2019 LSBC 29
Decision issued: August 1, 2019
Oral reasons: July 26, 2019
Citation issued: June 14, 2018

THE LAW SOCIETY OF BRITISH COLUMBIA

In the matter of the *Legal Profession Act*, SBC 1998, c. 9

and a hearing concerning

YVONNE YE WAH HSU

RESPONDENT

DECISION OF THE HEARING PANEL

Hearing date:	July 26, 2019
Panel:	Phil Riddell, QC, Chair Lindsay R. LeBlanc, Lawyer Brendan Matthews, Public representative
Discipline Counsel:	William B. Smart, QC and Trevor Bant
Counsel for the Respondent:	William G. McLeod, QC

BACKGROUND

[1] On June 14, 2018 a citation was issued against the Respondent alleging:

1. Between approximately May 2009 and February 2014, in the course of acting for one or both of PO and CM Inc. in a finance and securities matter, you did not perform all legal services to the standard of a competent lawyer, contrary to one or more of Chapter 3, Rules 1, 2 and 3 of the *Professional Conduct Handbook* in force until December 31, 2012 and thereafter contrary to one or more of rules 3.1-2 and 3.2-1 of the *Code of Professional Conduct for British Columbia*, and in particular you failed to do one or more of the following:

(a) acquire and apply relevant knowledge or skills of securities law and regulatory requirements (collectively, the "Regulatory Requirements") and the practices and procedures by which the Regulatory Requirements can be effectively applied;

(b) make reasonable inquiries to obtain information regarding exemptions to the Regulatory Requirements which information was necessary to provide legal services to your clients;

(c) make reasonable inquiries of your clients to obtain sufficient information to prepare documents to be used in raising funds and issuing securities in compliance with the Regulatory Requirements;

(d) keep your clients reasonably informed about their obligations to comply with the Regulatory Requirements and how to do so; and

(e) prepare documents competently or in compliance with the Regulatory Requirements.

2. Between approximately May 2009 and February 2014, in the course of acting for one or both of PO and CM Inc. in a finance and securities matter, you engaged in activities that you ought to have known assisted in or encouraged dishonesty or fraud, contrary to Chapter 4, Rule 6 of the *Professional Conduct Handbook* in force until December 31, 2012 and thereafter contrary to rule 3.2-7 of the Code of *Professional Conduct for British Columbia*, and in particular you did one or more of the following:

(a) made changes to disclosure documents used to solicit funds from investors (the "Disclosure Documents") requested by your client PO, including the removal of information regarding commissions payable to PO;

(b) prepared investment documentation for your client CC Corp. in which:

(i) investors seeking to invest in CC Corp. would not acquire CC Corp. shares directly, but would receive shares of Newco. as security for their interests in CC Corp. shares, which CC Corp. shares were to be held in trust for the investors by CM Inc., when the shares of Newco had no value; and

(ii) investors seeking to invest in CROF Corp. would not acquire CROF Corp. shares directly, but would receive shares of NewCo2 as security for their interests in CROF Corp. shares, which CROF

Corp. shares were to be held in trust for the investors by CM Inc., when the shares of NewCo2 had no value;

(c) allowed trust accounts at the law firm through which you provided legal services to be used to receive and disburse investor funds;

(d) failed to make any or reasonable inquiries with respect to one or more of the following:

(i) whether your clients were registered to sell securities;

(ii) the companies to receive investor funds, CC Corp. and CROF Corp., including the directors, officers and share structures of those companies;

(iii) significant differences among versions of Disclosure Documents given to investors;

(iv) whether CM Inc. owned the shares that it purported to sell to investors;

(v) whether the shares issued to investors as security for their investments were validly issued;

(vi) the rates and forms of returns described to investors;

(vii) the levels of investment risk described to investors; and

(viii) whether investor funds were paid to CC Corp. or CROF Corp., the entities for which the funds were purportedly raised.

[2] The conduct alleged in each allegation was stated to constitute professional misconduct pursuant to section 38(4) of the *Legal Profession Act*.

[3] This citation comes before us as a conditional admission by the Respondent that she committed professional misconduct in the manner set out in the citation, and a consent to a specified disciplinary action pursuant to Rule 4-30. The Respondent, through her counsel, executed the Agreed Statement of Facts, entered as Exhibit 2 at the hearing, in which the facts that form the basis for the citation were admitted as proven. The Respondent admitted that her conduct as set out in the Agreed Statement of Facts constituted professional misconduct. The Respondent consented to the following disciplinary action:

(a) a suspension of three months commencing August 1, 2019;

(b) a restriction from practising securities law; and

(c) costs in the amount of $1,000 plus disbursements to be paid by November 15, 2019.

[4] The Discipline Committee accepted the Respondent's conditional admission and the proposed disciplinary action. The disposition was recommended by counsel for the Law Society on the instructions of the Discipline Committee.

[5] An oral decision was provided on July 26, 2019 in which we:

(a) found that the Respondent committed professional misconduct in the manner set out in the citation;

(b) ordered the following disciplinary action:

(i) the Respondent be suspended from the practice of law for three months commencing on August 1, 2019; and

(ii) the Respondent be restricted from practising in the area of securities law until relieved of that condition by the Discipline Committee.

(c) ordered the Respondent to pay costs in the amount of $1,000 plus taxable disbursements by November 15, 2019;

(d) made a non-disclosure order pursuant to Rule 5-8(2) over all information in the exhibits filed in the proceedings or the transcript of these proceedings that is protected by client confidentiality and/or solicitor client privilege; and

(e) made a non-disclosure order over information in the exhibits filed in the proceedings, the written submission of the Law Society or the transcripts of these proceedings that disclose the Respondent's personal financial situation.

AGREED STATEMENT OF FACTS

[6] Counsel for the Law Society filed written submissions, and counsel for the Respondent adopted the submissions of the Law Society. Counsel for the Law Society in their written submissions set out a summary of the Agreed Statement of Facts, and we extracted much of that summary and have adopted it as follows:

(a) In May 2009, PO retained the Respondent in connection with his role in raising funds on behalf of CC Corp. PO provided the Respondent with a letter of engagement signed by CC Corp. that indicated:

(i) CC Corp. had engaged PO to raise $5 million from investors;

(ii) the investors would receive 60 per cent of the equity in a new venture relating to a planned composting plant in the Fraser Valley; and

(iii) PO would be paid a $700,000 commission from the $5 million and also receive a 21.25 per cent equity stake in CC Corp.

(b) The Respondent drafted an "offering summary" for PO to give to prospective investors. On PO's instructions, it stated that CC Corp. was seeking to raise $8 million and did not include any information about PO's compensation. The Respondent was not aware and took no steps to determine whether there were any laws or regulations applicable to the content or form of such a document, nor did she take any steps to determine whether PO was registered under the *Securities Act* to sell securities.

(c) In July 2009, the Respondent began receiving offering summaries that had been signed by various individuals (the "Signed Summaries"). The Signed Summaries have substantive differences among them, including in the description of the terms of the offering. The Respondent did not notice the differences among the Signed Summaries or realize that someone was making changes from time to time to the document she had drafted.

(d) In August 2009, the Respondent began receiving investor funds into her trust account. Investors provided funds by cheque payable to her firm in trust or by electronically transferring the funds into her trust account using account details provided to them by PO.

(e) Investor funds were withdrawn by the Respondent from her trust account at the direction of PO. With few exceptions, the investor funds the Respondent withdrew from her trust account were paid to PO or to CM Inc., a company the Respondent knew to be controlled by PO. Investor funds were typically withdrawn from trust within a few days of being deposited.

(f) In April February 2010, the Respondent and PO met to discuss how investors would receive their shares. At this point, investors had deposited funds into her trust account, and in most cases the funds had then been paid out, but none of the investors had received anything in return. In April 2010, the Respondent and PO met again and came up with an investment structure pursuant to which investors would not receive shares of CC Corp.; rather, CM Inc. would hold shares of CC Corp. in trust for the investors. A new company would be incorporated and shares from that newly incorporated company would be issued to investors as "security" in proportion to the number of shares of CC Corp. that CM Inc. was holding in trust for them.

(g) The Respondent incorporated a company, NewCo, to issue shares to investors as "security". She also drafted a form of investment agreement to be entered into between each investor, CM Inc. and NewCo (the "Form of Investment Agreement").

(h) Thereafter, from time to time PO would tell the Respondent or one of the Respondent's legal assistants that investor funds were forthcoming. PO would provide the Respondent or her legal assistant with the name of the investor and tell the Respondent or her legal assistant how many shares should be issued to that investor. The Respondent or her legal assistant would then:

(i) revise the Form of Investment Agreement to include the date, the investor's name, investment amount and number of shares, thereby creating a final investment agreement specific to that investor;

(ii) draft a subscription agreement for the relevant number of shares of NewCo; and

(iii) create a share certificate for the relevant number of shares of NewCo,

(collectively, a "Document Package").

(i) The Respondent or her legal assistant would then provide the Document Package to PO to provide to the investor. Where the Respondent's legal assistant was the one to prepare the Document Package, the Respondent did not review it before her legal assistant sent it to PO. The Respondent did not advise investors who received a Document Package that she acted only for PO and was not representing them.

(j) In March 2011, the Respondent began receiving Signed Summaries which referred to CROF Corp. instead of CC Corp. The Respondent had not drafted these documents.

(k) PO told the Respondent that CROF Corp. had been incorporated after CC Corp.'s CEO had been caught embezzling funds. He said that CROF Corp. was going to carry on the business begun by CC Corp. and that he was now raising funds for CROF Corp. The Respondent did not ask PO for details of the alleged embezzlement, take any steps to determine whether what PO had told her was true or consider whether the alleged embezzlement affected the transactions she was facilitating.

(l) The Respondent incorporated a company, NewCo2, to issue shares to investors as "security" and she revised the Form of Investment Agreement to refer instead to CROF Corp. and NewCo2.

(m) From mid-August 2011 until approximately September 2012, the Respondent was away from the office on parental leave. During this time her firm continued to receive investor funds into trust and pay them out to PO or CM Inc. as directed by PO. The Respondent thought her employer was overseeing the file while she was away. He was not in fact overseeing the file and mistakenly believed that the Respondent was continuing to work on the file remotely. During this year-long period, all Document Packages were prepared by legal assistants with no supervision by a lawyer.

(n) In May 2013, CC Corp. filed an assignment into bankruptcy. PO told the Respondent that he wanted to try to save the composting project by buying the assets of CC Corp. out of bankruptcy and that he wanted to ask investors to provide a 15 per cent top-up on their investments in order for him to be able to do so.

(o) In December 2013, PO sent the Respondent a draft letter she understood that he wished to send to certain investors in CC Corp. The Respondent reviewed the draft letter and provided her suggested revisions to PO. The revised letter, which PO sent to investors, includes the following passages:

> Because of the problem of corruption and the failure to fulfil their duties and responsibilities on the part of the Directors, we have sought for [sic] legal advice for solutions to this problem. ... Because of our passion for this recycling project and a duty

> towards our shareholders, the lawyer suggested we first close down CC Corp. and then reorganize a new company by purchasing some or all of CC Corp.'s machinery.
>
> …
>
> To be fair to every shareholder, the lawyer advised us to ask interested investors to provide a 15% top-up to their original investment.
>
> To be fair to all existing shareholders of [CC Corp.], whomever intends to continue to cooperate with us must inject a 15% top-up of their principal investment by June 21, 2013. Investors will receive shares equivalent to their principal investment plus the 15% top-up in the newly restructured company. … Consequently, there will be no losses to any investor who intends to continue to cooperate with us.
>
> …
>
> To protect your interests, please wire-transfer your 15% top-up funds to the lawyer's trust account on or before June 21, 2013. Information on the trust account is as follows:
>
> Payable to: [the Respondent's firm]
>
> [The Respondent's trust account bank details]

(p) The Respondent did not know who the "the lawyer" was and did not recognize that investors might understand that she was the lawyer. It had not occurred to the Respondent that the letter might give a false sense of reassurance to investors.

(q) PO sent the letter to the investors. The Respondent took no steps to advise investors who received the letter that she acted only for PO and was not representing them or protecting their interests.

(r) On PO's instructions, the Respondent incorporated a new company, EC Corp., to receive the "top-up" investments and attempt to purchase CC Corp.'s assets out of bankruptcy. The Respondent received "top-up" funds from numerous CC Corp. and CROF Corp. investors. These funds were deposited into the Respondent's law firm's trust account and subsequently paid out at PO's direction to CM Inc. As far as the

Respondent is aware, none of these transactions was documented in any manner.

(s) No investors received any shares of CC Corp., CROF Corp or EC Corp.

(t) The Respondent understood that different investors were receiving different numbers of shares per dollar invested.

(u) The Respondent believed that investors were receiving shares of NewCo and NewCo2 as "security" for an equivalent proportion (10 or 100 times as many, respectively) shares in CC Corp. or CROF Corp. However, the Respondent did not:

(i) keep track of how many shares of NewCo and NewCo2 her assistants were issuing to investors from time to time; or

(ii) take any steps to determine whether CM Inc. held any shares of CC Corp. and CROF Corp., let alone enough shares at any given time to cover (at the relevant ratio) the shares of NewCo and NewCo2 that the Respondent's assistants were issuing to investors.

(v) Authorized share structure of NewCo permitted 100,000 class A common non-voting shares to be issued but the Respondent's legal assistants ultimately issued 154,258 class A common non-voting shares to investors.

(w) The Respondent was not aware and did not take any steps to determine whether any laws or regulations governed the transactions she was facilitating. She was not aware and did not consider whether PO, CM Inc., NewCo or NewCo2 were trading in securities within the meaning of the *Securities Act*.

(x) PO terminated his retainer with the Respondent in or around February 2014.

(y) In total, the Respondent received approximately $12.5 million into her trust account from persons who intended to invest in CC Corp. or CROF Corp. and approximately $1.8 million from persons who intended to invest in EC Corp.

(z) The Respondent paid out from her trust account approximately $12.3 million to CM Inc., $1.4 million to PO personally and $350,000 to CC Corp.

(aa) The Respondent likely believed there was a reason for her to be paying the investor funds to CM Inc. or PO rather than to the CC Corp. or CROF Corp.: investors were not purchasing shares of the CC Corp. or CROF Corp.; CM Inc. was supposed to be purchasing shares of the CC Corp. and CROF Corp. to hold in trust for the investors. However, the Respondent was not aware of what happened to the investor funds after they were paid out of her trust account to PO or CM Inc. and she did not take any independent steps to determine whether CM Inc. was using the investor funds to purchase shares of the CC Corp. or CROF Corp.

(bb) In December 2017, the Securities Commission held that PO, CM Inc., NewCo and NewCo2 had each committed fraud contrary to s 57(b) of the *Securities Act*.

(cc) Specifically, the Securities Commission found that PO had fraudulently misappropriated approximately $5 million from persons who intended to invest in CC Corp. or CROF Corp.

(dd) The Respondent was not aware of PO's fraud and it was not her intention to facilitate his fraud.

[7] The Respondent expressed remorse for her actions, not only in the Agreed Statement of Facts, but also in a statement that she made to the Panel.

[8] Counsel for the Law Society characterized the conduct of the Respondent through the investigation as forthright and cooperative.

[9] The Respondent did not act with malice or for personal gain. This was an example of a lawyer practising in an area to which she was not familiar and not identifying the red flags that presented themselves throughout the Respondent's conduct of the file.

[10] The Respondent admitted that her conduct constituted professional misconduct.

DECISION

[11] Rule 4-30(1) permits the Respondent to make a conditional admission of a discipline violation, conditional on the imposition of a specified disciplinary action.

[12] The panel may either reject or accept the conditional admission and the proposed disciplinary action. If the panel does not accept the admission or the proposed disciplinary action it must advise the chair of the Discipline Committee of its

decision and proceed no further with the hearing of the citation. The chair of the Discipline Committee must then instruct discipline counsel to proceed to set a date for the hearing of the citation.

[13] We have no difficulty in finding that the evidence contained in the Agreed Statement of Facts leads us to the finding that the Law Society has met the burden of proof upon it, on the balance of probabilities, that the Respondent professionally misconducted herself in the manner set out in the citation in that her conduct constituted a "marked departure" from what the Law Society expects of lawyers (*Law Society of BC v. Martin*, 2005 LSBC 16 at para. 154).

[14] In assessing the appropriate disciplinary action we have to consider the purpose of disciplinary action. In *Law Society of BC v. Hill*, 2011 LSBC 16 the panel stated at paragraph 3:

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

[15] *Law Society of BC v. Ogilvie*, 1999 LSBC 17 is the leading case that sets out the principles to by applied by a panel in determining disciplinary action. At paragraph 10 of *Ogilvie* the panel set out a series of factors to be considered:

(a) the nature and gravity of the conduct proven;

(b) the age and experience of the respondent;

(c) the previous character of the respondent, including details of prior discipline;

(d) the impact upon the victim;

(e) the advantage gained, or to be gained, by the respondent;

(f) the number of times the offending conduct occurred;

(g) whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;

(h) the possibility of remediating or rehabilitating the respondent;

(i) the impact on the respondent of criminal or other sanctions or penalties;

(j) the impact of the proposed penalty on the respondent;

(k) the need for specific and general deterrence;

(l) the need to ensure the public's confidence in the integrity of the profession; and

(m) the range of penalties imposed in similar cases.

[16] In *Law Society of BC v. MacGregor,* 2019 LSBC 26 the panel made the following observations regarding the application of the *Ogilivie* factors at paras. 6 and 7:

> Those factors have been considered in many discipline decisions. In *Law Society of BC v. Dent,* 2016 LSBC 05 at para. 16, the panel stated:
>
> > It is not necessary for a hearing panel to go over each and every *Ogilvie* factor. Instead, all that is necessary for the hearing panel to do is to go over those factors that it considers relevant to or determinative of the final outcome of the disciplinary action (primary factors). This approach flows from *Lessing,* which talks about different factors having different weight.
>
> The panel in *Dent* also endorsed an approach of identifying any additional *Ogilvie* factors that, while not primary, may tip the scales one way or the other and described them as secondary factors. This Panel agrees that it is appropriate to mention in decisions any such secondary factors.

[17] Counsel for the Law Society, in reviewing the *Ogilvie* factors, emphasized the following factors.

[18] Nature, gravity and consequences of the misconduct:

(a) The misconduct was serious and had the consequences of enabling the wrongdoing of PO;

(b) The Respondent took no steps to determine whether there were any laws or regulations applicable to the documents she drafted. She took no steps to determine if PO was registered under the *Securities Act* to sell securities;

(c) The documents created by the Respondent were incoherent;

(d) The Respondent failed to adequately supervise her staff;

(e) The Respondent neglected the file for approximately a year when she was on leave, and mistakenly believed her employer was overseeing the file;

(f) The Respondent failed to advise investors that she only acted for PO and was not representing them;

(g) The Respondent allowed her trust account to be used when there was no need for her trust account to be used;

(h) The Respondent accepted a retainer in an area of law which she had no experience;

(i) The Respondent took no steps to develop her competence in the area of law in which she had no experience; and

(j) As a result of the Respondent's misconduct:

(i) The investors did not receive any shares in CC Corp. or CROF Corp.; and

(ii) Approximately $5 million of the funds deposited by investors in the Respondent's trust account were misappropriated by PO.

[19] Character and professional conduct record of the Respondent:

(a) The Respondent was a five year call when she was initially retained by PO and she has no record of any professional misconduct.

[20] Whether the Respondent has acknowledged the misconduct and has taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances:

(a) The Respondent was cooperative and forthright with the Law Society;

(b) The Respondent is a sole practitioner and restricts her practice to matters such as conveyancing and incorporations;

(c) The Respondent is of modest financial means;

(d) The Respondent did not gain significantly from her misconduct. She received approximately $29,000 in fees, disbursements and taxes over a five-year period;

(e) The Respondent admitted her professional misconduct in the Agreed Statement of Facts; and

(f) The Respondent feels "profound" remorse and has rehabilitated herself.

[21] Public confidence in the legal profession:

(a) Public confidence in the legal profession is a primary factor in determining the appropriate penalty; and

(b) The Respondent's involvement in the actions of PO and the use of her firm's trust account clothed the transactions with a veil of legitimacy.

[22] The Law Society has provided three cases that are of some assistance in determining the appropriate penalty. Those cases are: *Law Society of BC v. Gurney*, 2017 LSBC 15 and 2017 LSBC 32; *Law Society of BC v. Rai*, 2011 LSBC 2 and *Law Society of BC v. Skogstad*, 2008 LSBC 19. The range of penalty in those cases was from a three to six month suspension and in the case of *Gurney* the additional feature of a disgorgement order.

[23] The seriousness of the misconduct calls for a suspension. A fine is not an adequate penalty. This is a case where the Respondent acted on a matter on which she was not competent to act. She missed various red flags that led to her allowing her trust account to be used to funnel funds from the investors to PO, when there was no necessity for her trust account to be used.

[24] The Respondent, as has been said earlier, was cooperative and forthright with the Law Society, she admitted her wrongdoing by way of the Agreed Statement of Facts, has changed the nature of her practice and is remorseful. These are significant mitigating factors.

[25] There is no indication of dishonesty on the part of the Respondent. She appears to have been an unwitting dupe of PO.

[26] In examining the *Ogilive* factors we find that the sanctions that the Respondent has consented to and the Discipline Committee has accepted are appropriate sanctions in these circumstances.

SEALING ORDERS

[27] Counsel for the Respondent applied for and was granted a sealing order that:

(a) if any person, other than a party, seeks to obtain a copy of Exhibit 2 in these proceedings, paragraphs 102 and 104 shall be redacted from the exhibit before it is disclosed to that person;

(b) if any person, other than a party, seeks to obtain a copy of the Law Society's written submissions in these proceedings, the monetary amounts in paragraphs 42 and 70 shall be redacted before it is disclosed to that person

(c) if any person, other than a party, applies for a copy of the transcript of these proceedings, the monetary amounts of the Respondent's annual income shall be redacted before it is disclosed to that person; and

(d) no person shall broadcast or publish the monetary amounts of the Respondent's annual income that were stated in the course of the hearing.

[28] Counsel for the Law Society applied for and was granted a sealing order under Rule 5-8(2) that:

(a) if any person, other than a party, seeks to obtain a copy of any exhibit filed in these proceedings, client names, identifying information, and any other information that is protected by client confidentiality or solicitor-client privilege, shall be redacted from the exhibit before it is disclosed to that person;

(b) if any person, other than a party, applies for a copy of the transcript of these proceedings, client names, identifying information, and any other information that is protected by client confidentiality or solicitor-client privilege, shall be redacted from the transcript before it is disclosed to that person; and

(c) no person shall broadcast or publish any client names, identifying information, or any other information that is protected by client confidentiality or solicitor-client privilege, that was stated in the course of the hearing.

ORDER

[29] We order that the Respondent:

(a) is suspended from the practice of law for three months commencing August 1, 2019;

(b) is restricted from practising in the area of securities law until relieved of this restriction by the Discipline Committee; and

(c) pay costs in the amount of $1,000 plus taxable disbursement by November 15, 2019.

[30] The Panel instructs the Executive Director to record the Respondent's admission on her professional conduct record.