2025 LSBC 23
Hearing File No.: HE20220012
Decision Issued: August 15, 2025
Citation Issued: April 25, 2022

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL

HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

LAWYER 21

RESPONDENT

DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION

Hearing dates:	February 26 to 29, 2024 May 7, 2024
Written submissions:	November 19, 2024 February 9, 2025
Panel:	Michael F. Welsh, KC, Chair Karen Kesteloo, Public representative Kate Saunders, KC, Lawyer
Discipline Counsel:	Mandana Namazi Lisa Low
Counsel for the Respondent:	Richard C. Gibbs, KC

INTRODUCTION

[1] The Respondent's mother in Nanjing, China could no longer live alone as her health was failing. In 2017, the Respondent, who practises law in Vancouver, decided to buy a home for her mother and herself in Nanjing (the "Nanjing property") and to move there to live with and care for her mother.

[2] In the course of the transactions in BC and China for the funding and purchase of the Nanjing property, the Respondent used one of her trust accounts to hold and disburse funds needed for the transaction. That she did so, and how she did it, led to the Citation.

[3] The Citation alleges:

> 1. Between approximately December 2017 and February 2018, on your file [file number], purportedly in relation to personal property purchases in China, you used your firm's trust account to receive some or all of $3,139,000, or disburse some or all of $3,139,000, or both, as set out in Schedule "A" (collectively, the "Transactions")[1], and failed to do one or more of the following:
>
>   (a) provide any or [*sic*] substantial legal services in connection with the Transactions;
>
>   (b) make reasonable inquiries, or record the results of any inquiries, in relation to the circumstances of the disbursement of funds from the trust account, contrary to rule 3.2-7 of the *Code of Professional Conduct for British Columbia* ["*BC Code*"]; and
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>   (c) comply with the requirements of Law Society Rules 3-60(4) and 3-60(5), by ensuring one or both of the following occurred:
>
>   (i) funds deposited into the trust account were only for legal services; and
>
>   (ii) no more than $300 of your own funds were in the trust account at any one time.
>
> This conduct constitutes professional misconduct or a breach of the *Act* or Rules, pursuant to s. 38(4) of the *Legal Profession Act.*

[1] Schedule "A" to the Citation is attached at the end of these reasons.

[4] In light of the findings of the Review Board in *Law Society of BC v. Wang*,[2] a decision that was released following the hearing of this matter but before this decision, the Law Society on October 30, 2024 withdrew allegation 1(a).

[5] The Respondent admits service of the Citation in accordance with the requirements of Rules 4-19 and 10-1. The Respondent does not admit to any misconduct.

[6] As detailed in the reasons that follow, the Panel finds that the Law Society has failed to establish professional misconduct or any breach of the Law Society Rules (the "Rules") under the Rules as they existed at the time relevant to these matters.

FACTS

[7] Unless otherwise indicated, the facts set out in this section and the authenticity of the documents discussed below, are admitted or are otherwise uncontroversial. Controversial evidence of witnesses is dealt with later in these reasons.

[8] The Respondent grew up in Nanjing and came to UBC for law school. She was called and admitted to the bar in British Columbia on December 1, 2006. She opened her own law firm in 2007 where she has practised since. That law firm employs one additional lawyer, MC. At the times material to the events at issue in these proceedings, the Respondent's practice was focused primarily on residential real estate transactions, with some smaller amounts of commercial real estate transactions, commercial lending, and corporate matters. During those material times she was not licensed or authorized to practice law in China.

[9] The Respondent moved back to Nanjing on October 31, 2017 and has resided there since, maintaining her BC law practice remotely, with most of her staff located in her Vancouver office.

[10] According to her evidence, for the better part of the past decade, some $3 to $4 billion dollars went through her firm trust accounts annually on the legal transactions for which her firm was retained.

[11] A compliance audit, conducted in March 2019 and covering the time frame from November 1, 2017 to March 11, 2019, noted issues of apparent use by the Respondent of her firm trust account for personal transactions. The auditor referred these concerns to the Law Society professional conduct department for investigation.

[12] The details of the questioned transactions are these.

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[2] *Law Society of BC v. Wang*, 2024 LSBC 42 at paras. 52 to 73.

[13] The Respondent entered into a contract of purchase and sale in China for the Nanjing property, a copy of which, with English translation, was provided in evidence.

[14] In order to fund the purchase of the Nanjing property, the Respondent arranged for bridge financing on a townhouse she owned in Vancouver (the "Vancouver Townhouse") and arranged to draw on a mortgage placed against another residential property she owned in Vancouver (the "Vancouver House"). With those funds and other funds at her disposal, she then needed to exchange Canadian funds for Chinese renminbi (RMB) to make the purchase.

[15] She arranged for an exchange of Canadian dollars for RMB through a BC registered company, V, of which a personal friend, JL, was a director along with a former client of the Respondent, KD. The Respondent was originally going to exchange the funds directly with either or both of JL's and KD's families but was advised by JL that she should direct the funds to V instead and she did.

[16] The Respondent confirmed to the Law Society investigators that she needed money in China, she had good friends who needed money in Canada, and that is why she went ahead with the exchange. She stated to the Law Society investigators:

> I mean, they are my friends. And I know they need the money to develop their business in Vancouver, and I need money in China. So we say, okay, let's exchange the currency. They want the Canadian dollars. I have Canadian dollars, and I don't have many Chinese renminbis, [*sic*] so we just do the transaction directly through ourselves. And, of course, we are friends like over ten years, and we have some basic trust within each other.

[17] V was not at that time her client (although she later became its lawyer). She did a BC Online corporate search to confirm that JL and KD were directors of V.

[18] The Canadian funds were provided by trust cheque from one of the Respondent's trust accounts, and V in turn was to provide the RMB in China for the Respondent's use to purchase the property at an exchange rate of 5.3 RMB for each dollar. That trust cheque, issued December 11, 2017, was for $2.139 million Canadian.

[19] KD, a director of V, then deposited RMB to the Respondent's personal bank account in China in 10 installments of 1 million RMB and a final installment of 280,000 RMB from December 14 to December 26, 2017. The Respondent advised the Law Society that the funds received in China were paid in multiple installments due to the Chinese bank's limitation on amounts per transfer.

[20] The other lawyer in the Respondent's firm, MC, did the legal work for the mortgage on the Respondent's Vancouver House in May 2016 and on the bridge financing on the Vancouver Townhouse in December 2017. Bridge financing funds of $682,500 were paid by the bank to the Respondent's firm in trust. They were put into one trust account and then transferred to the trust account in which the Respondent was accumulating the funds for the Nanjing property purchase from a mix of personal funds (including amounts drawn under the Vancouver House mortgage), funds from her firm general account, and money from her boyfriend. It was from that account that the trust cheque for $2.139 million to V was issued.

[21] The Respondent stated to the investigators about this:

> The only — the mortgage — the mortgage funds is [*sic*] related to the legal service directly. The other monies are little bit far away from the legal service in B.C.

[22] In December 2017, the law firm opened a client file under the Respondent's name for this bridge financing and accumulation of purchase funds.

[23] The Respondent's explanation to the Law Society investigators of why she used her trust account was:

> I'm thinking because I did – I did conveyancing all the time and like from my understanding, like all people put their mortgage and their down payment in the trust account on their purchase of property. So I did the same. […] the only difference is if this is property in BC in Vancouver then there's no problem, but this is a property in a foreign country. […] One reason is like, for me like the ordinary [course] of business. And the second is easier for me to check the money. And maybe the third reason is that I'm not personally in Canada, so my office [can] help me to write a cheque out and help me do the deposit, so maybe easier for me to go through the trust account.

[24] In February 2018, the Respondent was contacted by JL about V returning $1 million of the funds to the Respondent's firm, and her firm in turn providing $1 million to KD's wife, YZ, instead. As the Respondent stated to the Law Society investigators:

> JL contacted me saying their company does not need that amount of money, so one million should be returned to KD's wife. I just follow their – his instruction. They give me like the bank draft, and I reissue a bank draft to YZ who is KD's wife. This is like a correction.

[25] She clarified to the investigators that JL had told her the return of funds to her trust account and their re-issuance to YZ was on the advice of his accountant as being better for their tax arrangements. As noted, the Respondent said that she cooperated with their instruction. She also confirmed that no legal service was involved and that to her it "sounded like" it was an accounting correction.

[26] She said to the investigators:

> I don't have much concern about it, because I have trust with [*sic*] them, and like we have business co-operation for many years. So I didn't think about their instruction, I just cooperate with them.

[27] On February 27, 2018, V provided the $1 million that was deposited by bank draft to the law firm trust account and that same day the law firm issued a trust cheque in that amount to YZ.

[28] The Respondent testified in direct, and in cross-examination was queried, about what steps her firm took to identify the funds from V as being from the same money initially paid to it from the firm trust account. She said she did not check herself but delegated to her office to confirm with the bank that it was the same money. It was suggested to her in cross-examination that she was making this evidence up, which she denied.

[29] This questioning took place later in the afternoon and when the hearing resumed the next day counsel for the Respondent provided an affidavit from JH, the bookkeeper of the Respondent.

[30] Counsel for the Law Society objected to admission of the affidavit. The Panel held that it was admissible as it was relevant and not subject to any exclusionary rule. The Panel further held that the deponent, JH, could be called for cross-examination at the request of the Law Society. Law Society counsel declined to make this request. The Panel concluded that the circumstances under which the affidavit was produced and its contents go to the factual weight and the legal significance to be given that evidence. This is analyzed later in these reasons.

[31] In the affidavit, JH states that about a week before the $1 million was paid by V, the Respondent telephoned him to advise that this might occur and that the funds would then be paid out again to YZ. He states the Respondent requested he call V's bank to verify the funds being paid out were from the $2.139 million paid in. JH said he confirmed this, and that the $1 million would be a return from the funds the Respondent paid from trust, as V had maintained over a $1 million balance on account in the interim.

[32] Attached to JH's affidavit are account statements from the V bank account obtained either the morning the affidavit was made or the evening before. The statements confirm this evidence, showing the account maintained a balance of some $1.7 million from when the trust cheque went in until the February 27, 2018 payment went out.

[33] In submissions requested by the Panel in light of the *Wang* decision, the Respondent's counsel referenced a dispute that apparently later arose between the Respondent and JH but there is no evidence before the Panel on which to assess the potential consequences of this dispute, and neither the Law Society nor the Respondent sought to reopen the hearing to provide evidence. The Panel addresses the additional submissions later on this decision.

ANALYSIS OF THE ALLEGATIONS AGAINST THE RESPONDENT

Burden and standard of proof

[34] The Law Society bears the onus of proving the professional misconduct alleged in the Citation on the balance of probabilities: *Foo v Law Society of British Columbia*.[3] The evidence must be clear, convincing, and cogent to meet this standard of proof: *F.H. v. McDougall*.[4]

Professional misconduct vs. a breach of the *Act* or Rules

[35] Professional misconduct occurs when the weight of the evidence shows a "marked departure from that conduct the Law Society expects of its members": *Law Society of BC v. Martin*[5]; *Law Society of BC v. Lawyer 12*.[6] To determine whether there has been a marked departure from the conduct expected of a lawyer, the panel considers the appropriate standard of conduct expected of a lawyer, and then determines if the lawyer's conduct falls markedly below that standard. The appropriate standard is determined by considering the requirements of the *Legal Profession Act* (the "*Act*"), the Rules and the *BC Code*, and 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 turns on its own facts: *Law Society of BC v. Kim*.[7]

[3] *Foo v. Law Society of British Columbia*, 2017 BCCA 151 at para. 63.
[4] *F.H. v. McDougall*, 2008 SCC 53, [2008] 3 S.C.R. 41 at para. 46.
[5] *Law Society of BC* v. Martin, 2005 LSBC 16 at para. 171.
[6] *Law Society of BC* v. Lawyer 12, 2011 LSBC 35 at para. 42.
[7] *Law Society of BC* v. *Kim*, 2019 LSBC 43 at para. 45.

[36] Whether lapses by a lawyer meet the test for professional misconduct or are instead a breach of the *Act* and Rules has been elucidated in several cases, one of which is *Law Society of BC v. McKinley*,[8] where the panel set out the test as:

> [33] In *Law Society of BC v. Lyons*, 2008 LSBC 9, the panel considered the difference between a finding of breach of the *Act* or Rules and a finding of professional misconduct and held:
>
> > [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.
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> [34] To make findings of professional misconduct with respect to allegations in the Citation involving Law Society Rules, the panel should determine whether the facts, as made out, disclose a marked departure from that conduct the Law Society expects of lawyers, in reference to the factors articulated in *Lyons*.

[37] As also stated in a 2023 decision, *Law Society of BC v. Guo*:[9]

> [143] Where the impugned conduct does not meet the test for professional misconduct, it is open to a panel to find that the respondent's actions have nevertheless resulted in a breach of the *Act* or Rules where the conduct is not insignificant and arises from insufficient attention being paid to the administrative requirements of a practice (*Lyons* at para. 32).

[8] *Law Society of BC v. McKinley*, 2019 LSBC 20.
[9] *Law Society of BC v. Guo*, 2023 LSBC 9.

[38] As noted above, the Law Society has withdrawn allegation 1(a). The Panel now turns to the remaining elements of the Citation.

> **Allegation 1(b): the Respondent used her firm's trust account for the Transactions, and failed to make reasonable inquiries, or record the results of any inquiries, in relation to the circumstances of the disbursement of funds from the trust account.**

[39] This allegation, as worded, deals with how well the Respondent investigated and tracked to whom funds from her trust account were provided, as required by rule 3.2-7 of the *BC Code*. It reads that "[a] lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud."

[40] The Panel begins with the First Transaction in late 2017 leading to the purchase of the Nanjing property.

[41] In that first set of transactions, there is no factual dispute about where the funds deposited came from. They came from the Respondent through the mortgage funds, transfers from her general account, other personal funds and the gifted funds as noted earlier.

[42] There is also no factual dispute about to whom they were paid out. They went to V which, in turn through its director KD, provided her personally with RMB in China.

[43] With both the deposit of the funds and their disbursal, the factual record is clear and the evidence supports that record. The Respondent knew and kept track of exactly what went in and what went out. Whether the source of the RMB paid personally to her in China may be questionable is not part of that equation under the Citation wording.

[44] With the Second Transaction, as noted below in the analysis under the next allegation, the Panel finds that the Respondent and her firm knew the source of the funds coming in and the identity of the person to whom they were paid out. As discussed further later in the decision, the funds were from the ones her firm earlier paid out to V that were returned, and the person to whom they were paid was personally and well known to the Respondent.

[45] The Panel concludes that, with respect to both the First and Second Transactions, the Respondent knew the source of the funds and to whom and for what purpose they were disbursed.

[46] As to recording the results of the inquiries before disbursement, the Panel finds that, as noted in paragraph 16 earlier, the Respondent did a corporate search of the

company V before payment out of her trust account, and that YZ was someone she had known for a number of years. She knew the cheque recipients. The cheques themselves record to whom they were made.

[47] It is important to note that there is no standalone requirement under the *BC Code* to "make reasonable inquiries, or record the results of any inquiries, in relation to the circumstances of the disbursement of funds from the trust account". The underlying rationale for the allegation here of not reasonably making and recording inquiries and their results is, under the *BC Code* rule cited, so as not to "engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud". With that underlying context, and on the facts as found, the Panel concludes the Law Society has not established that the Respondent's failure to more thoroughly record the results of her inquiries with respect to the First and Second Transactions results in a breach of this *BC Code* rule.

[48] Accordingly, the Panel dismisses allegation 1(b).

Allegation 1(c): the Respondent used her firm's trust account for the Transactions, and failed to comply with the requirements of Law Society Rules by ensuring one or both of the following occurred:
(i) funds deposited into the trust account were only for legal services; and
(ii) no more than $300 of her own funds were in the trust account at any one time

[49] In a memorandum dated November 15, 2024, the Panel sought additional submissions from the parties on how the *Wang* decision potentially affected this and the other remaining allegations in the Citation. The memorandum asked the parties:

> The Panel has received the Memo from counsel for the Law Society that it is no longer advancing allegation 1(a). The Panel finds that the conclusions in the *Wang* decision at paras. 52-73 may also have relevance to allegation 1(c)(i), and seeks submissions from counsel.
>
> Specifically, while *Wang* states that, at the times relevant to this case, there was no "bright line" restricting deposits to situations where they are directly related to legal services, it also notes that under the Rules as they then stood, lawyers were obliged to make appropriate inquiries to ensure their trust accounts were not being misused, and were instead used for legitimate commercial purposes. As the Board states at para. 69:
>
> > [69] The corollary of this must be that a request to use a trust account, without seeking legal services was, at the time, a red flag that ought to

> have caused the lawyer to question whether they were being unwittingly used as a dupe in a criminal or fraudulent transaction. But there was not an absolute prohibition against use of a lawyer's trust account without directly related legal services. And it follows that if the lawyer made reasonable inquiries and was reasonably satisfied the transaction was legitimate (objectively speaking) the lawyer could complete the transaction.

In this case there were two instances of funds deposited into trust. The first was from the accumulation of funds by the Respondent for the property purchase in China. The second was the deposit from V.

The definition of trust funds at the time was:

> "trust funds" includes funds received in trust by a lawyer acting in the capacity of a lawyer, including funds
>
> > (a) received from a client for services to be performed or for disbursements to be made on behalf of the client, or
> >
> > (b) belonging partly to a client and partly to the lawyer if it is not practicable to split the funds.

The issues on which the Panel seeks submissions are:

i. Did the funds deposited in each case come within the definition of "trust funds" under the applicable Rule at the times of the deposits?

ii. Did the Respondent make reasonable inquiries and was she reasonably satisfied the transaction was legitimate (objectively speaking) so that she could complete each of the transactions (the currency exchange with V for the property purchase and the deposit back from V and payment out to YZ)?

[50] In its submissions the Law Society stated that with respect to the initial $2.139 million disbursement to V, it was no longer pursuing this transaction as part of this allegation. However, in relation to the Respondent's actions on February 27, 2018, in depositing $1 million from V into her law firm's trust account and, on the same day, disbursing $1 million from her trust account to YZ, the Law Society continued to submit that this is a breach of Law Society Rule 3-60(4) and amounts to professional misconduct.

[51] The crux of its submission is that the Respondent, in taking into trust the $1 million, was not acting as a lawyer receiving funds from a client, as V was not at the time her client. As the Law Society puts it:

> [V] did not require a lawyer to achieve the transfer of funds sought. As set out by the review board in *Law Society of* [BC] *v. Wang*, "legal services must be defined in a matter that distinguishes them from services provided by people who are not lawyers".[10] Therefore, as a lawyer was not required to carry out the transfer of funds, the Respondent was not acting in the capacity of a lawyer when she transferred the money. Rather, she was performing purely a banking function.

[52] This receipt of funds that were not "trust funds" was, it submits, professional misconduct.

[53] Counsel for the Respondent, after being granted repeated extensions of time, made reply submissions in February 2025. The focus of that submission is on the definition of "trust funds" at the time which used the word "includes" and "including" ("trust funds" *includes* funds received in trust by a lawyer acting in the capacity of a lawyer, *including* funds [etc.]). Counsel submits that as a matter of statutory interpretation, use of those terms means that legitimate use of a trust account can also include receipt of funds when not acting in the capacity of a lawyer and is not limited to funds for legal services or related disbursements.

[54] Counsel quotes from the SCC case *of National Bank of Greece (Canada) v. Katsikonouris,* where the court states that the word "include" in a statute is a term of extension, designed to enlarge the meaning of the preceding words, and not to limit them.[11]

[55] Counsel also points out that when the Rule was amended the word "includes" was replaced by the word, "means" and that in the practice resource by which the Law Society explained this change, it stated that by changing the wording the definition was "narrowed so that funds received that are not directly related to legal services are not trust funds."[12]

[56] From this he submits that the inferential conclusion is that the definition of trust funds as it stood was not exhaustive and was not limited to funds directly related to providing legal services or funds otherwise received while acting in the capacity of a

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[10] *Wang*, at para. 49.
[11] *National Bank of Greece (Canada) v. Katsikonouris*, 1990 CanLII 92 (SCC) at p. 1041.
[12] Law Society of BC, Practice Resource, "Highlights of Changes to Trust Account and Cash Rules", July 2019, (https://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/highlights-ChangestoTrustAccountandCashRules.pdf).

lawyer. As *Wang* states, there was no "bright line" under the former rule as there is with the present one.

[57] The Panel accepts this inference as correct in law at the time the subject Rule was in effect.

[58] In light of the Law Society's position, the Panel only considers the Second Transaction, namely the refund to trust from V and payment out to YZ.

[59] The Panel begins with an analysis of what the Respondent and her firm knew about the source of the funds from V. This is relevant for the reasons noted in paragraph 69 of *Wang* quoted earlier.[13] If the funds were not for legal services or disbursements, then a "red flag" may be raised that requires the lawyer to make "reasonable inquiries" and be "reasonably satisfied" that "the transaction was legitimate".

[60] As the Law Society notes in its submissions, it is troubling that in her evidence at the hearing, the Respondent referenced inquiries into the source of funds that she apparently forgot or overlooked when the Law Society interviewed her, and that were only recalled by the Respondent while she was under cross-examination at the hearing. It is also of some concern that her former bookkeeper, JH, according to his affidavit, only recalled making the inquiries on the Respondent's behalf when the subject was raised with him during that overnight period during the hearing.

[61] The Panel has carefully considered what if any weight to give that evidence of the Respondent and in the JH affidavit in these circumstances, particularly given the reference in the Respondent's supplementary submission of a dispute with JH that subsequently arose. But, as noted there is no proper evidence before the Panel on what happened with that dispute or how that affects JH's evidence. Ultimately, with some reservations, the Panel accepts that evidence.

[62] When weighing evidence there are established principles to apply. The most often quoted in these decisions is that of inherent plausibility first articulated by the BC Court of Appeal in *Faryna v. Chorny* [14] that, "[i]n 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".

[63] Another factor is stated in *Bradshaw v. Stenner*: [15]

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[13] See paragraph 48 above.
[14] *Faryna v. Chorny*, 1951 CanLII 252, [1952] 2 DLR 354 (BCCA) at p. 357.
[15] *Bradshaw v. Stenner*, 2010 BCSC 1398.

> [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. … The inability to produce relevant documents to support one's case is also a relevant factor that negatively affects credibility. …

[64] In this case, the evidence of JH is bolstered by the banking records of V that show that the funds returned from its account to the trust account of the Respondent's firm were from the monies deposited to the V account from the Respondent's trust account.

[65] That documentary evidence, along with the uncontroverted and unchallenged sworn evidence of JH that he did that verification in February 2018 and was told by the bank manager that at all times since the trust deposit, V had an account balance exceeding $1 million, has sufficient internal consistency to be accepted on a balance of probabilities.

[66] With the acceptance of that evidence and our previous findings, the Panel finds that the Law Society has not established that the Respondent failed to make reasonable inquiries. She could be reasonably satisfied that the source of funds returned by V were those originally sent from her own trust account.

[67] With respect to the direction to pay it to YZ, whom the Respondent knew was the wife of KD, she should have had that direction in writing, but a lawyer may direct a payment to a third party on the direction of the party entitled to the funds in trust. In any event, the payment out is not contained in this allegation in the Citation.

[68] The Panel finds that the Respondent was acting in a good faith manner in this transaction, but despite this finding of good faith on her part, this Second Transaction had little to tie it to the legal work done months before by her firm.

[69] The Panel accepts the Respondent's evidence that she considered the Second Transaction as part of a continuing transaction related to the process of obtaining the RMB and making the Nanjing purchase. Given that the Rule allowed for situations where trust accounts could receive funds into trust outside that lawyer acting in the capacity of a lawyer where reasonable inquiries were made to be satisfied the funds' source was legitimate, the Panel concludes that there was no breach of the Rule as it then stood and no professional misconduct is established.

[70] While we find she was somewhat naïve, the Panel does not find that the Respondent's conduct falls markedly below the standard expected of a competent lawyer in these circumstances.

[71] We therefore find that the Law Society has not established professional misconduct or a breach of the *Act* or Rules pursuant to s. 38(4) of the *Legal Profession Act* with respect to allegation 1(c)(i).

[72] This leaves the issue of the $300 in allegation 1(c)(ii). The reason for this Rule is to allow a lawyer or law firm to keep up to $300 in a trust account indefinitely to cover unexpected bank charges or administrative fees that would otherwise potentially result in a trust shortage.

[73] The Citation alleges that the Rule was breached as the Respondent failed to comply with the requirements of the Law Society Rules by "ensuring no more than $300 of her own funds were in the trust account *at any one time*" (emphasis added). This is not how the Rule is worded. It states, "A lawyer *may maintain* in a pooled trust account up to $300 of the lawyer's own funds" (emphasis added).

[74] As her counsel submits, the word "maintain", while not defined in the *Act* or the Rules, is synonymous with "keep" or "continue" or "preserve" (quoting from the Merriam-Webster Dictionary) and carries with it a sense of more than a "one-off" or discrete event and is instead a continuing or prolonged state of affairs. That is not the same as "at any one time" which denotes a discrete moment in time.

[75] The Rules contemplate such discrete events that can significantly exceed $300; for instance, requiring a lawyer to pay personal or firm funds into trust to eliminate a trust shortage (Rule 3-74). This is very different from maintaining amounts exceeding $300 in trust and was specifically required in the Rules at the time (Rule 3-60(4)).

[76] Given that the Respondent did not maintain the purchase funds used in the First Transaction in her trust account, but instead deposited and then withdrew them in relatively short order, the Panel sees this Rule as inapplicable to the facts of this case.

[77] In conclusion, the Panel again concludes that the Law Society has not proved professional misconduct or a breach of the *Act* or Rules pursuant to s. 38(4) of the *Legal Profession Act* as alleged in allegation 1(c)(ii) of the Citation.

DISPOSITION

[78] The Panel finds the outstanding allegations, allegations 1(b), 1(c)(i) and 1(c)(ii), have not been established and consequently dismisses the Citation.

[79] If the parties are unable to reach an agreement between them on costs, either party may apply to the Panel, within 30 days of the date this decision is issued, to address the issue of costs.

SCHEDULE "A" – LIST OF TRANSACTIONS ON FILE

Date	Deposit Amount	Withdrawal Amount	Type	Ledger Description
December 8, 2017	$30,000	------	Draft	DP TD DFT
December 8, 2017	$20,000	------	Draft	DP
December 12, 2017	$682,500	------	Cheque	FR RBC TRUST
December 12, 2017	$980,000	------	Cheque	DP FROM CLIENT
December 12, 2017	$212,500	------	Cheque	DP FROM CLIENT
December 12, 2017	$200,000	------	Cheque	DP FROM CLIENT
December 12, 2017	$7,500	------	Cheque	DP FROM CLIENT
December 12, 2017	$6,500	------	Cheque	DP FROM CLIENT
December 12, 2017	------	$2,139,000	Cheque	V. NET MP
February 27, 2018	$1,000,000	------	Draft	DEPOSIT
February 27, 2018	------	$1,000,000	Cheque	YZ NET MP