2020 LSBC 58
Decision issued: December 3, 2020
Citation issued: December 18, 2019

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

MILAN MATT UZELAC

RESPONDENT

DECISION OF THE HEARING PANEL

Written materials:	September 30, 2020
Panel:	Jennifer Chow, QC, Chair Darlene Hammell, Public representative Sandra E. Weafer, Lawyer
Discipline Counsel:	Kathleen Bradley
Appearing on his own behalf:	Milan Matt Uzelac

OVERVIEW

[1] The Respondent admits that, between 2017 and 2018, he received and disbursed up to $1,167,000 through his trust account on behalf of his client, AN, without making reasonable inquiries about the circumstances and without providing substantial legal services in relation to those funds. As a result, AN was able to use the Respondent's trust account to dupe PW into investing funds in a fraudulent investment scheme.

[2] The Respondent has made a conditional admission of professional misconduct and has consented to proposed disciplinary action, pursuant to Rule 4-30 of the Law Society Rules.

[3] The Panel accepts the Respondent's admission of professional misconduct, as well as the proposed disciplinary action that the Respondent be suspended for four months and pay costs of $1,000 (the "Proposed Disciplinary Action").

Procedural history

[4] On May 7, 2019, the Respondent was interviewed by two Law Society investigators (the "Law Society Interview").

[5] On December 6 and 18, 2019 respectively, the Discipline Committee authorized and issued the following citation (the "Citation"):

> Between July 2017 and July 2018, the Respondent used his trust account to receive and disburse some or all of $1,167,000 that he credited to AN, without making reasonable inquiries about the subject matter and objectives of his retainer and the source of the funds, and without providing substantial legal services in relation to the trust funds.

[6] The Respondent admits proper service of the Citation, pursuant to Rule 4-19 of the Rules.

[7] By letter dated September 17, 2020 to the Chair of the Discipline Committee, the Respondent admitted that he had committed professional misconduct. The Respondent consented to a suspension of four months and payment of costs in the amount of $1,000. He also expressly acknowledged that publication of the circumstances summarizing this admission, pursuant to Rule 4-48 of the Rules, will identify him.

[8] On September 24, 2020, the Discipline Committee considered and accepted the Rule 4-30 proposal. Pursuant to Rule 4-30(4), discipline counsel was instructed to recommend to the Panel that it accept the Proposed Disciplinary Action.

[9] On September 30, 2020, the Panel received the Law Society's application to have this hearing conducted in writing. The Respondent consented in writing to that application.

[10] On October 22, 2020, the Panel ordered, by consent, that this Rule 4-30 hearing be conducted in writing. The Joint Book of Exhibits, which was marked as Exhibit 1, consists of the following:

> Tab 1: The Citation;
>
> Tab 2: A letter dated September 17, 2020 from the Respondent to the Chair of the Discipline Committee;
>
> Tab 3: An Agreed Statement of Facts signed and dated September 17, 2020; and

Tab 4: The Respondent's Professional Conduct Record ("PCR") as at September 17, 2020.

[11] On October 22, 2020, after considering the content of Exhibit 1, the Panel made its decision and granted the following orders:

(a) Pursuant to section 38(5)(d)(i) of the *Legal Profession Act*, the Respondent is suspended from the practice of law for a period of four months, beginning on the first day of the month following the release of the Panel's decision;

(b) Pursuant to Rule 5-11, the Respondent must pay costs of $1,000 within 30 days of the release of this decision; and

(c) Pursuant to Rule 5-8(2)(a), if any person, other than a party, seeks to obtain a copy of any exhibit filed in these proceedings, confidential client information and information protected by solicitor-client privilege must be redacted from the exhibit before it is disclosed to that person.

[12] On October 23, 2020, the Panel's decision was communicated to the parties, with reasons to follow. These are our reasons.

Agreed Statement of Facts

[13] The following facts generally mirror the Agreed Statement of Facts dated September 17, 2020.

The Respondent's background

[14] The Respondent is a senior member of the BC Bar. The Respondent was called to the BC Bar and admitted as a member of the Law Society on June 26, 1975. Since 1981, he has practised law primarily as a sole practitioner.

[15] The Respondent currently practises law full-time through Milan Uzelac, Law Offices, Personal Law Corporation (the "Firm"). The Respondent has a general practice, including the areas of corporate/commercial, family, criminal, residential real estate, administrative, civil litigation, commercial lending transactions, motor vehicle and wills and estates law.

The Respondent's trust account facilitated AN's fraud on PW

[16] On July 17, 2018, a detective from the Vancouver Police Department (the "Detective") contacted the Law Society regarding the Respondent's trust account. The Detective advised the Law Society that PW, a female complainant, reported having deposited funds into the Respondent's trust account as part of an investment scheme.

[17] On July 25, 2018, the Detective further advised the Law Society of the following:

(a) PW was approached by AN about an investment scheme whereby the Royal Bank in Barbados ("RBC") was offering eight per cent interest for funds deposited with RBC;

(b) PW was asked to provide funds in the form of bank drafts made payable to the Respondent "in trust";

(c) PW understood that the funds were to be deposited into the Respondent's trust account and then transferred to RBC;

(d) On AN's instructions, PW provided AN with bank drafts totalling more than one million dollars to be deposited to the Respondent's trust account;

(e) PW subsequently learned from RBC that the purported investment scheme was fraudulent;

(f) AN had also convinced PW to form a company with AN and herself as directors. That company was to be used as a vehicle for PW to attract other investors and invest their money in the scheme. AN incorporated the company and named it V Ltd. V Ltd.'s mailing and delivery address was the business address of AN's father;

(g) PW opened an RBC account for V Ltd. She did not know that she was the only director of V Ltd. and that AN was not listed as a director;

(h) AN told PW that RBC was so impressed with their business plan that they were willing to give them $5,000 in "seed money";

(i) PW thought this was strange, but AN gave her a trust cheque made payable to V Ltd. dated June 28, 2018 for $5,000. That trust cheque was from the Respondent's trust account;

(j) PW demanded her money back directly from RBC. PW found out that emails purportedly from RBC were fake, as they had been sent to her from email accounts controlled by AN; and

(k) On or about July 21 or 22, 2018, as a purported gesture of goodwill, AN gave PW a second cheque written on the Respondent's trust account for $200,000.

AN's fraud on PW

[18] PW has a disabled son who used to attend the same school as AN's daughter. In October 2016, PW's son's medical condition deteriorated and he started an experimental chemotherapy treatment.

[19] At that time, PW sought a second opinion from Dr. F of a US-based hospital. However, the hospital advised that an in-patient consultation was required, and PW's son was unable to travel.

[20] PW told AN of her difficulties in obtaining a second opinion. AN told PW that he was receiving treatment at the Mayo Clinic for cancer and that his oncologist was a good friend of Dr. F and might be able to help her get a referral.

[21] Subsequently, AN told PW that, for a fee of $5,200, Dr. F would provide a second opinion on her son's case without seeing him in person. PW paid that amount in cash to AN.

[22] Using an email address provided to her by AN, PW sent copies of her son's medical documents and other correspondence to Dr. F. Although PW received purported replies from Dr. F, she never received a second opinion.

[23] In the first half of 2017, while PW was corresponding with Dr. F, AN advised PW that he was the Vancouver representative of RBC. AN told PW that, for friends and family, he could arrange a special three-year term deposit for amounts over $60,000. AN said that the deposits would earn six per cent interest, would be redeemable at any time without penalty or forfeiture of earned interest, and that all bank drafts were to be deposited into a practising lawyer's trust account in BC.

[24] Between July 24, 2017 and March 16, 2018, PW provided eight bank drafts to AN as follows:

	DATE	AMOUNT
(a)	July 24, 2017	$7,000

(b) August 14, 2017	$125,000
(c) August 24, 2017	$125,000
(d) October 17, 2017	$350,000
(e) November 7, 2017	$100,000
(f) January 16, 2018	$35,000
(g) January 29, 2018	$400,000
(h) March 16, 2018	$25,000
TOTAL	$1,167,000

All of the bank drafts were made payable to "Milan Uzelac Law Offices in Trust."

[25] In July 2018, PW told her accountant about her investments with AN. The accountant became suspicious. The accountant had her staff contact RBC. RBC confirmed that no portfolio was being held for PW.

[26] PW subsequently had a friend investigate the IP addresses used by Dr. F and RBC in their emails to her. PW's friend advised her that the emails were coming from AN and his wife's IP address and that the physical location of the IP address belonged to AN and his wife's residential address in Vancouver.

[27] PW subsequently retained counsel, initiated a civil suit against AN and reported AN's fraud to the police.

[28] The Respondent never had any direct contact with PW, nor did he have any direct or indirect knowledge of PW, her circumstances, her son's circumstances or any of her dealings with AN.

[29] In October 2018, PW, AN and AN's wife settled the civil suit. The settlement included a term that the defendants would direct any funds held in trust by the Respondent to be paid to counsel for PW the following week. On November 1, 2018, the Respondent paid $153,269.21 to counsel for PW from funds held in trust for AN. On November 6, 2018, AN and his wife consented to judgment being entered against them as if pronounced after trial. As of November 6, 2018, the balance owed to PW was $946,857.73.

[30] Although they consented to judgment, AN and his wife repeatedly resisted efforts to aid in execution of that judgment. As a result, on November 28, 2018, Justice

Sharma fined AN $10,000 and committed him to 14 days in jail for contempt of court. On November 30, 2018, Justice Sharma fined AN's wife $10,000 and committed her to 14 days in jail for contempt of court, but suspended the committal order to December 10, 2018.

[31] PW has advised the Law Society that the matter subsequently settled. Although PW was content with the settlement, she was unable to disclose any details of the settlement.

[32] The Respondent never had any retainer agreements with AN.

[33] The Respondent's trust records confirm receipt of PW's bank drafts:

(a) The first three bank drafts totalling $257,000 were recorded as having been deposited to the Respondent's trust account in relation to another matter involving AN (the "A judgment"). At the Law Society Interview, the Respondent explained that this was done because that was the file that was open for AN; and

(b) Starting with the October 2017 deposit, the subsequent bank drafts totalling $970,000 were deposited to the Respondent's trust account in relation to a new matter for AN labelled "Payments".

[34] The Respondent did not make specific inquiries about the source of the funds he received from AN. In a letter to the Law Society dated March 18, 2019, the Respondent explained that his understanding was that the source of AN's funds was from any one or more of his investments, including his work for Corporate House, AN's father or his wife's family. The Respondent thought that the bank drafts he received came from AN's own bank account. However, AN frequently asked for cheques to be made payable to himself at the same time that he confirmed the arrival of a new deposit. At the Law Society Interview, the Respondent admitted that he did not ask AN anything about the source of AN's deposits or why he was being asked to write a cheque payable to AN at the same time AN was making deposits.

[35] The Respondent admits that AN's explanation about certain bank drafts received in 2017 that were said to be settlement funds from AN's employment with Corporate House, should have been a red flag that spurred further enquiries. Corporate House was the Canadian representative of the Panamanian law firm Mossack Fonseca, which was at the centre of the Panama Papers scandal that became public in the summer of 2016.

[36] The Respondent admits that the structure of AN's purported settlement payments was inconsistent with commercial norms for a settlement with a former employee. The Respondent admits that it was objectively unlikely that all of the bank drafts he received from AN in 2017 were settlement funds. He also admits that he did not ask questions or seek further information about the purported settlement funds.

[37] The Respondent understood that AN did some work for Corporate House, such as stock promotion. In or about 2007, AN referred some Corporate House work on securities issues to the Respondent. At the Law Society Interview, the Respondent explained that AN subsequently had a couple of companies doing work along the same lines as Corporate House. The Respondent was aware of the Panama Papers scandal and AN's links to it before he received some or all of PW's funds.

[38] On July 30, 2018, pursuant to Rule 4-55 of the Rules, the Chair of the Discipline Committee ordered an investigation into the books, records and accounts, including electronic and mobile phone records, of the Respondent and the Firm (the "Rule 4-55 Order").

[39] On March 14, 2019, Sarah Gosden, a forensic accountant employed by the Law Society, issued an investigative report summarizing her findings of the records obtained under the Rule 4-55 Order.

[40] During the period of time investigated under the Rule 4-55 Order, the Respondent made 99 withdrawals from trust in relation to AN's files. The 99 withdrawals totalled $1,070,618.41.

[41] In an email to the Law Society dated March 18, 2019, the Respondent explained that he understood the purpose of the funds he received from AN was to satisfy and repay directly, or indirectly, various parties to whom AN had become indebted in recent years, such as the A judgment. The Respondent admits that he did not know how much money he was to receive from AN before he received it. Nor did he know how AN was to use the particular funds he received and disbursed under a direction to pay from AN. The Respondent advised the Law Society that the payments did not raise any concerns for him.

[42] The Respondent did not provide any legal services in relation to the 99 withdrawals, apart from two payments to settle the A judgment. The Respondent never asked AN who PW was. His invoices to AN did not refer to any specific legal services. The Respondent does not have an explanation for why AN routed these deposits and disbursements through his trust account rather than just making the payments through his own bank account. At the Law Society Interview, the

Respondent advised that AN's deposits and disbursements did not strike him as unusual at the time and he did not ask any questions about them.

[43] AN's pattern of disbursements raised concerns with RBC. On August 30, 2017, AN wrote an email to the Respondent advising that he had drawn a red flag at his bank and asked the Respondent to verify the recent trust cheques he had written to AN and confirm that they were part of a settlement. The Respondent verified the cheques with RBC despite not understanding what the bank's concern was about the cheques and without having any independent confirmation that the funds were related to any settlement.

The Respondent's long-term relationship with AN

[44] The Respondent has known AN and his family for decades. The Respondent met AN in the 1980s when AN was about nine years old. The Respondent attended some family functions with AN, including AN's wedding.

[45] The Respondent first met AN's father when both were working at the same law firm. AN's father later became a notary public and immigration consultant. In 1995, coincidentally, the Respondent and AN's father purchased commercial office units in the same building in Vancouver.

[46] During the Law Society Interview, the Respondent explained that, over the course of their relationship, AN worked as a stock promoter for Corporate House and helped AN's father by handling some immigration files and hearings for his immigration practice. The Respondent explained that he did not know exactly what AN did.

Earlier evidence of fraud by AN

[47] The Respondent acknowledged the following cases involving AN:

(a) *Sharp v. Canada (National Revenue)*, 2017 FC 684. On July 13, 2017, the Federal Court issued a decision regarding a motion in the *Sharp* tax file. The motion was for the removal from the court file of an affidavit that was found to refer to and contain fabricated documents. Although AN was not a party to the proceedings, the parties agreed that he was the source of the fabricated documents. The Respondent stated to the Law Society that he was not previously aware of the Federal Court decision. The Respondent's file materials, however, contained a printout of an article about the *Sharp* matter, with a print date of August 12, 2017.

(b) *FA v. AN et al.* In June 2015, FA filed a claim against AN, AN's wife and a numbered company where AN's wife was the sole director. The Firm was the registered and records office of the numbered company. The claim alleged that, in June 2011, FA paid $20,000 to the numbered company as an investment in an Alberta gas project. In September 2011, FA invested an additional $15,000. FA alleged that he discovered that the Alberta gas project did not exist, that documents provided by AN displayed false information and that AN made other false presentations. Although the Respondent recommended defending the claim to AN, he did not look into any of the underlying facts. The *FA* lawsuit settled in 2017 for $25,000. The funds used to pay the settlement came from PW's deposits given to AN who, in turn, provided those funds to the Respondent. The Respondent stated to the Law Society that he recalled very little about the file. When asked whether FA's allegations raised any concerns for him about AN's honesty or conduct, the Respondent explained "somewhat I guess, yes …You know, I don't know who was telling the truth in this."

(c) *GC v. Uzelac and the Firm*. In July 2011, GC filed a claim against the Respondent and the Firm in the Supreme Court of BC. GC alleged that he had hired the Firm to file an application for permanent residency and a work visa. He later found out that no applications in his name were ever received by Citizenship and Immigration Canada. GC alleged that he had been misled about his applications for two years. After no response from the Respondent about his file for four months, GC asked for his file and a full refund. He was provided with his file but no refund. GC hired a different lawyer to submit his applications.

In July 2011, the Respondent sent an email to AN with the claim attached. They exchanged emails in which they discussed the $25,000 sought by GC. In August 2011, the Respondent filed a Third Party Notice against AN alleging that AN agreed to prepare and submit GC's immigration applications and to account for GC's funds. The Respondent alleged that AN provided false or misleading information to GC as to the progress of any immigration application.

At the Law Society Interview, the Respondent was not able to recall much about the *GC* matter. When asked about his concerns with AN's honesty or working with him in the future, the Respondent replied "I think I just let it go and turned the other cheek. Let's put it that way, okay?"

GC complained to the Law Society that AN was representing himself as an immigration lawyer working for the Respondent. In December 2010, the Respondent acknowledged to the Law Society that AN had worked for his office but denied that AN ever represented himself as a lawyer.

(d) *S Inc. v. AN*. In August 2010, S Inc. filed a claim against AN and a numbered company in the Supreme Court of BC. In September 2010, the Respondent opened a file as counsel for the defendants. AN was the sole director and president of the numbered company. The Firm was the registered and records office of the numbered company. The claim alleged that AN caused $47,500 to be withdrawn from S Inc.'s bank account and paid to AN and the numbered company without lawful authority. The claim further alleged that AN made false representations to the bank, deliberately concealed his actions from S Inc. and falsified documents.

The Respondent explained to the Law Society that he had little recollection of the S Inc. file and did not recall whether there was a meritorious defence. The defence filed was a rote denial of the allegations.

(e) S Inc. In July 2010, the Respondent received a letter from PS of S Inc. seeking information about $15,000 he had sent to the Respondent's trust account in 2005. PS asked about the incorporation of S Inc., which the Respondent had facilitated through AN. PS explained that he deposited $15,000 on AN's advice that the Registrar of Companies required that sum for a bond to be held for up to three years. The Respondent admits that PS's attached email sent from AN to PS should have raised obvious concerns about AN's conduct. The Respondent replied to PS explaining that he was unaware of any requirement for a bond and that PS should contact AN directly. The Respondent also advised PS that his trust account ledger for S Inc. did not show the receipt of any funds at any time. At the Law Society Interview, the Respondent stated that he did not recall the email or the letter, what they were about or whether they gave rise to any concerns at the time.

(f) AN immigration seminar. In February 2005, AN asked the Respondent to be "legal cover" for an immigration seminar he planned on running. AN wanted to state that he was employed by the Respondent and to use the Firm's name on business cards. AN also advised the Respondent that he had wired $9,000US to the Respondent in trust and asked him to cut a

cheque to him for the full amount in Canadian dollars. In an email to the Law Society dated September 6, 2019, the Respondent wrote that he did not recall any seminar and had no idea what AN meant when he asked for "legal cover for the seminar." He denied ever agreeing to AN saying he was employed by the Firm or authorizing him to use the Firm name on business cards. The February 2005 emails from AN to the Respondent were printed and filed in the S Inc. file in 2010. The Respondent advised the Law Society that he had no idea why this was done.

ISSUES

[48] The issues before the Panel are:

(a) Whether the conduct admitted by the Respondent amounts to professional misconduct, and

(b) Whether the Proposed Disciplinary Action falls within the acceptable range for this misconduct

DISCUSSION

Onus of proof

[49] The Law Society bears the burden of proof on a balance of probabilities to establish that the facts amount to professional misconduct: *Law Society of BC v. Schauble*, 2009 LSBC 11, para. 43; *Foo v. Law Society of BC*, 2017 BCA 151, para. 63.

Test for professional misconduct

[50] The term "professional misconduct" is not defined in the *Act*, the Rules or the *Code of Professional Conduct for British Columbia* (the "*BC Code*"). The leading case on the test for professional misconduct is *Law Society of BC v. Martin*, 2005 LSBC 16, para. 171, which is: "whether the facts as made out disclose a marked departure from that conduct the Law Society expects of its members." Further, the analysis involves determining whether the Respondent's conduct displays culpability "which is grounded in a fundamental degree of fault that is whether it displays gross culpable neglect of his duties as a lawyer" (*Martin*, para. 154).

Rule 3.2-7 of the *BC Code* regarding trust accounts

[51] In determining whether the Respondent's conduct amounts to professional misconduct, the Panel has considered Rule 3.2-7 of the *BC Code*:

> 3.2-7 A lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud.
>
> 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.
>
> …
>
> [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 and 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 investment 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.

The parties' positions

[52] The Law Society submits that the Proposed Disciplinary Action of a four month suspension and payment of $1,000 in costs is an acceptable sanction as it falls within the range of a fair and reasonable disciplinary action.

[53] The Respondent admits professional misconduct and consents to the Proposed Disciplinary Action.

Rule 4-30 analysis

[54] In a Rule 4-30 hearing, the panel is to satisfy itself that the proposed disciplinary action is acceptable and falls within the range of a fair and reasonable disciplinary action in all the circumstances, even where the panel may prefer a different disciplinary action: *Law Society of BC v. Rai*, 2011 LSBC 02, para. 7.

[55] The primary purpose of disciplinary proceedings is to fulfill the Law Society's mandate to uphold and protect the public interest in the administration of justice: the *Act*, section 3*; Law Society of BC v. Ogilvie,* 1999 LSBC 17, paras. 9 and 10. In considering whether the Proposed Disciplinary Action is fair and reasonable, the Panel has considered whether the proposal maintains high professional standards and preserves public confidence in the legal profession: *Law Society of BC v. Hill,* 2011 LSBC 16, para. 3.

[56] In accordance with recent jurisprudence, the Panel has focused on the primary factors that determine the disciplinary action to be imposed: *Law Society v. BC v. Lessing*, 2013 LSBC 29, para. 55; *Law Society of BC v. Dent*, 2016 LSBC 05, paras. 16 to 19. Accordingly, the Panel has focused on the following four primary factors:

(a) nature, gravity and consequences of conduct;

(b) character and professional conduct record;

(c) acknowledgement of the misconduct and remedial action; and

(d) public confidence in the legal profession, including the disciplinary process.

Nature, gravity and consequences of conduct

[57] The nature of the allegations against the Respondent is serious. When a lawyer, whether knowingly or by being wilfully blind, permits a fraudster to use the lawyer's trust account to perpetuate fraudulent schemes, that lawyer erodes the public confidence in the administration of justice. Rule 3.2-7 exists to protect the public interest and to ensure that lawyers are held to high ethical and practice standards.

[58] We agree with the Law Society's submissions that, by allowing AN to receive and disburse PW's funds through his trust account, the Respondent provided a veneer of legitimacy to AN's fraudulent schemes. The Respondent should not have allowed PW's funds to be deposited into his trust account. The Respondent failed to make any inquiries as to the source and purpose of the funds and did not provide any legal services in relation to PW's funds. The Panel finds that the Respondent's failure to make any inquiries about the source and purpose of AN's funds passing through his trust account, despite all the red flags, allowed AN to perpetrate a fraud against PW.

[59] Further, the Respondent knew or ought to have known that AN was perpetrating fraudulent schemes based on several red flags that had arisen over the course of his relationship with AN. Those red flags should have led the Respondent to make further inquiries as to the source and purpose of AN's funds. Those red flags included:

(a) the Respondent's understanding that the funds originated from Corporate House, which the Respondent knew or ought to have known was embroiled in controversy for its reported role in aiding money-laundering and tax evasion;

(b) the inconsistencies between:

(i) the Respondent's understanding that the funds were to be used to pay debts and the actual disbursement of much of the funds to purchase a car, pay for travel, and pay AN or his numbered companies;

(ii) the Respondent's understanding that the bank drafts were coming from AN's bank accounts and the frequent immediate disbursement of funds back to AN or on his behalf;

(iii) the Respondent's understanding that the funds were from a settlement or settlements with AN's former employer and the structure of the payments (i.e. amount and timing);

(c) the lack of any documentation with respect to the supposed settlement(s) or to any of the debts the disbursements were to repay;

(d) the fact that the Respondent was not required by AN to provide any advice or legal advice or services in relation to the supposed settlement(s), despite doing so on other settlements entered into by AN;

(e) AN's question about whether there was any risk to his funds if a cheque was written to Canada Revenue Agency from trust;

(f) RBC's inquiry about the multiple trust cheques made payable to AN in a short period of time; and

(g) the lack of any apparent explanation regarding why AN was paying the Respondent to put funds through his trust account rather than holding the funds in his own bank accounts.

[60] The fraud perpetrated by AN is exactly the kind of mischief Rule 3.2-7 was put in place to prevent. The purpose of Rule 3.2-7 is to require a lawyer to act as a gatekeeper by making inquiries about the source and purpose of the lawyer's clients' funds and by ensuring that the lawyer is providing legal advice or services in regard to those funds. The lawyer's gatekeeper function serves to protect against the lawyer's trust account being used for fraudulent or illegal purposes.

[61] That gatekeeper function in regard to trust funds was explained in *Law Society of BC v. Gurney*, 2017 LSBC 15. There the panel explained that a lawyer's trust account is not to be used as a "conduit" but, rather, is to be used for legitimate purposes and transactions where the lawyer plays the role of legal advisor. That is because trust funds are shielded by the principle of solicitor-client privilege from inquiries by authorities, such as FINTRAC. As explained in *Gurney*:

> … 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.
>
> …
>
> A lawyer has a gatekeeper function with regard to trust accounts. This function arises, in part, from the fact that transactions that occur through a lawyer's trust account are protected by solicitor-client privilege. The privilege means that, while the authorities may be aware of the source of funds entering into the trust account, the facts regarding to whom funds are disbursed, the amounts and the purposes are shielded from the authorities by the privilege. The purpose of the privilege is to allow open and candid communications between a lawyer and client. The purpose of the privilege is not to facilitate suspicious transactions.

[62] In our view, the Respondent turned a blind eye to the possibility that AN was perpetrating fraudulent investment schemes against PW. The Respondent knew or ought to have known that AN's conduct was suspicious. Given the various red flags that arose over the years, the Respondent had a duty to inquire and investigate the source and use of AN's funds. The Respondent's failure to meet his gatekeeper duty is serious given the various suspicious activities AN had engaged in over the course of their long-term relationship.

[63] Accordingly, the Panel finds that the Respondent's failure to exercise his gatekeeper function warrants a strong sanction. The lawyer's gatekeeper function in regard to trust funds is especially important today when money laundering is a major concern and a commission of inquiry into money laundering is taking place in this province.

The Respondent's character and Professional Conduct Record

[64] At the time of the misconduct, the Respondent had been practising law for 42 years. Simply stated, as a senior member of the Bar, the Respondent should have known better.

[65] The Respondent's Professional Conduct Record shows the following:

(a) January to June 2002: Practice Standards Recommendations. The Respondent was subject to accounting and trust restrictions, an undertaking to cease practising in the area of wills and estates and a recommendation to retain a solicitor to advise on any estates where the Respondent acted as the executor. The Respondent was released from the undertaking in March 2006.

(b) April 2002: Practice Conditions. The Respondent was subject to various trust accounting conditions imposed by a panel of Benchers, pending the hearing of a citation.

(c) December 2002: Undertaking. The Respondent provided an undertaking to withdraw from practising law starting December 2 until relieved of this undertaking by a panel of Benchers.

(d) February 2003: Three citations. The hearing panel found that the Respondent had committed professional misconduct by: (a) breaching multiple accounting rules; (b) breaching practice conditions; (c) failing to record for at least two months the identity of persons receiving cash; and (d) failing to record those trust transactions within seven days. The

hearing panel found that the Respondent had been duped by an unscrupulous client and ordered the Respondent to enter a practice supervision agreement for one year. The Respondent lost about $200,000 as a result of fraud committed by his former bookkeeper and client. The Respondent had voluntarily ceased practising for nine months before the hearing, which the hearing panel took into account in declining to order a suspension.

(e) September 2006: Order. The Respondent was not permitted to act as a principal to an articled student unless he showed cause why he should be permitted to do so.

(f) July 2012: Citation. The Respondent admitted professional misconduct and consented to a six-week suspension pursuant to (now) Rule 4-30. The Respondent was cited for failing to protect the lender's interests and to serve the lender with the quality of service expected of a competent lawyer in a mortgage transaction. The Respondent released mortgage funds without first securing the lender's mortgage, failed to report to the lender within 90 days, failed to advise the lender of the release of funds and failed to communicate with the lender.

[66] The Law Society submits that the Panel should apply the concept of progressive discipline. That concept requires the Panel to impose a penalty that is more serious than one that would have been imposed if the Respondent had no previous conduct record. The Law Society submits that the Respondent should have exercised more care in administering his trust account, given his previous trust accounting issues and past citations involving the Respondent being duped by a previous client.

[67] The Panel agrees that the concept of progressive discipline should be applied. The Respondent's PCR is an aggravating factor given the four previous citations and a previous suspension.

The Respondent's acknowledgement of the misconduct and remedial action

[68] In his letter to the Chair of the Discipline Committee and in the Agreed Statement of Facts, the Respondent admits that he committed professional misconduct. He is remorseful and has apologized.

[69] About a year before the misconduct, the Respondent was hospitalized for a stroke. The medical records show that the Respondent was left with some left-sided numbness and neglect and suffers from a subtle motor speech disorder. Following

the stroke, the Respondent slowed down his practice as the stroke had impacted his short-term memory and ability to take notes.

[70] In regard to PW, she was deprived of her funds and was forced to file a court action to retrieve those funds from AN. Ultimately, she settled the matter, although the Law Society was not provided with details of that settlement.

Public confidence in the legal profession

[71] A lawyer's cavalier approach to handling trust funds reflects badly on the legal profession as a whole: *Law Society of BC v. Wilson*, 2020 LSBC 20. As emphasized by the panel in *Wilson* at para. 22, "No aspect of the [protection of the] public interest ranks higher than the administration of trust funds."

[72] A lawyer's failure to act as the gatekeeper to the lawyer's trust account is a serious matter. When a lawyer turns a blind eye and allows a trust account to be used by fraudsters to dupe innocent parties, the public interest requires the panel to send a strong message to the profession by imposing a suspension.

DECISION ON DISCIPLINARY ACTION

Whether the conduct admitted by the Respondent amounts to professional misconduct?

[73] Pursuant to Rule 4-30, the Panel accepts the Respondent's admission of professional misconduct. Lawyers are required to take steps to ensure that their trust accounts are used only for the legitimate commercial purposes for which they are established: *Law Society of BC v. Hammond*, 2020 LSBC 30, para. 35.

[74] Based on our discussion above, the Panel agrees that the Respondent has committed professional misconduct. The Respondent's failure to act as a gatekeeper to his trust account is a marked departure from the conduct the Law Society expects of lawyers.

[75] Specifically, the Respondent failed to perform his required gatekeeper function to guard against fraudulent uses of his trust account by his long-time family friend AN. Given the Respondent's previous involvement with AN and the lack of any legal advice sought by AN, a number of red flags should have alerted the Respondent to make inquiries about AN's use of his trust account. Instead, the Respondent turned a blind eye to AN's use of his trust account, which facilitated AN's fraud on PW.

Whether the proposed disciplinary action falls within the acceptable range for this misconduct?

[76] Pursuant to Rule 4-30, the Panel accepts the Proposed Disciplinary Action. We are satisfied that the Proposed Disciplinary Action falls within the range of a fair and reasonable sanction in all the circumstances. Our role is limited. The question we have asked ourselves is not whether we would have imposed exactly the same disciplinary action, but whether the proposed disciplinary action falls within the range of a fair and reasonable disciplinary sanction: *Hammond*, para. 48.

Range of disciplinary action

[77] The jurisprudence supports the Proposed Disciplinary Action as the spectrum of disciplinary action ranges from a two-week to a six-month suspension. The proposed four-month suspension falls within the more serious end of that range.

[78] Although none of the cases are exactly on point, they provide guidance and support for the Proposed Disciplinary Action. We have considered the following cases:

(a) *Hammond*: The respondent was suspended for two weeks and was ordered to pay costs of $1,000. The respondent's trust account was used to receive and disburse $474,000US without making adequate inquiries, providing legal services or making records of any inquiries, in connection with those funds. The client was referred to the respondent by a trusted party such that the respondent assumed that the underlying transactions were legitimate. The matter related to an escrow/stakeholder arrangement. The respondent was a 30-year call and had no professional conduct record. He expressed remorse, cooperated with the Law Society and admitted facts in an agreed statement of facts. The facts did not support any loss, fraud or money laundering;

(b) *Law Society of BC v. Daignault*, 2020 LSBC 18: The respondent was suspended for two weeks. No order for costs was made. The respondent's trust account was used to process three transactions without making adequate inquiries or providing legal services. He failed to caution an unrepresented person that he was not protecting that person's interests in the transactions. The respondent had no professional conduct record, admitted the misconduct, expressed regret and the facts did not support any dishonesty or personal gain. The panel took into account a significant investigative delay of five and a half years as a mitigating factor;

(c) *Law Society of BC v. Gurney*, 2017 LSBC 32: The respondent was suspended for six months, required to follow practice conditions regarding his trust account and ordered to disgorge the fees he charged (about $26,000). The respondent's trust account was used to receive and disburse about $26 million in offshore funds in suspicious circumstances without making adequate inquiries or providing legal services. The respondent did not have a professional conduct record;

(d) *Law Society of BC v. Hsu*, 2019 LSBC 29: The respondent was suspended for three months with a practice restriction that she not practise securities law until relieved of that restriction. The respondent flowed $14 million through her trust account, which facilitated fraud and misappropriation of millions of dollars. She missed red flags that would have alerted her to her trust account being used by a fraudster. The matter involved securities law, which the junior lawyer knew little about. The panel found no dishonesty and that she was duped. She had no professional conduct record and she admitted the misconduct.

DECISION ON COSTS

[79] The Law Society submits that the amount of $1,000 is appropriate and consistent with line 25 of the Tariff for Hearing and Review Costs at Schedule 4 of the Rules. The Respondent consents to that order.

[80] Accordingly, the Panel hereby orders that the Respondent pay to the Law Society the amount of $1,000 in costs.

NON-DISCLOSURE ORDER

[81] The Law Society sought an order pursuant to Rule 5-8(2) of the Rules to allow for the redaction of confidential and solicitor-client privileged information provided to the Law Society pursuant to sections 87 and 88 of the *Act*. The Respondent does not object.

[82] Accordingly, pursuant to Rule 5-8(2), the Panel ordered that, if any person other than a party requests a copy of an exhibit filed in these proceedings, confidential client information and information protected by solicitor-client privilege must be redacted from the exhibit before it is disclosed to that party.

DECISION ON FACTS AND DETERMINATION, DISCIPLINARY ACTION AND COSTS

[83] In summary, on October 22, 2020, the Panel accepted the Proposed Disciplinary Action and made the following orders:

(a) The hearing be conducted in writing;

(b) Pursuant to section 38(5)(d)(i) of the *Act*, the Respondent is suspended from the practice of law for a period of four months, beginning on the first day of the month following the release of the Panel's decision;

(c) Pursuant to Rule 5-11 of the Rules, the Respondent must pay costs of $1,000 within 30 days of the release of this decision; and

(d) Pursuant to Rule 5-8(2)(a) of the Rules, if any person, other than a party, seeks to obtain a copy of any exhibit filed in these proceedings, confidential client information and information protected by solicitor-client privilege must be redacted from the exhibit before it is disclosed to that person.