2024 LSBC 17
Hearing File No.: HE20200031
Decision Issued: March 22, 2024
Citation Issued: May 22, 2020
Citation Amended: June 16, 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:	June 6, 7, 8 and 9, 2023
Panel:	William R. Younie, KC, Chair Natasha Tony, Public representative Dean Lawton, KC, Life Bencher
Discipline Counsel:	J. Kenneth McEwan, KC Saheli Sodhi
Counsel for the Respondent:	David E. Gruber Christina Joynt

Written reasons of the Panel

INTRODUCTION

[1] The Respondent, Hong Guo, was called and admitted as a member of the Law Society of British Columbia on May 4, 2009, and practiced as a sole practitioner since 2010. At all times material to the citation described below, the Respondent carried on her sole practice through Guo Law Corporation ("GLC").

[2] This matter arises from a citation authorized by the Discipline Committee on April 29, 2020, issued on May 22, 2020, and amended on June 16, 2020 (the "Citation").

[3] The Citation contained seven allegations of professional misconduct and alleged alternatively a breach of the *Legal Profession Act* (the "*Act")* or rules with respect to allegations 1, 2, 3, and 6 of the Citation, pursuant to section 38(4) of the *Act*. The Law Society elected during the Hearing process to abandon allegations 6(a), 6(c), 6(g), and 7 of the Citation.

[4] The remaining allegations, the specific wording of which are referred to further in these reasons below, allege the Respondent misappropriated or improperly handled client funds, failed to comply with trust accounting obligations under the Law Society Rules (the "Rules"), made false or inaccurate representations, and failed to respond promptly or at all to requests of counsel.

[5] The Law Society submits each of the remaining allegations, if proven, constitutes professional misconduct, or alternatively, a breach of the *Act* or Rules.

[6] Proper service of the Citation on the Respondent as required by Rules 4-19 and 10-1 of the Rules was effected on the Respondent and further, the Respondent admitted proper service at the commencement of the Hearing.

NOTICE TO ADMIT

[7] A Notice to Admit (the "NTA") delivered by the Law Society was filed in this proceeding, containing:

(a) 177 paragraphs; and

(b) Books of Documents containing 208 individual or groups of documents.

[8] The NTA and the Books of Documents have been marked in this proceeding as exhibits. However, there was disagreement with respect to the admissibility and what use we can make of some documents. For example, the Respondent submitted many of the documents were not admissible and not authenticated or were objectionable for violating the rule against hearsay. We will remark later in these reasons about the admissibility and reliability of documents the Respondent alleges are hearsay.

EVIDENCE

[9] Evidence tendered by the Law Society in this Hearing consisted of copies of:

(a) the Amended Citation;

(b) the NTA;

(c) the Respondent's Response to the NTA;

(d) a May 24, 2023, letter from counsel for the Law Society to counsel for the Respondent; and

(e) the corresponding May 26, 2023, reply letter from counsel for the Respondent.

[10] The Respondent testified in the Hearing. Hers was the only in-person testimony in the course of the Hearing.

ISSUES

[11] We must determine whether the allegations of misconduct against the Respondent in the Citation are proven, and if so, for allegations 1, 2, 3, and 6, whether such conduct amounts to a breach of the *Act* or Rules or professional misconduct, and for allegation 4 and 5, whether such conduct amounts to professional misconduct.

BACKGROUND

[12] The background facts referred to below are derived largely from admissions made by the Respondent, but also the additional evidence in this Hearing.

[13] In or about 2008, the Respondent leased a virtual office space in Richmond, B.C.

[14] Since April 2010, the Respondent was a sole practitioner in Richmond, B.C.

[15] From 2012 to 2017, the Respondent practiced primarily in the areas of real estate (residential and commercial), corporate, and administrative law (including labour, immigration, and regulatory bodies).

[16] From July 6, 2011, to September 20, 2016, the Respondent's chief place of practice was a physical office located in Richmond, B.C.

[17] The Respondent had a busy practice, and assisted many clients, including persons with immigration matters. She said at the Hearing that she had 70,000 people on her phone.

[18] From 2011 through 2017, the Respondent operated a satellite office in the city of Beijing, in the People's Republic of China ("China") where work on client immigration matters also occurred.

[19] The Respondent testified she had over twenty employees, with eight employees working on immigration matters. The Respondent acknowledged that she provided little supervision over her immigration files. She viewed immigration matters as not really legal work, and mainly administrative. The Respondent testified that the staff were the main people to work with the immigration clients, and that only if the staff had issues did they come to the Respondent for a final decision. The Respondent stated that she paid little, if any, attention to emails on immigration matters unless those communications were brought to her attention by staff members.

[20] The Respondent had a bank account in China (the "Beijing Account"). The Beijing Account was not a trust account, was never disclosed by the Respondent to the Law Society in any of her trust reports, and was not a general account for GLC. The Beijing Account was the Respondent's personal account.

[21] The Respondent had little knowledge of the activities regarding the Beijing Account. The Respondent testified she was assisted by her sister, MG, who resided in China. When asked what role MG played in GLC, the Respondent testified that MG, "doesn't work for GL, but I am very bad at numbers and accounting. I really hate accounting, so sometimes she helps me out." That MG was providing services to the Respondent or GLC to some extent is evidenced by MG being paid from the Beijing Account.

[22] The Respondent was unable to obtain records for the Beijing Account for the years 2012 to 2013. When questioned during the Hearing about the Beijing Account records provided by the Respondent to the Law Society for the year 2014, the Respondent testified she "really didn't know" if the 2014 Beijing Account records were from that particular account, and that the records were provided by MG, further indicating the Respondent had little knowledge of the Beijing Account operations.

[23] Working from China on immigration matters with the Respondent was RL. The Respondent first met RL in Richmond, in 2010 or 2011. He was previously a tenant of the Respondent in Richmond. In approximately 2011, RL returned to

China. The exact nature of the relationship between RL and the Respondent is disputed, however the Respondent testified that RL was an experienced immigration consultant and they worked together. RL was in China, and worked on marketing the British Columbia Provincial Nominee Program (the "BC PNP") and answering client questions.

[24] YB was an associate of RL. The Respondent testified that she was introduced to YB by RL and only met YB on one occasion in China, for five to ten minutes.

[25] The Respondent testified that neither RL nor YB were her authorized agents. The Respondent testified RL was authorized to promote the BC PNP program, although RL and YB had no authority to do anything connected with GLC, and that they were independent agents for the clients.

[26] The Respondent acknowledged she had a fee splitting arrangement with RL with respect to clients assisted by both GLC and RL.

[27] HZ and JL were both Chinese citizens, residents of China, and clients of the Respondent. HZ and JL retained the Respondent to act on their behalf regarding Canadian immigration matters and assist them in applying to immigrate to Canada.

[28] ML was JL's wife.

[29] The Respondent prepared applications for both HZ and JL under the BC PNP. We take administrative notice that the BC PNP is an immigration program jointly administered under the Canada-British Columbia Immigration Agreement by the governments of British Columbia and Canada.

[30] The proposed business for HZ's BC PNP application was a plan to establish an indoor and outdoor LED lighting company in Coquitlam, British Columbia, in partnership with SSE Ltd., a local company.

[31] The Respondent was also involved in preparing the requisite business plan for both HZ and JL's BC PNP applications, and following signing by the clients, the Respondent in April 2012 submitted the applications for both HZ and JL. The Respondent paid the requisite BC PNP application fees for both HZ and JL via the Respondent's Mastercard credit card.

[32] Both HZ and JL attended in-person interviews on November 12, 2013, in Vancouver as part of the BC PNP application process. The Respondent attended these interviews with her clients.

[33] Neither HZ's nor JL's BC PNP applications were approved.

[34] Subsequently, on behalf of HZ, the Respondent found another BC PNP opportunity, being a potential purchase of a business in British Columbia, GLTD. The Respondent signed a purchase agreement dated February 16, 2015, on behalf of HZ. A $10,000 deposit on account of the purchase price was deposited into the Respondent's trust account on March 2, 2015, by JL; who was then an accountant for GLC.

[35] On March 31, 2015, the Province of British Columbia implemented a 90-day freeze on most BC PNP applications. After email communications between HZ and GLC, documents were prepared by GLC and sent to HZ with regard to terminating the GLTD purchase. One of the documents prepared by GLC and signed by both HZ and her spouse was a release in favour of the Respondent, GLC, YP and RL (the "Release"). The GLTD purchase was successfully terminated.

[36] After the Release was executed, on July 10, 2015, HZ wrote to - and we note this in particular - "Guo & Company Law Corporation" seeking from the Respondent a refund of monies in relation to her BC PNP application. The amount identified as paid was "RMB229,400" and included: amounts deposited on HZ's behalf to the Respondent's Beijing Account; and monies paid by HZ to YB in China. EK, an employee of GLC in the Respondent's Richmond office, responded to the July 10, 2015 communication from HZ, asking HZ to "[p]lease show my company the RMB229,400 transfer voucher of deposit fees and other expenses. The Service contract is signed by you and Mrs. Y., please first communicate with YB".

[37] HZ subsequently retained lawyer LB to press HZ's demand of the Respondent for a refund of monies paid. LB communicated in writing with the Respondent. The Respondent responded to LB by email, in part stating that she had never collected any retainer from HZ. Following further communication between LB and the Respondent, LB made a complaint to the Law Society on behalf of HZ. We shall discuss the particulars of the communications between the Respondent and LB, later in these reasons.

LEGAL FRAMEWORK

Onus and standard of proof

[38] The parties agree the Law Society bears the onus of proving each allegation in the Citation on the balance of probabilities test. The evidence must be sufficiently clear, convincing, and cogent to satisfy the Panel that the test is met: *F.H. v. McDougall*, 2008 SCC 53.

Test for professional misconduct

[39] There is no statutory definition of professional misconduct. However, it is well settled that professional misconduct is defined as conduct that is a marked departure from that conduct reasonably expected of lawyers by the Law Society: *Law Society of BC v. Martin*, (2005) LSBC 16.

[40] *Law Society of BC v. Kim*, 2019 LSBC 43, at para. 45, confirms that the marked departure test is an objective one:

> The *Martin* test is not a subjective test. A panel must consider the appropriate standard of conduct expected of a lawyer, and then determine if the lawyer falls markedly below that standard. In determining the appropriate standard, a panel must bear in mind the requirements of the *Act*, the Rules and the *Code*, and then consider the duties and obligations that a lawyer owes to a client, to the court, to other lawyers and to the public in the administration of justice. Each case will turn on its particular facts.

[41] A breach of the Rules does not automatically constitute professional misconduct. As stated in *Law Society of BC v. Lyons*, 2008 LSBC 9, at paras. 32 and 35:

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

[42] The hearing panel in *Law Society of BC v. Harding*, 2014 LSBC 52, at paragraphs 78 to 79 noted that a panel must look at all the circumstances and no particular factor is determinative:

> [78] The requirement that all the circumstances be considered, and the factors set out in *Lyons* preclude an assertion that particular factors are determinative or trump factors.
>
> [79] 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.

Test for Misappropriation

[43] Misappropriation is not defined in the *Act*, the Rules, or the *Code of Professional Conduct for British Columbia* (the "*BC Code*"). Many Tribunal decisions have examined whether lawyer conduct amounted to misappropriation of funds or property.

[44] In *Law Society of BC v. Gellert*, (2013) LSBC 22, the panel stated, at para. 71 to 73:

> [71] Misappropriation of a client's trust funds occurs where the lawyer takes those funds for a purpose unauthorized by the client, whether knowingly or through negligence or incompetence so gross as to prove a sufficient element of wrongdoing. As this definition indicates, there must be a mental element of wrongdoing or fault, yet this mental element need not rise to the level of dishonesty as that term is used in the criminal law. See *Law Society of BC v. Ali*, 2007 LSBC 18 ("Ali"), paras. 79-80, 105; *Law Society of BC v. Harder*, 2005 LSBC 48 ("Harder"), para. 56.
>
> [72] In determining whether a lawyer has misappropriated trust funds, it matters not whether the lawyer received any personal benefit from taking the funds. Nor does it matter that the lawyer intended to or did return the funds in short order, that he or she was acting in response to severe

> personal financial pressures, or that the amount of money taken was relatively small. See Ali, para. 104; *Harder*, para. 56.
>
> [73] The definition of misappropriation, and in particular its mental fault element, is driven by a recognition that the proper handling of trust funds is one of the core parts of the lawyer's fiduciary duty to the client. An unauthorized use of trust funds harms or risks harming the client, undermines the client's confidence in counsel, and has a seriously deleterious impact on the legal profession's reputation in the eyes of the public. Because of the sacrosanct nature of trust funds, removing a client's trust funds is and should always be a memorable, conscious and deliberate act that a lawyer carefully considers before carrying out (*Ali*, para. 104, 106).

[45] *Gellert* cites *Law Society of BC v. Ali*, 2007 LSBC 18, at para. 80, where further definitions of misappropriation are referenced:

> [80] In *Law Society of BC v. Andres-Auger*, Hearing Report: Findings of Fact dated January 14, 1994, misappropriation was explained as follows:
>
> > Webster's definition of "appropriate" includes "often without permission or legal right" indicating that "misappropriation" must involve something more than mere "lack of right". A finding of "misappropriation" is a factual finding only and it is only after submissions are received on verdict that it can be determined that any found "misappropriation" leads or does not lead to a finding of "professional misconduct", "conduct unbecoming a Member" or a finding of "incompetence". A factual finding of misappropriation will not always lead to all or any such verdicts in every case.
> >
> > "Misappropriation" or "wrongfully converting money" at least requires proof of the appropriation being wrongful and means more than merely receiving money to which you are not entitled. There must be some mental element amounting to wrongdoing. This need not be the equivalent of criminal conduct such as dishonesty or fraud. Incompetence or some degree of carelessness may be all that is necessary. It will in every case depend upon the circumstances.

[46] Misappropriation was discussed in *Law Society of BC v. Gounden,* 2021 LSBC 7, at para. 55:

> [55] The concept of "misappropriation" was described by the panel in *Law Society of BC v. Ahuja,* 2019 LSBC 31 (reversed on other grounds 2020 LSBC 31), at paras. 83 to 85 and 108, as follows:
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> > Counsel reminded us that "misappropriation" has been defined broadly as any unauthorized use of clients' funds. The Law Society directed us to *Law Society of BC v. Sahota,* 2016 LSBC 29, where the panel set out at paras. 61 to 63 an overview of misappropriation:
> >
> > > … Any unauthorized use qualifies. It does not need to amount to stealing, as long as there is an unauthorized temporary use for the lawyer's own purpose. Personal gain or benefit to the lawyer is not required.
> > >
> > > Further, the panel in *Law Society of BC v. Harder,* 2005 LSBC 48, provided at para. 56 the following helpful language to the quest for clarity on this issue:
> > >
> > > > A useful further clarification of the meaning of misappropriation is found in an American authority, in the matter of *Charles W. Summers* 114 NJ 209 @ 221 [SC 1989] where the Court stated:
> > > >
> > > > > Misappropriation is "any unauthorized use by the lawyer of clients' funds entrusted to him, including not only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom." …
> > > > >
> > > > > The lawyer's subjective intent to borrow or steal, the pressures on the lawyer leading him to take the money, the presence of the attorney's good character and fitness and absence of "dishonesty, venality, or immorality" are all irrelevant.

> Thus, all that is required is for the lawyer to take the money entrusted to him or her knowing that it is the client's money and that the taking is not authorized.

[47] The recent decision of *Law Society of BC v. Edwards*, 2022 LSBC 27, at para. 42 to 43, usefully references several prior cases:

> [42] Of note, "misappropriation" is not defined in Rule 3-64. A review of the case law indicates that "misappropriation" has been defined broadly, and occurs when the lawyer takes funds for a purpose unauthorized by the client, whether knowingly or through negligence or incompetence so gross as to prove a sufficient element of wrongdoing. There must be a mental element of wrongdoing or fault, yet it need not rise to the level of dishonesty as that term is used in criminal law. See *Law Society of BC v. Ali*, 2007 LSBC 18, at paras. 79 to 80; *Law Society of BC v. Harder*, 2005 LSBC 48, at paras. 55 and 56.
>
> [43] Conduct meeting this definition is misappropriation regardless of whether the lawyer received any personal benefit. It also matters not that the lawyer intended to, or did return, the funds in short order. Nor does it matter that the amount involved was small. See *Law Society of BC v. Gellert*, 2013 LSBC 32, at para. 72; *Ali*, at para. 104; *Harder*: *Law Society of BC v. Sahota*, 2016 LSBC 29, at paras. 60 to 63; *Law Society of BC v. Chaudhry*, 2018 LSBC 31, at para. 37.

[48] While many prior decisions concern the taking of monies directly from trust accounts, misappropriation has been found in other circumstances, such as in *Gounden,* where the panel found the lawyer misappropriated monies by submitting false expense claims and receiving payment based on them.

Principles for Assessing Credibility and Reliability of Witness Testimony

[49] The leading decision in British Columbia on assessing credibility is *Faryna v. Chorney*, [1952] 2 D.L.R 354 (BCCA), at para. 11, where the court said the following at page 357:

> The credibility of interested witness (*sic*), 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. Only thus can a Court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skillful exaggeration with partial suppression of the truth. Again a witness may testify what he sincerely believes to be true, but he may be quite honestly mistaken. For a trial Judge to say "I believe him because I judge him to be telling the truth", is to come to a conclusion on consideration of only half the problem. In truth it may easily be self-direction of a dangerous kind.

[50] *Faryna* was referred to in *Bradshaw* v. *Stenner*, 2010 BCSC 1398, at para. 186 to 188, where, in addition to referring to general principles regarding credibility, the court discussed the importance of contemporaneous documentary evidence when assessing the credibility of oral testimony:

> [186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 1919 CanLII 11 (SCC), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Faryna v. Chorny*, 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354 (B.C.C.A.) [*Farnya*]; *R. v. S.(R.D.),* 1997 CanLII 324 (SCC), [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Farnya* at para. 356).
>
> [187] 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 (AB KB), 12 Alta. L.R. (3d) 298 at para. 13 (Alta. Q.B.)). I have found this approach useful.
>
> [188] Most helpful in this case has been the documents created at the time of events, particularly the statements of adjustments. These provide the most accurate reflection of what occurred, rather than memories that have aged with the passage of time, hardened through this litigation, or been reconstructed. It should also be remembered that the parties used documentation to accomplish undisclosed purposes here, particularly in the Peachland contract. The inability to produce relevant documents to support one's case is also a relevant factor that negatively affects credibility.

[51] The distinction between credibility and reliability is discussed in *R. v. Khan,* 2015 BCCA 320, at para. 44:

> [44] Credibility and reliability are not the same. In *R. v. Perrone*, 2014 MBCA 74 at para. 26, appeal dismissed 2015 SCC 8, the Court referred to the description of the difference in *R. v. H.C.*, 2009 ONCA 56 at para. 41. Credibility concerns the veracity of a witness; reliability involves the accuracy of the witness's testimony. Accuracy engages consideration of the ability of the witness to observe, recall and recount.

Reliability and Credibility of the Respondent's Evidence

[52] The Respondent gave sworn oral testimony over four days, namely June 6, 7, 8, and 9, 2023. She gave evidence in chief and was cross-examined.

[53] In the course of her evidence the Respondent stated in excess of 50 times that she could not remember facts and circumstances to permit her to answer questions. In this context, on the second day of her testimony when giving her evidence in chief, the Respondent stated to her counsel: "Just my brain just damaged (*sic*) and I just cannot remember as well as before. Just my brain doesn't work as well as before and also too much, too much happened."

[54] No expert opinion evidence was submitted to support, corroborate or explain the Respondent's statement that her brain was damaged.

[55] At the commencement of the Respondent's cross-examination when asked by Law Society counsel about the quality of her memory, she stated: "My memory in general is not good"; and "My memory is not good".

[56] In light of the Respondent's demonstrated and acknowledged poor memory, we find her evidence is largely unreliable in that we are not satisfied she had the ability to recall and recount in any meaningful way.

[57] We found the Respondent's demeanor and manner of engagement during her oral testimony perplexing. For example, she frequently failed to give responsive answers to what were uncomplicated questions. She answered questions with statements – often amounting to pronouncements – on issues completely unrelated to the subject matter of the question. This pattern of behaviour by the Respondent caused a need for questions from counsel to be repeated, sometimes more than once, with some questions never being answered at all. This evasive and deflective behaviour was in our view unreasonable and nonsensical. It has regrettably led us to conclude that the Respondent's trustworthiness as a witness and historian was seriously flawed, and her credibility consequently suspect.

FACTS AND DETERMINATION OF ALLEGATIONS IN CITATION

Allegation 1- Facts

[58] Allegation 1 of the Citation is:

> On or about December 16, 2011, in the course of acting for your client JL in relation to a business immigration application, you misappropriated or improperly handled some or all of approximately CAD $13,000 received as a retainer from your client by failing to deposit the trust funds into a pooled trust account, contrary to Rule 3-51(l) [now Rule 3-58(1)] of the Law Society Rules.

[59] On or about December 16, 2011, JL's spouse, ML, transferred $13,000 to the Beijing Account. These funds were intended as a retainer which should have served as a source of payment for JL's BC PNP application fee of $3,000 and the $10,000 business plan cost.

[60] On deposit these monies became trust funds as defined in the Rules. The Respondent kept these monies, and they were never transferred into a pooled trust account as soon as practicable, or at all, as required by now Rule 3-58(1).

[61] The BC PNP application materials submitted in April 2012 for JL record the Respondent's Mastercard as the method of payment for the $3,000 application fee. The Respondent testified she paid the $10,000 for the business plan for JL.

[62] There is no document or written record in evidence directly confirming who paid the business plan fee, or when that disbursement was paid.

[63] The Law Society submits in part that the Respondent misappropriated these funds or mishandled the monies, and misappropriation occurs when a lawyer takes funds for a purpose not authorized by a client. The Law Society further submits there is no evidence of what became of the funds after deposit, that the Respondent effectively pre-billed for disbursements not yet incurred, and the Respondent was willfully blind about whether JL had been billed for not yet incurred disbursements.

[64] The Respondent acknowledged at the Hearing that she should have caused the funds to be put into a pooled trust account in Canada, but that she simply "missed a step" in not meeting her obligations under now Rule 3-58(1).

[65] The Respondent submits in part that there was no misappropriation because the monies were for disbursements, not fees, and the submission of JL's BC PNP Application and business plan corroborate the Respondent's evidence she paid, in addition to the application fee, the business plan costs. The Respondent further submits that in mishandling the fees she did not misappropriate them and that prior decisions require a finding that the Respondent "used" the funds, and that she did not do so.

Allegation 2- Facts

[66] Allegation 2 of the Citation is:

> On or about February 24, 2012, in the course of acting for your client HZ in relation to a business immigration application, you misappropriated or improperly handled some or all of approximately cad $13,000 received as a retainer from your client by failing to deposit the trust funds into a pooled trust account, contrary to rule 3- 51(1) [now rule 3-58(1)] of the Law Society Rules.

[67] On or about February 24, 2012, HZ transferred $13,000 to the Beijing Account. These funds were intended as a retainer which should have served as a source of payment for HZ's BC PNP application fee of $3,000 and the $10,000 in relation to a business plan cost.

[68] On deposit these monies became trust funds as defined in the Rules. The Respondent kept these monies. They were never transferred into a pooled trust account as soon as practicable, or at all, as required by now Rule 3-58(1).

[69] The BC PNP application materials before us, and submitted in April 2012, record the Respondent's Mastercard as the method of payment for the $3,000 application fee, although that fee was included in the stated payment sum of $4,000.

[70] There is no document or written record in evidence confirming who paid the business plan fee, or when that disbursement was paid.

[71] Both the Law Society and the Respondent submit many of their submissions with respect to allegation 1 are applicable to allegation 2.

[72] Additionally, the Respondent submits a February 10, 2012 bill issued by GLC to HZ is further evidence the Respondent did not "use" some of the $13,000 deposited by HZ and paid out by the Respondent. That bill, which identifies the subject matter as "RE: BCPNP Business Immigration", sets out total fees of $10,000, inclusive of goods and services and sales taxes, and also charges two disbursements, identified as "Application Fee", and "Business Plan Drafted", for $3,000 and $10,000 respectively.

Allegations 1 and 2 - Findings of Misappropriation

[73] In *Law Society of BC v. Sas*, 2015 LSBC 19, the lawyer transferred money in trust from 22 clients, without authorization and paid the monies to the lawyer's law corporation when not entitled to do so. The panel found the lawyer was willfully blind and knew or was deemed to know that clients were billed for disbursements not yet incurred, and thus not entitled to treat the trust money as her own. The panel found such conduct was professional misconduct and would have made the same finding were the lawyer's conduct reckless, as opposed to willfully blind or having knowledge.

[74] In *Law Society of BC v. Lowe,* 2019 LSBC 10, the lawyer pre-billed for disbursements not yet incurred. The panel found the lawyer's conduct constituted professional misconduct. The panel said at para. 27, that the conduct "… while not

knowingly dishonest, was improper and grossly negligent and provides the sufficient element of wrongdoing to constitute misappropriation."

[75] With respect to allegation 1, the Respondent accepted JL's retainer without any disbursements yet incurred or paid or billed. We find there is no record or direct documentary evidence confirming the Respondent paid the $10,000 business plan fee on JL's behalf. Even if we were satisfied the Respondent paid JL's $10,000 application fee, we are not able to determine when the fee was paid after the retainer funds were received.

[76] The Respondent possessed JL's retainer from December 11, 2011, forward. There is no evidence JL granted the Respondent permission to keep the funds. The Respondent indeed put the funds to a "use". She kept the funds in her personal possession and never put them in a pooled trust account. The Respondent had direct access to the funds and created the opportunity to access them. She testified she did not know what became of the retainer funds. We find the Respondent's attitude towards her obligations with client retainer funds was at best based on profound and inexcusable ignorance of the Rules, and the law of trusts.

[77] With respect to the April 2012 payment of the $3,000 BC PNP application fee for JL, payment of that disbursement on JL's behalf several weeks after receipt of the funds does not make the earlier misappropriation into something less.

[78] We find the funds were trust funds and the Respondent converted those funds to her own use and benefit when she received and deposited them to her Beijing Account, and such conduct amounts to misappropriation.

[79] With respect to allegation 2, the Respondent accepted HZ's retainer without any disbursements yet incurred or paid or billed. We cannot find, based solely on the February 12, 2012, account, and the Respondent's testimony, that she paid HZ's $10,000 business plan fee. Even if we were satisfied the Respondent paid HL's $10,000 business plan fee, we are not able to determine when the fee was paid after the retainer funds were received.

[80] Because the BC PNP application was filed in April 2012, we find the GLC Statement of Account is evidence the Respondent billed HZ for disbursements not, or not yet, incurred.

[81] The Respondent possessed HZ's retainer funds from February 12, 2012, forward. There is no evidence HZ granted the Respondent permission to keep the funds. The Respondent indeed did put the funds to a "use". She kept the funds and never put them in a pooled trust account. The Respondent had direct access to the funds and

created the opportunity to access them. She testified she did not know what became of the retainer funds. Again, we find the Respondent's attitude towards her obligations with client retainer funds was at best based on profound and inexcusable ignorance of the Rules, and the common law of trusts.

[82] We find the Respondent converted the funds to her own use and benefit when she received and deposited them to her Beijing Account and such conduct amounts to misappropriation.

Allegation 3 - Finding of Facts

[83] As a preliminary matter, we note the Law Society submits the evidence establishes that in addition to the $13,000 deposited into the Beijing Account by HZ, two amounts paid by HZ to YB were paid in the context of a retainer between HZ and the Respondent.

[84] The Respondent testified she had no knowledge of any monies paid by HZ to YB, but acknowledged in cross-examination that HZ did pay YB two sums, being $4,800 and $20,000.

[85] We agree with the Law Society's submissions and find the monies paid by HZ to YB were paid in the context of the retainer between HZ and the Respondent.

[86] For reasons discussed further in this decision below, we find that the Respondent and HZ entered into an Immigration Representation Agreement (the "IRA"). The IRA was an agreement between HZ and the Respondent that required payment to the Respondent of both an initial $4,800 deposit and further $20,000 in advance of HZ's interview in the BC PNP application process. The requisite $20,000 sum was recorded in the GLC Spreadsheet produced by GLC.

[87] Further, in cross-examination, the Respondent testified the $20,000 paid to YB should have been paid to the Respondent.

[88] Allegation 3(a) of the Citation is:

> Between approximately September 2011 and May 2015, in the course of acting for your clients HZ and JL in relation to a business immigration application, you failed to comply with your accounting obligations under Part 3 Division 7 of the Law Society Rules, and in particular you failed to do one or more of the following:

> (a) account in writing to one or both HZ and JL for all funds received on their behalf, contrary to Rule 3-48(1) [now Rule 3-54(1)] of the Law Society Rules.

[89] The Respondent submits in her written submissions with respect to this particular allegation, that her general practice was to issue client receipts. The Respondent acknowledges there is no evidence of receipts and further submits we should consider the impact the Respondent's bookkeeper, JL, had on the Respondent's ability to produce accounting records.

[90] We find this allegation is proven. We find there is no evidence of any document or other method of accounting convincing us on a balance of probabilities that the Respondent accounted in writing to either HZ or JL. Being satisfied JL paid $13,000 to the Respondent and that HZ paid monies to both the Respondent and YB pursuant to the IRA, we find that the Respondent failed to account in writing to either JL or HZ, and this conduct was contrary to the Rules.

[91] Allegation 3(b) of the Citation is:

> … in particular you failed to do one or more of the following:
>
> (b) deposit into trust client retainer funds, or maintain proper general account records, or both, contrary to one or more of Rules 3-51(1), 3-61 and 3-63(2) [now Rules 3- 58(1), 3-69 and 3-72(2)] of the Law Society Rules;

[92] We reject the Respondent's submission suggesting that funds received by the Respondent in China, from clients resident in China, may somehow negate the Respondent's obligation, as a member of the Law Society, to handle or deal with client monies strictly in accordance with the Rules. Now Rule 3-67 and 3-75 together, for example, required the Respondent to maintain, in part, all records and supporting documents. That obligation was not met by the Respondent.

[93] All monies paid into the Respondent's Beijing Account to the credit of JL or HZ, or to YB to HZ's credit, should have been deposited into trust. There is no evidence any proper records were created by the Respondent in respect of payments by or for the benefit of JL or HZ. Having found these funds received by the Respondent were trust funds, it is unnecessary to determine if the Respondent failed to maintain general accounts. Although we find the elements of allegation 3(b) have been proven, for the reasons that follow, we decline to make a finding of professional misconduct in respect of allegation 3(b).

[94] Having found allegations 1 and 2 proven, and 3(b) proven in so far as the monies paid were trust funds, we recognised in the course of our deliberations that there was a potential for a duplication of delicts among allegations 1, 2, and 3(b), with a consequential need to consider the principles in *R*. v. *Kienapple*, [1975] 1 SCR 729 ("*Kienapple*"), referred to in *McLeod* v. *Law Society of British Columbia*, 2022 BCCA 280. Following submissions of counsel at the Hearing, we sent a memorandum to the parties seeking written submissions on the possible application of *Kienapple* in this case. We received submissions on behalf of the Law Society, but none by or on behalf of the Respondent. We find there are no distinguishing elements between the proven allegations 1 and 2, and allegation 3, and that the breach or the wrong found proven as allegation 3(b) is no different than, or distinguishable from, that found with respect to allegations 1 and 2. Accordingly, we decline to record a finding of professional misconduct under allegation 3(b).

[95] Allegation 3(c) of the Citation is:

> … in particular you failed to do one or more of the following:
>
> (c) record each transaction involving one or both of HZ and JL promptly or at all, contrary to Rule 3-63(1) [now Rule 3-72(1)] of the Law Society Rules;

[96] We find this allegation is proven. No Beijing Account records of retainers deposited to that account were produced. No GLC trust or general account records or ledger for each client were produced by the Respondent, recording receipt of any retainer, or the payment of any disbursements the Respondent testified she paid on behalf of JL or HZ. In a February 1, 2019 email from the Respondent to Anneke Driessen, a Law Society investigator, the Respondent stated that there was no trust ledger for HZ, and in her interview with Ms. Driessen on March 6, 2019, the Respondent advised the only ledgers available were with respect to a numbered company identified in the interview.

[97] With respect to this sub-allegation 3(c), the Respondent in her written submissions, submitted in part that she failed to appreciate that funds for disbursements were considered retainers. The Panel does not find that the Respondent failed to appreciate that funds intended for disbursements were considered retainers. Even if we accepted this particular submission of the Respondent, that submission is no answer to the Respondent's failure to adhere to her obligations under now Rule 3-72, which obliges a lawyer to record trust transactions promptly and within seven days.

[98] Allegation 3(d) of the Citation is:

> … in particular you failed to do one or more of the following:
>
> (d) deliver a bill, immediately or at all, or issue a receipt for the funds received, or both, contrary to Rule 3-63(3) [now Rule 3-72(3)] of the Law Society Rules.

[99] The Respondent acknowledges in her submissions she could not tender evidence that any bill was delivered to either JL or HZ, or that any receipts were issued for funds received. There being no other evidence before us that the Respondent delivered any bills or issued any receipts, we find no bill was delivered and no receipt for funds received was ever provided. We find this allegation is proven.

Allegation 1 to 3 - Finding of Professional Misconduct

[100] Having found the underlying facts in allegations 1 to 3 of the Citation are proven, the next issue to determine is whether the Respondent's conduct with respect to the proven allegations amounts to a breach of the *Act* or Rules or amounts to professional misconduct.

[101] The Law Society submits in part and generally with respect to these three allegations:

(a) the breaches were part of a systematic disregard of her accounting obligations;

(b) the Respondent maintained little, if any, records of her arrangements with her clients in China;

(c) her breaches of the Rules were grave;

(d) the harm caused to at least HZ is obvious; and

(e) the breaches were a marked departure from the standard expected of a lawyer and amount to professional misconduct.

[102] The Respondent submits in part with respect to allegations 1 and 2, and referencing certain of the factors from *Lyons*:

(a) her conduct was not "grave";

(b) there was no "*mala fides*" in her conduct; and

(c) JL did not suffer any harm.

[103] With respect to allegation 3, the Respondent submits in part:

(a) the trust accounting errors are not grave;

(b) her behavior was infrequent;

(c) there was no "*mala fides*" in her conduct"; and

(d) the Respondent has been sanctioned by a prior hearing panel for failing to properly supervise her former bookkeeper, JL, and to punish her again for such failure to supervise would amount to double jeopardy.

[104] Regarding allegations 1 to 3, with the exception of 3(b), we are, firstly, of the view that any misappropriation is a serious matter. Secondly, the Respondent, despite her testimony that she was aware of her obligations with respect to trust accounts as mandated by the Rules, showed little regard to or respect for, those obligations.

[105] The Respondent's misappropriations contravened a fundamental obligation to her client. With respect to the Respondent's breaches of the trust rules they were serious and not infrequent.

[106] We find in considering all of the circumstances that the Respondent's conduct as proven with respect to allegations 1 to 3, with the exception of 3(b), to be a marked departure from the conduct the Law Society expects of lawyers under its regulatory jurisdiction.

Allegation 4

[107] Allegation 4 of the Citation is:

> In your November 4, 2015, email to LB, counsel for your former client HZ, you made one or more representations that you knew or ought to have known were inaccurate or false, or both, contrary to rule 2.2-1 of the *Code of Professional Conduct for British Columbia*. In particular, you represented that:
>
> (a) you had not collected any retainer funds from HZ; and
>
> (b) you had never signed any contract with HZ.

[108] We are satisfied on the evidence that the Respondent both collected a retainer from HZ and signed a contract for legal services with HZ. The evidence leading to this conclusion follow below.

[109] In the fall of 2015 lawyer LB wrote to the Respondent informing her that he was counsel to her former client HZ in respect of an agreement between the Respondent and HZ (the IRA). The purpose of the IRA was to facilitate the Respondent providing legal advice and related procedural assistance in the context of HZ making an application under the BC PNP.

[110] In a letter dated October 14, 2015, LB requested the Respondent return all money paid by HZ, being (RMB 229,000) less CAD $1,000, the Respondent was entitled to deduct under the IRA, and to provide HZ with a final bill for legal services pursuant to section 96 of the *Act*.

[111] The Respondent sent an email replying to the October 14, 2015, letter stating that the IRA, "was not prepared and signed by this office". She also stated she disagreed with the facts in LB's letter and demanded that HZ produce records showing funds were paid to the Respondent.

[112] On October 28, 2015, LB wrote again to the Respondent requesting she provide documents consisting of: (1) her trust ledger for all funds received on behalf of HZ; (2) all statements of account issued to HZ, and (3) the money received from HZ further to those statements of account.

[113] Not receiving a prompt reply from the Respondent, LB wrote to the Respondent on November 3, 2015, again requesting the information and documentation he had sought in his October 28, 2015, letter.

[114] On November 5, 2015, the Respondent sent an email to LB stating, "We have never signed any contract with this person. We have not collected any retainer from this person. Please ask your client to stop harassing our office." Importantly, in this email, the Respondent said nothing about the fact that HZ had made a payment of the equivalent of CAD $13,000 directly to the Respondent that was deposited by the Respondent into the Respondent's Beijing Account in China.

[115] The Respondent acknowledged at the Hearing that she received the equivalent of CAD $13,000 from HZ; these funds being for the payment of a BC PNP fee and for preparing a business plan to accompany the BC PNP application.

[116] The Respondent testified that the approximately CAD $13,000 in funds provided to her by HZ were deposited into the Respondent's Beijing Account in China, instead of her law firm trust account in Canada. She suggested by doing so she "missed a step" in handling the funds.

[117] In direct examination the Respondent was asked by her counsel how she came to believe that her office had not collected a retainer from HZ. She responded that her office had, "only collected the $13,000" and this was paid to the immigration office and a consultant to prepare the business plan (for the BC PNP application).

[118] When HZ paid the equivalent of CAD $13,000 to the Respondent under the IRA, those funds were trust funds and this fact ought to have been plainly obvious to the Respondent.

[119] We are satisfied that the IRA was an agreement between the Respondent and HZ through which the Respondent was to provide legal services in her immigration law practice, the consideration for which would be payment of legal fees and disbursements by HZ. The Respondent could not have reasonably concluded otherwise, and her assertions to LB that she had neither a contract with HZ to provide legal services, nor received a money retainer from HZ, were objectively and historically false. We find that the Respondent's representations that she had never signed any contract with HZ and that she had not collected any retainer funds from HZ were representations that she knew or ought to have known were false.

[120] Additionally, it was improper on the part of the Respondent to have accused HZ of harassing her office when HZ was entitled to ask reasonable questions through LB about the legal services the Respondent had agreed to provide under the IRA. It would have been easy for the Respondent to, if necessary, inform herself and to communicate with LB about the history of her relationship with HZ. Instead of doing so, she improperly attempted to deflect the legitimate enquiries of LB by making an unfounded accusation of harassment against her former client. Her failure to communicate the accurate state of her relationship with HZ amounted to the Respondent being both irresponsible, and willfully blind to her professional obligations.

[121] In the circumstances, we are satisfied that the Law Society has proven the allegations of misconduct in paragraphs 4 (a) and 4(b) of the Citation, that such misconduct is a marked departure from the conduct the Law Society expects of lawyers under its regulatory authority, and accordingly amounts to professional misconduct.

Allegation 5

[122] Allegation 5 of the Citation is:

> You failed to respond promptly or at all to one or more requests made by LB, counsel for your former client, HZ, in his letter dated October

> 14, 2015, and emails dated October 28, 2015, and November 3, 2015, contrary to rule 7.2-5 of the *Code of Professional Conduct for British Columbia*, for provision of one or more of the following:
>
> (a) your client trust ledger in respect of any retainer or trust funds received from HZ;
>
> (b) all Statements of Account you issued to HZ;
>
> (c) money you received further to any Statements of Account; and
>
> (d) a final bill for services rendered.

[123] At paragraphs 109 through 114 above, we described the history of correspondence by letter and email between LB, lawyer on behalf of HZ, and the Respondent. That history is also relevant and applicable to allegation 5 of the Citation. It is undisputed by the Respondent that she answered none of LB 's requests identified in allegation 5 (a) through (d) of the Citation. During the course of the Hearing, the Respondent identified a bill for legal services but there is no evidence the Respondent sent the bill to LB or HZ at any time.

[124] We are satisfied that contrary to rule 7.2-5 of the *BC Code* the Respondent failed to respond promptly or at all to the requests of LB in his letter of October 14, 2015, and his emails of October 28, 2015 and November 3, 2015. In coming to this conclusion, we are not satisfied that the Respondent's attempt to deflect the enquiry of LB by accusing her former client of harassment qualifies as a response to any of the requests.

[125] The Law Society has proven the misconduct in the sub-paragraphs of allegation 5 of the Citation. In considering all of the circumstances with respect to these allegations, in our view the Respondent's conduct was a marked departure from the conduct the Law Society expects of lawyers under its regulatory jurisdiction and amounts to professional misconduct.

Allegation 6

[126] Allegation 6 of the Citation is:

> Between approximately January 2016 and February 2020, in the course of an investigation into your conduct arising from a complaint made by LB, you made representations to the Law Society that you knew or ought to have known were false or inaccurate, or both, contrary to one

> or more of Rule 3-5(7) of the Law Society Rules and rules 2.2-1 and 7.1-1 of the *Code of Professional Conduct for British Columbia. ...*

[127] Before addressing the evidence and our conclusions with respect to each of sub-paragraphs (b), (d), (e), (f), (h), and (i), of allegation 6, we observe that the misconduct alleged in these subparagraphs is linked in what we characterize as a pattern of conduct by the Respondent. What follows is an outline of some features of the Respondent's conduct in responding to Law Society communications in the course of the investigation into her conduct leading to the Citation in this matter. Our conclusions here were significantly influenced by the Respondent's poor memory in her evidence before us, as described earlier in these reasons, and her careless and dilatory approach in responding to questions from the Law Society investigator. Indeed, it was only after the Respondent received an administrative suspension for failing to provide timely responses to questions from the Law Society investigator, that she appeared to make any meaningful effort to provide responses.

[128] The Respondent admitted during the Hearing that she "should have done better" in answering the questions of the Law Society investigator, "was in a big rush" when answering, and delegated answering questions on occasion to her staff.

[129] At the Hearing the Respondent's counsel asked her several times what process she used in responding to the questions of the Law Society investigator. She stated variably that she did not remember the process, or that she provided the investigator with answers based on her memory.

[130] During cross-examination, the Respondent stated that in providing an initial response to the Law Society investigator - after the time to do so had passed - she did not review her files because she, "did not have time to do it".

[131] The Respondent suggested in her testimony that she was hampered in answering questions from the Law Society investigator because the Law Society had taken her physical files, and "nobody knows where the files are". This statement is contradicted by documents demonstrating the Respondent's physical files were delivered to the Law Society on November 28, 2016, and returned to the Respondent's office on December 5, 2018.

[132] The history and testimony canvassed above illustrate the challenges we encountered in this Hearing to identify reliable evidence of the Respondent. In the written submissions of the Law Society following the close of evidence in the Hearing, counsel observed that the Respondent, "provided inaccurate, incomplete, cryptic, and often entirely non-responsive answers to Law Society questions…".

We agree with that summary of the quality and nature of the Respondent's engagement with the Law Society, and we observed this pattern of conduct continued in the Hearing itself.

[133] Allegation 6(b) of the Citation is:

> … In particular, you made one or more of the following representations:
>
> (b) you were not aware of the existence of an immigration agency contract signed by Client [H]Z;

[134] We are satisfied that the IRA was an immigration agency contract between the Respondent and HZ, was a contract for legal services, and hence a retainer agreement. The Respondent acknowledged that HZ was her client and that her law firm was providing legal services under the IRA. Additionally, the IRA was recorded in the Respondent's law firm Immigration Spreadsheet.

[135] The fact of the existence of the IRA was further corroborated when the Respondent relied on its provisions when communicating with HZ about a money refund in the context of the client's BC PNP application.

[136] Given this history, we conclude it was untruthful of the Respondent to say to the Law Society that she was not aware of an immigration agency contract (the IRA) signed by her client HZ, because she knew or ought to have known the representation was false. In considering whether this false representation amounted to professional misconduct, we have given weight to the *Lyons* factors, referenced earlier in these reasons. In so doing, we are concerned that the misrepresentation exemplifies the Respondent's refusal or inexplicable inability to acknowledge that HZ was her client. Denying a lawyer-client relationship in the circumstances amounts in our view to an abandonment of the client, and is serious misconduct. Although we do not conclude the evidence is sufficient to determine the Respondent acted with *mala fides* in making the false representation, we are satisfied that it demonstrated a pattern of willful blindness, was a marked departure from expected conduct and is professional misconduct.

[137] Allegation 6(d) of the Citation is:

> … In particular, you made one or more of the following representations:

> (d) you were not aware of one or more payments from Client [H]Z totaling 229,400 RMB (approximately $37,700.00 CAD) in connection with her immigration matter;

[138] In the course of the Law Society investigation, the Respondent represented on numerous occasions that she was unaware of HZ's payments to her and YB respecting HZ's immigration application (See Exhibit 2, NTA Tabs: 45(a), 57, 136(a), 144(a), 146(a)). The question we must answer in this context however, is, should the Respondent have known that her representations were false about this unawareness. The Respondent owed the Law Society an obligation to cooperate; this included examining her law firm client ledger and interviewing her staff in order to correctly answer questions of the Law Society investigator. Had she done so, she would have determined HZ had made two payments in respect of her IRA with the Respondent, and these were recorded in Respondent's Immigration Spreadsheet. There is no plausible explanation for this false representation in the circumstances. Her failure to investigate and to learn the accurate state of her financial relationship with HZ amounted to her being both irresponsible, and willfully blind to her professional obligations. As with allegation 6(b) we have considered the *Lyons* factors in determining the nature of this misconduct, and while we do not find it to reflect *male fides*, it is however a marked departure from the conduct the Law Society expects of lawyers under its regulatory authority, and constitutes professional misconduct.

[139] Allegation 6(e) of the Citation is:

> … In particular, you made one or more of the following representations:
>
> (e) Client [H]Z did not answer a July 13, 2015, email from EK of Guo Law Corporation requesting evidence that Client [H]Z had paid 229,400 RMB (approximately $37,700 CAD) in connection with her immigration matter;

[140] The Respondent has admitted that she represented to the Law Society on multiple occasions during its investigation that HZ did not respond to EK's July 13, 2015 email, and that HZ never provided evidence showing payments made in connection with her immigration matter. The evidence concerning these payments includes the following facts:

> (i) The Respondent acknowledges receiving a payment the equivalent of $13,000 CDN from HZ. Given the IRA, this payment could only have been made in connection with the BC PNP application

process. HZ had not engaged the Respondent for any other purpose.

(ii) Two other payments were made by HZ to YB in China respecting the BC PNP application. The first payment to YB was for approximately $4,800 CDN (based on the exchange rate), although the Respondent denied any knowledge of this payment, or that YB was authorized to collect it. The second payment to YB was for approximately $20,000 CDN (based on the exchange rate), and again the Respondent denied any knowledge of the payment. The Respondent testified at the Hearing that she was to have received $20,000 CDN in fees from HZ after the BC PNP interview was obtained, and that she issued a bill reflecting the $20,000 CDN sum. There is however no bill in the Hearing record.

(iii) The Respondent testified at the Hearing that the $20,000 CDN payment was demanded by YB from HZ because the BC PNP interview was obtained.

We find, when these facts are considered together, that HZ had paid approximately $37,800 CDN pursuant to the IRA.

[141] The Respondent admitted in her response to the NTA and in her evidence at the Hearing that HZ had responded to EK's email, the response was received by GLC, and HZ provided evidence showing the payments in connection with her immigration matter. The Respondent's representation to the Law Society that HZ did not answer a July 13, 2015 email from EK at GLC requesting evidence that HZ had paid approximately $37,700 (*sic*) CDN in connection with her immigration matter was false, and the Respondent knew such representation was false, and further, even if she did not, the Respondent ought to have known the representation was false or she was wilfully blind as to the truth or accuracy of the representation when made. In the circumstances of the history outlined above, we conclude that the false representation was both a breach of Rule 3-5(7) and amounted to a marked departure from expected conduct and is professional misconduct.

[142] Allegation 6(f) of the Citation is:

> … In particular, you made one or more of the following representations:

> (f) Client HZ never provided evidence showing that she had made payments totaling 229,400 RMB (approximately $37,700.00 CAD) in connection with her immigration matter;

[143] Allegation 6(f) is linked factually to allegation 6(e) addressed above. The Respondent admitted at the Hearing that HZ had provided proof of these payments. Her representation to the Law Society, otherwise during the investigation, was untruthful. The Respondent gave no explanation about why she made these misrepresentations. Again, the GLC financial records and client spreadsheet demonstrated that HZ had made the payments. In the circumstances, the misrepresentation was avoidable had the Respondent examined her law firm accounting records. Although we do not find that the misrepresentation was done through *mala fides*, we conclude that the Respondent's behaviour in this circumstance demonstrates conduct that was willfully blind to her client's interests and her obligations. In our view this conduct is a marked departure from that conduct the Law Society expects of lawyers under its regulatory jurisdiction, and is professional misconduct.

[144] Allegation 6(h) of the Citation is:

> … In particular, you made one or more of the following representations:
>
> (h) you had never collected any fees or received any payment from or on behalf of Client [J]L; and

[145] The Respondent stated during the Law Society investigation that she had not "collected any fees" from Client JL; "did not charge him at all"; and in the course of her interview with the Law Society investigator, that she, "did not receive a penny from L", and, "did not receive anything from him". These statements were false. During cross-examination of the Respondent on the fourth day of the Hearing, she stated she did not have a trust ledger for Client JL that would have shown $13,000 in funds paid by the client to the Respondent because the funds were for a disbursement she paid. She insisted there was no trust created with the payment, because, "[w]e did not think in that way".

[146] When asked by Law Society counsel if she placed the client's funds into her personal account in China, and may have spent the money on salary and clothes, the Respondent evaded answering the question with the following statement: "They requested me to help them. I helped, and they benefit from my help. I paid the disbursement in Canada by my money. I missed one step. I should have put my

money into the trust account and then pay out from the trust account, but I just did not think in that way".

[147] Law Society counsel then put the following to the Respondent: "The fact of the matter is that the equivalent of $13,000 Canadian was paid into your general account in Beijing, correct? In answer to the question, the Respondent stated, "Yes, because there was no trust account in China". When asked by Law Society counsel if the Respondent's sister was administering her Beijing account, the Respondent stated, "It's under my name, and my sister was helping me because I'm busy and I'm no good in numbers."

[148] We are satisfied that the Respondent knew or ought to have known that the representation she made to the Law Society in sub-paragraph 6(h) was false. The Respondent's evasive and digressive answers to questions put to her in the course of the Law Society investigation - and not remediated during her cross-examination at the Hearing on this issue as outlined above - are concerning. When considering the *Lyons* factors, in the context of the false statements in allegation 6(h), the evidence again shows the Respondent was willfully blind to the requirement to acknowledge to the Law Society that she had collected fees or payment from client JL. In our view, this is a troubling form of a continuing pattern of misconduct. While we do not conclude the basis for the false representation was *mala fides*, we find the false statements were made in the context of the Respondent's willful blindness to her professional obligations. In our view this conduct is a marked departure from that conduct the Law Society expects of lawyers under its regulatory jurisdiction and is professional misconduct.

[149] Allegation 6(i) of the Citation is:

> …In particular, you made one or more of the following representations:
>
> (i) you did not know a company by the name of Guo & Company Law Corporation and it was not your company.

[150] The Respondent incorporated GLC on April 29, 2011, and practiced law in British Columbia through that corporation. She used the name "GLC" in reference to Guo Law Corporation.

[151] Documents in the Hearing, translated into English from Chinese identify an entity called "Guo & Company Law Corporation". During her examination in chief, the Respondent's counsel asked about her knowledge of Guo & Company Law Corporation. In particular, the following exchange occurred:

Q There are some documents in Chinese which have a stamp that says Guo & Company Law Corporation. Is there such a thing as Guo & Company Law Corporation?

A "No. The company's name, we don't have such a company, and we don't have the stamp.

Q Does your office in Beijing have any stamp that they use for anything?

A No. No, we don't have stamps like that.

Q And do you know anything about how any stamp that says Guo & Company Law Corporation came to be prepared?

A No.

[152] We note that a certified translation into English of the Chinese language documents referenced above was in evidence at the Hearing, and no challenge was made to the accuracy of the translation.

[153] During cross-examination, the question or issue of the Respondent's knowledge about Guo & Company Law Corporation and her connection with it was canvassed. In particular, the following exchange occurred:

Q You, in fact, received $13,000 from (HZ) into your bank account; correct?

A Yes.

Q Some four months later you…put the 3,000 fee (*sic*) on your credit card; right? The application fee was on your credit card? Do you recall looking at that with Mr. Gruber?

A Yes, yes, on credit card.

Q Then below this it says Guo & Company Law Corporation. Do you see that?

A Yes. That company doesn't exist. It is not my company.

Q It appears there was a seal, and your name was being used, your bank account was being used and money was being paid to a personal

account of yours being administered by your sister in relation to this document; correct?

A This is not mine. The company is not mine.

[154] We have found earlier in these reasons that the IRA was an agreement between the Respondent and HZ for the provision of legal services in respect of HZ's application under the BC PNP. In the context of the $3,000 fee being placed on the Respondent's personal credit card with the name of the card holder being identified as Guo & Company Law Corporation, and given the unreliability of the Respondent's evidence discussed earlier in these reasons, we conclude it is reasonable to infer that any reference in documents in evidence in this Hearing to Guo & Company Law Corporation, was a reference to GLC.

[155] We conclude that the Respondent's representations to the Law Society that she did not know a company called Guo & Company Law Corporation, and it was not her company, were knowingly false. We again weighed the *Lyons* factors in the context of this false representation, including as they related to the gravity of the misconduct, and whether it occurred through *mala fides.* As with the other false representations we have found to have occurred as alleged in paragraphs 6(b), (d), (e), (f), (h) and (i), of the Citation while we are skeptical about the motivations of the Respondent in her misrepresentations to the Law Society - we do not conclude that these were made in bad faith, but instead reflect and form part of the Respondent's pattern of willful blindness to her professional obligations. In our view this conduct is a marked departure from that conduct the Law Society expects of lawyers under its regulatory jurisdiction, is a breach of Rule 3-5(7) of the Rules as well as contrary to rules 2.2-1 and 7.1-1 of the *BC Code*, and constitutes professional misconduct.

OVERVIEW OF CLOSING WRITTEN SUBMISSIONS OF COUNSEL ON THE QUESTION OF PROFESSIONAL MISCONDUCT ALLEGATIONS

[156] We acknowledge having considered all the written submissions of counsel, namely the Closing Submissions of the Law Society, dated July 21, 2023, the Closing Submissions of the Respondent, dated August 4, 2023, and the Reply Submissions of the Law Society, dated August 11, 2023. We thank counsel for their work and analysis in preparing the submissions, however, we shall not refer to all the submissions in these reasons.

[157] Law Society counsel submits that all the allegations in the Citation have been proven.

[158] Counsel on behalf of the Respondent correctly and helpfully submits that in considering the allegations in the Citation, we must determine whether the underlying conduct is proven to have contravened the Respondent's professional responsibilities, and if so whether it constitutes a marked departure from what the Law Society expects of its members. In this context, counsel for the Respondent submits that we may only rely on evidence found to be clear, convincing, and cogent. We agree with those submissions and observe that each case must be determined on its own evidence and circumstances.

[159] Counsel for the Respondent submits that many of the documents relied upon by the Law Society amount to hearsay evidence, and hence should not be relied upon at all.

[160] Counsel for the Respondent submits that many of the documents in the NTA have not been admitted to be authentic, or authenticated through other means, and hence are not reliable, or in some instances, should not be admissible.

[161] Counsel for the Respondent submits that banking records from China, upon which the Law Society seeks to have us rely, are not the Respondent's documents. Further, with respect to those banking records, counsel for the Respondent submits these cannot be found to be business records of the Respondent because she did not admit them to be so, and the Law Society did not call any witness to qualify them as business records.

[162] Counsel for the Respondent submits that entries on a GLC spreadsheet obtained from the records of GLC made an exhibit in the Hearing are hearsay because none of the Respondent's former employees were called to substantiate the information or entries in the spreadsheet.

[163] Counsel for the Respondent submits that the transcript of the Respondent's March 6, 2019, Law Society interview is *prima facie* hearsay, and to the extent the Law Society seeks to rely on the transcript for the truth of its contents, we should refuse to admit such evidence.

[164] In this context we are aware of the helpful guidance of the Court of Appeal in *British Columbia (Securities Commission) v. Alexander*, 2013 BCCA 111, at paragraph 63, where the court stated:

> In general, hearsay evidence that is relevant or logically probative to a material fact in issue (i.e., that demonstrates a connection between the evidence and a fact in issue) is admissible before administrative tribunals

> "where it can fairly be regarded as reliable". Procedural fairness requires that evidence be relevant and meet basic threshold reliability. …

[165] We are satisfied that to the extent any of the documentary evidence obtained from the Respondent's files relied upon by the Law Society may be hearsay - and challenged by the Respondent as inadmissible - we have the discretion to admit such evidence, and we do so because it is relevant, logically probative to a material fact in issue, and can be fairly regarded as reliable. Additionally, as in the example of the GLC client spreadsheet from the Respondent's files and records, such documents relied upon by the Law Society qualify in our view as business records admissible under section 42 of the *Evidence Act* [RSBC 1996] Ch.124 ("*Evidence Act*"). This is so because we are satisfied statements of facts in them are "statements" contemplated in the *Evidence Act* that could have been accepted with direct oral evidence, and they are, a) documents that were made or kept in the usual and ordinary course of the Respondent's business, and b) it was in the usual and ordinary course of the Respondent's business to record in the documents a statement of the facts at the time they occurred or within a reasonable time after that.

[166] We are also satisfied that the transcript of the March 6, 2019, interview between the Law Society investigator and the Respondent is an authentic document, and the transcript is an accurate portrayal of the questions and answers that occurred in the course of the interview. We have come to this conclusion because shortly after the interview occurred, the transcript was prepared, and the Law Society investigator wrote to the Respondent on April 30, 2019, requesting she comment on whether the transcript was incomplete or inaccurate in any way. The Respondent said in cross-examination at the Hearing that she did not remember the letter of April 30, 2019, and further that she did not review the transcript at the time because she did not have the energy or the time to do so. In this circumstance, there is no reasonable basis for us to be concerned that the transcript was other than an accurate and authentic record of the questions and answers that occurred during the March 6, 2019 interview.

[167] We have considered the Respondent's submission that to the extent we find the Respondent failed to properly abide by the Rules relating to trust accounting is professional misconduct, it effectively punishes the Respondent again for her failure to supervise her former accountant JL and amounts to "double jeopardy". The Respondent relies on *Law Society of BC v. Guo,* 2020 LSBC 52 ("*Guo 2020*"), where the Respondent was found to have committed professional misconduct for failing to supervise JL and facilitating the misappropriation of over $7.5 million from her trust account.

[168] We agree with the Law Society's submissions that the trust accounting misconduct in this matter is not the same conduct as was found in *Guo 2020.* Here, the transactions involved client funds deposited to the Respondent's personal bank account in China, a subject matter completely different than the misappropriation of client trust funds from the Respondent's trust account in Canada. The transactions differ, and no factual nexus exists. We find no "double jeopardy".

[169] With respect to the Respondent's credibility and weighing her evidence, counsel for the Respondent submitted that given there were no other witnesses called at the Hearing, the Panel need only assess the credibility of the Respondent as a witness; however, he adds that there is no evidence to measure the Respondent's answers against, besides the documentary record, to the extent the documentary record itself is properly in evidence.

[170] Counsel for the Respondent submitted that any question of the Respondent's credibility should be considered in light of four features, namely: 1) the unreliability of human memory; 2) the Chinese cultural concept of "Face"; 3) the Respondent was limited in her ability to provide oral testimony because English is her second language; and 4) the Respondent would have been foolish to attempt to mislead or deceive the Law Society about the contents of her physical files.

[171] With respect to enumerated feature 1) above, on the question of human memory being unreliable, counsel for the Respondent submitted that memory is, "frail, malleable and fallible"; and "any inconsistencies in the Respondent's evidence must be understood as a product of the frailty of human memory, rather than deliberate deception". In support of this submission, he referred to the United Kingdom decision of Leggatt, J. in *Gestmin SGPS SA v. Credit Suisse (UK) Ltd.*, [2013] EWHC 3560 (Comm) (15 November 2013), in which the judge discussed the unreliability of human memory, and his view that the legal system has not yet sufficiently absorbed emerging social facts on the subject.

[172] While we observe there has been a body of work published addressing the question of the reliability of witness memory and observation, we are satisfied that the various factors and processes discussed in *Bradshaw v. Stenner* referenced earlier in this decision are an accepted and reasonable framework for assessing the credibility of witnesses.

[173] With respect to enumerated feature 2), above, counsel for the Respondent submitted that "Face" is an important Chinese cultural concept and hence formed a cultural need in the Respondent of "saving Face" in order to avoid shame. In particular, counsel submitted, "The Respondent's desire to avoid shame is

culturally engrained and impacts the manner in which she responds to accusations and allegations".

[174] Counsel for the Respondent further submitted, "[w]e live in a pluralistic society, that calls for an exercise of sensitivity when making judgments about witness credibility. It is one thing to exercise judgment about the reliability of evidence in a non-judgmental way. It is another to condemn a witness based on cultural norms that may not provide an accurate lens on the witness's morality".

[175] We have the following observations in light of these submissions relating to enumerated feature 2), above.

[176] We agree ours is a pluralistic society that may in a particular case necessitate consideration of cultural, community, and individual experiences when assessing witness credibility. When the witness is a lawyer who is the subject of a Law Society citation however, it is the *conduct* of the lawyer that is required to be considered at a facts and determination hearing. It is a fundamental obligation of a lawyer to protect the public interest in the administration of justice, including meeting and following obligations of professional conduct, and it is a central obligation of a panel in a discipline hearing such as this to consider whether a lawyer's conduct has fallen below the standard the Law Society expects of lawyers.

[177] It is neither our intention, nor within our jurisdiction, to engage in any condemnation of the Respondent based upon her cultural norms or practices. It is however our view that cultural features, beliefs, or practices of individual lawyers cannot displace the uniformity of professional conduct standards expected of all lawyers.

[178] With respect to enumerated feature 3), above, at no time before or during the Hearing did the Respondent, counsel on her behalf, or counsel for the Law Society, suggest to us that her ability to give oral testimony was limited because English is her second language. Had we been informed of such a limitation, we would have enquired about its extent, and if necessary, we would have arranged for an interpreter to be present throughout the Respondent's testimony. It is too late in the process to raise this suggestion now, and accordingly we find it would be procedurally unfair and a breach of the rules of natural justice to consider this submission in the circumstances.

[179] With respect to enumerated feature 4), above, we do not find this submission to be a helpful consideration for us. Whether it would have been foolish for the Respondent to attempt to mislead or deceive the Law Society investigation is not relevant and does not provide assistance as a basis for considering any

inconsistencies, lack of reliability, or lack of credibility, in the Respondent's evidence.

DECISION/CONCLUSION

[180] We find that the Law Society has proven all the misconduct alleged against the Respondent in the Citation except for allegations 6(a), (c), (g) and 7 of the Citation that were abandoned.

[181] We further find that this misconduct reflects a marked departure from that conduct the Law Society expects of lawyers under its regulatory jurisdiction and constitutes professional misconduct. For the reasons stated earlier in this decision, we decline to record a finding of professional misconduct with respect to allegation 3(b) of the Citation.