

2023 LSBC 38
Hearing File No.: HE20200092
Decision Issued: September 7, 2023
Citation Issued: November 4, 2020
Citation Amended: January 5, 2023

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

NEAL BURTON WANG

RESPONDENT

**DECISION OF THE HEARING PANEL
ON FACTS AND DETERMINATION**

Hearing dates: November 21, 22 and 23, 2022
January 5, 6, April 19 and 20, 2023

Panel: Thomas L. Spraggs, Chair
David Dewhirst, Public representative
Bruce A. LeRose, KC, Lawyer

Discipline Counsel: William B. Smart, KC
Susan J. Humphrey

Counsel for the Respondent: Joven Narwal

OVERVIEW AND BACKGROUND

[1] In a citation authorized by the Discipline committee on October 29, 2020, the Law Society has made allegations against Neal Burton Wang, the “Respondent”. The citation was issued on November 4, 2020, and amended on January 5, 2023 (the “Citation”). The allegations are as follows:

Nature of conduct to be inquired into:

1. Between approximately June 2016 and November 2016, on behalf of your client AK, you used your trust account to receive and disburse a total of approximately \$163,705.94 (the “AK Trust Matter”), and you failed to do one or more of the following:
 - (a) provide substantial or any legal services in connection with the AK Trust Matter;
 - (b) make reasonable inquiries about the circumstances of the AK Trust Matter; and
 - (c) make a record of the results of any inquiries made about the circumstances of the AK Trust Matter.

This conduct constitutes professional misconduct, contrary to section 38(4) of the *Legal Profession Act*.

2. Between approximately June 2016 and November 2016, in relation to your client AK, you failed to obtain, record, and verify client identification information, contrary to one or more of Rules 3-100, 3-102, and 3-105 of the Law Society Rules, then in force.

This conduct constitutes professional misconduct or a breach of the Act or rules, contrary to section 38(4) of the *Legal Profession Act*.

3. Between approximately August 2017 and August 2018, on behalf of your client R Inc., you used your trust account to receive and disburse a total of approximately \$43,265.26 (the “R Inc. Trust Matter”), and you failed to do one or more of the following:
 - (a) provide substantial or any legal services in connection with the R Inc. Trust Matter;

- (b) make reasonable inquiries about the circumstances of the R Inc. Trust Matter; and
- (c) make a record of the results of any inquiries made about the circumstances of the R Inc. Trust Matter.

This conduct constitutes professional misconduct, pursuant to section 38(4) of the *Legal Profession Act*.

4. Between approximately August 2017 and August 2018, in relation to your client R Inc., you failed to obtain, record, and verify client identification information, contrary to one or more of Rules 3-100, 3-102, 3-103, 3-104, 3-105, and 3-106 of the Law Society Rules, then in force.

This conduct constitutes professional misconduct or a breach of the Act or rules, contrary to section 38(4) of the *Legal Profession Act*.

5. Between approximately August 2017 and June 2018, in relation to one or both of your clients L Investments and A Corp., you used your trust account to receive and disburse a total of approximately \$3,193,792.37 (the “L Investments Trust Matter”), and you failed to do one or more of the following:
 - (a) provide substantial or any legal services in connection with the L Investments Trust Matter;
 - (b) make reasonable inquiries about the circumstances of the L Investments Trust Matter; and
 - (c) make a record of the results of any inquiries made about the circumstances of the L Investments Trust Matter.

This conduct constitutes professional misconduct, pursuant to section 38(4) of the *Legal Profession Act*.

6. Between approximately August 2017 and June 2018, in relation to one or both of your clients L Investments and A Corp., you failed to obtain, record, and verify client identification information, contrary to one or more of Rules 3-100, 3-102, 3-103, 3-104, 3-105, and 3-106 of the Law Society Rules, then in force.

This conduct constitutes professional misconduct or a breach of the Act or rules, contrary to section 38(4) of the *Legal Profession Act*.

7. Between approximately August 1, 2016, and June 12, 2018, you failed to maintain accounting records in compliance with the provisions of Part 3 Division 7 of the Law Society Rules and, in particular, you did one or more of the following:
- (a) withdrew or authorized the withdrawal of trust funds when the funds were not properly required for payment to or on behalf of a client, by withdrawing bank fees directly from your trust account, contrary to Rule 3-64(1) of the Law Society Rules;
 - (b) made payments from trust funds when your trust accounting records were not current, contrary to Rule 3-64(3) of the Law Society Rules;
 - (c) made or authorized the withdrawal of funds from your trust account by way of online transfers, email transfers, ATM withdrawals, and/or bank drafts, contrary to Rule 3-64(4) of the Law Society Rules;
 - (d) withdrew or authorized the withdrawal of trust funds for the payment of your fees, without first preparing and immediately delivering a bill for those fees to your clients, contrary to Rule 3-65 of the Law Society Rules;
 - (e) failed to maintain a book of entry or data source showing all trust transactions, and in particular the source and form of the funds received and the name of each recipient of money out of trust, contrary to Rules 3-68(a)(ii) and (v) of the Law Society Rules;
 - (f) failed to maintain minimum general account records, and in particular a book of original entry (general ledger), contrary to Rule 3-69(1)(a) of the Law Society Rules;
 - (g) failed to record each trust or general transaction promptly, and in any event not more than 7 days after a trust transaction, contrary to Rule 3-72(1) of the Law Society Rules;
 - (h) failed to prepare monthly trust reconciliations for your pooled trust account within 30 days of the effective date of the reconciliation or at all, contrary to Rule 3-73 of the Law Society Rules; and
 - (i) delivered one or more bills to your client(s) that were not signed, or accompanied by a letter signed, by or on your behalf, contrary to section 69(3) of the *Legal Profession Act*; and

- (j) delivered one or more bills to your client(s) that did not contain a reasonably descriptive statement of the services with a lump sum charge and a detailed statement of disbursements, contrary to section 69(4) of the *Legal Profession Act*.

This conduct constitutes professional misconduct or a breach of the Act or Rules, pursuant to section 38 of the *Legal Profession Act* [the “Act”].

NOTICE TO ADMIT AND ADMISSIBLE DOCUMENTARY EVIDENCE

- [2] On July 7, 2022, the Law Society served a Notice to Admit (“NTA”), seeking the Respondent’s admission to the authenticity of 17 documents and 234 factual admissions on July 7, 2022. The Respondent provided a response to the Law Society’s NTA on October 10, 2022.
- [3] Particulars of each fact or document admitted or denied for the truth of the fact or the authenticity of the document have been considered.
- [4] In addition to the NTA, the Law Society has provided three binders containing documentary evidence they seek to rely upon in the Hearing of the Citation. The admissible evidence from this binder has been fully considered by the Panel.
- [5] The Respondent admits the facts as alleged in subparagraphs (a), (c), (e), (f), (g), (h) and (i) of allegation 7 in the Citation.

THE RESPONDENTS PRACTICE AND EXPERIENCE

- [6] The Respondent has been a member of the Law Society of B.C since 1999. The Respondent has worked for large national firms with a focus on complex international commercial transactions and investment. At the time of the Citation, the Respondent was working between firms on his own. The Respondent was candid about his lack of experience pertaining to his awareness relating to the Rules and his obligations under the Rules for client identification and trust accounting. The Panel finds that this lack of experience was likely the genesis for the events and transactions that culminated in these proceedings.
- [7] The Rules surrounding trust accounting and strict compliance with them are designed to protect the public against lawyers becoming dupes of money launderers or an actual party to money laundering activities.

- [8] The Panel accepts that the Respondent has worked and demonstrated competence in complicated cross-border financing and deal flow structuring. This area of practice is highly specialized. The Panel took this context into account when assessing the evidence in relation to the allegations in the Citation. While some of these allegations deal with large sums of cash deposited into the Respondent's trust account, the Law Society is not alleging that the Respondent facilitated any money laundering. Instead, the allegation is that the Respondent failed to comply with Law Society Rules and to fulfil his professional gatekeeping responsibilities by permitting his account to be used without performing substantial legal services in connection with the financial transactions and without making inquiries about the source of the funds or the nature of the transactions to which the funds related.

ISSUES

- [9] This Panel must assess the evidence before it in relation to every allegation contained in the Citation. On the applicable legal standard as set out below, the Panel must determine whether the Law Society has proven the conduct as alleged in the Citation and, if so, whether such conduct in relation to allegations 2, 4, 6 and 7 amounts to professional misconduct or, as may apply, a breach of the *Act* or Rules pursuant to section 38(4) of the *Act*. The Law Society is seeking findings of professional misconduct in relation to allegations 1, 3 and 5. If the Law Society does not make out allegations to the requisite standard, the allegations must be dismissed.

LEGAL FRAMEWORK

Onus and Standard of Proof

- [10] The Law Society bears the onus of proving, on a balance of probabilities, the facts alleged in the Citation and whether the proven facts constitute professional misconduct in relation to allegations 1, 3 and 5, or whether they constitute professional misconduct, or a breach of the *Act* or Rules, in relation to allegations 2, 4, 6 and 7.

Test for Professional Misconduct

- [11] There is no statutory definition of professional misconduct. However, it is well settled by prior decisions that professional misconduct is conduct that is a marked departure from that conduct reasonably expected of lawyers. In *Law Society of BC*

v. *Seeger*, [2022 LSBC 8 \(CanLII\)](#), 2022 LSBC 08, at para. 15, the definition of professional misconduct is identified and stated as follows:

Professional misconduct is a marked departure from that conduct the Law Society expects of lawyers: *Law Society of BC v. Martin*, [2005 LSBC 16](#), at para. [171](#). The test is objective. The panel must “consider the appropriate standard of conduct expected of a lawyer, and then determine if the lawyer falls markedly below that standard”: *Law Society of BC v. Edwards*, [2020 LSBC 21](#), at paras. [44 to 46](#).

Professional Misconduct or a Breach of the Rules

[12] Whether lapses by a lawyer meet the test for professional misconduct or are instead a breach of the Rules has been elucidated in several cases, one of which is *Law Society of BC v. McKinley*, 2019 LSBC 20, 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.

[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*.

Credibility and Reliability

- [13] The Respondent testified in these proceedings and was cross-examined by the Law Society. The Law Society directly challenges the Respondent's testimonial reliability and credibility.
- [14] The Law Society submits that the Respondent's evidence should not be believed.
- [15] The Panel finds helpful guidance in the determination of how to properly consider the issue of credibility and reliability in the authorities set out below.
- [16] The relevant criteria for credibility and reliability can be found in *Bradshaw v. Stenner*, 2010 BCSC 1398, at para. 186, aff'd 2012 BCCA 296. They include the firmness of the witness's memory, the ability of the witness to resist the influence of interest in modifying his recollection, whether the witness's evidence harmonizes with independent evidence that has been accepted, whether the witness changes his evidence during direct examination and cross-examination (or between examination for discovery and trial) or is otherwise inconsistent in his recollections. Other factors are whether the witness's evidence seems generally unreasonable, impossible, or unlikely, and the witness's demeanour. The fundamental question is whether the witness's evidence is consistent with the probabilities affecting the case as a whole.
- [17] In *Bradshaw v. Stenner*, at paras. 187 and 188, the court further stated that, in addition to using the test of inherent plausibility articulated in *Faryna v. Chorny*, 1951 CanLII 252, [1952] 2 DLR 354 (BCCA), it is often helpful to evaluate testimony based on its consistency with that of other disinterested witnesses and with documentary evidence.
- [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.
- [18] In *Law Society of BC v. Cole*, 2021 LSBC 40, at para. 13, the hearing panel adopted this approach, noting that it had the advantage of numerous emails, letters

and other documents created at the time of the events to provide an accurate reflection of what had happened.

[19] The starting point in a credibility assessment is to presume truthfulness: *Van Halteren v. Wilhelm*, [1997] B.C.J. No. 1959, at para. 207, aff'd 2000 BCCA 2, at para. 15.

[20] *McCully v. Moss*, 2019 BCSC 81 provides that a finding of credibility and reliability is not all or nothing, a finding of unreliability on one aspect of evidence does not show that one is unreliable in all provided evidence. Justice Devlin provides a succinct description of this principle in paragraph 78:

However, it does not follow that because I find that Ms. McCully is neither credible nor reliable on one aspect of her evidence that I must also reject all of her evidence....

[21] The Panel must assess and weigh what is the likely truth. Where a witness may have a problem in recalling, scrutiny on the seriousness of the issue and the weight of the expected memory are weighed in conjunction with the Panel's ability to find the Respondent truthful. Sometimes a witness may have a selective memory, a form of diminished credibility, but that does not always equate to intentional deception.

[22] The Panel finds that the Respondent cannot be completely relied upon or believed on all issues. The impact of the Panel's finding on the Respondent's credibility and reliability is considered in relation to each allegation below.

ANALYSIS

Allegation One

[23] The Law Society alleges that:

Between approximately June 2016 and November 2016, on behalf of your client AK, you used your trust account to receive and disburse a total of approximately \$163,705.94 (the "AK Trust Matter"), and you failed to do one or more of the following:

(a) provide substantial or any legal services in connection with the AK Trust Matter;

(b) make reasonable inquiries about the circumstances of the AK Trust Matter; and

(c) make a record of the results of any inquiries made about the circumstances of the AK Trust Matter.

This conduct constitutes professional misconduct or a breach of the Act or rules, contrary to section 38(4) of the *Legal Profession Act*

- [24] The thrust of this allegation relates to the rules requiring a lawyer to only use their trust account where “substantial or any legal services” are provided.
- [25] In the circumstances relating to this allegation, AK approached the Respondent who then opened a trust account that was specifically used to accommodate two transactions proposed by AK. The Panel finds that the Respondent received \$75,000 by way of a bank draft from AK in August 2016 and disbursed those funds to AK the next day. The funds going in and out of the trust account over the period of a day was because a purported investment deal had fallen through. The Respondent then received \$88,705.94 from a Mexican source in October 2016 and disbursed \$50,000 of those funds to AK the next day. The balance of the funds were disbursed to AK in November. The funds were supposedly from the sale of assets in Mexico. The Respondent was not involved in the sale, nor did he have information about the nature of the assets or the source of the funds.
- [26] The Law Society submits that the Respondent did not perform substantial legal services in connection with either of these financial transactions. In support of its argument, it points to the fact that the Respondent’s client file consists of a single loose sheet of handwritten notes and a signed retainer agreement dated October 1, 2016. The Law Society also alleges the Respondent backdated invoices to demonstrate compliance with the Law Society trust accounting rules.
- [27] The Law Society asks the Panel to find the Respondent untruthful about the testimony relating to the (L Investments, R Inc., and AK) invoices as inherently improbable and inconsistent with the documentary evidence and the Respondent’s own testimony. The Law Society argues that the Respondent is not credible and has made misleading representations to the Trust Assurance Department, which he continues to advance before the Panel. The Law Society submits that with this lie, if the Panel finds it is a lie, the Respondent undermines his credibility regarding other allegations.
- [28] The Panel finds that the Respondent backdated this invoice as the account could not be invoiced on August 31, 2017, as instructions were received for the

assignment of a mortgage in September 11, 2017, via email. In addition, the Respondent emailed DC on November 21, 2017, attaching his invoice as well as a retainer agreement dated effective August 1, 2017, and that the Respondent had not been introduced to DC until September 6, 2017.

- [29] The Panel finds useful guidance from Justice Devlin in *McCully v. Moss, supra*. The import of this analysis is that the Panel does not need to infer that all evidence is tainted as a result of the above finding. The Panel weighs all the relevant considerations on each and every allegation and, as such, declines to make a general determination that the Respondent's credibility is undermined throughout.
- [30] The Respondent is experienced counsel and has worked in a number of large firms where the trust accounting was handled for him. It is unfortunate that, in an effort to reduce compliance problems with the Law Society through back-dating of documents, as the Panel finds, significant doubt is placed on the explanations of the Respondent that are contentious.
- [31] The Respondent testified that he did perform substantial legal services for AK. He states that the legal services for the funds that went in and out of the trust account in one day included extensive research and continual discussions with AK. The Respondent argues, like in *Law Society of BC v. Gurney*, 2017 LSBC 15, legal advice is an appropriate and essential part of legal services.
- [32] The Respondent also testified that there was another cannabis investment opportunity to which \$75,000 could have been applied which he stated also fell through the day after he had received the funds from AK. The Panel finds that there are problematic inconsistencies with the Respondent's position that the funds were provided back to AK, given that the Respondent believed these funds to be for some other investment opportunity.
- [33] Counsel for the Law Society argues that, if the Respondent and AK had been discussing various potential cannabis transactions to which the \$75,000 was to be applied, the logical course of action would have been for the Respondent to hold the funds until one of those investment opportunities came to fruition. The Panel agrees.
- [34] The Panel cannot accept the testimony of the Respondent in relation to the evidence on this point. The Panel does not accept that experienced counsel would have virtually no records to document or substantiate a file if the Respondent's contention were to be accepted as true.

- [35] The foregoing discussion of the relevant authorities makes clear that the Panel must consider all of the circumstances in assessing the credibility of the Respondent. The Respondent was evasive, aggressive, and contradictory in most, if not all, previous interactions with the Law Society, including the delivery of his testimony during the Hearing.
- [36] The Panel appreciates that an experienced lawyer being subjected to an investigation might experience some level of frustration. Accounting for some measure of expected defensiveness, the level of candor that might be expected in an administrative process for professional discipline was regrettably absent. The Law Society confronted the Respondent with evidence that directly contradicted his oral testimony.
- [37] The relevant test for assessing credibility found in *Ahonen v. Thauli*, 2013 BCSC 1607, relies on that of the reasonable person. When taking the whole of the evidentiary history and repeated failures of the Respondent, it becomes clear that the credibility of the witness is compromised. The Panel cannot completely trust that what the Respondent is saying is truthful, without the production of notes, documents or any other records to establish the legal work provided by the Respondent. The Panel does not accept the explanation of the Respondent and, even if the Panel did, the records fall below the requisite expectation for a lawyer in British Columbia.
- [38] The Respondent argues that the Law Society, in relation to allegation one, must establish that the Respondent: (a) did not provide substantial legal services in connection with the AK trust matter; (b) objectively had an obligation to make reasonable inquiries about the circumstances; (c) failed to make reasonable inquiries; and (d) failed to record the results of his inquiries. The Respondent submits that the Law Society must prove each of these elements or the allegation is dismissed.
- [39] In determining the merits of the allegation, the Panel finds that it is necessary to consider the meaning of “substantial legal services” within the context and purpose of the Rules.
- [40] Both the Law Society and the Respondent have emphasised that context is an important, if not essential, element to the Panel in making its determinations in relation to the allegations before us.
- [41] The Law Society submits that operating a trust account is a privilege that is entrusted to lawyers. Appropriate use of the trust account facilitates ethical and efficient commerce. Abuse of the Rules can cause great harm and an erosion of the

trust of the public and their expectation that lawyers will meet the expected standards for compliance. Compliance with the Law Society Rules is mandatory for lawyers. The risk of non-compliance is the perception of, and potential for, money-laundering.

- [42] The Interim report of the Commission of Inquiry into Money Laundering in British Columbia (the “Cullen Commission”), referring to the Maloney report which was prepared for the BC Minister of Finance in March 2019, found that money laundering and its effects corrode the very fabric of society and impact all spheres of a functioning democracy. One of the clear conclusions of the Cullen Commission is that, where money launderers gain a stronghold, democracy and the rule of law suffers
- [43] The Cullen Commission’s reports that money laundering is a significant problem demanding serious attention from government, law enforcement, and regulators. An enormous volume of illicit funds are laundered through British Columbia’s economy every year with significant negative impacts on the people living in this province.
- [44] Money laundering is connected to crimes including drug and human trafficking, and fraud that targets the most vulnerable members of society and destroys communities. There can be few things more destructive to a community than a governing regime that fails to resist those whose opportunities are unfairly gained at the expense of others.
- [45] For these reasons, the Law Society takes its responsibilities in the prevention of money laundering seriously, educating the profession on the harm involved and taking disciplinary action against those who fail to meet their responsibilities in respect of client identification and verification and as gatekeepers of their trust accounts.
- [46] The Federation of Law Societies of Canada (“FLSC”) provides a useful explanation of how money laundering occurs, how lawyers are targeted and how lawyers can avoid participating in money laundering in its report, Anti-Money Laundering and Terrorist Financing Working Group, “Guidance for the Legal Profession: Your Professional Responsibility to Avoid Facilitating or Participating in Money Laundering and Terrorist Financing” (the “FLSC Report”), February 19, 2019 at p. 3:

Criminal proceeds are typically laundered through a three-stage process: placement, layering and integration. In the placement stage, the launderer introduces the illegal profits into the financial system (for example, by

depositing cash with financial institutions changing currency at currency exchanges, or depositing funds into lawyer's trust accounts). In the layering stage, the launderer engages in a series of transactions to distance the funds from their source (for example, by creating trusts or shell companies, buying securities, or buying real estate). Finally, in the integration stage, the launderer integrates the funds into the legitimate economy, i.e., by investment into real estate or business ventures. Money launderers may try to involve lawyers at any of these stages.

Legal professionals are seen as gatekeepers within money laundering and terrorist financing systems because of their unique role in facilitating financial transactions. Specifically, legal professionals may be used to:

- Give an appearance of legitimacy to a criminal transaction;
- Facilitate money laundering through the creation of a company or trust, and/or purchase and sale of property; and
- Eliminate the trail of funds back to a criminal through the use of a professional trust account.

[47] The FLSC Report states, at p. 2:

Avoiding participation in money laundering and terrorist financing is rooted in knowing your client: their identity, their financial dealings in relation to your retainer, and any risks arising from your professional business relationship with them. When working with corporate clients, knowing your client means taking additional steps to ascertain ownership and control of the corporation, and routinely assessing the accuracy of your knowledge about them... finally, the fight against money laundering and terrorist financing requires you to be vigilant and exercise judgement about the use of your trust accounts, pursuant to established parameters.

[48] The Law Society since 1990 has regularly published and made available information for lawyers in an effort to guide them in recognizing and avoiding areas of risk that can be targeted by money launderers, and to remind them to be on guard against becoming a tool or dupe of unscrupulous clients.

[49] The FLSC Report, at p. 5, also provides the following helpful remarks to keep lawyers alive to the issue of money laundering, particularly as it relates to the use of shell companies:

Criminals are increasingly turning to shell companies to facilitate money laundering. Anonymous shell companies allow criminals to hide their identities, conceal the origin and flow of money, hide the identities of true beneficiaries, or enhance the perception of legitimacy. They are typically used during the “layering phase” of money laundering involving often complex financial transactions designed to hide illegal sources of funds.

Legal advisors must be aware of the risks when dealing with clients looking for assistance with products or transactions that would facilitate anonymity and allow beneficial owners to remain hidden without a reasonable explanation. While client identification and verification rules are essential to ensure that lawyers know their clients, it is imperative that lawyers and notaries also understand the facts relating to their retainers, particularly when a shell corporation is involved.

They must ask probing questions to ensure they understand the subject matter and objectives of their retainers, including:

- (i) whether there is a legitimate business or legal reason for using a particular corporate structure;
- (ii) who are the legal and beneficial owners of the property and business entities;
- (iii) who has control of the business and entities; and
- (iv) where it is unclear, what is the nature and purpose of complex or unusual transactions.

Legal advisors must be satisfied on an objective basis that every transaction is legitimate, prior to acting or continuing to act.

[50] A number of risk factors or suspicious circumstances that all lawyers should look out for are identified in the FLSC Report, at pp. 6-7, including:

- (a) Insufficient information is provided by the client to identify the beneficial owners of the corporation.
- (b) Third parties or intermediaries are involved, including in providing instructions.
- (c) The corporation has no or nominal assets, or assets consisting solely of cash and cash equivalents.

- (d) The corporation was incorporated in a jurisdiction that might enable anonymity.
- (e) The corporation's financial transactions occur in a jurisdiction that minimizes transparency or provides an environment more amenable to money laundering.
- (f) The lawyer is not asked to provide any substantial legal services in connection with the transaction.
- (g) The corporation's transactions appear inconsistent with the corporation's or the other party's profile/circumstances (e.g., age, income, geographic location, or occupation).
- (h) The client's business discloses the frequent involvement of beneficiaries located in high-risk, offshore financial centers.
- (i) Multiple high-value payments or transfers are made or instructed between shell companies with no apparent legitimate business purpose.
- (j) The corporation transacts from an offshore jurisdiction that is known to be secretive or restrictive.

[51] For its part, the Law Society of BC has implemented rules to guard against money laundering, including client identification and verification.

[52] The Respondent argues that the legal services for the funds that went in and out of the trust account in one day included extensive research and continual discussions with AK. The Respondent argues, as in *Law Society of BC v. Gurney, supra*, that legal advice is an appropriate and essential part of legal services.

[53] The Panel finds that the proposition of the Respondent must be filtered through the lens of the Panel's finding on credibility. The Panel cannot accept the testimony of the Respondent in relation to the evidence on this point. The Panel does not accept that experienced counsel would have virtually no records to document or substantiate a file if this proposition were to be accepted as true.

[54] More recently, in *Law Society of BC v. Kim*, 2019 LSBC 43, a hearing panel emphasized that the test for professional misconduct is not subjective:

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 [of Professional Conduct for British Columbia]*, 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.

[55] The requirement to reasonably document work performed is elemental to the legal profession and any failure to do so is a clear departure of the standard expected and required by the Law Society of British Columbia.

[56] As such, the Panel finds that the Respondent's conduct in relation to all counts found in allegation one is a marked departure from the conduct expected of a lawyer. The Law Society has proven professional misconduct in relation to allegation one.

Allegation Two

[57] The Law Society alleges that:

Between approximately June 2016 and November 2016, in relation to your client AK, you failed to obtain, record, and verify client identification information, contrary to one or more of Rules 3-100, 3-102, and 3-105 of the Law Society Rules, then in force.

This conduct constitutes professional misconduct or a breach of the Act or rules, contrary to section 38(4) of the *Legal Profession Act*.

[58] The Law Society submits that the only client identification or verification documentation relating to this file was a printout of the retainer agreement's acceptance page signed by AK and a copy of his BC driver's license along with business address, telephone number and email address. He did not record AK's home address or telephone number.

[59] The Law Society further argues that there is no indication of client identification prior to October 1, 2016. The significance of the date is that the transactions were performed without appropriate identification and verification.

[60] The Respondent, in relation to this allegation, argues that the context of the factual matrix involving the relevant transactions is of paramount importance. The Respondent had a close personal relationship with AK and, while the specific details were not documented, there was sufficient information to both identify and verify AK's identity.

- [61] The Respondent submits that there was reliance on the close personal and professional relationship between himself and AK, including that of Rule 3-102, which required that reasonable steps be taken to verify a client's identity through reliable, independent source documents, data or information which may include a driver's license. The Respondent argues that the Rule in place at the time was more flexible than the current Rule and that his previous relationship with AK over the years was sufficient to satisfy the requirements.
- [62] The client identification and verification rules are complex and, in the cases where your client is well known to you, may seem unnecessarily onerous. The purpose of the client identification and verification rules are, however, designed to prevent fraud and misuse of the privileges lawyers have in the operation of trust accounts. Strict compliance is required. As set out above, the trust account is a powerful tool for client protection, but, like many powerful tools it can be abused to detrimental effect. Most importantly, failure of lawyers to follow the trust accounting rules may erode the public's confidence in the profession generally.
- [63] Not all breaches of the Rules will amount to professional misconduct. The Panel finds, on the evidence as a whole, that the Respondent did have a close relationship with AK and that, while more could have been done to document the file, the Panel accepts the argument of the Respondent that he complied with the spirit of the Rules. The evidence of a close relationship with AK is uncontroversial. However, the Respondent did not strictly comply with the Rules. The Respondent had an independent duty under the Rules to verify his own clients. He did not do so.
- [64] Although AK was a longtime friend, former colleague and lawyer in good standing, the Respondent's failure to comply with client identification requirements fails to meet the requisite standard expected of lawyers in British Columbia.
- [65] These Rules have been put in place to ensure that lawyers protect themselves from fraudulent schemes used by clients for money laundering activities. Given the long-standing relationship with AK, such risks did not exist in the Respondent's circumstances. While good faith efforts do appear to have been made by the Respondent to verify AK's identification, those efforts failed to meet the requirements set out in the Law Society's Rules. Though the Respondent attempted to comply with the Rules by taking a copy of AK's driver's license, the Panel finds that the Respondent has breached the *Act* or Rules, pursuant to section 38(4) of the *Act*.

Allegation Three

[66] The Law Society alleges that:

Between approximately August 2017 and August 2018, on behalf of your client R Inc., you used your trust account to receive and disburse a total of approximately \$43,265.26 (the “R Inc. Trust Matter”), and you failed to do one or more of the following:

- (a) provide substantial or any legal services in connection with the R Inc. Trust Matter;
- (b) make reasonable inquiries about the circumstances of the R Inc. Trust Matter; and
- (c) make a record of the results of any inquiries made about the circumstances of the R Inc. Trust Matter.

This conduct constitutes professional misconduct, pursuant to section 38(4) of the *Legal Profession Act*.

[67] Regarding the R Inc. Trust Matter, the Law Society relies on the evidence that the Respondent was retained to continue R Inc. into Canada despite this not being his area of practice.

[68] The Respondent knew that R Inc. was a special purpose vehicle with the purpose of holding a condominium located in Toronto (the “Condo”). R Inc. was being continued in British Columbia because the Condo had been sold and less property tax would be paid if R Inc. was continued in Canada.

[69] The Respondent did not know who the ultimate beneficial owner of R Inc. was, nor did he make any inquiries to find out.

[70] The Law Society submits that though the Respondent was retained to continue R Inc. into British Columbia, the financial transactions performed were not connected to its continuation.

[71] The transactions focused on \$40,000 that was owed to R Inc. by an insurance company, as a result of the Condo flooding. The Law Society alleges that the Respondent received the insurance cheque into his trust account without performing any relevant legal services.

- [72] The Respondent received the insurance cheque on November 2, 2017, the same day the Respondent was directed to tender the client's account and wire the remaining funds to B Inc., an Ontario company that paid the expenses of the Condo.
- [73] The Respondent did not know who the beneficial owner of B Inc. was, nor did he make any inquiry about B Inc. or why it had been paying the fees with respect to the Condo.
- [74] The Law Society submits the Respondent accepted the insurance cheque into his account and disbursed it to B Inc. after payment of his invoice, allowing R Inc. to use his trust account like a bank account with no meaningful connection to any legal services rendered to R Inc. by the Respondent.
- [75] The Respondent provided several accounts of why he agreed to take the money. The Respondent testified that he took the money as he was already acting for DC and R Inc. on the corporate matter. Further, the Respondent added that he thought accepting the insurance cheque through the trust account was a convenient matter with which he could assist his client.
- [76] During the Hearing, the Respondent provided further information about this transaction in that the work he performed continuing R Inc. in British Columbia was sufficiently connected to the insurance cheque transactions, as the funds were owed by the insurance company to R Inc. and would have to be dealt with prior to the Condo's sale and his work in continuing the company.
- [77] The Law Society relies on *Law Society of BC v. Yen*, 2023 LSBC 02, in relation to what constitutes an appropriate consideration for scope of legal services. In *Yen*, the respondent submitted that it was acceptable for her to receive and disburse funds into and out of trust so long as there was some indirect linkage to some legal work that was being done or may be done for that client. The panel in *Yen* rejected the respondent's argument, concluding that it was too broad of a characterization and would absolve a lawyer of making inquiries provided they were doing some legal work for the client, regardless of whether there was a correlation between the work and the deposits and withdrawals from trust.
- [78] The Respondent submits that the Law Society must prove the Respondent: (a) did not provide substantial legal services in connection with the processing of an insurance payout cheque for his client; (b) objectively had an obligation to make reasonable inquiries about the circumstances; (c) failed to make reasonable inquiries about the circumstances of the insurance payout cheque; and (d) failed to record the results of the inquiries.

[79] “Legal services” is not a defined term. Also, “substantial legal services” is not a defined term. The *Act* does define the practice of law as:

- (a) appearing as counsel or advocate,
 - (b) drawing, revising or settling
 - (i) a petition, memorandum, notice of articles or articles under the *Business Corporations Act*, or an application, statement, affidavit, minute, resolution, bylaw or other document relating to the incorporation, registration, organization, reorganization, dissolution or winding up of a corporate body,
 - (ii) a document for use in a proceeding, judicial or extrajudicial,
 - (iii) a will, deed of settlement, trust deed, power of attorney or a document relating to a probate or a grant of administration or the estate of a deceased person,
 - (iv) a document relating in any way to a proceeding under a statute of Canada or British Columbia, or
 - (v) an instrument relating to real or personal estate that is intended, permitted or required to be registered, recorded or filed in a registry or other public office,
 - (c) doing an act or negotiating in any way for the settlement of, or settling, a claim or demand for damages,
 - (d) agreeing to place at the disposal of another person the services of a lawyer,
 - (e) giving legal advice,
 - (f) making an offer to do anything referred to in paragraphs (a) to (e), and
 - (g) making a representation by a person that he or she is qualified or entitled to do anything referred to in paragraphs (a) to (e),
- but does not include:
- (h) any of those acts if performed by a person who is not a lawyer and not for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed,

(i) the drawing, revising or settling of an instrument by a public officer in the course of the officer's duty,

(j) the lawful practice of a notary public,

(k) the usual business carried on by an insurance adjuster who is licensed under Division 2 of Part 6 of the [Financial Institutions Act](#), or

(l) agreeing to do something referred to in paragraph (d), if the agreement is made under a prepaid legal services plan or other liability insurance program.

- [80] The Panel finds that in having no working definition of “substantial legal services”, it takes guidance from the principles of statutory interpretation and the purposive approach outlined in *Canada Trust Co v. R*, 2005 SCC 54. The interpretation of statutory provisions must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the *Act* as a whole. Chief Justice McLachlin (as she then was) goes on to state that this is in order to find a meaning that harmonizes the wording, object, spirit and purpose of the provision.
- [81] The Supreme Court has provided through decisions such as *Hunter et al. v. Southam Inc.*, [1984] 2 SCR 145; *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295; *Irwin Toy Ltd. v. A.G. Quebec*, [1989] 1 S.C.R. 927; *R. v. Zundel*, [1992] 2 S.C.R. 731; *R. v. K.R.J.*, [2016] 1 SCR 906, at paragraphs 37 to 38 that statutory interpretation is to be done through a purposive analysis, which gives a generous and liberal interpretation aimed at fulfilling the purpose of the provision in question.
- [82] A contextual analysis is often tied to the purposive approach, and requires that the provision be placed in the social, political and legal context in which it arises as provided by cases such as *Edmonton Journal v. A.G. Alberta et al.*, [1989] 2 S.C.R. 1326; *Thomson Newspapers Ltd. v. Canada*, [1990] 1 S.C.R. 425; *R. v. Wholesale Travel Group Inc.*, [1991] 3 S.C.R. 154; *Chiarelli v. Canada (M.E.I.)*, [1992] 1 S.C.R. 711; *R. v. Fitzpatrick*, [1995] 4 S.C.R. 154; *May v. Ferndale Institution*, [2005] 3 S.C.R. 809. This will often require consideration of the underlying principles and policies found in the area of law.
- [83] To determine if the services offered by the Respondent fall under the definition of the practice of law which the Panel has adopted in the absence of definitional clarity surrounding substantial legal services, the Panel must take both a purposive

and contextual approach to determine whether the Respondent's actions fit the purpose of the intended Rule while considering the contextual backdrop.

- [84] One of the main roles of lawyers is to guide their clients through the legal system which the Respondent argues he did in this circumstance. The Respondent provided a client with legal help regarding the aforementioned insurance cheque which the client would otherwise be unable to process. Both real estate and insurance law are complex topics that often require the help of legal counsel and the Panel is persuaded that this is likely one of those times. Furthermore, the prevention of loss is a legitimate consideration for commerce, something quite appropriate for a lawyer to assist in facilitating.
- [85] The Respondent was previously providing corporate services to the client in question and in his mind this additional action was neither onerous nor burdensome. The Respondent was hired to continue the company into the province of British Columbia with the Condo being directly owned by the same company. The Panel accepts that it is more likely than not, the Respondent was providing sufficient legal services to meet the burden required to satisfy substantial legal services when considering both the legislative intent and context of the Rules set in place.
- [86] Additionally, one of the purposes of legal services is to facilitate efficient commerce, something that the Rules should only constrain in common sense situations or where clearly articulated rules prevent lawyers from assisting. The Panel finds that facilitating commerce may also be a function of assisting clients in efforts to avoid loss, harm, or delay for any pecuniary or legitimate opportunity costs.
- [87] Lawyers should be free to facilitate, as creatively as ethics and rules permit, the ability for clients and society to advance. If the Respondent refused to assist in this matter, as argued by them, the client would have been severely affected and left with no alternative way to receive the funds from the insurance cheque. Refusing to provide the requested services would prevent efficient commerce and hinder a lawyer's ability to make common sense decisions surrounding what is and what is not legal services.
- [88] Without a clearly articulated definition of what "substantial legal services" is not, lawyers ought to be free to exercise judgment that assists legitimate commerce. There is no allegation that this transaction was improper. The standard proposed by the Law Society may lead lawyers to refuse to participate in legitimate deals over fear of sanctions. Such an untenable standard would leave clients in a

precarious position having no way to receive their funds without a lawyer's help and with lawyers unwilling to help.

- [89] Over-regulation of the legal profession will prevent the goal of the facilitation of efficient commerce, and though there are scenarios that may require constraints, they should be left for the most obvious situations. Expanding beyond that will only harm the clients the Law Society seeks to protect.
- [90] The Panel finds that the Respondent assisted a client in these circumstances who could not process a cheque without considerable cost and delay. There was nothing objectively suspicious about the use of the trust account in these circumstances.
- [91] The Panel finds that the Law Society has not met the burden of proof in relation to allegation three and as such, it is dismissed.

Allegation Four

- [92] The Law Society alleges that:

Between approximately August 2017 and August 2018, in relation to your client R Inc., you failed to obtain, record, and verify client identification information, contrary to one or more of Rules 3-100, 3-102, 3-103, 3-104, 3-105, and 3-106 of the Law Society Rules, then in force.

This conduct constitutes professional misconduct or a breach of the Act or rules, contrary to section 38(4) of the *Legal Profession Act*.

- [93] The Law Society submits that the Respondent failed to comply with Rules 3-100, 3-102, 3-103, 3-104, 3-105 and 3-106 in relation to client R Inc.
- [94] These Rules, as set out earlier, are complex. The allegation that the Respondent partially complied with the requirements because he did not obtain a corporate register and that further enquiries ought to have been made is based on the Law Society's allegation that there were objectively suspicious circumstances about R Inc.'s corporate structure and history.
- [95] The Respondent argues that he had already identified the relevant client parties under Rule 3-99(2)(c)(ii), meaning there was no obligation under Rules 3-100 to 3-108.
- [96] Alternatively, the Respondent argues that if Rule 3-99(2)(c)(ii) does not apply, there were reasonable efforts and reasonable steps to find compliance with the Rules.

- [97] Further, the Respondent argues that if there were no legal services provided in relation to allegation three, then Rules 3-102 to 3-106 do not apply for verification requirements.
- [98] The Panel has dismissed allegation three and therefore the argument about verification not being required does not apply.
- [99] The Respondent admits he did not make the inquiries into the corporate structure of the companies for which he was taking and distributing money into his trust account. Though he claims that he had personal knowledge of certain parties, the Respondent could not confidently identify where the money was coming from or who was the ultimate beneficiary.
- [100] Accordingly, it is the Panel's finding that not enough was done to follow the Rules, as required. The Panel finds that the Respondent was not taking adequate steps or efforts to document or demonstrate compliance with the Rules and finds that the Respondent has committed a breach of the *Act* and Rules, pursuant to section 38(4) of the *Act*.

Allegation Five

- [101] The Law Society alleges that:

Between approximately August 2017 and June 2018, in relation to one or both of your clients L Investments and A Corp., you used your trust account to receive and disburse a total of approximately \$3,193,792.37 (the "L Investments Trust Matter"), and you failed to do one or more of the following:

- (a) provide substantial or any legal services in connection with the L Investments Trust Matter;
- (b) make reasonable inquiries about the circumstances of the L Investments Trust Matter; and
- (c) make a record of the results of any inquiries made about the circumstances of the L Investments Trust Matter.

This conduct constitutes professional misconduct, pursuant to section 38(4) of the *Legal Profession Act*.

- [102] The Respondent was introduced to WW by AK in or around 2011. The Respondent had previously done legal work for WW in 2012, 2013 and 2015. WW was the sole officer, director and shareholder of A Corp.
- [103] NW is WW's spouse. The Respondent was introduced to NW by AK in or around 2011. L Investments is a company registered in the United Arab Emirates and run by NW.
- [104] On September 1, 2017, the Respondent wrote an email to WW inquiring about the possibility of assisting him with some legal work. In an email dated September 6, 2017, WW advised the Respondent that he would have received two wire transfers. Prior to receiving the email, the Respondent had already accepted \$1.525 million into his trust account on August 28, 2017, and \$1.4 million on September 1, 2017. Both deposits were wire transfers from P Inc.
- [105] The Law Society submits that the Respondent received into his trust account the cumulative sum of \$2.925 million dollars with no information of the intentions of the funds or to which company they belonged. Furthermore, the Law Society argues that no legal services were provided regarding any transactions relating to the aforementioned funds.
- [106] The Law Society submits that the Respondent was told by AK of an SEC investigation into WW sometime around October 2017, and took no further action to find out more about that investigation. The effect of the SEC investigation in the submission of the Law Society is that it should have alerted the Respondent to make additional inquiries to determine the appropriateness of the transactions through his trust account.
- [107] The Respondent relies on the fact that AK provided him with the information and as such was under no obligation to inquire further. The Respondent emphasized that relying on a member in good standing as AK was at the time, is reasonable, sufficient, and aligned with appropriate professional standards.
- [108] The Law Society submits that this is not enough to satisfy the Respondent's professional obligations. The Respondent at no time during these transactions, despite the "red flags", sought independent legal advice, conducted his own research, or spoke to a practice advisor. The Law Society submits those failures by the Respondent are a marked departure from the conduct expected of lawyers and meets the definition of professional misconduct.
- [109] The facts that gave rise to the alleged breach are multifactorial. On January 24, 2018, WW emailed the Respondent requesting assistance with completing

documentation for a \$50,000 loan from L Investments to B Ltd., a Vancouver based company run by AK's domestic partner. A convertible secured debenture was provided by the Respondent two days later. Emails were exchanged between the Respondent and WW on February 7 and 8, 2018. On February 9, 2018, the Respondent purchased a \$50,000 bank draft from his trust account payable to B Ltd.

- [110] The Respondent received approximately \$55,000 from L Investments into his trust account, understanding that these funds were a true-up to replace the previous \$50,000 but the Respondent had no information regarding the source of the funds.
- [111] The Respondent was instructed by WW on March 10, 2018, to prepare an amended debenture to advance an additional \$150,000 to B Ltd. through a bank draft purchased through his trust account and on April 18, 2018 a wire transfer for \$150,000 was received into trust from L Investments. The Respondent again saw this as a true-up but failed to make inquiries regarding the source of the funds received.
- [112] Three bank drafts were purchased by the Respondent for \$20,000 each on March 31, April 12, and May 29, 2018, made out to AK from funds received from L Investments and in connection with a personal loan made by the company, L Investments, to AK.
- [113] The Law Society alleges that the Respondent failed to make reasonable inquiries to WW and NW regarding the holding of the funds and the repayment of this personal loan.
- [114] During the Hearing, the Respondent testified that he was satisfied that the investigation relating to WW was likely of the type that was not a serious concern. He testified that he relied on AK for this assurance.
- [115] The Panel finds that the nature of the transactions should have created a sense of independent diligence separate and apart from AK.
- [116] The Panel finds that insufficient steps were taken by the Respondent to ensure that he was not assisting in dishonesty, crime, or fraud, which the Law Society submits is a marked departure from the standard required of lawyers.
- [117] Further issues arise from an April 26, 2018, email to the Respondent from WW asking for a \$165,000 wire transfer from A Inc. to G Corp., with no previous information regarding money transfer to G Corp.

- [118] The Respondent made no inquiries and had no information regarding the transfer. Questions should have been asked as the funds held in trust by the Respondent were believed to be L Holdings funds, not A Inc. funds. The Respondent assumed that WW had made a mistake when he referred to A Inc. and not to L Holdings and the Respondent made no further inquiries. At a minimum, clarity should have been sought.
- [119] The Respondent received a wire transfer of \$63,830 from DS on May 28, 2018. He was told this was someone who owed WW and NW money and was paying them back and the Respondent agreed to run it through his trust account. No inquiries were made regarding DS or the funds. No legal services were provided with regard to these funds. There was no evidence that the DS transaction had any work or considerations that might allow it to be considered as part of the analysis in relation to allegation three.
- [120] On May 18, 2018, the Respondent was instructed by NW to wire the \$2,600,000 he held in trust to L Investments in Dubai. The Respondent understood that he was being instructed to return the \$2,600,000 to L Investments and that he would not be placing these funds for investment. Later that same day, the Respondent attempted to affect the \$2,600,000 wire transfer to L Investments from his trust account. Due to an error with the wire transfer coordinates, the transfer was not completed and \$2,599,955 was returned to the Respondent's trust account on June 4, 2018 (\$2,600,000 less a \$45 processing fee).
- [121] On June 7, 2018, the Respondent was instructed by NW to wire all but \$105,000 of the funds he held in trust to A Advocates in Dubai. Later that same day, the Respondent wired \$2,613,016.81 to A Advocates from his trust account. On June 13, 2018, the Respondent was instructed by NW to wire the balance of the funds he held in his trust to A Advocates. The following day, on June 14, 2018, the Respondent wired \$104,885 to A Advocates from his trust account.
- [122] The Law Society further submits that the Respondent's transfers to L Holdings and A Advocates further constitute marked departures from the conduct expected of lawyers. The entirety of the money held in the Respondent's trust account was sent to A Advocates and L Holdings with all but \$105,000 initially being transferred to A Advocates.
- [123] Instead of making inquiries regarding these transactions, the Respondent submits he was relieved to finally get instructions and divest the funds that were making him uncomfortable. The Panel finds that his discomfort should have prompted earlier action as the Respondent seemed utterly unconcerned that he may be helping commit dishonesty, fraud, or crime.

- [124] The Respondent argues that substantial legal services had been provided regarding the above transactions, including research and precedent development.
- [125] Further, the Respondent submits that there is no obligation to make inquiries in the above circumstances as there was no reason for the Respondent to be suspicious of the dealings.
- [126] In the alternative, the Respondent submits that sufficient inquiries had been made, arguing that the Respondent was entitled to rely on the information provided by AK who had satisfied himself that the transactions would not be assisting in dishonesty, fraud, or crime. The Respondent submits that seeking an opinion from a lawyer familiar with securities law, which was done through AK, should be the antithesis of professional misconduct.
- [127] As discussed above, the Panel finds that the Respondent has provided the Panel with contradictory testimony, falsified documents and has not been candid throughout this proceeding. The Panel does not believe it necessary to outline the previously mentioned tests regarding credibility or reliability but will reiterate that the Respondent has given the Panel no reason to believe the testimony or evidence that he has provided against what the documents and the circumstances of these transactions reveal.
- [128] The Panel finds that the Respondent backdated invoices to L Holdings, specifically in regard to the invoice dated August 31, 2017, which is dated three days after the Respondent received a \$1,525,000 dollar wire transfer from P Inc. The invoice included legal work identical to that described in the previous two invoices as well as “matters relating to an assignment of mortgage.”
- [129] As previously stated without the Respondent’s file notes or other documents, the Panel has no evidence as to whether the Respondent was providing substantial legal services, his failure to document all or any of the claimed work leaves the Panel to make a determination based solely on testimony that is unreliable at best and lacks credibility at worst.
- [130] There is an expectation that lawyers in BC keep appropriate records that demonstrate what legal services have been provided in each matter.
- [131] Furthermore, additional deficiencies by the Respondent to make relevant inquiries into the large sums of money being moved through his trust account defy the prudent and conscientious consideration of a transaction of this nature. While the Respondent was “in between” firms and working on his own, there should have been further diligence about requirements that would have ordinarily been done by

others in larger organizations where he had previously worked. The Respondent relied on AK for assistance, something that was not reasonable in the circumstances, given the full context of this particular transaction.

- [132] The cumulative effect of these breaches and the Panel's finding on the Respondent's credibility challenges throughout this process leads the Panel to find that without corroborating evidence regarding the claimed legal services provided by the Respondent, his conduct is sufficient to reach the threshold for professional misconduct.
- [133] The Panel accordingly finds that the Respondent did not render substantial legal services in connection with any of these financial transactions. The Panel also finds that the Respondent failed to make reasonable inquiries to obtain information about the parties and the subject matter and purpose of the financial transactions he was requested to facilitate.

Allegation Six

- [134] The Law Society alleges that:

Between approximately August 2017 and June 2018, in relation to one or both of your clients L Investments and A Corp., you failed to obtain, record, and verify client identification information, contrary to one or more of Rules 3-100, 3-102, 3-103, 3-104, 3-105, and 3-106 of the Law Society Rules, then in force.

This conduct constitutes professional misconduct or a breach of the Act or rules, contrary to section 38(4) of the *Legal Profession Act*.

- [135] The Law Society submits that the Respondent back dated retainer agreements related to A Inc, and L Holdings. The Respondent received \$1.525 million from P Inc. on August 28, 2017, and another \$1.4 million from P Inc. on September 1, 2018. The Law Society submits that it was not known whether these funds had been sent on behalf of L Holdings or A Inc.
- [136] A retainer agreement was not signed between the Respondent and WW in relation to L Holdings and A Inc. until December 11, 2017. Correspondence between the Respondent and WW, namely, an email, which included retainer agreements for L Holdings and A Inc. dated effective August 1, 2017, so the Respondent could comply with his annual law society file review.

- [137] Contrary to Rule 3-100(1) the Respondent did not obtain and record the following client identification information from WW and A Inc.: home address, home telephone number, occupation, position with A Inc., general nature of the type of business engaged in by A Inc. or A Inc.'s incorporation or business identification number and its place of issue.
- [138] The Respondent takes the position that he relied on client identification information for WW that was obtained while the Respondent worked at a law firm in Calgary. The Respondent was unable to specify what identification information had been obtained or what procedures were taken to verify WW's identity.
- [139] The Respondent argues that he knew the individuals instructing on behalf of L Holdings and A Inc. well in advance of August 2017. The Respondent has also acted for WW and A Inc., and other entities, at four previous firms, where he states all verification and identification requirements were met. As such, the Respondent submits that there are no obligations to subsequently verify WW's identity unless the Respondent no longer recognizes him.
- [140] The Panel empathizes with the Respondent as these Rules can be onerous. The Rules, however, are a necessary anti-money laundering tool and must be strictly complied with. In this case, the Respondent was not engaged by any of those previous firms to provide legal work for these clients nor did another lawyer refer this client matter to him so he cannot rely on their records. Nor did the Respondent obtain and record this information when he commenced practice on his own. The Panel finds that the Law Society has proven to the requisite standard that the Respondent did not meet the standard set by the Rules in force at the time and that this failure amounts to a breach of the *Act* or Rules, pursuant to section 38(4) of the *Act*.

Allegation Seven

- [141] The Law Society alleges that:

Between approximately August 1, 2016, and June 12, 2018, you failed to maintain accounting records in compliance with the provisions of Part 3 Division 7 of the Law Society Rules and in particular, you did one or more of the following:

- (a) withdrew or authorized the withdrawal of trust funds when the funds were not properly required for payment to or on behalf of a client, by withdrawing bank fees directly from your trust account, contrary to Rule 3-64(1) of the Law Society Rules;

- (b) made payments from trust funds when your trust accounting records were not current, contrary to Rule 3-64(3) of the Law Society Rules;
- (c) made or authorized the withdrawal of funds from your trust account by way of online transfers, email transfers, ATM withdrawals, and/or bank drafts, contrary to Rule 3-64(4) of the Law Society Rules;
- (d) withdrew or authorized the withdrawal of trust funds for the payment of your fees, without first preparing and immediately delivering a bill for those fees to your clients, contrary to Rule 3-65 of the Law Society Rules;
- (e) failed to maintain a book of entry or data source showing all trust transactions, and in particular the source and form of the funds received and the name of each recipient of money out of trust, contrary to Rules 3-68(a)(ii) and (v) of the Law Society Rules;
- (f) failed to maintain minimum general account records, and in particular a book of original entry (general ledger), contrary to Rule 3-69(1)(a) of the Law Society Rules;
- (g) failed to record each trust or general transaction promptly, and in any event not more than 7 days after a trust transaction, contrary to Rule 3-72(1) of the Law Society Rules;
- (h) failed to prepare monthly trust reconciliations for your pooled trust account within 30 days of the effective date of the reconciliation or at all, contrary to Rule 3-73 of the Law Society Rules; and
- (i) delivered one or more bills to your client(s) that were not signed, or accompanied by a letter signed, by or on your behalf, contrary to section 69(3) of the *Legal Profession Act*; and
- (j) delivered one or more bills to your client(s) that did not contain a reasonably descriptive statement of the services with a lump sum charge and a detailed statement of disbursements, contrary to section 69(4) of the *Legal Profession Act*.

This conduct constitutes professional misconduct or a breach of the Act or Rules, pursuant to section 38 of the *Legal Profession Act*.

[142] The Respondent admits to allegations 7(a), (c), (e), (f), (g), (h) and (i). The Panel must assess the evidence in relation to allegations 7(b), (d) and (j) only. For the reasons set out above and the discrepancies found, the August 31, 2017, invoice to

L Holdings failed to provide descriptive statements of the legal services offered as required by s.69(4) of the *Act*. The invoice in question had an identical description as the previous two invoices provided and included descriptions of legal work that the Respondent did not have instructions for until September 11, 2017. The Respondent also distributed trust funds before providing the August 31 bill contrary to Rule 3 – 65.

[143] The Panel has found that the accounts were backdated, and that the Respondent manufactured the dates and the bills to satisfy a Law Society auditor. This is a marked departure from the expectations the Law Society has of the lawyers it governs. Accordingly, while this is a transgression of the Rules and not all breaches of Rules will constitute professional misconduct, in this matter, it does.

CONCLUSION

[144] After reviewing the evidence provided by both the Respondent and the Law Society of British Columbia, the Panel has concluded that with regard to allegation one the Respondent's conduct in relation to all sub-allegations was a marked departure from the conduct expected of a lawyer as such the Panel finds that the Respondent's actions are professional misconduct.

[145] The Panel finds in relation to allegation two that the Respondent breached the *Act* or Rules pursuant to section 38(4) of the *Act*.

[146] The Panel finds in relation to allegation three that the Law Society has not reached their evidentiary burden and therefore allegation three, including all sub-allegations, is dismissed.

[147] The Panel cannot accept the arguments provided in relation to allegation five by the Respondent. The conduct of the Respondent is far outside the realm of what a reasonable lawyer would do within similar circumstances, as such the Panel finds that in relation to allegation five the Respondent's actions amount to professional misconduct.

[148] While the Respondent's conduct with relation to allegation six, though problematic, does not reach the standard required for professional misconduct, the identification and verification rules have been put in place for a reason and their requirements have not been met in this situation, as such the Panel finds that the Respondent has breached the *Act* or Rules pursuant to section 38(4) of the *Act*.

[149] The Respondent has admitted the conduct underlying sub-allegations (a), (c), (e), (f), (g), (h), and (i) within allegation seven leaving the Panel only to find on the

remaining sub-counts of (b), (d), and (j). The Panel has found on the evidence that the Respondent backdated invoices, withdrew funds prior to delivering bills, and the Respondent's conduct in relation to sub allegations seven (b), (d), and (j) cumulatively meet the burden for professional misconduct. The conduct in each individual breach may not have been enough to prove professional misconduct but the continued and constant breaches are a marked departure of the conduct expected of those in the legal profession.

[150] In summary, the Panel finds the Respondent has breached the *Act* and Rules in relation to allegations two, four, six and allegation seven (a), (c), (e), (f), (g), (h) and (i). The Panel finds that the Law Society has proven professional misconduct in relation to counts one, five and seven (b), (d) and (j).