2020 LSBC 45
Decision issued: September 18, 2020
Citation issued: December 12, 2018

CORRECTED DECISION: SUB-PARAGRAPH 1 OF PARAGRAPH [2] WAS AMENDED ON NOVEMBER 20, 2020

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

FLORENCE ESTHER LOUIE YEN

RESPONDENT

DECISION OF THE HEARING PANEL
ON FACTS AND DETERMINATION

Hearing dates:	October 29, 30, 31, 2019 and March 4, 2020
Panel:	Nancy Merrill, QC, Chair John Lane, Public representative Sandra Weafer, Lawyer
Discipline Counsel:	Mandana Namazi
Counsel for the Respondent:	Gerald Cuttler, QC

BACKGROUND

[1] This case involves the receipt and disbursement of over ten million dollars of trust money on behalf of an existing client over a two-year period. The issues involve what inquiries need to be made concerning the source of those deposits and what constitutes doing a "substantial amount of legal work in connection with the trust matter."

THE CITATION

[2] The citation in this matter was authorized by the Discipline Committee on December 6, 2018 and issued on December 12, 2018. Essentially the citation sets out two allegations:

1. Between approximately May 20, 2015 and February 23, 2017, on behalf of her client PL, the Respondent used or permitted the use of her firm's trust accounts to receive approximately $10 million US and $1.27 million Canadian and disburse approximately the same amount in 15 separate deposits and 25 separate withdrawals or transfers , and failed to do one or more of the following in connection with these transactions:

    (a) provide any substantial legal services;

    (b) make reasonable inquiries about the circumstances of the transactions, including the subject matter and objectives of the retainer, the source of funds, the purpose of payment of the funds or the reason of the payment of the funds to or through the trust account; or

    (c) make a record of the results of any inquiries about the circumstances.

2. Between approximately May 20, 2015 and June 15, 2015, the Respondent received funds into her firm's trust accounts on behalf of her client PL but failed to record the source of funds in relation to one or more of the following transactions:

    (a) $500,000 US received on or about May 20, 2015;

    (b) $1,700,000 US received on or about June 10, 2105; and

    (c) $1,849,971.20 US received on or about June 15, 2015.

FACTS

[3] The following are the salient facts for the purposes of our determination. The evidence consisted of lengthy notices to admit and responses from both parties, and testimony from the Respondent's employer KA, Kurt Wedel (the Law Society investigator), IG (the bookkeeper at the law firm), GB (KA's partner), and the Respondent. PL, the client, did not testify.

[4] The Respondent has been practising law since her call to the bar in 1995. The Respondent originally practised as an employee of the JW Law Corporation

(JWLC), from her call to the bar in September 1995 until JW sold his practice to KA. At that time, in or about November, 2011 the Respondent became an employee of KA Law Corporation (KALC), and she remained there until approximately March, 2019. At all times she was an employee and was never a partner, as she chose to remain an employee.

[5] Although an employee of KALC, the Respondent was a signatory on the trust accounts, although the trust reports were reviewed and certified by KA. The process for receiving wire transfers into trust was as follows:

(a) the Respondent and her assistant had wire instructions to provide to clients who wished to wire money to the trust account in issue;

(b) these instructions would be provided to a client when a client wished to wire funds to the firm;

(c) either the lawyer or the assistant would advise the accounting staff (who consisted of one full-time bookkeeper, who worked remotely four days and in the office one day a week, and other staff who were responsible for posting transactions to the KALC's accounting system and issuing trust cheques) who would look out for the funds that were expected;

(d) the accounting staff would confirm when the funds arrived;

(e) information about the incoming transfers would be provided to the bank by the accounting staff;

(f) the accounting staff would inform the assistant that the deposit had arrived;

(g) the lawyer or the assistant would then write a note and record the deposit on a green sheet that was placed in a client's paper file and advise the client that the funds had been received;

(h) the accounting staff would post the deposit, together with all relevant information required by the Law Society Rules, to the firm's accounting records.

[6] PL became a client of JWLC in August 2007. At that time he dealt with the Respondent, who incorporated a company for him ([numbered company] BC Ltd.) for the purpose of a restaurant business. At around the same time, she and JW acted for the same numbered company, on PL's instructions with respect to the purchase of the assets of a restaurant on West Broadway. During the course of the

Broadway restaurant purchase, the Respondent learned that PL and his partner were already operating a restaurant on Kingsway in Burnaby, that he had his serve it right certification, and that he had applied for and been granted a liquor licence for the Kingsway restaurant.

[7] Between 2007 and 2010 PL and his partner, or their corporate entities, retained JWLC to provide other legal services, including becoming the registered and records office for three other numbered companies, doing share transfers, and preparing and submitting liquor licence applications in connection with the expansion of the restaurant business. In order to obtain or transfer a liquor licence, it is necessary to have a criminal record check done. None of the criminal record checks done in connection with the application or transfer of any liquor licence involving PL or any of his companies revealed any record of criminal activity.

[8] In January 2012, PL told the Respondent that he was thinking of relocating to Asia to assist with his father's business. As a result of this, he would transfer all of his shares in his various restaurants to his business partner. PL retained KALC to prepare the share purchase agreement for the sale of his shares.

[9] During 2012 and 2013, PL and the Respondent had communications about a variety of matters – PL wanted a company incorporated for the purpose of purchasing licensed merchandise for resale; there were questions about the residency of PL's father and questions about trusts and foundations, for which the Respondent referred PL to a tax accountant for advice. In 2014, the Respondent acted for PL's family and prepared a trust agreement transferring title to the parents' Vancouver house to the mother's name. There was some indication that the family had some dealings in Panama, as PL asked the Respondent some questions about Panama's legal system as early as October, 2012.

[10] The transactions in issue in the citation began in May 2015. On May 1, PL contacted the Respondent from Hong Kong and advised that his uncle's foundation wanted to invest in Canada, that there was a property that he was looking at purchasing and that he would be receiving funds from his uncle as a gift or loan. He asked for instructions on how the uncle could wire monies into the firm's trust account.

[11] The Respondent's notes of that May conversation are as follows:

> TF [PL] May 1, 2015
>
> - Uncle's foundation to invest in Cda

- has a ppty he is looking at purchasing
    - borrowing $ from his Uncle's foundation
    - give $ to [PL] so he can go ahead w/a purchase

        $ in amt to $3-$4 million
    - concern re. gift of $
    - get a note from his Uncle it is a gift
    - what should he write re. gift?
- instructions on how to wire $ into our trust acct. [assistant] will email him the acct info.
- his Uncle will wire funds for potential purchase by [PL]

[12] The Respondent, with no further specifics, authorized her assistant to provide PL the deposit information for one of the firm's trust accounts.

[13] On May 18, 2015 $500,000 US was wired to the trust account of the Respondent's firm. PL sent an email to the Respondent indicating that his uncle was wiring $500,000 to the trust account. The wire record accompanying the email did not refer to the uncle, but instead indicated that the money was received from "Fundacion F" an entity with a Hong Kong address. The wire record included a note "Gift to [PL]". The money was received as $604,770.16 Canadian by the law firm trust account on May 20, 2015. At that time the Respondent opened file number 20968 ("File number 20968"), with PL as the client and the matter as "Gift from LKF".

[14] On May 20, the day the money arrived in the trust account, PL called the Respondent and said that the offer on the property he had been looking at was not accepted. The Respondent had never seen the offer on the property, despite asking for the contract of purchase and sale. PL also indicated at that time that he wanted to access the money that had been forwarded to the trust account.

[15] At that time, the Respondent was unsure if she was able to release the funds to PL, given that the funds had been forwarded to the trust account from the uncle for a transaction that was not proceeding. The Respondent asked the firm's bookkeeper if they could pay out the funds to the client's nephew in that circumstance. The bookkeeper indicated that she did not know the answer, so the Respondent

requested that the bookkeeper contact the Law Society to ascertain whether the funds could be paid out. The bookkeeper testified that she contacted the trust assurance department of the Law Society, as she had previously communicated with them.

[16] The Respondent did not inform the bookkeeper of some of the salient details of the circumstances, including the amount of the funds, any details about the client or the sender of the funds. The bookkeeper spoke with the trust assurance department, and made the general inquiry – that the funds were provided for a client by an uncle for a real estate transaction and the transaction did not proceed. When the Law Society called the bookkeeper back, she was told that if it was a client of the firm it would be fine. The bookkeeper then went and informed the Respondent that as it was an existing client, it should be fine to go ahead and pay out the funds. Present for that conversation were the Respondent, the bookkeeper and the Respondent's assistant. A note of that meeting was taken by the Respondent's assistant, who did not testify at the hearing. The note states, in its entirety:

> [bookkeeper] talked to auditor at the Law Society [auditor's name]
>
> we write lt to uncle saying that we are paying money to nephew (laundering issues only) - not necessary
>
> as far as we are concerned, we act for client and can pay to him

[17] This is the only note of the call or the meeting that was put in evidence. The Law Society had no note of the call, and neither the assistant nor the employee of the Law Society were called as witnesses. There was no explanation of the reference to money laundering, and neither the Respondent nor the bookkeeper had any recollection of money laundering being discussed at that meeting.

[18] In accordance with the advice received from the Law Society, the Respondent's legal assistant wrote an email to PL seeking the uncle's contact information (email and address) in order to confirm with the uncle that the firm had received the funds for PL. PL provided the uncle's email address as the company address of [xxco]@hotmail.com. The Respondent's assistant wrote to the uncle at that address:

> We confirm that we have received in our trust account your gift of USD 500,000.00 for [PL]. We will be paying these funds to P pursuant to his instructions.
>
> Can you please provide us with your mailing address for our records.

[19] In response the uncle provided his mailing address in Hong Kong.

[20] From the May 20, 2015 deposit, the following withdrawals were made upon the instructions of PL: May 21, 2015 – $300,000 Canadian to PL, and on June 8, 2015 three cheques to law firms in the amounts of approximately $18,500, $19,750 and $59,900 for purchase deposits. The Respondent was not acting for PL with respect to any of these purchases.

[21] On June 10, 2015 a further $1,700,000 US was wired to the trust account from [xxco] via Luxembourg. Two days later, a bank draft was prepared for essentially the same amount ($1,699,985) to A. Inc., one of PL's companies. There is no indication that the Respondent was providing any legal services to PL or to A. Inc. with respect to these funds. Further, there is no indication that the Respondent or her assistant knew either the date or the amount of funds or who the funds would be coming from, or even that they would be coming from a different source than the May 18 wire transfer.

[22] On June 15, 2015 a further $1,849,971.20 US was wired to the trust account from KF from Singapore. A US dollar bank draft of essentially the same amount was paid out on June 15 to A. Inc. on the instructions of PL. Again, there is no indication that the Respondent was providing any legal services with respect to these funds, nor was there any information in advance about the amount of money, the date of the deposit or the fact that the deposit would be coming from a different entity than had provided the first two deposits.

[23] Of the approximately $200,000 remaining in trust, amounts were paid out between June 15 and July 7 in varying amounts to law firms for purchase deposits, to investment funds, and almost $100,000 to PL, all on the instructions of PL. Again, there is no indication that the Respondent was providing any legal services to PL or any of his related companies with respect to the purchase deposits or the investments at that time.

[24] Over the next two years, funds continued to be deposited to the trust account, and in similar fashion, these monies were disbursed to a variety of other law firms, to investment entities, to currency exchange companies, to companies controlled by PL and to PL personally. In total, between May 20, 2015 and February 23, 2017, a total of $9,949,688.99 US and $1,274,764.96 Canadian was received in trust, and the same was paid out of trust in a total of 45 transactions. Of the amount paid out of trust, only approximately $1.5 million US was transferred directly to the credit of other legal files at KALC, where the Respondent was providing legal services. Those transfers were as follows:

(a) November 13, 2015 – $1,049,855.49 US transferred to the File (purchase of commercial property in Chilliwack);

(b) April 25, 2016 – $115,124.75 Canadian transferred to [number] E Holdings;

(c) May 10, 2016 $380.69 Canadian – transfer to [number] E Holdings for payment on account; and

(d) May 20, 2016 $455,004.36 – transfer to file [number] re: purchase of Vancouver City property.

[25] At no time did the Respondent ask any further questions of PL as to why the trust fund was being used to receive and disburse funds where the firm was not doing any legal work in connection with the disbursed funds. Notwithstanding that the funds were coming in as wire transfers from a variety of sources, including Panama, Singapore, a Singapore bank via Luxembourg, the Respondent did not ask further questions or ever meet or speak to the uncle who was providing the funds to PL. At no time after the initial call to the Law Society in May 2015 did the Respondent or anyone on her behalf contact the Law Society about the propriety of the activity in File 20968.

[26] The fact that these deposits raised red flags was not lost on the bankers involved in these transactions. In February 2016 the Royal Bank made inquiries about the source and purpose of the funds. In an email to PL from the Respondent's assistant, the assistant stated that the "Royal Bank has advised that it needs to know the purpose of these funds. 'Gift' is not a sufficient reason. "Investment may or may not work; probably best to have a more tangible reason." After PL responded, the assistant responded to the Royal Bank that "the reason for the funds is for investment into real estate assets. Also the pay down into investment property." In June 2016 the Royal Bank had further questions, including why a law firm was receiving funds that were intended as a gift between family members, and again the Respondent's assistant went to PL for responses. In August 2017 the Royal Bank had further questions about the trust activity, including why the money was coming in via wire transfers from Panama and wanted details about the Uncle's source of wealth in Panama. In response to that August 2017 query (which the Respondent passed on to her client, PL for answers) PL explained that the monies were dividend income from the Uncle's business as a registered and exclusive brand agent of China's number one brand of rice wine and for the China National Tobacco Co. There is no indication that the Respondent was aware of this level of detail, or had ever asked similar questions of her client as the Bank required, before August 2017.

[27] The Respondent has argued that she made appropriate inquiries, given that PL was a long-standing client. The Respondent testified that she made it a practice only to do work for existing clients or for referrals from friends, family or existing clients in order to avoid risk.

[28] She had acted for PL with respect to restaurant purchases, including the acquisition and transfer of liquor licences, which required criminal record checks. She knew he had relocated to Hong Kong in order to work with his father and uncle. She knew, through conversations with him from Hong Kong concerning various legal issues, including the residency status of his father, distributing and trademarking products, incorporating a company for the purpose of purchasing licensed merchandise for resale. She created a trust agreement to transfer the beneficial interest in PL's parents' Vancouver home to his mother as the sole beneficiary. In doing so, she met his parents. All of this, she testified, gave her a sufficient level of knowledge of the client such that she did not need to make further inquiries.

[29] The Respondent's evidence, through her testimony and Notice to Admit is that, in May 2015, PL contacted her by phone and indicated that his uncle's foundation wished to invest in property. PL indicated he would be receiving funds from the uncle as a gift or loan for this purpose. The Respondent testified that this made sense to her, as she knew the uncle had no children of his own. She also emphasized the amount of legal services that she was in fact providing to PL and his related companies during the time frame that the funds were being deposited into the trust account.

[30] The Respondent opened 16 files for PL or related companies during the material period. These included purchases of commercial buildings in Vancouver, Surrey and Chilliwack and on Vancouver Island and related lease matters. She created a family trust for PL, she incorporated companies and drafted a shareholders agreement, and she acted for him in connection with the purchase, joint venture and financing of property near Victoria.

[31] Her understanding was that she was performing substantial legal services for PL and his related companies with respect to property investments. Further, she believed that this was sufficient reason for her to receive funds into trust even if the funds deposited for File 20968 were not connected to any specific legal file at the time of the deposits or withdrawals from trust.

OBLIGATIONS REGARDING TRUST FUNDS

[32] There is no dispute about the test for professional misconduct. A lawyer will be found to have committed professional misconduct if the conduct is a marked departure from the conduct that the Law Society expects of lawyers. (*Law Society of BC v. Martin*, 2005 LSBC 16 at par. 171). What conduct the Law Society expects of its members can be found in the *Code of Professional Conduct* and commentary, the Law Society Rules, and the precedents that have applied them. This is not a dispute about what the test is – it is a dispute about whether the test has been met.

[33] Further, there is not a great deal of material dispute on the evidence in this case. The specific deposits and withdrawals from trust are not disputed. The fact that the Respondent was doing, and had done, a great deal of legal work for PL and related companies is not disputed. Although there are some minor disagreements about certain events, the major dispute is with respect to what obligations were on the Respondent with respect to the trust accounts and whether these obligations were met in the circumstances of this case.

[34] The starting point is rule 3.2-7 of the *Code of Professional Conduct*. The rule states:

> A lawyer must not engage in any activity that the lawyer knows or ought to know assists or encourages any dishonesty, crime or fraud.
>
> Commentary
>
> 1. A lawyer should be on guard against becoming the tool or dupe of an unscrupulous client, or of others, whether or not associated with the unscrupulous client.
>
> 2. A lawyer should be alert to and avoid unwittingly becoming involved with a client engaged in criminal activities such as mortgage fraud or money laundering. Vigilance is required because the means for these, and other criminal activities may be transactions for which lawyers commonly provide services …
>
> 3. Before accepting a retainer, or during a retainer, if a lawyer has suspicions or doubts about whether he or she might be assisting a client in any dishonesty, crime or fraud, the lawyer should make reasonable inquiries to obtain information about the client and about the subject matter and objectives of the retainer. These should include

making reasonable attempts to verify the legal or beneficial ownership of property and business entities and who has the control of business entities, and to clarify the nature and purpose of a complex or unusual transaction where the nature or purpose are not clear.

3.1 The lawyer should also make inquiries of a client who:

(a) *seeks the use of the lawyer's trust account without requiring any substantial legal services from the lawyer in connection with the trust matter,* or

(b) promises unrealistic returns on their investments to third parties who have placed money in trust with the lawyer or have been invited to do so.

3.2 The lawyer should make a record of the results of these inquiries.

[emphasis added]

[35] A lawyer's obligations concerning trust funds were succinctly set out in *Law Society of BC v. Gurney*, 2017 LSBC 15 at par 79:

…

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

(b) The Court of Appeal in *Elias v. Law Society of British Columbia* (1996), 26 BCLR (3d) 359, 1996 CanLII 1359, quoted the Bencher review decision at para. 9: "where the circumstances of a proposed transaction are such that a member should reasonably be suspicious that there are illegal activities involved under Canadian

> law or laws of other jurisdictions, it is professional misconduct to become involved until such time as inquiries have been made to satisfy the member on an *objective* test that the transaction is legitimate." [emphasis added by the *Gurney* panel] It is clear that the duty to make inquiries is triggered prior to the lawyer becoming involved in the transaction, and the lawyer must be satisfied on an objective basis that the transaction is legitimate.
>
> (c) The lawyer's duty to investigate arises when, on an objective basis, he becomes suspicious that the transaction is illegitimate. Professional misconduct can be found even if the underlying transaction cannot be proved to be illegitimate. A lawyer cannot delegate the duty to inquire to a third party such as a client and rely upon the client's assurance as to the legitimacy of the transaction.
>
> [emphasis added, footnotes omitted]

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

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

> For any transaction in which you are involved … it is always sound to think through the issues: Do you fully understand the transaction? Are you satisfied the investment is legitimate? ... Are you offering legal

> services and advice, and acting as a lawyer in the transaction? ... If the answer is "no" to any of these questions, why are you involved?

Similarly a 2002 *Benchers' Bulletin* stated:

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

[38] In essence, that is what was occurring in this case. Of the 30 withdrawals from trust in issue in the citation, only four were transfers to other legal files where the Respondent was providing legal services. These transfers were to complete transactions or pay a small account. Other withdrawals were to the client or his related companies, to other law firms with respect to transactions with which the Respondent was not involved, to currency exchanges, or to other investment entities, again, where the Respondent was not providing legal services and was, in essence, being the banker.

ALLEGATION 1

[39] In order for the Law Society to prove the allegation 1 of the citation, it must prove, with clear, convincing and cogent evidence, on a balance of probabilities that:

(a) The Respondent permitted the use of her trust fund for the relevant deposits and withdrawals;

(b) She did not do substantial legal work in connection with the trust matter;

(c) She objectively had an obligation to make inquiries about the circumstances;

(d) She failed to make the necessary inquiries; and

(e) She failed to record the results of the inquiries.

[40] In this case, it is not disputed that the Respondent continued to do legal work for PL and his related companies. It is fair to characterize this work as substantial. However, it is not enough that a lawyer does legal work, even substantial legal work, for a client who deposits money into the lawyer's trust account. These legal services must be "in connection with the trust matter."

[41] In this case, although PL indicated that he wanted to invest in properties with money from his uncle, and although the Respondent ultimately did in fact act for PL in connection with the purchase of certain properties in BC, there is nothing (with the exception of the four transfers noted above) tying the deposits and withdrawals from trust with the legal work provided.

[42] As set out above, the Respondent did not have a contract for purchase and sale with respect to the first deposit (and, it appears that there never was a contract of purchase and sale as the offer was not accepted). The second deposit of $1.7 million US was disbursed via bank draft to a company controlled by PL within two days, again, with no evidence that this was connected to a specific retainer of the Respondent. That the Respondent was not providing any legal services with respect to this trust matter can be seen from the bill for legal services rendered in connection with File 20968 between May 2015 and December 2015. The bill refers to various receipts into trust and payments out of trust to the client and other parties but does not refer at all to the provision of any legal advice. We find that there were no substantial legal services provided with respect to the trust matter.

[43] It is not enough that, during the time frame in question, the Respondent was working on real estate transactions for PL. The deposits and transfers out of trust were not tied to specific real estate transactions (except for the four transfers noted above). Instead, PL was simply using the Respondent's trust fund as a bank account, to which he could make deposits when it suited him and from which he could transfer money out at will.

[44] For the allegation in the citation to be made out, however, it is not enough that no substantial work was done in connection with the trust matter. Where there is no connection to the provision of legal services by the lawyer relating to the use of the account, this requires that the lawyer make inquiries of the client.

[45] In this case, there were a number of troubling indicators or "red flags" that, particularly in connection with the lack of legal services provided with respect to the trust funds, should have been troubling to the Respondent. Among the things that made these transactions questionable, if not outright suspicious, are:

(a) there was no reason given for the funds to come through the trust account when, although property investment was contemplated, the Respondent had not seen any contracts of purchase and sale;

(b) the Respondent did not know PL's uncle. At the time of the first deposit, she did not know his name, his foundation's name, whether the money would be coming from the uncle or his foundation, where the uncle lived,

or where he worked, his level of wealth or the origins of the money being "gifted" to her client;

(c) the money came from a variety of sources (from companies, from a foundation, from the uncle individually, and from different banks in Singapore and Panama) and at a variety of intervals without explanation as to why or when and often without notice that the money was coming at all;

(d) the value of the deposits was different than what was discussed at the time of the original deposit. Originally, PL indicated that the gift would be 3 to 4 million dollars. Originally only $500,000 US was deposited, and then ultimately over $10,000,000 US was deposited over the two-year period;

(e) PL asked that the first deposit be substantially paid out within a day of deposit. The explanation was that the purchase, the documentation for which the Respondent had never seen, had fallen through;

(f) there was no explanation as to why, if there was no specific purchase in the works, a further $3.5 million US was deposited into trust, in two separate amounts, less than a month later.

(g) although PL claimed to be concerned about exchange rates and maximizing his investments, there was no reason given, nor were questions asked, about why the money was being deposited into a non-interest bearing trust account rather than being deposited to a bank until the funds were needed for real estate purchases;

(h) although there may be many legitimate reasons for a Hong Kong businessman to have money in Panama accounts, it raises enough of a concern that questions concerning the source of funds should have been asked. This is particularly so when the Panama Papers were in the news during this time frame, highlighting the potential linkages between Panama and money laundering.

[46] Further evidence of the questionable nature of these transactions is that the Royal Bank, on four separate occasions between February 2016 and August 2017, had to make inquiries about the source of the funds, and that it was only in connection with the Royal Bank inquiries that specific questions were asked of PL about the source of funds.

[47] The Respondent says that there was no reasonable basis for the Respondent to be suspicious. She knew PL well, and he had been a client for approximately eight

years before the first deposit. There were enough red flags, however, as set out above, that should have alerted her to ask questions and record the answers to ensure that her trust account was not being used for any nefarious purpose. We find that there was an objective basis for suspicion such that the Respondent had a duty to make further inquiries.

[48] The extent of the information she obtained before allowing monies to be deposited to trust are contained in her note to file dated May 1, 2015, reproduced above at para. 11.

[49] Although she had her staff contact the Law Society about the first disbursement from trust, it is not at all clear that enough information was given to the Law Society for the Respondent to be able to rely on the response from the Law Society as absolving her of any further duty to be vigilant about the trust account. Although it appears that the Law Society was told that the Uncle provided monies for the nephew's use for a real estate transaction that did not complete, it is not clear that the Law Society was told that the money came in and out of the account in such a short time frame, or that the Respondent had provided no legal services and had in fact never seen the alleged contract or offer to purchase, or that the monies were wired from off shore. Neither the inquiry to the Law Society nor the information that she obtained from her client met the standard required of the Respondent to make inquiries about the subject matter and objectives of her retainer, the source of the funds, the purpose of the payment of the funds or the reason for the payment of the funds to or through the firm's trust accounts.

[50] For these reasons, we find that the Law Society has proven the first allegation in the citation.

ALLEGATION 2

[51] The second allegation in the citation is that the Respondent received funds into the firm's trust accounts but failed to record the source of the funds with respect to the following deposits:

> $500,000 US received as $604,770.16 on or about May 20, 2015;
>
> $1,700,000 US received on or about June 10, 2015; and
>
> $1,849,971.20 US received on or about June 15, 2015.

[52] The Rules clearly set out that a lawyer must maintain a book of entry or data source showing all trust transactions, including the source and form of the funds received.

In this case, although there were indications on the wire transfers or wire confirmations for the above deposits (albeit not in English), the source of funds were not recorded in the book of entry for these deposits.

[53] The Respondent argues that it is enough that the wire receipts were retained, that they could have been translated into English to ascertain the source of funds and, further, that it was not the Respondent's obligation, as an employee of the firm, to ensure that the appropriate records were kept.

[54] With respect to the first argument, the Law Society Rules differentiate between supporting documents and the book of entry or data source. It is not enough that there are supporting documents (although there must be), there must also be a book of entry or data source, which is, as the Law Society puts it – the "foundational accounting record" for trust accounts that allows lawyers, firms and the Law Society to review trust transactions.

[55] Secondly, it is not sufficient for the Respondent, who had signing authority on the trust account and was responsible for the file in which the transactions were taking place to absolve herself of responsibility by saying that she was not responsible for the accounting procedures in the law firm. Signing authority on a trust account comes with a responsibility to ensure that the account is used in accordance with the Law Society Rules for every transaction for which a lawyer is responsible.

[56] The Respondent further argues that this is a mere Rules breach and does not amount to professional misconduct. However, the failure to document the source of funds is not the only matter that brings the Respondent before this Panel. This 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). This Panel must take into account the totality of the circumstances and particularly the fact that the failure to record the source of funds takes place in the context of the marked departure of the Respondent failing to make sufficient inquiries about the source of funds, and the fact that this took place on three separate occasions within a month. In all the circumstances of this case, we find that the failure to record the source of funds in the book of entry constitutes professional misconduct.

SUMMARY

[57] This Panel finds the Law Society has established both allegations on the citation, and we find the Respondent committed professional misconduct in relation to both allegations.

NON-DISCLOSURE ORDER

[58] The Law Society seeks an order under Rule 5-8(2) excluding all confidential or privileged information from disclosure to the public. If a member of the public requests copies of the exhibits or transcripts of these proceedings, the exhibits and transcripts should be redacted for confidential or privileged information before being provided to the public.

[59] The Panel agrees with this request. In the course of this hearing a great deal of solicitor-client information was provided, and we agree that any portions of the transcript or exhibits that refer to confidential client or privileged information must not be disclosed to the public.