltd., SF Ltd., or any other entities involving KS;
>
> (b) in relation to one or both of your clients LF and CL, you made one or more of the following representations:

> i. LF and CL had never signed retainer agreements with Guo Law Corporation; and
>
> ii. trust funds deposited by, or on behalf of LF and CL had been stolen from your trust account;
>
> (c) in relation to one or more of the share purchase agreements listed at Schedule "B" (collectively, the "Share Purchase Agreements"), you made one or more of the following representations:
>
> i. you were not aware of, or did not have any knowledge about the Share Purchase Agreements;
>
> ii. to the best of your knowledge, no such agreements were brought to your attention by your clients; and
>
> iii. you had never reviewed the Share Purchase Agreements;
>
> (d) in relation to AZ, you made one or more of the following representations:
>
> i. the person identified in your trust accounting records as "AA" and "A" was "a person lives in this community" and you did not know her; and
>
> ii. you had no contact information for the person identified in your trust accounting records as "AA" and "A",

[181] In relation to Allegation 4 (a) Ms. Driessen in her April 23, 2019 letter asked the Respondent:

> Please advise what services, if any, were provided to [S Ltd.], [SF Ltd.], and any other entities involving [KS]. Please provide any client ledgers and statements of account issued to the companies.

[182] On May 7, 2019 the Respondent wrote: "Never, we do not know this person." This answer was not responsive because Ms. Driessen was not asking about KS personally, but about services provided to entities related to him.

[183] During a telephone call with Ms. Driessen on May 9, 2019, there was the following exchange:

> AD: So I asked you what legal services, if any, you provided to [S Ltd.], [SF Ltd.], and any other entities involving [KS], and you said "Never, we do not know this person." What does that mean?

Guo: Don't know any of them!

AD: So you don't know [KS] or any of these [SO] entities and you did no work for them?

Guo: Never. Don't know them.

[184] The Respondent had in fact acted for KS and related entities including S Ltd. and SF Ltd.

[185] On April 10, 2013 the Respondent reported to KS concerning the incorporation of a numbered company of which KS was the sole shareholder. KS was the client.

[186] Later, on June 13, 2013 the Respondent again wrote to KS reporting on the issuance of shares in that numbered company to three corporate entities. There are numerous documents such as shareholder agreements, consents to act as a director, and share registers prepared by the Respondent's firm in relation to the numbered company bearing the name of KS.

[187] KS was a director of the numbered company as well as S Ltd., SF Ltd., and another related company SO Commercial at all material times.

[188] As noted above the Respondent received several requests from S Ltd. and SF Ltd. in 2015 to do legal work and actually did complete some contracts for the Companies.

[189] Although she was not asked if she had acted for KS the Respondent answered that she did not act for him and that she did not know this person. In her testimony before us she explained that she does not know KS in the sense that she had never met him and he was only pointed out to her once in a crowded restaurant. We accept that she may have interpreted the phrase "do you know KS" as meaning do you have a personal relationship with him. But she was not asked if she knew him, she was asked if she had done any work for entities related to him.

[190] It is clear that the Respondent had done work for S Ltd. and SF Ltd. As described above, she reviewed the Share Purchase Agreement on their behalf and issued an account to them which was paid. Throughout the time she was acting for CL and LF she communicated with AZ, an employee of S Ltd. and SF Ltd. The basis of their BC PNP application was their proposed investment in S Ltd. and SF Ltd. In preparing their BC PNP application the Respondent included a business plan for S Ltd. and SF Ltd. that was modified by her to fit the circumstances of CL and LF.

[191] The Share Purchase Agreements signed by HL and TW were with S Ltd. and SF Ltd. Most of the people connected with the deposit of trust funds were referred by AZ from S Ltd. and SF Ltd. This was described as an "atypical arrangement" by her counsel. The funds of YS, YW and TW were recorded in her client trust ledger named "SO, SO".

[192] On March 19, 2019 less than two months prior to the answers given in May 2019 that the Respondent did not know KS, S Ltd. and SF Ltd., referred to in paragraphs [182] and [183] above, the Respondent provided a copy of HL's Share Purchase Agreement with S Ltd. and SF Ltd.

[193] The Respondent testified that she did not recall having done any work for S Ltd. and SF Ltd. when she answered those questions. She also testified that she did searches and was unable to find anything. She said she and her staff did not realize SO (one word) and SO (two words) were different and only searched SO (two words). We do not accept this because in SF Ltd., SO is two words. In the client ledger SO is also two words.

[194] We do not accept her evidence in this respect. The results of these searches were not provided in evidence.

[195] The Respondent thought the Law Society's investigation was directed to money laundering. In an email sent March 21, 2019 to Ms. Driessen she said: "If you are trying to find money laundering or cheating clients conducted by our office or me, you will never find anything in those categories. We are well respected in the community and simply do not do such things." This email was sent in response to a request by Ms. Driessen for records relating to HL. The Respondent repeated this comment in both direct and cross examination as well.

[196] We do not accept that the Respondent's answers were truthful or based on her faulty memory at the time. The circumstances of her relationship with S Ltd., SF Ltd. and her work for CL and LF concerning their investments in S Ltd. and SF Ltd., the referral of a number of potential clients, or the persons making deposits, to the Respondent by AZ were too unique for her not to have remembered them. Her memory would also have been refreshed a little more than a month earlier when she obtained and forwarded HL's documents which involved S Ltd. and SF Ltd. In addition, the nonresponsive answers could not have been the result of a faulty memory.

[197] We find that her answers referred to in Allegation 4 (a) were false. We find that in giving the answers she did, the Respondent was motivated by a concern that the

Law Society was investigating her for money laundering and sought to distance herself from KS, S Ltd. and SF Ltd.

[198] In relation to Allegation 4 (b) the Respondent in a letter to Linda Murray dated September 20, 2016 stated:

> "CL and FL [should be LF] never signed the retainer agreement as they never fully committed to being retained by us. They deposited the funds pursuant to the request of [S Ltd. and/or SF Ltd.] in our trust account"; and
>
> "$100,000 each was returned to BW [should be TW] and HL. The funds of CL and FL [LF] were part of the stolen funds."

[199] These statements were not correct. It is clear that:

(a) CL and LF signed retainer agreements with the Respondent on August 29, 2014, copies of which were in the Respondent's client file.

(b) CL and LF were refunded their $100,000 deposits on February 19 and 22, 2016 respectively and were not stolen.

[200] The Respondent corrected this information in a letter to Ms. Driessen dated November 2019. She stated that she was confused about the names and apologized. She did not satisfactorily explain why those errors were made. She had opened a file for CL and LF which should have appeared on any search of her client list. She had also issued refund payments to both and there should have been documents relating to those payments in her system. She did not provide any evidence that she made sincere efforts to answer the questions asked of her accurately.

[201] In relation to Allegation 4 (c) the statements made by the Respondent were:

(a) in a May 9, 2019 telephone call, the Respondent represented that she was not aware of and did not have any knowledge of the Share Purchase Agreements; and

(b) in her November 25, 2019 letter, the Respondent stated "[w]e have never reviewed nor witnessed the Share Purchase Agreements signed by HL, CL, and LF", and further that "if there are or were any Share Purchase Agreements between any of the parties above, we were not aware of such agreements unless we were informed by our clients and, to the best of our knowledge, no such agreement was brought to our attention by our clients".

[202] As previously noted, copies of the Share Purchase Agreements for each of CL and LF, for whom the Respondent did substantial legal work, were in her file for them. The BC PNP application that she prepared is based on their investment pursuant to those agreements. She also had copies of the Share Purchase Agreements signed by HL and TW. She had in the months prior produced a copy of HL's signed Share Purchase Agreement to the Law Society. It is not credible for her to say that she was not aware of these agreements.

[203] Also as previously noted we have found that she reviewed a draft of the Share Purchase Agreement for S Ltd. and SF Ltd. and issued an account for those services. We note again in this context her counsel's submission regarding her understanding of the term "review'. While on the surface it may explain her answer that she had not "reviewed nor witnessed" the Share Purchase Agreement with the investors, but of concern is that that answer was given along with other answers to the effect that she had never seen the Share Purchase Agreements. We are not satisfied that her answer was due to her misunderstanding of how the term "review" was being used in this context.

[204] Although the Respondent says that these misrepresentations were accidental, we do not accept that explanation. For the same reasons that we found her answers to be false in relation to Allegation 4 (a), we find her answers on this issue are also false and made out of concern that the Law Society was investigating her for money laundering, from which she sought to distance herself.

[205] In relation to Allegation 4 (d) the statements made by the Respondent to the Law Society were as follows:

(a) in response to Ms. Driessen's April 23, 2019 letter requesting the full name and contact information for "A", to which the Respondent replied: "A person lives in this community" (Ex. 9, Tab 10);

(b) in a voicemail left for Ms. Driessen on May 9, 2019, the Respondent stated that she did not know this "A"; and

(c) in a May 9, 2019 telephone call, where Ms. Driessen raised the inadequacy of this response to her question for the full name and contact information for "A" the Respondent stated: "I don't have it! I don't know her!" (Driessen Affidavit, Ex. K).

[206] In considering these responses it is helpful to look at the context in which these statements were made. Ms. Driessen's April 23, 2019 letter to the Respondent (Ex. 9, Tab 9) enquired about the following:

> I have additional questions concerning your response dated March 19, 2019. Please address each of the questions below and provide relevant materials:
>
> 1. Please provide the full name and contact information for [A][1].
>
> 2. Who is [A], and how do you know her?
>
> 3. Is [A] a client? If so, please provide details. If not, please describe your relationship to her.
>
> 4. You wrote that three applicants intended to jointly purchase a project. Whom do you mean – [HL], [FL], and [CL]?
>
> 5. Were [HL], [FL], and [CL] all introduced to you by [A]?
>
> 6. What "project" do you mean?
>
> 7. Did you have any other clients who wanted to invest in [SF Ltd.]?
>
> 8. Did any of your clients actually invest in [SF Ltd.]?
>
> …

[207] In a letter dated May 7, 2018 (*sic*) (Ex. 9, Tab 10), the Respondent responded to Ms. Driessen as follows:

> I am sending my answers for your review and please see the attachments.
>
> Question 1. Answer: A person lives in this community.
>
> Question 2. Answer: No relationship with us.
>
> Question 3. Answer: No, she is not a client.
>
> Question 4. Answer: Yes, we are not involved with the project or investment.
>
> Question 5. Answer: She introduced three of them.
>
> Question 6. Answer: Their investment project. We have no knowledge of their investment project. We were not involved at all.

[1] You advised [A] introduced [HL] to you.

> Question 7. Answer: No, we did not.
>
> Question 8. Answer: No, they did not.
>
> …

[208] The Respondent's answers were clearly evasive. She knew the question resulted from her producing the "AA" "A's client" trust ledger to Ms. Driessen in March 2019. She knew that "A" is the person who referred HL to her and the Respondent confirmed that, in addition, "A" also referred CL and LF. She also knew that the CL and LF had agreed to invest in SF Ltd. and S Ltd.

[209] If she truly did not remember who "A" was, the answer to the first question would have been to the effect of "I cannot recall who that is." Her response "a person who lives in the community" is disingenuous.

[210] As a result of the answers given on May 7, 2019 Ms. Driessen wrote again on May, 9, 2019 (Ex. 9, Tab 11) advising that the answers given were not full and substantive and if not answered properly by April 23, 2019 the Respondent would be suspended commencing May 17, 2019. She asked further questions, in particular questions 1 to 3:

> 1. In your response to my question 1, you have not provided the full name and contact information of [A], saying only she "lives in this community". I note she is listed as a client on your trust ledger for your file number BP1418037. Please provide us with her full name and contact information;
>
> 2. In your response to my question 2, you say you have "no relationship" with [A], however you have not addressed how you know her. Please respond fully to the question;
>
> 3. In your response to my question 6, you refer to an "investment project", and do not answer the question asked. What "project" do you mean?

[211] After this letter the Respondent left a voicemail stating that she did not know this "A". Later, on the same day, in a telephone call with Ms. Driessen, the Respondent said in relation to a request for "A's contact information "I don't have it. I don't know her".

[212] On May 16, 2019 the Respondent wrote to Ms. Driessen:

> I am sending my answers for your review.

> Question 1. Answer: We have lots of walk-in clients. She introduced [HL] to our office.
>
> Question 2. Answer: We were only a deposit holder.
>
> Question 3. Answer: We were only a deposit holder. We have never involved in anything else.

[213] None of the answers given are responsive. We find that she was deliberately seeking to deflect the investigation away from her involvement with S Ltd. and SF Ltd.

[214] In a letter dated July 2, 2020 Ms. Driessen wrote advising that as a result of her search of the Respondent's practice records it appeared that "A" was AZ who worked at S Ltd. who also referred several clients to the Respondent. Ms. Driessen then asked the Respondent to explain the precise relationship with AZ. In her Response on July 22, 2020 the Respondent said only "AZ referred clients to me."

[215] The Respondent acknowledged that her statements regarding whether she knew AZ may have misled the Law Society but says that the statements were made unintentionally and were caused by her lack of memory rather than an attempt to mislead.

[216] We do not accept this explanation. As referred to above, the Respondent's relationship with AZ and S Ltd. referring clients to her was atypical and one would expect it be memorable. In addition, while acting for CL and LF the Respondent received many emails from AZ or was copied on emails between AZ and the Respondent's office. AZ also communicated with the Respondent seeking to refer other clients.

[217] The nonresponsive and evasive answers given lead us to the conclusion that the Respondent's answers were not the result of a faulty memory. For the same reasons that we found her answers to questions concerning S Ltd. and SF Ltd. and the Share Purchase Agreements were not based on a faulty memory we find that her answers in relation to "A" were also not caused by a faulty memory.

[218] The Respondent had a duty to ensure that her answers were truthful and complete. Her answers instead were evasive and non-responsive. From that and the surrounding circumstances we also find they were false.

[219] We have found that the Respondents answers in relation to Allegations 4 (a), (c), and (d) to be false. In relation to Allegation 4 (b) we found the statements to be incorrect and are not satisfied that she has shown us that she made sufficient efforts

to be accurate. We use the term "incorrect" in relation to Allegation 4 (b) to distinguish it from the others where we use the term false because of the different degree of fault. We do find it to be false as alleged in the Citation. We will now consider whether the conduct found above constitutes professional misconduct.

[220] It is significant that all of the communications from Ms. Driessen referred to above are in relation to an investigation into the Respondent's failure to respond to Mr. Rhodes' inquiries which are dealt with in Allegation 5. This is stated in her first letter dated February 27, 2019.The answers given by the Respondent in her letters dated May 7, 2018(*sic*) and May 16, 2019 are clearly evasive and non-responsive. While the answers in her letter dated November 25, 2019 are more fulsome, she continued to profess a lack of memory and gave answers that were inconsistent with documents in her own files. Overall, her responses fall far short of her obligation to cooperate with an investigation and her duty to respond fully to questions from the Law Society.

[221] We will consider the factors set out in *Macdonald Weiser*, at para. 66. In considering all of the circumstances to determine whether the Respondent failed to cooperate we are aware that the Respondent was in 2019 still suffering from the effects of the theft by her bookkeeper. This includes her travels to China seeking justice. We are also mindful that at this time the Respondent was the subject of several investigations by the Law Society. Those factors were considered by Ms. Driessen when she gave several extensions of time. We do not consider that the surrounding circumstances explain the untruthful answers given by the Respondent.

[222] We do not accept that the Respondent answered questions in good faith to the best of her ability. Except for her answers in relation to Allegation 4 (b), we find that she was evasive and untruthful. In relation to Allegation 4 (b) we find that she did not make sufficient efforts to ensure that her answers were correct.

[223] The most fundamental requirement when answering questions from the Law Society is that the lawyer must be honest and truthful. The Respondent was not. We find this to be a marked departure from that expected of all lawyers and find that she committed professional misconduct in relation to Allegation 4.

ALLEGATION 5

[224] Allegation 5 of the Citation states:

> You failed to respond substantively, or at all, to some or all of the following communications from the Law Society, contrary to rule 7.1-1 of the *Code of Professional Conduct for British Columbia*:

(a) letters and emails from the Custodianship Department dated August 24, 2018, September 13, 2018, September 14, 2018, and November 6, 2018; and

(b) a letter from the Investigations, Monitoring and Enforcement Group dated February 27, 2019.

[225] As the custodian over the part of the Respondent's law practice affected by the April 2016 trust shortage, Mr. Rhodes was responsible for determining the rightful payees for the missing trust funds and paying them out accordingly. Mr. Rhodes identified $100,037 recorded on the "AA" trust ledger in File No. BP1418037 deposited into trust by HL, which funds were affected by the trust shortage.

[226] The Respondent's file did not contain documentation to explain the purpose of the deposit or whether it should be returned, or any client identification or contact information for HL. Accordingly, Mr. Rhodes wrote to the Respondent on August 24, 2018 requesting an explanation for the funds in trust, the current status of the funds, and copies of any relevant documentation or file material.

[227] On September 13, 2018 Mr. Rhodes sent a follow up email requesting a response. The Respondent's bookkeeper responded by email sending a copy of the "AA" trust ledger. Mr. Rhodes had already identified that ledger as being in his possession. The response sent by the bookkeeper on instructions from the Respondent merely sent back a document the Respondent knew or should have known that Mr. Rhodes already had in his possession.

[228] On September 14, 2018 Mr. Rhodes by email advised that the response received did not answer his previous question and demanded a complete response.

[229] Having received no response Mr. Rhodes wrote again on November 6, 2018 and set a deadline of November 13, 2018 for the Respondent's response. As none was received, he referred the matter to another Law Society department for investigation.

[230] The Respondent testified that she had never seen the August 24, 2018 letter. She said that if she had seen the letter she certainly would have answered it. She referred to the fact that at that time she was busy having travelled to China about 20 times pursuing her bookkeeper who stole funds. She also said that when in China she could not receive emails because of the barriers.

[231] We do not accept her explanations. She did not provide us with travel documents showing when she was out of the country. She did not explain how she failed to see

the three follow up emails or letters. Nor did she explain how her office could have been instructed to send the "AA" trust ledger unless she had seen the August 24, 2018 letter.

[232] In this regard we consider her counsel's submissions about "losing face". The Respondent in cross examination agreed with the proposition that her staff would generally not have communicated with the Law Society without instructions. We do not think that her answer was given to avoid "losing face". We think it is a probable proposition. While her staff might communicate with people outside the office on files without specific instructions it is very unlikely they would communicate with the Law Society without instructions.

[233] Also of significance is the first paragraph of Ms. Driessen's letter dated February 27, 2019. In it she advised that her present investigation resulted from the Respondent's failure to respond to Mr. Rhodes' August 24, 2018 and November 6, 2018 letters. She states further "the Law Society has still not received your response to those queries."

[234] If the reason the Respondent had failed to respond was that she had not seen the August 24 letter, or the follow ups, one would have expected the Respondent to say so at this time. The Respondent does not explain her failure to respond to Mr. Rhodes' requests in any of her subsequent communications with Ms. Driessen.

[235] The Respondent also said in her evidence that if Mr. Rhodes wanted a response to his inquires, he could have reminded her when they were talking on the telephone from time to time. The Panel notes that the Respondent did not raise this with Ms. Driessen when she began asking why the Respondent did not respond to Mr. Rhodes' written correspondence, and in any event, it does not excuse her failure to respond to Mr. Rhodes.

[236] When asked in the NTA to admit that she had not responded to the August 24 letter and follow up emails and letters, the Respondent declined saying:

> The Respondent does not recall whether she, her bookkeeper or Mr. Cuttler responded to the referenced communications, but does recall that she had frequent telephone calls with Mr. Rhodes during which the matters raised in the referenced communications *may* have been discussed. [emphasis added]

[237] Mr. Rhodes testified that although he did speak with the Respondent on the telephone about matters relating to the custodianship from time to time, he did not recall this matter coming up and none of his notes recorded such a discussion.

When asked in cross-examination why Mr. Rhodes did not verbally raise the matter in a telephone conversation with the Respondent, Mr. Rhodes said he did not do so because he wanted a paper trail of his inquiries and her responses.

[238] With respect to Allegation 5 (a), we find the Respondent did not respond at all to the August 24, 2018 letter or the subsequent communications.

[239] With respect to Allegation 5 (b), in the letter of February 27, 2019 Ms. Driessen set out her understanding of the facts and asked for essentially the same information Mr. Rhodes had requested but expanded the questions to be more detailed. She set a deadline for response of March 11, 2019.

[240] When no response was received by the deadline, Ms. Driessen wrote to the Respondent on March 12, 2019 advising that unless answers were received by March 19, 2019, the Respondent would be suspended effective March 20, 2019.

[241] The Respondent emailed answers on March 19, 2019. She also enclosed documents including a retainer letter for HL, a copy of the "AA" trust ledger again, photocopies of HL's passport and the Chinese equivalent of a social insurance card, an account to HL dated March 18, 2018, a release and indemnity signed by HL dated March 18, 2018, and a Share Purchase Agreement signed by HL.

[242] The Respondent did not provide a copy of any correspondence between her office and HL. Ms. Driessen had to follow up on two occasions and then only received some of the correspondence. After further follow up certain other documents were received. It was almost a month later when the Respondent provided all the correspondence requested in the February 27, 2019 letter.

[243] With respect to Allegation 5 (b) we must consider whether there was a response and whether it was substantive. There was a response and it was substantive although not complete. The response led to further questions which led to the responses that are the subject of Allegation 4. The Law Society investigator should not have needed to write to the Respondent with follow-up questions over the next month.

[244] It appears that the Respondent, knowing the Law Society wanted to resolve the matter of the $100,037 remaining in trust, took it upon herself to contact HL and obtain a Release and Indemnity from him even though he had not yet been paid his trust monies. Further, the Respondent has never explained where documents like the retainer agreement and Share Purchase Agreement were obtained.

[245] The Law Society is critical of the documents produced on March 19, 2019 suggesting that the Respondent created them for the purpose of responding to Ms. Driessen's requests. Although the genesis of these documents is unclear there is insufficient evidence to conclude that they were newly created by the Respondent to respond to Ms. Driessen's requests as suggested by the Law Society.

[246] We find that those concerns should not colour the issue of whether a substantive response was provided. We find that the obligation to respond substantively includes the obligation to be complete and truthful. However, if the conduct at issue is the truthfulness of the Respondent's response and her failure to explain the circumstances under which she received the documents from HL, the Citation ought to have stated those allegations specifically as was done in Allegation 4 (Rule 4-18).

[247] As a result, in relation to Allegation 5 (b) we do not find that the Respondent failed to provide a substantive response.

[248] We will now consider whether the conduct proved in relation to Allegation 5 (a) constitutes professional misconduct.

[249] As noted previously a lawyer's obligation to respond to Law Society requests is of fundamental importance. The Respondent submits that her failure to respond to Mr. Rhodes was not grave and suggests that because the Law Society had access to all her physical files and electronic records because of the search made pursuant to the Rule 4-55 order it had all the information it needed.

[250] We do not agree. The Respondent has never explained where she obtained the retainer agreement, the Share Purchase Agreement, the passport photocopies, or the contact information for HL. No evidence was provided showing that that information was in the files and records the Law Society had obtained. Further, the Respondent's obligation to respond is not diminished when the Law Society has seized records.

[251] The Respondent also suggests she was simply overwhelmed by the number of investigations and volume of correspondence with the Law Society. While there is evidence that the Respondent requested extensions of time and expressed a concern about missing deadlines, those communications from the Respondent occurred later in the fall of 2019. We note that instead of just answering the questions asked by Ms. Driessen in her letter of February 27, 2019, which should not have been onerous, the Respondent found time to contact HL and obtain a Release and Indemnity from him.

[252] The Respondent also suggests that no harm was caused by her failure to respond. We do not agree. Mr. Rhodes' requests were made in August 2018 and the first information responsive to his request was in March 2019 after several reminders and the commencement of an investigation into the Respondent's failure to respond. Mr. Rhodes' investigation was delayed and significant time and resources were expended by the Law Society due to the Respondent's failure to respond.

[253] There has been no satisfactory explanation given for her lack of response to Mr. Rhodes' initial request and several reminders. This is a persistent failure to respond that is a marked departure from the conduct expected of lawyers. We find that the Respondent committed professional misconduct in relation to Allegation 5 (a).

CONCLUSION

[254] We have found the following:

1. Allegation 1 – The Respondent committed professional misconduct by acting for CL and LF while also acting for S Ltd and SF Ltd.

2. Allegation 2 – The Respondent committed professional misconduct by failing to:

   (a) deposit the YZ's funds into a trust account;

   (b) record the source of any of the named persons' funds;

   (c) properly identify any of the named persons;

   (d) record the deposit of funds on a separate client ledger for any of the named persons; and

   (e) record the terms and conditions under which funds are held for YS, YW, and XZ.

3. Allegation 3 – The Respondent committed professional misconduct by allowing the named persons, except for CL and LF, to use her trust account without providing substantial legal services, making inquiries about the subject matter and objectives of the trust funds and keeping a record of those inquiries.

4. Allegation 4 – The Respondent committed professional misconduct by providing false answers in relation to Allegation 4 (a), (c), and (d) and by providing an incorrect answer to Allegation 4(b) without making sufficient effort to ensure the accuracy of her response.

5. Allegation 5 - The Respondent committed professional misconduct by failing to respond in relation to Allegation 5 (a). Allegation 5 (b) was found not to be proven.