2021 LSBC 34
Decision Issued: August 25, 2021
Citation Issued: April 16, 2019

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

GEORGE FREDERICK TURNER GREGORY

RESPONDENT

DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION

Hearing dates:	September 2, 3, 4 and 10, 2020 January 5, 13, 15 and March 15, 2021
Panel:	Jennifer Chow, QC, Chair Nina Purewal, Lawyer Ruth Wittenberg, Public representative
Discipline Counsel:	William B. Smart, QC Trevor Bant
Counsel for the Respondent:	Henry C. Wood, QC

OVERVIEW

[1] In January 2018, the Respondent was retained by A to foreclose on a private mortgage. Several months later, the Respondent was informed that a national news article had profiled A and his associate, B, as drug traffickers and money launderers. That article alleged that both A and B were laundering drug monies in the Vancouver-area real estate market by acting as private lenders.

[2] The Law Society alleges that, as A's lawyer, the Respondent failed to comply with a fundamental duty, namely, a lawyer's duty not to aid or assist clients in any dishonesty, crime or fraud. Specifically, the Law Society alleges that the Respondent failed to make reasonable inquiries about A's foreclosure proceeding. The Law Society also alleges that the Respondent failed to make reasonable efforts to obtain client information from A and B.

[3] The Respondent, on the other hand, denies that he failed in any duty as a lawyer. He says he made reasonable and timely inquiries about A and the foreclosure proceeding, which included seeking advice from his lawyer colleagues. The Respondent's position is that in this matter, the Law Society's position overreaches by relying on arbitrary and premature deadlines for the making of any client inquiries.

[4] After considering the whole of the circumstances, the Panel has determined that the Respondent has committed professional misconduct in relation to both allegations, namely, that his conduct in failing to make reasonable inquiries and to obtain client information amounts to a marked departure from that conduct the Law Society expects from lawyers.

THE CITATION

[5] The two issues before this Panel are:

1. whether the Respondent made reasonable inquiries required by the *Code of Professional Conduct for British Columbia* (the "*Code*") and the Law Society Rules while acting for A (and taking instructions from his associate B) in a foreclosure proceeding involving a private loan and mortgage; and

2. whether the Respondent made reasonable efforts to obtain or record client information.

[6] In the citation issued on April 16, 2019 (the "Citation"), the Respondent is alleged to have committed professional misconduct or a breach of the Rules as follows:

1. Between approximately January 2018 and February 2019, in the course of acting for your client A, the petitioner in a foreclosure proceeding, you failed to do one or more of the following:

   (a) make reasonable inquiries to obtain information about your client or his associate B, or both;

(b) make reasonable inquiries about the subject matter and objectives of your retainer; and

(c) make a record of the results of inquiries made.

2. Between approximately January 2018 and February 2019, you failed to make reasonable efforts to obtain, or record, client identification information in relation to your client A, contrary to Rule 3-100(1)(a) and (b) of the Law Society Rules.

[7] The Respondent does not dispute proper service of the Citation. Specifically, the Respondent accepted service of the Citation through his counsel and waived the service requirements under the Rules.

THE LEGAL FRAMEWORK

[8] In this case, the relevant sections of the *Code* are as follows:

> 2.1-1
>
> (a) A lawyer owes a duty to the state, to maintain its integrity and its law. A lawyer should not aid, counsel or assist any person to act in any way contrary to the law.
>
> 2.2-1 A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity.
>
> Commentary
>
> [2] Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer's irresponsible conduct. Accordingly, a lawyer's conduct should reflect favourably on the legal profession, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety.
>
> 2.2-2 A lawyer has a duty to uphold the standards and reputation of the legal profession and to assist in the advancement of its goals, organizations and institutions.
>
> 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.

[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 such as: establishing, purchasing or selling business entities; arranging financing for the purchase or sale or operation of business entities; arranging financing for the purchase or sale of business assets; and purchasing and selling real estate.

[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.

…

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

[9] Rule 3-100 of the Rules, as they existed during the period of time referred to in the Citation, provided as follows:

(1) A lawyer who is retained by a client to provide legal services must make reasonable efforts to obtain and, if obtained, record all of the following information that is applicable:

(a) the client's full name, business address and business telephone number;

(b) if the client is an individual, the client's home address, home telephone number and occupation; …

[10] Rule 3-102 of the Rules, as they as they existed during the period of time referred to in the Citation, provided as follows:

(1) When a lawyer provides legal services in respect of a financial transaction, including a non-face-to-face transaction, the lawyer must take reasonable steps to verify the identity of the client using what the lawyer reasonably considers to be reliable, independent source documents, data or information.

(2) For the purposes of subrule (1), independent source documents may include

(a) if the client is an individual, valid original government-issued identification, including a driver's licence, birth certificate, provincial or territorial health insurance card, passport or similar record, …

PROCEDURAL BACKGROUND

[11] On the first day of the Hearing, the Panel was provided with an Agreed Statement of Facts (the "ASF") and various books of documents. Additionally, the Panel heard testimony from six witnesses: the Law Society's investigating lawyer, Kurt Wedel, the Respondent himself and four lawyers, Gerry Cuttler, QC, Andrew Bury, QC, Les Mackoff and Michael Steinbach, all of whom were consulted by the Respondent from time to time in regard to this matter. The Hearing took place over six days. Counsel for both parties presented final submissions in writing and orally. The Hearing began in person but then was conducted by videoconference due to Covid-19 restrictions.

FACTS

[12] The Panel makes the following factual findings based on the ASF, witness testimony and documentary exhibits. The Panel was provided with extensive documentary evidence, detailed oral testimony and lengthy submissions. Accordingly, we have focused only on the key evidence, issues and submissions in making our decision.

[13] For the purposes of this decision, the Panel has treated A, B and C collectively as the Respondent's "client". [redacted for solicitor/client privilege and/or confidentiality] Additionally, the Respondent included C on all emails to A and B since C had a better command of the English language than A and B. C was acting as A and B's informal interpreter. Accordingly, when we refer to "client" in this decision, we are referring collectively to A, B and C.

The Petition in the foreclosure proceeding

[14] On August 1, 2017, A commenced a foreclosure proceeding against D by filing a Petition in the British Columbia Supreme Court (the "Foreclosure Proceeding"). At that time, A was represented by a different lawyer. The Petition was accompanied by A's Affidavit #1 which stated that:

(a) On December 18, 2015, A loaned $800,000 and D signed a promissory note acknowledging his indebtedness to A for that loan;

(b) The promissory note was secured by a mortgage against D's residential property in Surrey, British Columbia;

(c) D prepaid to A with three monthly interest payments for a total amount of $30,000. A ledger attached as an exhibit showed that D was credited with interest paid in the amount of $10,000 each on February 1, March 1 and April 1, 2016;

(d) A did not receive any other payments for the loan;

(e) On January 17, 2017, A's solicitor sent a demand letter; and

(f) The amount owing by June 1, 2017 was $961,616.18.

[15] Notably, A's Affidavit #1 included an endorsement of interpreter signed by a lawyer practising in British Columbia who was competent to interpret between English and Mandarin. The Petition was signed by A's former lawyer.

The initial court filings

[16] On January 15, 2018, the Respondent filed a Notice of Appointment or Change of Lawyer on behalf of A in the Foreclosure Proceeding.

[17] On January 23, 2018, D filed and served a Response to Petition and his Affidavit #1 in the Foreclosure Proceeding. D challenged the contents of A's Affidavit #1. Significantly, D alleged that he was a victim of fraud and that A's mortgage was

invalid due to fraud. Specifically, D alleged that A never actually provided the $800,000 in cash to D as alleged by A.

[18] D's Affidavit #1, endorsed by a professional interpreter, set out considerable details to back up D's version of events:

(a) In 2015, D was behind in paying a developer who was building a house on his West Vancouver property. After the developer filed a lien, a corporate lender made a demand for immediate repayment of $630,000 on a construction loan. By October 2015, the corporate lender served D with notice it was seeking to foreclose on the mortgage given as security for the construction loan;

(b) D and B became friends while golfing in China in 2002. B had become a moneylender after moving to Canada around 2015. In 2015, D was unable to obtain conventional financing from a bank to deal with the corporate lender's demand for repayment. So D asked B to lend him $700,000 to repay the construction loan. B told D that he was unable to help because he was being investigated for several regulatory offences in Canada concerning money and he could not access most of his money. Despite B being "in trouble with the police," D continued to trust B because he was forthright about the investigation. B also told D that he did not realize the things he had done were unlawful;

(c) In October 2015, B told D that A would provide him with a $700,000 loan at an interest rate of 15 per cent per annum. D agreed. Several days later, B asked D to help him as he desperately needed money and had nothing to offer as security for a loan. B asked D to borrow additional money from A for him. He asked D to borrow a total of $1.6 million to be secured by D's Surrey property. The first $800,000 was to be provided to D and the next $800,000 would be provided to B. The entire sum would be advanced at the same time. D agreed because he trusted B as he had been a good friend for many years;

(d) In mid-December of 2015, B told D that A had funds available. On December 17, 2015, D, B and A all attended at a lawyer's office suggested by B. D agreed to retain DC, a Mandarin speaking solicitor in Richmond. DC explained to D that several documents needed to be drafted. D told DC that he did not entirely understand the contents and asked DC to obtain the details from A. DC then spoke with A, and the parties agreed to meet again the next day;

(e) On December 18, 2015, D, A and B met in the lobby of DC's building. There, A told D that he only had $800,000 in cash that he could loan right away. A said he knew D needed the money urgently and he would provide B with the next $800,000 later when he had more funds. B also agreed to this arrangement;

(f) The parties then went to DC's law office. A, B, D and DC all reviewed the contract documents together in the same room;

(g) One of the documents prepared said that D had already received the $800,000 from A. This was the only document that included a Chinese translation of the terms. D asked A about this since he had not received any funds. B and A told him that, if D returned to China on December 20, 2015 as planned without having acknowledged receipt of the funds or signing the documents, A could not register the mortgage against the Surrey property and would not be able to release the funds to D. B and A told D not to worry because, if he did not actually receive money in the future, the mortgage and contract would not be effective;

(h) Their explanation made some sense to D as it was similar to the process for bank loans and he trusted B. D repeated to B that the contract would not be effective if funds were not advanced to D;

(i) B then asked about the $800,000 he was to borrow. B seemed to be very concerned that he would not receive any money after D received the first $800,000. B was concerned that D might back out and explained that it would be troublesome if B received the next $800,000 while D was in China, in case additional documents needed to be signed. At this point, B raised the fact that a company owned by D in China owed B's company about ¥$3 million. D became very upset and frustrated since those matters were business dealings while the current matter was personal. Out of frustration, D threatened to walk away from the deal entirely;

(j) B and A then went to discuss things in another meeting room. After a long time, B returned to the room and suggested that they sign additional loan documents which would permit A to advance further funds to B directly when he had more money;

(k) D overheard B and A asking DC to assist; however, DC refused and told them to resolve the matter among themselves. They then proceeded to negotiate the following arrangement:

(i) B would borrow $800,000 from A secured by a mortgage granted by D over the Surrey property;

(ii) B would be responsible for all interest payments under that loan;

(iii) There would be no credit or offset granted for any loans advanced between their respective companies in China; and

(iv) B would be responsible for repaying all monies borrowed by him under the security of the Surrey property;

(l) D did not recall who prepared the documents for the agreement, but they were typed up and brought into the meeting room. As the documents were only prepared in English, B and A translated the documents to D. D signed the documents because he trusted B. D paid DC an additional $600 in cash and left; and

(m) Later, D provided B with his bank account information together with three post-dated cheques, each for $10,000, as prepayment of interest. D asked B to provide the cheques to A as they were specifically requested by A. The first $800,000 was not advanced to D at that meeting;

(n) D always understood that, since A only had $800,000 available, he would be making two separate loans. A would provide the first $800,000 to D, secured by a mortgage on his Surrey property (the "First Loan"). The First Loan would be advanced right away so D could stop the foreclosure proceedings against his West Vancouver property. A would then provide the second $800,000 to B (the "Second Loan") only after the First Loan was advanced. The Second Loan was to be secured by a mortgage against D's Surrey property. D was under the impression that he had signed all documents necessary to put in place the agreed mortgage to be registered when A was prepared to fund the Second Loan. D said that at no time did A or B suggest that the Second Loan would be funded before the First Loan. D stated he would never have agreed to such an arrangement;

(o) D returned to China on December 20, 2015. By the end of December and again by the end of January, 2016, D had still not received the funds from the First Loan. Finally, in May 2016, D returned to Vancouver having still not received the funds from the First Loan. That month, he met with B and asked why A had not advanced the funds. B would not give him a straight answer;

(p) In June 2016, A called and demanded that D pay interest on the First Loan. D told him that he had not received any money from the First Loan. A told D that he provided the funds to B. D was shocked and upset as this was not the agreement between the parties. D stated that at no time did he authorize B to receive the funds for the First Loan on his behalf;

(q) The three prepaid interest cheques he provided to A were never cashed; and

(r) D did not take further steps to address the matter because he always believed that the mortgage secured by the First Loan was not valid because of the assurances given by B and A. At that time, however, D was more concerned over raising funds to repay the corporate lender. Eventually, D sold the West Vancouver property and repaid the corporate lender.

[19] The Panel views D's Affidavit #1 as a significant development in the Foreclosure Proceeding because of the allegation of fraud. Additionally, the parties differed in whether any funds were actually paid to D under the loan and mortgage and whether A had actually cashed the three prepaid interest cheques. Finally, D raised key allegations that B was in trouble with the police and could not access his funds because of regulatory matters.

The Respondent's initial meeting with B and C

[20] On January 11, 2018, the Respondent met with B and C for the first time. C attended the meeting to act as an informal interpreter since B did not speak English well. Through C's interpretation, B told the Respondent that A wished to retain the Respondent to assume conduct of the Foreclosure Proceeding. B also told the Respondent that he wished to provide instructions on behalf of A and asked about a power of attorney for that purpose. A did not attend that initial meeting.

[21] At that initial meeting, B and C provided the Respondent with A's telephone number, email addresses for B and C and a residential address for C. No other client information was obtained at that meeting.

[22] The Respondent took brief notes of that meeting. His two-page handwritten notes captured [redacted for solicitor/client privilege and/or confidentiality]:

(a) [redacted for solicitor/client privilege and/or confidentiality]

(b) [redacted for solicitor/client privilege and/or confidentiality]

(c) [redacted for solicitor/client privilege and/or confidentiality]

(d) [redacted for solicitor/client privilege and/or confidentiality]

(e) [redacted for solicitor/client privilege and/or confidentiality]

(f) [redacted for solicitor/client privilege and/or confidentiality]

(g) [redacted for solicitor/client privilege and/or confidentiality]

(h) [redacted for solicitor/client privilege and/or confidentiality]

The Respondent meets his client A with B

[23] The next day, on January 12, 2018, the Respondent met with B and A, without C to interpret. Despite the lack of interpretation, the Respondent testified that he was confident through a combination of body language and his client's minimal English language skills that he did in fact obtain proper instructions. The Respondent's one-page handwritten note briefly sets out shorthand notes about the value of D's house being $[redacted for solicitor/client privilege and/or confidentiality] and A's email address. Both sides of A's and B's driver's licences were photocopied. No other client information was obtained at that meeting.

[24] [redacted for solicitor/client privilege and/or confidentiality]

[25] On January 15, 2018, the Respondent became counsel of record in the Foreclosure Proceeding after filing a Notice of Appointment or Change of Lawyer.

The Respondent's initial requests for client documents

[26] By email dated January 24, 2018, the Respondent forwarded D's filed documents in the Foreclosure Proceeding to B, A and C:

> [redacted for solicitor/client privilege and/or confidentiality]

[27] On February 9, 2018, the Respondent emailed B, A and C:

> I am unable to move forward until you get me the bank records we discussed.

[28] On March 1, 2018, C emailed the Respondent:

> Please see attached documents as per your request. Please let us know if you needed anything else.

[29] The attachments to C's March 1, 2018 email included a black and white copy of a man's identity card in Chinese with an ID Card No. and a birthdate of July 24, 1965 without an accompanying translation; an untranslated bank statement with a red round stamp in the middle of the document ("First Bank Record"); an affidavit of a professional interpreter attesting that she translated a promissory note and a receipt both dated March 11, 2014 from Chinese to English.

[30] The Law Society provided the Panel with a translation of the First Bank Record. The First Bank Record appears to be a bank statement from the China Merchants Bank. The account holder is "AZ" which may be B's sister. The bank statement documented seven transactions, all of which appear to have occurred on March 11, 2014. The third line appears to record a debit of ¥2,910,000 described as a "retail remittance debit" sent from B to "GL" on that date.

[31] On its face, the First Bank Record identified a loan transaction made in 2014 rather than the 2015 loan transaction that was the focus of the Foreclosure Proceeding. Whether one, two or even three loan transactions were made among A, B and D and how those alleged loans interconnected would eventually emerge as hotly disputed issues after the Respondent was retained.

The media outlet article

[32] On February 16, 2018 (updated on March 5, 2018), the media outlet published an investigative article about money laundering by drug traffickers in the Vancouver-area real estate market. In regard to the Respondent's client, the article described the following:

(a) A and B were found with hundreds of thousands of dollars in small bills stuffed in the trunk and behind the seat of their cars and at a condo they were using. The small bills were covered with traces of street drugs, including fentanyl. The cash was ordered forfeited to the provincial government as proceeds of crime;

(b) A and B were under surveillance by police;

(c) A and B were calling themselves private lenders, issuing millions of dollars in registered mortgages and short-term loans. They granted

loans, registered a land title charge against the borrower's property equal to the value of the debt plus interest. This charge remained in place until the debt was cleared. If the property was sold, the loan would get paid out from the sale proceedings as clean money;

(d) Their targets were wealthy Chinese newcomers who had bought property in Canada and who wanted to use it as leverage to borrow large amounts of cash;

(e) Typically their targets' wealth is in China. Most of the homeowners already had mortgages with Canadian banks and may have maxed out their legitimate borrowing power in Canada;

(f) Because the properties were not in the lenders' names, their investments could not be seized as proceeds of crime. As lenders, [A and B] were "paid out by cheques from lawyers, the same way a bank gets paid when it holds a mortgage";

(g) A Richmond lawyer, DC, represented some of the borrowers. DC also provided legal services regarding the Respondent's transaction. Notably, the article stated that DC was being sued by one of his clients over an $800,000 mortgage from suspected drug dealer, A;

(h) Most borrowers made payments by electronic transfer from their bank accounts in China to accounts held by the lenders, also in China;

(i) As lenders, A and B would be paid out by cheques from lawyers the same way a bank got paid when it was paid out from a mortgage. B, A and one other had acquired more than $20 million worth of Vancouver-area real estate in recent years;

(j) On four occasions, B and A had filed a builder's lien after falsely claiming to have built the home or performed renovations; and

(k) The articled investigated 45 properties involving lending processes used by drug dealers to launder their money. The property that is the subject of the Foreclosure Proceeding was the 45th house named.

[33] The article explained the concepts of money laundering and proceeds of crime with a detailed pictogram and explanations. The article was critical of lawyers who allegedly gave shady real estate transactions an "air of legitimacy" by writing up mortgage agreements and filing lawsuits on behalf of the money launderers. The article suggested that rules governing lawyers were weak and they faced little

enforcement. The article suggested that all lawyers ask two key questions: "Where is the money coming from?" and "Am I being used to facilitate money laundering?"

The Law Society begins its investigation

[34] On April 13, 2018, the Respondent set down a hearing for June 28, 2018 in the Foreclosure Proceeding.

[35] By letter dated May 23, 2018, the Law Society advised the Respondent that it had opened a complaint investigation regarding the Foreclosure Proceeding. The letter noted the upcoming June 28, 2018 hearing date and asked for the Respondent's client file including client identification by May 28, 2018.

[36] On May 23, 2018, the Respondent advised the Law Society that he wanted to notify his client regarding the Law Society investigation. By email of that same date, the Law Society asked the Respondent to review Rule 3-3(1) that generally prohibited disclosure. Additionally, the Law Society's position was that the Respondent's client's consent was not required to respond to the Law Society's earlier client file request.

[37] On May 24, 2018, the Respondent sent a copy of his "entire file in this matter" to the Law Society including copies of his client's driver's licence. He raised concerns with the Law Society that "I need to do a significant amount of work on this file **in the next week** to maintain our June date. This complaint puts me in an immediate conflict of interest." [emphasis in original]

[38] By email dated May 30, 2018, the Respondent wrote to A, B and C and advised that a complaint had been made about him regarding his file with them. [redacted for solicitor/client privilege and/or confidentiality]:

[redacted for solicitor/client privilege and/or confidentiality]

[39] On May 31, 2018, the Respondent attended the offices of the Law Society to be interviewed by two investigators (the "Law Society Interview"). The topics of the interview included the Respondent's client file, the Foreclosure Proceeding and the media outlet article. At the Law Society Interview, the Respondent was shown a copy of the media outlet article.

[40] Up until the Law Society Interview, the Respondent did not appear to know about the media outlet article or the allegations that A and B were drug traffickers and money launderers.

[41] At the Law Society Interview, the Law Society asked the Respondent about the First Bank Record and the fact that it related to 2014 transactions. The Respondent did not appear to know that they did not relate to the 2015 transaction at the heart of the Foreclosure Proceeding. The Respondent was asked questions, among other things, about the Foreclosure Proceeding, his knowledge about his client's business, the accuracy of his meeting notes and his knowledge about the source of funds.

(a) In regard to the Foreclosure Proceeding, the Respondent explained that the transaction centred on D obtaining a loan from A to pay B $800,000 to satisfy an earlier debt owed by D to B;

(b) The Respondent explained that he needed several bank records to support A's version of events, including bank records that showed A lent money to D; bank records that showed B loaned money to D; and bank records that showed A repaid B the $800,000;

(c) The Respondent knew from D's Affidavit #1 about the allegation that the mortgage was invalid as D alleged he did not receive any of the purported loan amount of $800,000. The Respondent's view was that D's version of events was a "tissue of lies" with a "30 per cent or less probability of being true";

(d) The Respondent assumed A advanced the funds to B through a bank account, as he had recently received an untranslated bank record. When asked whose bank account the money was drawn from, the Respondent advised that he assumed the account was his client's account. In particular, the Law Society asked about the source of funds for his client:

Q: Okay. And what's your understanding about the source of the money that was in the bank account?

A: Didn't, didn't ask.

Q: So no idea about that?

A: No.

(e) The Respondent was asked what steps he takes to ensure that his trust account and legal services are not used for improper services:

> ... it's been a couple of decades since I've misjudged a client … this just is a loan transaction. … I don't see it being my job to ask my clients where they got their money. …

(f) The Respondent explained that the loan transaction did not look like a money laundering issue:

> He loans money to this guy, if he wanted to make an allegation about money laundering, um I'm sure he would have despite how stupid that might look for him. Um you get amazing stuff in defence.

(g) The Respondent did not view the loan transaction as suspicious because he was going to receive bank records to support it:

> Once the money, … that once it's in a bank account, uh it doesn't look like money laundering …

(h) After being shown the media outlet article accusing A and B of being money launderers, the Respondent initially responded by saying that:

> … that's unlikely to be incorrect. … there is a significant amount of fire behind this smoke. Um this, from what I'm looking, is it doesn't fit the transaction if the money came from a bank account 'cause it's clean to begin with.

(i) The Respondent's view of money laundering was that:

> … the whole purpose of money laundering, as I understand it, and the cycle of dirty money, is to get the money into a bank account, um and then uh it's clean in the sense that … you have cash and you need to get it into a bank account so that it isn't cash. …
>
> I don't think … I don't see how it could be. Money from a bank account, I mean then it would be money coming out of a lawyer's trust account which uh obviously has a, a, a badge of uh honesty to it or propriety to it, and uh in that sense, it might be cleaner, but I, I always thought the, the issue was getting the money into a bank account.

[42] At the hearing, the Respondent testified and said that "there was no way these guys were going to convince me that they weren't money—that [A and B] weren't drug

dealers and that they didn't money—didn't launder money in the way described in that article."

[43] Additionally, at the Law Society Interview, the Respondent explained that both A and B had poor command of the English language and communicated primarily in Mandarin:

(a) Both A and B's command of the English language was "poor" and "[A]'s English was worse than [B] and [B]'s is terrible";

(b) "C's [English] wasn't that great either";

(c) "I'm sure that [C] said I, I studied in English or explained why her English was better, but um uh I didn't, uh [pause] I didn't um, I you know I often get friends and people coming in and translating";

(d) "… [C] was the only one who speaks English … it's clear that [B] and [A] are cooperating on this, and [C]'s the one who speaks English. …";

(e) "[C was] fluent enough to say hello, how are you, order stuff in a restaurant, … she didn't give me tons of confidence that, let me put it differently, um I had to work hard to make sure that she got things through to [A] and I probably, probably would take a couple of, saying stuff a couple of times and refining it and watching A to see that the, the information go through."

[44] After the Law Society Interview, the Law Society followed up with a letter. In its letter dated June 1, 2018, the Law Society advised that it was continuing to investigate concerns about the Foreclosure Proceeding. The Law Society asked the Respondent for more details about his client's banking records. The Law Society also advised that it was declining to provide a copy of the complaint. Instead, the Law Society provided the following summary:

> The Law Society received information from a third party that raised concerns about the circumstances of and underlying the foreclosure proceeding in which you were acting, which concerned an apparent loan of $800,000.00 in December 2015, by your client, who was arrested a few months later in possession of several hundred thousand dollars in cash that was later forfeited as proceeds of crime. Your client was profiled in an article in a media outlet on February 16, 2018. The article discussed your client's arrest as well as his lending activities. The article was published about a month after you assumed conduct of the proceeding

> from previous counsel. The court file showed that you had taken steps in furtherance of the proceeding after publication of the article. *The circumstances gave rise to a concern as to whether the foreclosure proceeding may have been in furtherance of illegal activity such as money laundering or possession of the proceeds of crime and as to whether you may have been assisting the client in that regard.*
>
> [emphasis added]

[45] On June 11, 2018, the Respondent's assistant advised the Respondent that the property in the Foreclosure Proceeding was listed in the media outlet article as one of the various homes subject to questionable transactions.

[46] On June 13, 2018, the Respondent met with A, B and C for about an hour. The Respondent testified that he asked his clients if they were money launderers, but this was an "empty gesture" and a "frankly ridiculous question." The Respondent testified that he wanted A to explain the documents they had provided to him. The Respondent put sticky notes on the documents for later review and did not retain those sticky notes nor did he make any other notes of that meeting. The Respondent testified:

> I wasn't trying to understand the transactions at all, and it would almost be fair to say I was trying *not* to understand the transactions.

[47] After his meeting with his client, the Respondent reached a turning point in the events. While the Respondent cooperated with the Law Society by sending copies of his client's documents, he also began expressing contempt for the Law Society's investigation.

[48] In his letter dated June 18, 2018 to the Law Society, the Respondent used paragraph headings that accused the Law Society of breaching its obligation to provide him with a copy of the complaint; and of maintaining "improper secrecy in investigating this complaint." The Respondent minimized the Law Society's concerns by saying the media outlet article was "about people with my clients' name who allegedly had been involved in criminal activity (which the Crown did not even charge, let alone prove)." Additionally,

> When the three of us met, I asked how there could possibly be an assertion of money-laundering if the loan money originated from a bank account.
>
> …

> Since this money came from a bank account, I don't understand how there could the [sic] kind of money laundering described in the article;
>
> …
>
> Had I known about the allegations against my client in the first place, I would not have taken him on, and I would not take another file for him.
>
> As it is, I have taken [A] on and charged him for getting up to speed on the file.
>
> Time is short.
>
> Giving this matter thought after my interview, and speaking with one senior member of the member-complaint bar, I ask myself why I should not act for a hypothetical party merely because it is alleged that he was laundering money.
>
> Whatever [A] may have done on other occasions, this transaction bears all the hallmarks of legitimacy.
>
> I don't know how I could properly fire a client because I have learned unflattering things about him respecting other transactions.
>
> Accordingly, as matters now stand, I have told [A] that I will complete his retainer.

[49] At the Hearing, the Respondent admitted that his letter was intemperate and that he was angry at how the Law Society was treating him. He further testified that, when he wrote "this transaction bears all the hallmarks of legitimacy," he did not mean the transaction was legitimate. He meant that the "red flags" the Law Society had raised with him were not, in his view, red flags nor concerns applicable to the Foreclosure Proceeding.

[50] At the Hearing, the Respondent testified that he was simply channelling the advice of Gerald Cuttler, QC in his June 18, 2021 letter to the Law Society. Mr. Cuttler testified that he did not review that letter before it was sent. In that letter, the Respondent referred to "people with my clients' name who allegedly had been involved in criminal activity." Given the contrast between Mr. Cuttler's testimony and the Respondent's testimony, we prefer Mr. Cuttler's testimony and find that the June 18, 2018 letter reflected the Respondent's own views and state of mind at that time.

Steps in the Foreclosure Proceeding

[51] Given the impending hearing date for the Foreclosure Proceedings, on June 22, 2018 the Law Society called the Respondent. Mr. Wedel testified that the Respondent advised him at the outset of that call that he was hoping to proceed with the hearing of the Foreclosure Proceeding on June 28, 2018. Mr. Wedel reminded the Respondent that the First Bank Record dated March 2014 did not appear to relate to the 2015 loan at the heart of the Foreclosure Proceeding. According to Mr. Wedel, the Respondent said words to the effect that "if that was true, it would be a problem."

[52] The day before the hearing date, the Respondent filed a requisition and adjourned the hearing of the Foreclosure Proceeding.

[53] On September 17, 2018, the Respondent reset the hearing date for the Foreclosure Proceeding to November 2, 2018.

[54] The next day, by email dated September 18, 2018, the Law Society requested an update on the status of the Foreclosure Proceeding. Mr. Wedel asked whether the Respondent had received additional records evidencing the 2015 loan. In particular, Mr. Wedel had reviewed the financial records attached to the Respondent's June 18, 2018 letter. Mr. Wedel again raised concerns that the bank records related to a 2014 loan rather than the 2015 loan at the heart of the Foreclosure Proceeding.

[55] The Respondent did not respond immediately. The Law Society sent two follow up emails on October 4, 2018 and October 10, 2018 that went unanswered. By letter dated October 17, 2018, the Law Society advised the Respondent that he would be suspended effective 9:00 am on October 29, 2018 unless the Respondent responded to the Law Society's letter of September 18, 2018.

[56] The next day, by letter dated October 18, 2018, the Respondent advised the Law Society that the hearing of the Foreclosure Proceeding was set for November 2, 2018. Regarding his client's documents, the Respondent advised that "With respect to the 2015 loan, I have not received any additional records."

[57] During his testimony before this Panel, the Respondent was asked whether he had any concerns over the fact he had not received any additional records to evidence the 2015 loan. The Respondent testified that, at that point, he had not fully turned his mind to the loan transactions so he did not understand the two transactions until the end of November, 2018.

[58] Meanwhile, the hearing date in the Foreclosure Proceeding was still set for November 2, 2018. On October 31, 2018, counsel for D emailed the Respondent about the Petition Record for the upcoming November 2, 2018 hearing date. Several minutes later, the Respondent advised opposing counsel that he did not file the Petition Record as he had been "so disorganized at this end" and "endeavouring to get more affidavit material, but have not." The Respondent then explained that the matter would have been struck from the hearing list. Accordingly, the hearing did not proceed on November 2, 2018.

[59] The Law Society then sent the Respondent a lengthy, detailed letter dated November 16, 2018, setting out detailed concerns over the lack of banking records relating to the 2015 loan transaction at the heart of the Foreclosure Proceeding. Mr. Wedel wrote:

> I confirmed your apparent belief about the relationship of the documents to the subject matter of the petition in a phone call to you on June 22, 2018. At that point, [A]'s petition was scheduled to be heard on June 28, 2018. You mentioned preparing further affidavits. I asked you why your letter dated June 18, 2018 detailed a transaction in March 2014 when that was not the loan that was the subject of [A]'s petition. You replied with words to the effect of, "is it not?" You also said that, if I was right, that would be a problem. Moreover, you confirmed to me that you had not received any other financial records after our interview on May 31, 2018.
>
> (It also appears from another passage in your letter that you may believe that the presence of cash in a transaction is an essential element of money laundering. If that is your belief, it appears to indicate an incomplete understanding of the relevant concepts. *I strongly urge to you to review the possession of proceeds of crime and laundering proceeds of crime sections of the Criminal Code and/or seek legal advice.*)
>
> [emphasis added]

[60] In that same letter, the Law Society provided a lengthy list of risk factors and red flags for suspicious activity relating to the Foreclosure Proceeding. In particular, Mr. Wedel wrote:

- This was your first matter for [A]. You had no previous contact with him.

- [A] wanted to replace his existing counsel at a relatively early stage of the proceeding. The reason why is not clear.

- Your first meeting, on January 11, 2018, was not with [A] but with [B]. The reason why is not clear.

- [B] advised you that he would provide instructions on [A]'s matter, which you confirmed in your retainer letter with [A], and even inquired about a power of attorney for that purpose. The reason why is not clear.

- You did not meet or speak with [A] in the absence of [B]. The reason why is not clear.

- The matter involved recovery of a private loan for a large amount. The reason why [D] borrowed an amount of this size from a non-credit institution is not clear.

- [A]'s driver's licence, which you copied on or about January 12, 2018, had been issued only 10 days earlier. The reason why is not clear.

- On January 23, 2018, you received [D]'s affidavit that described [B] as a money lender who in late 2015, around the time of [A]'s alleged loan to [D], was in trouble with the police and under investigation for offences involving money.

- Beginning on January 24, 2018, you requested financial records from your client to corroborate the loan to [D] but apparently have yet to receive any. As a result, it appears, you have twice had to abandon hearing dates that you scheduled. The reason for the absence of documentation is not clear.

- By May 31, 2018, you were aware that the article published in a media outlet on February 16, 2018 reported that [A] and [B] had been arrested together in the spring of 2016 in possession of several hundred thousand dollars in cash that was later forfeited as proceeds of crime. The arrest occurred only a few months after [A]'s alleged $800,000.00 loan to [D].

[61] And if there was any doubt left as to what the Law Society's concerns were, Mr. Wedel explained:

> While some of these factors are red flags on their own, others are risk factors whose importance increases in combination. The circumstances appear to give rise to an objective basis for suspicion of illegal activity in connection with the loan of $800,000.00 from [A] to [D] in December

2015. Efforts to recover that amount may be in furtherance of such activity.

[62] The letter set out relevant provisions of the *Code* and listed several disciplinary rulings where lawyers were found to have committed professional misconduct when they failed to make reasonable inquiries about the legitimacy of their client's activities.

(a) The letter also raised concerns that the Respondent did not understand the distinction between the loan between B and D evidenced by the March 2014 records and the loan between A to D that was the subject of the Foreclosure Proceeding;

(b) In terms of client identification, the Law Society raised concerns that the Respondent had not obtained or recorded or made reasonable efforts to obtain or record client information, including business address, business telephone number, home telephone number and occupation; and

(c) The Law Society requested further production of the Respondent's client file and a further update on whether the Respondent intended to remain as counsel for A.

[63] The Law Society's letter did not appear to cause the Respondent any reason to pause and he continued to advance steps in the Foreclosure Proceeding. On November 28 and 29, 2018, the Respondent met A and B to prepare and commission their affidavits. The Respondent made no notes of this meeting. The Respondent's timekeeping evidence shows that he also spent an hour and a half preparing his argument for the hearing of the Foreclosure Proceeding.

[64] On November 30, 2018, the Respondent filed A's Affidavit #2 and B's Affidavit #1 in the Foreclosure Proceeding. In his Affidavit #2, A responded to D's Affidavit #1 by saying he disagreed with it in its entirety. A explained that:

(a) When he met with B and D, he was told that D borrowed ¥3,000,000 from B. D did not have the money to repay B so he wanted to borrow money from A to repay B;

(b) D agreed to borrow CDN $800,000 from A, which he then paid to B to repay D's loan to B. "I was present when the three of us explained this transaction in front of [DC], D's lawyer. Accordingly, [DC] drafted the promissory note, mortgage, and acknowledgement that I attached to my first affidavit"; and

(c) An untranslated bank record was attached as an exhibit. A explained that it was a "true copy of an extract from my bank account that indicates that on December 29, 2015, I transferred ¥5,000,000 to the account of [B]. That amount included the amount that I promised [D] that I would pay to [B] on [D]'s behalf" (the "Second Bank Record").

[65] B's Affidavit #1 also responded to D's Affidavit #1 by saying "his version of events is untrue. I deny that there was any discussion of two loans as [D] swears in his affidavit." In B's Affidavit #1, he explained that in 2014, he lent ¥3,000,000 to D. He gave him a promissory note dated March 11, 2014, which was attached as an exhibit. He also attached a copy of a translated receipt that D gave B for ¥90,000 cash, a copy of a receipt by which D acknowledged receipt of ¥2,910,000 from a bank transfer to the account of GL and a copy of an extract from B's bank account which "indicates that I made that transfer to account number …"

[66] B described the transaction as follows:

> In March 2015, I asked [D] to repay me the money he owed me. He did not have the cash to do that. We agreed that he would borrow the money to repay me from [A] and secure the loan with the mortgage in favour of [A].
>
> This is the agreement that we discussed in front of [DC], [D]'s lawyer. [DC] prepared the mortgage that we are dealing with in this action and [D] signed it …
>
> On or about December 29, 2015, [A] transferred ¥5,000,000 to my account. I understood that [A] intended part of that amount to include the money that [D] owed me (it also included other money). I understood that payment cancelled [D]'s March 11, 2014 debt to me.

[67] Notably, C signed an endorsement of interpreter at the end of both affidavits. That endorsement purported to be made by a competent interpreter in the English and Mandarin languages. At the Hearing, the Respondent was asked whose idea it was to have C sign the endorsement of interpreter. The Respondent testified that he did not remember. The Panel notes that the Second Bank Record did not have a separate endorsement of translation. The Respondent testified at the Hearing that C interpreted the key portions of the Second Bank Record to him to his satisfaction. He testified that he did not pay her for her interpretation.

[68] The Second Bank Record would prove to be critical. In regard to the Second Bank Record, the Respondent testified that he did not remember when he received that

record from his client. He testified that he thought he received it from his client around or before May 2018, and that maybe it was inadvertently not scanned and saved in his document management software. In any event, he admitted that he was unaware of the Second Bank Record until he met with A, B and C in late November 2018. He testified that he did not know he had the Second Bank Record until then.

[69] The Law Society had the Second Bank Record translated for the Hearing. It appears to be a bank statement from the China Merchants Bank. The account holder is stated to be "LG." The row in the bank statement underlined in A's Affidavit #2 appears to document a credit rather than a debit of ¥5,000,000 as a "retail remittance credit" from the account of "[SS Ltd.]" on December 29, 2015.

[70] Since the Respondent relied on his client's reassurances in imperfect English that the documents supported the Foreclosure Proceeding, the Respondent continued to respond to Law Society concerns. On December 3, 2018, the Respondent emailed a client identification form to B, A and C asking them to fill it out for A (the "Client ID Form"). That form requested A's business address, business telephone number, a home telephone number and occupation.

[71] By letter dated December 11, 2018, the Respondent sent the Law Society the latest copy of his client file as requested.

[72] On December 13, 2018, C sent the completed Client ID Form back to the Respondent. The completed form provided A's business address as 1630 Burlington Avenue, Burnaby BC, his business telephone and his occupation as "manager" of a numbered BC company.

[73] By email of December 19, 2018, the Law Society requested additional details regarding any client group meetings and phone calls after May 24, 2018. The Law Society also asked how the Respondent received the information for the affidavits of A and B filed on November 30, 2018.

[74] By letter dated January 9, 2019, the Respondent explained that he met with A and C on June 13, 2018 as planned. He did not recall if B was there. He advised:

> I discussed the concerns I had about the file as a result of the article, and the concerns raised by the Law Society.
>
> The other main point of that meeting was for me to understand how things happened, with specific reference to specific documents. My time sheets show that within a week I was drafting affidavits.

> At the June 13, meeting I made notes on individual sticky notes and put them on documents to help me piece the story together when I reviewed the file.
>
> While I was drafting the final drafts of [A]'s affidavit #2 and [B]'s affidavit #1, I would have replaced those sticky notes with ones for my assistant linking the documents to the exhibits in the affidavits. Those replacement sticky notes would have been discarded once the documents were organized as exhibits before the affidavits were sworn.
>
> I did not take any other notes at the June 13 meeting.

[75] The Respondent also provided other explanations for several discrepancies in his note taking:

(a) There was no way that [D] repaid money to [A]; he denied owing anything. [D] did provide some post-dated cheques for interest when he signed the mortgage, but they were dishonoured;

(b) "I realized that there had to be an error in those notes. I wrote: [D] paid [B] by cheque. … That note made no sense unless it said that [A] repaid [B]";

(c) "Apart from this clearly erroneous note, the only difference between those notes and the affidavit version of the events is the manner in which [A] paid [B] the money to discharge [D]'s loan. … I do not regard the discrepancy between the cheque and bank transfer as significant …";

(d) He did not have a translation prepared of the Second Bank Record. "[A]'s explanation made the document sufficiently clear to me that I would not have asked for a translation."; and

(e) He provided the Law Society with a copy of the completed Client ID Form.

[76] The Panel notes that, by this point in time, the Respondent's client and D gave conflicting views on the structure of the loan agreement. Additionally, three versions of facts were circulating about D's three prepaid interest cheques: the cheques had been cashed and credited to D (A Affidavit #1), the cheques were never cashed (D Affidavit #1), or the cheques were dishonoured (letter of January 9, 2019 by the Respondent to the Law Society).

[77] D continued to disagree. He responded with an Affidavit #2, which was filed on February 21, 2019, endorsed by a professional interpreter. In his Affidavit #2, D specifically denied key parts of A's version of events. Specifically, D explained:

> At no time did I tell the petitioner that I borrowed ¥3,000,000 from [B] or that I needed a loan from the petitioner to repay [B].
>
> The purpose of seeking a loan from the petitioner in the first place was because I urgently need to repay [a construction company] to prevent foreclosure of the West Vancouver Property. The loan from the petitioner was never supposed to be for repayment of any loan to [B]. To be clear, I deny that I ever owed a personal loan to [B] of ¥3,000,000, as alleged by him or the petitioner.
>
> Furthermore, as I have already stated in my first affidavit, at no time did I agree that the petitioner could pay loan proceeds to [B].
>
> … I do not know why the petitioner transferred ¥5,000,000 to [B], but none of those funds were for my benefit and I did not agree to any such transfer. In fact, I was not aware of that transfer until I read the affidavit.

[78] Significantly, D explained:

> Exhibit "A" to the petitioner's second affidavit purports to be a copy of an extract from the petitioner's bank account. I am able to read Chinese and I note that nowhere in the extract does it show the name of the account holder. In fact, the second page reveals that the name of the account holder is "[GL]". I do not know a person by that name. In addition, the December 29, 2015 transfer of ¥5,000,000 that the petitioner refers to is not a withdrawal but a deposit and it does not refer to [B] at all, but rather a company named '[SS Ltd.]'. I have not heard of this company before.

[79] In response to B's Affidavit #1, D denied that he ever personally borrowed ¥3,000,000 from B. He explained that B loaned ¥2,910,000 to his company in China and not to him personally, although he signed a promissory note on behalf of his company. The remaining ¥90,000 was never funded in case or otherwise. He advised that if the loan was a personal loan, the funds would have been transferred to his personal account and they were not. D also advised that he had repaid ¥1,530,031 of that loan. Attached as an exhibit was a copy of a spreadsheet detailing the monthly payments his company had made.

[80] At the same time, D's counsel filed an affidavit from a legal assistant, PB. PB's Affidavit #1 attached as an exhibit a Notice of Civil Forfeiture filed July 27, 2016. The Notice of Civil Forfeiture referred to a May 2016 surveillance operation of a drug trafficking investigation involving both A and B. The document contained allegations that the car A and B were travelling in was stopped by the police and searched for possession of the proceeds of crime. In the trunk, the police allegedly found five white plastic bags of bundled Canadian currency totalling $513,780. PB's Affidavit #1 also attached an order made on November 3, 2016 against several persons, including A and B, that required the cash and other things to be forfeited to the provincial government as proceeds of crime.

[81] By this point, the Respondent had already retained counsel. By letter dated February 22, 2019, the Law Society wrote to counsel for the Respondent advising that its core concerns were being referred to the Discipline Committee. Specifically, the Law Society wrote:

> 1. There were circumstances that required reasonable inquiries by Mr. Gregory that he did not make and/or record. Of particular concern is the absence of documented evidence of reasonable inquiries by him after May 31, 2018 (given what Mr. Gregory by then knew about [A] and [B]), including most significantly reasonable inquiries in relation to [A]'s occupation and the source of his wealth and assets – including the $800,000,00 CAD [A] claims to have loaned to [D] a few months before his ([A]'s) and [B]'s arrest while in possession of over $500,000.00 CAD in proceeds of crime. The circumstances appear to give rise to an objective basis for suspicion of illegal activity in connection with the loan of $800,000.00 from [A] to [D] in December 2015. Efforts to recover that amount may be in furtherance of such activity. There does not appear to be evidence of reasonable inquiries to permit satisfaction on an objective test that the loan underlying the recovery proceeding—and by extension the proceeding itself—is legitimate.
>
> 2. Mr. Gregory did not comply with client identification obligations under Rule 3-100(1)(a) and (b).

[82] In that same letter, the Law Society raised further concerns arising from the Respondent's responses:

> I also note that the additional information received after my letter dated November 16, 2018 was, itself, problematic. [A]'s affidavit #2 includes as an exhibit a bank account printout purportedly corroborating the content of his affidavit. However, [A]'s description of the document in his affidavit

> raises further questions. The account is in another person's name, the sending and receiving parties (as the case may be) to the December 29, 2015 payments are people other than [B], and the funds purportedly being loaned from the account (according to [A]'s affidavit) are actually being received into the account. The account statement also shows several million Canadian dollars' worth of funds passing through the account within the span of just 3 days in late December 2015, which was, as noted above, a few months before [A] and [B] were arrested while in possession of over $500,000.00 CAD in proceeds of crime.
>
> Furthermore, regarding the Client Identification Form Mr. Gregory produced at my request on January 9, 2019:
>
> - The business address refers a non-existent block in Burnaby;
> - No home telephone number is provided; and,
> - The stated occupation of "Manager" of a numbered company does not provide any meaningful information about [A]'s occupation.

[83] The Respondent also contacted his client for further clarification. The Respondent sent an email dated February 26, 2019 to his client seeking additional information in light of the latest affidavits filed by D and PB. The context for the Respondent's email was to advise his client on whether to oppose moving the Foreclosure Proceeding to the trial list. After raising concerns over D's interpretation of the Second Bank Record, the Respondent advised:

> Clearly, I am not in a position to evaluate whether or not this is true, but if we do not answer it, I am sure the court would refer this to the trial list. Is there some point we can make that would definitely defeat this assertion?
>
> The other concerning portion of the affidavit is the allegation that [D] or his company have repaid half the loan. Is [B] able to shed any light on that?
>
> [PB]'s affidavit is designed to paint [A] (and [B]) as criminals and money launderers. My inclination is to say that nothing that they are alleging is related to this proceeding closely enough that it should matter, but that is far from certain.
>
> I await to hear from you, but unless we have an extremely decisive answer to the allegations in paragraph 7 of [D]'s affidavit I see no point in opposing the application to have this matter referred to the trial list.

[84] On February 28, 2019, counsel for the Respondent wrote submissions to the Discipline Committee challenging the validity of the complaint.

[85] [redacted for solicitor/client privilege and/or confidentiality]

[86] [redacted for solicitor/client privilege and/or confidentiality] The Respondent testified that he continues to be counsel of record for A.

[87] At the Hearing, the Respondent testified that he was suffering from depression at the same time he was representing his client in the Foreclosure Proceeding. Additionally, a two-page letter provided by a medical doctor briefly outlined an opinion and a brief overview of the Respondent's longstanding history of major depressive disorder and associated anxiety. The Law Society did not object to the admission of that letter as an exhibit in this proceeding.

DISCUSSION AND ANALYSIS

Onus and standard of proof

[88] The Law Society bears the onus of proving the allegations set out in the Citation. The standard of proof is the ordinary civil standard of balance of probabilities (*Foo v. Law Society of British Columbia*, 2017 BCCA 151 at para. 63).

Test for professional misconduct

[89] The test for professional misconduct is well-established, namely, whether the facts as made out disclose a marked departure from the conduct the Law Society expects of its lawyers (*Law Society of BC v. Martin,* 2005 LSBC 16 at para. 171). The *Martin* test is an objective test. The Panel is to examine the evidence objectively to determine whether the Respondent's conduct in these circumstances amounts to a marked departure from conduct the Law Society expects from its lawyers.

[90] The parties' submissions debated the extent to which "culpability," "aggravated," "gross culpable neglect" and "blameworthiness" form part of the test for professional misconduct. The suggestion appears to be that there may be a subjective component to the test for professional misconduct that may lower the Respondent's culpability or blameworthiness along a presumed spectrum. For example, if the Respondent did not believe his client's transaction was a money laundering transaction, then his subjective belief should be taken into account to lower his culpability in pursuing his client's Foreclosure Proceeding. Taken from another vantage point, if the Respondent was, for example, too depressed to

understand that he was furthering his client's illegal activities, then his culpability for pursuing his client's Foreclosure Proceeding should be lowered on the spectrum of culpability.

[91] We agree with the Panel in *Law Society of BC v. Harding*, 2014 LSBC 52 at para. 76:

> In our view, given all the cases and the guiding principles from *Re Stevens and Law Society of Upper Canada* (1979), 55 OR (2d) 405 (Div. Ct.) and the marked departure test from *Martin*, there must be culpability in the sense that the lawyer must be responsible for the conduct that is the marked departure. The words "marked departure" are where one finds the requirement that the nature of the conduct must be aggravated or, to use the words of *Stevens*, outside the permissible bounds.

[92] We agree with the Law Society that the differences between "marked departure", "aggravated" or "gross culpable neglect" distract from the real issue, which is whether, based on all the circumstances, the Respondent's conduct is a marked departure from conduct objectively expected of lawyers. The Panel is to review the evidence holistically and may consider any subjective beliefs including any mental or physical health issues that may form part of the circumstances (*Harding* at para. 79).

Allegation 1 – Failure to make reasonable inquiries in suspicious circumstances

The Law

[93] There are only a handful of cases addressing the lawyer's duty to make reasonable inquiries.

[94] In *Law Society of BC v. Elias*, [1993] LSDD No. 182 at para. 44, the benchers on review held that:

> … 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.

[95] In *Elias*, the lawyer was contacted by a long-time banker friend. The London banker said that his client, who was in Manila, wished to transfer USD $10 million

out of the Philippines. The London banker told the lawyer that the Manila cash was the proceeds of a brothel business. Without taking any steps to confirm whether the funds were proceeds of crime in the Philippines, the lawyer contacted a Taiwanese client and offered to introduce him to the person with the Manila cash. The lawyer did not know that prostitution and operating a brothel were crimes in the Philippines. The benchers on review held that the lawyer had committed professional misconduct because he failed to check on the legitimacy of the transaction before offering to introduce the two parties. The benchers held that the lawyer should have inquired into whether the funds were proceeds of crime before offering to assist in the transaction by introducing the parties (*Elias*, page 3).

[96] The Court of Appeal affirmed the benchers' decision (*Elias v. Law Society of British Columbia*, 1996 CanLII 1359, 26 BCLR (3d) 359 (CA). The Court of Appeal expressly agreed with the benchers' conclusions that:

> … the Member should reasonably have been suspicious that there were illegal activities involved under Canadian law or the law of the Philippines and that it was professional misconduct to become involved before inquiries were made by the Member to his satisfaction on an objective test which would have disclosed that the subject funds were the proceeds of crime in the Philippines.

[97] In *Law Society of BC v. Gurney*, 2017 LSBC 15 at para. 79, the hearing panel set out key principles regarding when a lawyer should make reasonable inquiries:

> (b) The Court of Appeal in *Elias*, 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." … 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.

[98] In *Gurney*, a private banker contacted the lawyer about a potential client. The lawyer had known the private banker for many years. The lawyer knew the private banker had a history of involvement with securities fraudsters. The potential client was a newly incorporated BC company with no assets or business operations.

[99] The client presented the lawyer with a series of one-page credit agreements, for loans totalling $26 million, ostensibly drafted by lenders in Nevis, the Marshall Islands and Belize. The transactions did not require the use of a lawyer's trust account but the client asked the lawyer to receive the loan proceeds into his trust account and disburse the funds to the client. The lawyer was not asked to provide any legal services. The lawyer was paid 0.1 per cent of the money flowing through his trust account.

[100] The hearing panel found that the lawyer had committed professional misconduct by not making reasonable inquiries about the source of funds or purposes of the transactions. There were suspicious circumstances that suggested possible money laundering, as the lawyer had asked the private banker about the source of the lenders' funds. The lawyer simply accepted his generic answers of "stocks" and "nothing illegal" at face value (*Gurney*, paras. 51, 54, 66(l), 83 and 84).

[101] In *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7 at para. 93, the Supreme Court of Canada provides helpful guidance on the limits of a lawyer's duty of commitment to clients' causes:

> Of course the duty of commitment to the client's cause must not be confused with being the client's dupe or accomplice. It does not countenance a lawyer's involvement in, or facilitation of, a client's illegal activities. Committed representation does not, for example, permit let alone require a lawyer to assert claims that he or she knows are unfounded or to present evidence that he or she knows to be false or to help the client to commit a crime. The duty is perfectly consistent with the lawyer taking appropriate steps with a view to ensuring that his or her services are not being used for improper ends.

[102] Lawyers are not required under FINTRAC to report suspicious transactions. However, this exemption, coupled with the unique protections afforded to solicitor-client privilege, may invite unscrupulous individuals to target lawyers. That means that lawyers should be on alert for suspicious activities so that they do not unwittingly facilitate their unscrupulous client's fraud, money laundering or other criminal activities. The public interest and confidence in the legal profession demands that lawyers be vigilant and take positive steps to ensure that their exemption is not misused by unscrupulous clients.

[103] When the circumstances of a client or potential client reasonably raise suspicions, the lawyer should first make reasonable inquiries to be satisfied on an objective standard, that the lawyer will not be assisting the client in doing something unlawful or potentially unlawful. It is not sufficient to say that the lawyer should zealously represent the client's interests and trust in the court system to sort out the "truth" or to bring the unlawful behaviour to light. That deflects the lawyer's responsibilities. As officers of the court, lawyers must make reasonable inquiries of their clients so that their unscrupulous clients do not burden the court system with questionable claims rooted in fraud, money laundering or other criminal activities.

[104] The lawyer's duty to make reasonable inquiries is a duty owed to the public interest, to the state and to others to ensure that the lawyer does not promote or participate in the client's unscrupulous activities. That duty arises when objectively, the lawyer should be suspicious. It is no defence to say that the lawyer was not subjectively suspicious (*Law Society of BC v. Rai*, 2011 LSBC 02 at para. 5).

[105] The Law Society is not required to actually prove that the lawyer's client was in fact involved in something unlawful (*Gurney*, at para. 87; *Law Society of BC v. McCandless*, 2010 LSBC 03 at paras. 42 to 56).

[106] The Respondent relies on *Bowman v. Fels*, 2005 EWCA Civ 226, for support that barristers who act for their clients in litigation would be characterized as assisting them in the commission of a crime. The primary issue in that case was whether a statute, the *Proceeds of Crime Act 2002*, applied to barristers in the ordinary course of representing clients in legal proceedings. If that Act applied, barristers representing their clients in various dealings might be viewed as assisting them in a money laundering offence. While that case is interesting, it focuses on a particular British statute and common law. The case is distinguishable and we decline to consider or adopt it.

[107] Based on *Elias* and *Gurney*, the Panel has considered two key elements. First, whether the Respondent should reasonably have been suspicious that his client was or might be involved in illegal activities under Canadian law. Second, whether the Respondent made reasonable inquiries to satisfy himself on an objective test that the 2015 loan at the heart of the Foreclosure Proceeding was legitimate. Both elements import an objective test.

Whether the Respondent should reasonably have been suspicious

The issue of the media outlet article

[108] The media outlet article constitutes an objective basis for reasonable suspicions that the Respondent's client were involved in illegal activities:

(a) The media outlet article generally profiled A and B as drug traffickers and money launderers who were under police surveillance and who had about $660,000 in cash seized from the trunk of their car, which was later forfeited to the provincial government as proceeds of crime;

(b) A lawyer, DC, was described as being sued by a client over an $800,000 mortgage granted by A, which sounded suspiciously similar to circumstances of the Foreclosure Proceeding;

(c) The house involved in the Foreclosure Proceeding was actually listed by the media outlet as one of the several houses involved in shady transactions;

(d) The article did not describe all money laundering as involving cash; and

(e) The article described B and A having stakes in homes that were sold months after they filed their claims, and they were then paid out "by cheques from lawyers" the same way a bank gets paid when it holds a mortgage. In other words, some lawyers were holding proceeds of crime in their trust accounts.

[109] The Respondent testified that he focused only on the specific method of money laundering described in the media outlet article, which generally involved cash. The Respondent testified that he believed there was no cash involved in the transaction in the Foreclosure Proceeding. The Respondent testified:

> If it's cash, then — I just can't tell you how different — I mean, I think it's clear. If it's cash, yes, there are red flags everywhere. If it's money from a bank account, the way I read the article is, you know, it's — once it's there it's been laundered[.]

[110] The Respondent admitted in his testimony that he had not made any inquiries to determine whether his client had in fact filed builders liens on four properties on false pretenses. The Respondent dismissed this allegation out of hand as "just a fraudulent claim," as though fraud was not a serious crime:

> A [...] The builder's lien stuff is they would file builder's liens when there wasn't any work done. I don't see how that's laundering proceeds of crime. That's just a fraudulent claim.
>
> Q Yes.
>
> A So that's not money laundering. It's an allegation my clients have done something illegal and -- but that's not what I had.

[111] In his submissions, the Respondent explained that:

> (a) There is no dispute that the media outlet article presented both A and B as drug dealers and money launderers who appeared to engage in fraudulent dealings involving real estate. While it raised objective suspicions that the underlying loan might have some connection to proceeds of crime, the Respondent struggled to see how the Foreclosure Proceeding contributed to money laundering.
>
> (b) The Respondent had no suspicion that he might be assisting his client in any crime prior to reading the media outlet article at his interview on May 31, 2018, but objectively reasonable suspicions about that possibility arose then.

[112] The Panel accepts this submission as an admission that the media outlet article reasonably gave rise to suspicions that the Respondent's client was engaged in illegal activities.

The issue of the contemporaneous Law Society investigation

[113] When the Law Society contacted the Respondent about a complaint relating to the Foreclosure Proceeding and his client, that complaint should have in itself given rise to suspicion on the Respondent's part that he was assisting a client in furthering criminal activities. Instead, the Respondent appeared to side with his client and dismissed the complaint as something D might have started.

[114] The Law Society's letter of June 1, 2018 referred to a "concern as to whether the [Foreclosure Proceeding] may have been in furtherance of illegal activity such as money laundering or possession of the proceeds of crime and as to whether you may have been assisting the client in that regard."

[115] The Law Society's letter of November 16, 2018 contained a detailed explanation of why the Respondent's conduct was problematic and included references to the relevant law, including *Elias* and *Gurney*. The Law Society explained:

> As noted earlier, the circumstances connected to the loan appear to be suspicious. There does not appear to be evidence in your file or responses to permit satisfaction on an objective test that the loan underlying the recovery proceeding—and by extension the proceeding itself—is legitimate. Nor does there appear to be evidence of sufficient inquiries to that end. However, you have continued to act for [A] in the matter.

[116] Despite the concerns raised by the Law Society, the Respondent chose almost immediately to defend his client and continue to this day to demonstrate blind loyalty to his client, including remaining as counsel of record in the Foreclosure Proceeding, despite the lack of any evidence showing the source of funds for the 2015 loan.

Issue of the definition of money laundering

[117] The Law Society submits that money laundering is knowingly doing something with proceeds of crime for the purpose of concealing the fact that it is proceeds of crime. We accept that definition is applicable to the circumstances here.

[118] At the time the Citation was issued, the money laundering provision was set out in s. 462.31 of the *Criminal Code*:

> Every one commits an offence who uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds, knowing or believing that all or a part of that property or of those proceeds was obtained or derived directly or indirectly as a result of
>
> (a) the commission in Canada of a designated offence; or
>
> (b) an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence.

[119] A "designated offence" was defined at the time of the Citation as any offence that may be prosecuted as an indictable offence, or a conspiracy or an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to, such an offence.

[120] We accept the Law Society's view that cash is not an essential component of money laundering. The reference in the *Criminal Code* provision to "any property

… obtained or derived directly or indirectly as a result of" crime is broad. Money in a bank account may fit that definition. The jurisprudence shows that individuals have been convicted of money laundering for transferring money from one bank account to another (*R. v. Abdel*, 2018 ONSC 6002; *R. v. Lawrence*, 2016 ONCJ 701).

[121] The Respondent submits that, at the time the Citation was issued, money laundering was a relatively new concern and that little guidance was available prior to the Citation. He testified that he now appears to be judged by standards that were not widely understood at that time.

[122] A key area of questioning explored at the Hearing centred on whether the Respondent viewed anything suspicious about the loan transaction underlying the Foreclosure Proceeding after he knew about the media outlet article. In direct examination, the Respondent testified that the loan transaction at the heart of the Foreclosure Proceeding did not raise any red flags with him. He testified that "given that my understanding was you can't have money laundering without cash, that one's off the table."

[123] The Respondent also testified that, when he wrote his June 18, 2018 letter to the Law Society, he was intending to proceed with the June 28, 2018 hearing date in the Foreclosure Proceeding, even after what he learned from the media outlet article. While in cross-examination, the Respondent testified that he had essentially resolved to try and obtain a foreclosure order because "I don't understand how this is money laundering, the kind we're talking about." As the Respondent explained in cross-examination:

> Q What happened is you decided that your clients were being truthful, this money came from a bank and so it couldn't be money laundering, correct?
>
> A Yeah.

[124] The Respondent's view is that the media outlet article discussed money laundering as generally involving physical cash. For example, the Respondent testified several times that he had concluded the foreclosure was legitimate because he believed no cash was involved. The Respondent explained that, since no cash was involved, that one fact satisfied him that he could complete the Foreclosure Proceeding and he would proceed to do so.

[125] The Respondent testified that he spent between one and two hours looking online for information about money laundering. He admitted that he did not research or review any case law about money laundering, nor even read the *Criminal Code*

provisions about money laundering. He described his thought process as being essentially (i) the article refers to cash; (ii) my clients tell me there was no cash; (iii) therefore it cannot be money laundering:

> Q Didn't you agree that after reading that article that you had an obligation to make reasonable inquiries to obtain information about [A] and more information about the subject matter and objectives of the retainer, what you were doing? Or do you say no, it doesn't change my view at all?
>
> A No. My view and understanding of money laundering then was it took cash — I looked at the article very closely, compared it to the transaction I was looking at, and I saw that as a focused allegation about what my clients did and it was unquestionably not what I was doing and I asked, how is this money laundering? That's where my thought process stuck.

[126] Under cross-examination, the Respondent admitted that he did not consult any criminal law lawyer to check whether he held a correct understanding of the definition of money laundering and proceeds of crime. The Respondent also admitted that he never considered, until being asked in cross-examination at the Hearing, whether his $10,000 retainer had been paid with proceeds of crime.

[127] The Respondent submits that he was having genuine difficulty understanding how A's transaction could constitute money laundering under either of the loan arrangements described by A or D. The Respondent submits he was waiting to obtain more facts to respond to D's primary defence that he was not advanced any loan funds.

[128] The Respondent was asked in cross-examination why he did not do any legal research or consult a criminal lawyer to determine whether cash was an essential component of money laundering. He answered: "Because the article that I read indicated that it wasn't." Given the Respondent's experience, seniority and the informal advice he received from his lawyer colleagues, the Panel gives little to no weight to this testimony.

[129] During his testimony, the Respondent pointed out how he repeatedly asked the Law Society to explain how a non-cash transaction could constitute money laundering. However, it is not the role of the Law Society to provide legal advice to the Respondent.

[130] The Law Society submits that, had the Respondent exercised a minimal amount of due diligence, he would have discovered he was mistaken in believing that money laundering required cash as an essential element. We agree.

The issue of the bank records and D's affidavits

[131] D's court documents filed in the Foreclosure Proceeding should reasonably have raised suspicion for the Respondent. D's Response to Petition filed on January 23, 2018 stated clearly that the mortgage was obtained by a fraud by B, A or both of them. D took the position that the mortgage was invalid. D's Affidavit #1 filed at the same time stated that B was being investigated for several regulatory offences in Canada concerning money and he could not access most of his money. D said B was in trouble with the police.

[132] Even if the Respondent believed that opposing parties often lie, at that time, the Respondent would have been alerted to two contrasting stories and should have been suspicious. He did not have the necessary banking documents to support A's Foreclosure Proceeding, so he should have made that a priority to guard against being a dupe. Additionally, he might have asked B whether he was in fact being investigated for regulatory offences to assuage any suspicions. The Respondent did not do any of this, because he immediately dismissed D's story as being untrue.

[133] The Respondent's belief that no cash was involved was based on his instructions from A, B and C's explanations of the untranslated bank records that he had been provided. Those explanations proved to be untrue.

[134] The Respondent takes a completely different view of the Bank Records. The Respondent denies that any significant issues surround the 2014 Bank Record. He explained that, while there is a dispute about whether the actual borrower was D or his company, that dispute was minor because D gave a personal guarantee. In regard to the 2015 Bank Record, the Respondent acknowledges divergent views about the basis of the loan. He submits that "the fundamentals of the 2015 loan" described by A and B appear to be supported by the transactional documents drafted by D's own lawyer.

[135] Although the Respondent could not read the untranslated First Bank Record as it was written mainly in Chinese, if he had examined that document, he would have quickly learned that it did not support the 2015 loan at the heart of the Foreclosure Proceeding. If the Respondent had examined the First Bank Record, he would have noticed that the transaction dates were set out in Arabic numbers as "2014/03/11". Thus, the Bank Record did not support the existence of the loan his client said was paid out in December 2015.

[136] The circumstances cried out for the Respondent to hire an independent interpreter. The Respondent's complete avoidance of hiring one to assist him in communicating with his client makes no sense. The Respondent testified that A

and B spoke minimal English and that he spoke no Mandarin. He testified that C spoke barely acceptable English. In answer to the Panel's question, the Respondent testified he did not know if C was competent to acceptable standards to interpret English. In these circumstances, the Panel is perplexed as to how the Respondent could reassure himself that his client even understood him let alone how he could understand them.

[137] The Respondent testified that he was confident that C was interpreting correctly because he could tell from B or A's body language that they understood what was being said. However, there was no way for the Respondent to be able to verify the accuracy of any interpretation.

[138] The Respondent testified that he felt he could trust his client's explanation of the untranslated bank records because they were going to be provided to another Chinese person who would be able to read them for themselves. The Panel finds the Respondent's testimony on this point troubling.

[139] What makes the lack of professional translation even more perplexing is the Respondent's testimony about the importance of documents in a foreclosure practice. He testified that he always relies on the contents of the documents, not what his clients tell him. The Respondent testified at the hearing that:

(a) "whenever I do a commercial case I start with the paper, because that tells you what the transaction is, and it's quite unusual to have a client will describe the transaction correctly, completely correctly";

(b) "resort is always to the paper";

(c) "you can figure out the deal by reading the paper and then go back and talk to people";

(d) "In this transaction I didn't feel I had the story, but I did feel that once I had the paper I would have the story";

(e) "I had no confidence that I understood my instructions, and I was waiting for documents from my clients";

(f) "I was quite confident I was not communicating — I couldn't communicate with my clients";

(g) "I always want to get the paper, because I don't trust — I don't really want to trust any client unless he or she is very precise to accurately tell me what's going on. So I knew my instructions were to foreclose on the

mortgage. What I meant was I didn't understand my instructions in the sense of what the transaction was";

(h) B and A were "not able to talk about the details of loans and things like that with the language skills [they] had";

(i) "I knew that there were huge language barriers between my clients and me so I was — I don't know — as confident that I didn't have an understanding of the transactions from talking to my clients"; and,

(j) "I had always thought that I wasn't going to know what was going on until I read the paper".

[140] Yet, despite the importance of documents, the Respondent failed to have any key bank documents translated. When asked by the Law Society whether he had the Second Bank Record translated, the Respondent wrote back on January 9, 2019 to say that "[A]'s explanation made the document sufficiently clear to me that I would not have asked for a translation." The Respondent's explanation is unconvincing and lacks credibility.

[141] The Panel notes that the Respondent did not address the issue of his failure to hire an independent interpreter or translator in his submissions. In these circumstances, if the Respondent had relied on an independent professional interpreter to review the bank documents, he would have quickly learned his client was not telling him the truth. In other words, had the Respondent had the assistance of a professional interpreter or translator, he would have become suspicious early on that the 2015 loan was not legitimate. Without a professional interpreter, the Respondent had to blindly trust his client.

[142] Despite the lack of a qualified interpreter to assist him, the Respondent should have become suspicious when he drafted and commissioned B's Affidavit #1 on November 29, 2018. Included as an exhibit to B's Affidavit #1 was the First Bank Record which B explained was a transfer to GL in March 2014. B explained that the First Bank Record was from his bank account. The Law Society's translation of that document shows the transfer was not from B's bank account but from the bank account of "AZ", and a transfer date of March 11, 2014. According to information provided later by D, AZ is B's sister.

[143] That description of the First Bank Record in B's Affidavit #1 was different from that provided by the Respondent to the Law Society on June 18, 2018. In his letter of June 18, 2018, the Respondent advised the Law Society that the First Bank Record "shows a transfer of 2,910,000¥ from [my] client's bank account to [...] the

account that D designated to receive" the December 2015 loan. That difference should have raised suspicions.

[144] With the Second Bank Record, the Respondent also blindly accepted what A told him since it was written in Chinese and untranslated. In his Affidavit #2 made November 29, 2018, A explained that the Second Bank Record was "an extract from my bank account that indicates that on December 29, 2015, I transferred ¥5,000,000 to the account of [B]". In his Affidavit #1 made on the same date, B similarly deposed that A "transferred ¥5,000,000 to my account."

[145] As the Respondent admitted in his testimony, both of his client's statements were false. The Second Bank Record did not show a transfer from A's bank account to B's bank account. Rather, it showed a deposit described as a "retail remittance credit" from "SS Ltd." to "LG".

[146] If it were translated, the Respondent may have noticed that the Second Bank record did not support his client's version of events. That bank document showed more than ¥14,000,000 (approximately $2.8 million) flowing in and out of the account in a matter of days. Most of the transfers were described as retail remittance credits or debits. The Second Bank Record showed that "SS Ltd." and "LG" were transferring funds in large quantities, quickly into and out of accounts. The Law Society suggests that this is exactly the sort of banking record one would expect from a group of money launderers. While that may be true, if translated, the Second Bank Record would and should have raised suspicions of illegal activity.

[147] The "Promissory Note" attached to D's Affidavit #1 dated December 18, 2015 also raises more questions than answers. That document purports to be an acknowledgement of receipt by D of a loan of $800,000 from A. However, B and A's story was that D received $800,000 from A when he transferred ¥5,000,000 to B *on December 29, 2015*, which was said to extinguish a debt owed by D to B (replacing it with a debt owed by D to A). Given all the conflicting stories raised by D, B and A, those differences should have made the Respondent suspicious, especially when one factors in the media outlet article's accusations against A and B.

[148] The Law Society submits that the First and Second Bank Records do not show that the loan monies advanced by A or B originated from a bank account. Those records reflected other transactions between other parties. The Respondent would have discovered these critical facts if he had hired an independent professional translator to translate the bank documents for him, instead of relying entirely on his client's explanations translated through a friend.

[149] Additionally, the Law Society submits that, even if the Bank Records showed that the loan monies originated from a bank account, that fact would still not address the concern that the monies were proceeds of crime. The Law Society submits that the Respondent needed to know the source of the loan monies and whether they originated from, for example, work or investment income.

[150] In short, based on the First and Second Bank Records and the different stories, the documents did not support the Respondent's client's version of events that the December 2015 loan from A to D, if it occurred at all, was advanced from a bank account instead of being paid in cash.

[151] Had the Respondent had his client's documents properly translated, he would have become reasonably suspicious that he was assisting in an illegal transaction or activity. The Respondent would have noticed that the First and Second Bank Records did not support his client's version of events.

[152] In our view, a reasonable lawyer would have hired a professional interpreter in circumstances where he could not communicate directly with his client in English nor read the documents provided to him. The Panel finds that the Respondent's complete failure to do so when he normally relies on the documents to tell the story in a foreclosure proceeding is unreasonable. The Respondent wilfully blinded himself in circumstances where a reasonable lawyer would have become reasonably suspicious.

The issue of the Respondent's commitment to acting for a client

[153] The Respondent testified that he was concerned about the ethical implications of withdrawing from what he believed was a legitimate transaction, even in the face of the concerns raised by the Law Society.

[154] The Respondent testified that, after thinking about the situation and earnestly seeking advice from litigation counsel, he decided to remain on the file at that time. He submits that "[h]e had been advised that there was nothing to compel an immediate decision and he thought that it would be ethically wrong for him to abandon his client *in the circumstances known to him at that time*." [emphasis in original]

[155] The Respondent suggests that his commitment to acting for his client should take primacy over his duty to make reasonable inquiries in these circumstances. We do not agree. The public confidence in lawyers maintaining high ethical and professional standards is a dominant consideration over lawyers choosing to blindly act for unscrupulous clients.

The issue of legal advice

[156] The Respondent submits that, before February 2019, there was little published guidance from the Law Society on money laundering. Accordingly, the Respondent took proper steps to seek out independent legal advice to address the Law Society's concerns. We understand the Respondent's position to be that, since none of those other lawyers raised ethical concerns over the Respondent continuing to act for A, he could properly continue to act for A.

[157] The Panel heard evidence from four lawyers who testified on behalf of the Respondent about their discussions with him over the Foreclosure Proceeding and the Law Society's concerns. The Panel notes that, except for Mr. Cuttler, the other lawyers generally did not know the specifics of the Respondent's client transaction nor the actual concerns raised by the Law Society about the Respondent failing to make reasonable inquiries. Rather, the other lawyers testified that they believed, for example, that the Law Society was wrong to be trying to force the Respondent to withdraw as counsel when even criminals are entitled to legal representation.

[158] The Respondent testified that he was relying on Mr. Cuttler's advice that he should stay on with the file until he had gathered more evidence and that there was no immediate need to make a decision about continuing to represent the client.

[159] The Respondent also explained that Mr. Cuttler was clear that the *first step* was for the Respondent to figure out whether any consideration was actually advanced and, if so, to then determine whether that consideration was the proceeds of crime. Obviously, the Respondent could not identify the source of the funds until he understood what funds, if any, were used. This is a bit of a chicken and egg situation. If the Respondent did not know the source of his client's funds, then the Respondent should have asked his client about how he was earning a living. It makes no sense to wait for untranslated bank documents only to rely on what his client told him anyways about what those documents meant. The Panel rejects this explanation as not credible.

[160] The Law Society submits, and the Panel accepts, that the receipt of legal advice may be considered a mitigating factor at the disciplinary phase but should be given very little weight at the facts and determination phase.

[161] At the Hearing, the Respondent appeared to take the remarkable position that he could rely on other lawyers' advice as a complete defence to a disciplinary matter:

> Q Mr. Gregory, you were a 35-year call lawyer?

A Yes.

Q You have a responsibility to make these decisions yourself. You can get advice from others, but ultimately it's your responsibility.

A Well, it is absolutely my responsibility to do everything within my ability and to use my skill to make sure that I follow the Law Society Rules. I had a big problem with my question to Kurt I wasn't getting an answer to. I knew that — he said get advice, but I'm not sure that I can say that I got advice because he told me, but the reason a lawyer hires another lawyer is because that person's objective. And *if you're saying I had to figure it out myself and I'm answerable if the advice I get is wrong, I disagree with you.*

Q Sorry. You disagree with that?

A If I go — if I'm told to go get advice —

Q Yes.

A — if I go to someone like Gerry, put all the information before him, every lick of it, he — he got all the letters, he got all — I reported to him on every conversation and I was seeking his advice knowing that I — you know, I was worried about doing it myself. I was doing what Kurt said. And in those circumstances *if you say relying on that advice is professional misconduct, you're basically saying it's professional misconduct for me to get advice that the Law Society doesn't agree with.*[1]

[162] A more modest position was recently rejected in *Law Society of BC v. Hittrich,* 2019 LSBC 24 at paras. 57(a) and 58. In that case, the lawyer sought to distance himself from a letter he had written to the Law Society by testifying that an admission had been "inserted by his then counsel and that he was not entirely comfortable with that sentence." The lawyer also "sought to blame his previous counsel" for an answer he had given while being interviewed by the Law Society.

[163] The hearing panel did not accept that a lawyer could blame his own lawyer as a defence. The hearing panel highlighted this evidence as an example of the lawyer having "minimized his responsibility" and cited it as a reason his evidence was found lacking in credibility (*Hittrich* at para. 64). The hearing panel also noted that

[1] Evidence of the Respondent (September 4, 2020 at pp. 104-105), emphasis added.

the lawyer had "blamed his previous counsel for the contents of much of the Paragraph, although the Paragraph is contained in a letter that the Respondent signed and directed to the Law Society" (*Hittrich* at para. 64(a)).

[164] The Law Society and the Panel accepts that the same may be said of the Respondent's evidence about the intemperate language in his June 18, 2018 letter being "channelled" from Mr. Cuttler.

[165] The Panel agrees with the Law Society that there is a settled body of law that establishes that reliance on legal advice is not a defence to criminal offences, provincial offences under the *Securities Act* or contempt of court, but may be a mitigating sentencing factor.

The issue of the Respondent's mental health

[166] The Respondent's evidence is that he was paralyzed by A's file and did very little work other than to secure a couple of hearing dates that were then adjourned. The Respondent submits that he did nothing of substance to advance the file in any meaningful way between the Law Society contact and late November 2018. After that, the Respondent consented to the file being moved to the trial list. He took no further steps to advance the file.

[167] The Respondent appears to be suggesting that he may have been too depressed to notice anything suspicious since he was not really working the file. The Respondent was setting hearing dates, attending client meetings and sending client emails and drafting and filing client affidavits. While the Respondent may not have been advancing his client's matter speedily, the Panel does not accept that the Respondent was not actively advancing his client's Foreclosure Proceeding.

[168] The Respondent submits that he suffered from chronic depression for many years and that condition was aggravated by the added anxiety associated with the Law Society investigation. He testified that he had considerable difficulty in dealing with the Foreclosure Proceeding in any substantive way.

[169] The purpose of the disciplinary phase of this proceeding is to determine whether the Respondent has committed professional misconduct. The primary consideration is to ensure that the public is adequately protected and to promote public confidence in the legal profession.

[170] The Panel also agrees with the Law Society that mental health issues such as depression are mitigating factors generally considered at the disciplinary action phase. Accordingly, little weight is given to mental health issues at the facts and

determination phase (*Law Society of BC v. Ahuja*, 2020 LSBC 31 at paras. 46 and 47).

The issue of withdrawing as counsel

[171] The Respondent testified that he began to question his client's honesty after reviewing D's Affidavit #2 filed on February 26, 2019. He testified that he felt that his client had been dishonest, causing him "huge concern." Once the Respondent had reviewed the response from C that indicated that A did not advance the money to B, but rather to B's mother (through a company), that caused him "massive concern." At that point, he was not planning on advancing the file at all.

[172] However, it took several months, until September 2019, before the Respondent advised his client that he was withdrawing. The Panel was presented with a Notice of Intention to Act in Person that appears to have been signed by A several months later, on August 15, 2020. However, at the Hearing, the Respondent testified that he remains on record as counsel in regard to the Foreclosure Proceeding.

The issue of the Citation being premature

[173] The Respondent submits that the Law Society's steps in proceeding with the Citation was premature since the fundamental facts behind the bank loans were still evolving in February 2018. The Respondent submits that the time period within which "reasonable inquiries" are to be conducted under allegation 1 is not specified. The Respondent submits that:

> [T]he Law Society drew the curtain down as of February 28. [The Law Society] appeared to have no interest in what Mr. Gregory's reaction might now be to the information that [D] had provided. The sudden imposition of what had effectively become a deadline for Mr. Gregory was an arbitrary act that coincided with developments that there was absolutely no realistic prospect of settlement or of the matter proceeding before a court for substantive determination in the near future.

[174] Specifically, the Respondent submits that he still had time to make reasonable inquiries because he had no reason to think his client was involved in any illegal activity when he was first retained. The Respondent submits that the litigation was continuing to evolve especially after D's Affidavit #2. It was only in late February that the "recent defense materials raised serious questions about [A]'s honesty and Mr. Gregory's continued representation."

[175] The Panel does not accept this position. As discussed earlier, a reasonable lawyer in these circumstances would have hired an independent professional interpreter to translate documents and interpret at meetings. If the Respondent had done what a reasonable lawyer would have done in these circumstances, he would have become suspicious at or near the outset of his retainer.

[176] In the Respondent's view, "The consideration issue was a determinative one; if [D] was correct, it would dispose of the action altogether with no need to make other inquiries related to the possibility of continuing crime." The Respondent's submission did not address why the Respondent was now giving any weight to D's evidence, which he initially dismissed as a "tissue of lies."

[177] In *Elias*, the benchers on review held that, when the circumstances are suspicious, reasonable inquiries must be made before the lawyer takes "an initial site." Based on D's Affidavit #1 filed on January 23, 2018 alleging fraud, the Panel accepts that objectively speaking circumstances where the Respondent knew little about his new client, had no supporting documents and could not clearly communicate with him, suspicions should have arisen at that time.

[178] The Respondent submits that there was no "imminent risk of harm" presumably to D since the Foreclosure Proceeding was likely to proceed to trial. Based on *Elias* and *Gurney*, the Panel accepts that the test for making inquiries does not include the requirement of imminent risk of harm. Thus, we reject the Respondent's submissions on this point.

[179] Finally, the Respondent submits that the role of the courts in truth-finding and the existence of other paramount ethical duties such as the duties surrounding withdrawing as counsel also mitigates in his favour. As discussed earlier, the Panel rejects this submission since, as an officer of the court, the Respondent also owes a duty of candour and honesty to the court. If the Respondent reasonably suspects his client of money laundering through a foreclosure proceeding, he should not participate in that illegal activity by advancing that litigation. Judges must be able to rely on lawyers holding the highest ethical and professional standards when they appear before them.

[180] At the Hearing, the Respondent suggested that the Citation was defective. However, when the Panel asked whether he had been prejudiced, the Respondent advised that he was not. The Panel notes that the Law Society had continuing communications with the Respondent over the course of several months. In these circumstances, the Panel does not accept that the Citation is improper since the timing of any reasonable inquiry will turn on the particular circumstances of the facts.

[181] The Respondent also submits that the Citation is not proper as it takes language from a Commentary that is exhortative and attempts to convert it into something mandatory, all without an amendment to the *Code*, notice to the profession, or the opportunity for considered discussion about a substantial change that would have profound implications not only for the lawyer/client relationship but also for the long-established norms of practice for counsel before the courts. Based on *Elias* and *Gurney*, the Panel rejects this submission.

[182] In any event, the Respondent testified that, after receiving D's Affidavit #2 in February 2019, he still intended to complete the retainer. In this case, the timeliness issue is academic since the Respondent intended to complete his client's retainer despite D's evidence that demonstrated A and B had lied to the Respondent about the First Bank Record and then lied to him again about the Second Bank Record.

Whether the Respondent made reasonable inquiries

[183] Despite the suspicious circumstances such as the media outlet article and D's allegations, the Respondent failed to make reasonable inquiries to satisfy himself on an objective standard, that his client was not in fact seeking his assistance to launder money or commit fraud.

[184] In our view, the Respondent should have asked A about the source of his funds for the 2014 and 2015 loans in January 2018 based on D's Affidavit #1. The Respondent should have worked diligently to obtain confirmatory banking, financial or work-related documents to confirm that his client's source of funds was legitimate. Additionally, the Respondent should have asked himself whether he was being used by his client to assist in criminal activity, namely money laundering or fraud.

[185] The Respondent admitted in cross-examination that he did not make any inquiries about the source of A's loan monies, sources of income and wealth, occupation (beyond "manager" of a numbered company that the Respondent knew nothing about), B's sources of income and wealth, or B's occupation. As far as the Respondent knew from the media outlet article, his client's only income was from drug trafficking and money laundering.

[186] The Respondent could and should have sought information and documentation from reliable third parties such as an employer, bank or investment brokerage that could verify a legitimate source of income for A and B. The hearing panel held in *Gurney* at para. 79(c) that a lawyer cannot "rely upon the client's assurance" to satisfy the duty to make reasonable inquiries.

[187] The Respondent made no effort to determine whether his client had any legitimate businesses or other means of earning money lawfully. The only source of income of which the Respondent was aware was drug dealing. He had no information upon which he could reasonably conclude that A's loan monies were not proceeds of crime. To the contrary, A's main or only source of funds was likely through drug trafficking.

[188] Even if the Panel were to accept the Respondent's view, which it does not, the Respondent had no objective evidence that A's loan to D was paid from a bank account, rather than by cash.

[189] Mr. Cuttler testified on the Respondent's behalf at the hearing. He testified that he had no doubt that A and B, who were identified in the media outlet article, were the Respondent's clients and not different people with the same names. He testified that he had no doubt that A and B were drug dealers and money launderers and "never questioned that, as a premise."

[190] Mr. Cuttler testified that the essence of his advice to the Respondent was that "the key issue was to get to the bottom of whether this foreclosure or this, this mortgage, I guess it was a mortgage, was funded with proceeds of crime." Mr. Cuttler testified that the Respondent understood that cash was not an essential component of money laundering and that, even if the loan had not been made in cash, he still had to get to the bottom of whether the loan monies were proceeds of crime:

> A […] So, Mr. Gregory, in my discussions with him, he – I made it clear, and he, he appeared to accept, that notwithstanding the distinction between being caught with cash in Canada and money, and money coming from a bank account in China, you still have to get to the bottom of it.
>
> Q But did you, did you understand, just because money came from a bank doesn't mean you're not laundering it?
>
> A Yes, of course.
>
> Q Did you explain that to Mr. Gregory
>
> A Uhm, I don't know if it was as much an explanation as the two of us agreeing that there was a distinction, or sorry, that there was – that that wasn't some kind of inoculation against money laundering.

[191] The Respondent's own advisor, Mr. Cuttler, repeatedly urged him to "get to the bottom of" the question of whether the loan monies were proceeds of crime, and yet the Respondent did not do so.

[192] Mr. Cuttler testified that the essence of his advice to the Respondent was that "the key issue was to get to the bottom of whether [the loan] was funded with proceeds of crime." Mr. Cuttler described frequently urging the Respondent to "get to the bottom of" this question. The Respondent's own advisor was telling him that an absence of cash "wasn't some kind of inoculation against money laundering" and, even if the loan had not been made in cash, he still needed to determine whether the loan monies were proceeds of crime. The Respondent made no effort to do so and was determined in continuing to proceed with the foreclosure.

Determination on allegation 1

[193] Based on our discussion above, the Panel concludes that the Respondent should reasonably have been suspicious that his client was, or might be, involved in illegal activities under Canadian law.

[194] After considering the above evidence and submissions, the Panel finds that suspicious circumstances arose on January 24, 2018, after D served his Affidavit #1 and the Respondent had received A's client file from his former lawyer. We find that suspicious circumstances that gave rise to the need to make reasonable inquiries were based on the following constellation of circumstances:

(a) B and C attended an initial meeting with the Respondent on January 11, 2018 to see if the Respondent was interested in representing A. The Panel finds that they were likely scoping out the Respondent to see if he would be a suitable lawyer for A;

(b) A and B met the Respondent the following day without C who had been informally acting as an interpreter. Despite the lack of interpretation and the attendance of clients who spoke poor English, the Respondent agreed to represent A in the Foreclosure Proceeding. We find the Respondent's explanation to the Panel that he could tell A and B understood him despite his not knowing Mandarin and despite no interpreter being present at this meeting to be objectively unreasonable in the circumstances;

(c) The Respondent's notes of those two meetings show an unclear picture of two possible loan transactions rather than one loan transaction;

(d) By January 24, 2018, the Respondent had received A's client file from his former lawyer. The information about the loan transaction in A's Affidavit #1 was straightforward reflecting one loan transaction. A also acknowledged that D had prepaid $30,000 of interest on the loan. A's Affidavit #1 was also endorsed by a professional interpreter;

(e) D's Affidavit #1 filed on January 23, 2018 alleged that the loan transaction was a fraud and that the mortgage that was at the heart of the Foreclosure Proceeding was invalid; and

(f) The Respondent did not utilize the assistance of any independent professional interpreter and was unable to communicate fairly with A to question him about the conflicting evidence.

[195] Accordingly, we find that that the Respondent failed to make reasonable inquiries in these circumstances. However, even if the Respondent did not turn his mind to the suspicious activity at that time, he should have at the time that the Law Society met with him in June 2018.

[196] Based on our reasons above, the Panel finds that allegation 1 in the Citation has been proven and that the Respondent's conduct in relation to allegation 1 amounted to a marked departure from the standard the Law Society expects of lawyers and that the Respondent has committed professional misconduct.

Allegation 2 – Failure to make reasonable efforts to obtain and record client information

LEGAL FRAMEWORK

[197] The lawyer's duty to comply with the client identification and verification steps is not only for the lawyer's benefit, but also for the benefit of the public interest and to ensure public confidence in the legal profession as a whole.

[198] Rule 3-100 of the Rules during the period of time referred to in the Citation provided as follows:

(1) A lawyer who is retained by a client to provide legal services must make reasonable efforts to obtain and, if obtained, record all of the following information that is applicable:

(a) the client's full name, business address and business telephone number;

(b) if the client is an individual, the client's home address, home telephone number and occupation;

(c) if the client is an organization, the name, position and contact information for individuals who give instructions with respect to the matter for which the lawyer is retained;

(d) if the client is an organization other than a financial institution, public authority or reporting issuer,

(i) the general nature of the type of business or activity engaged in by the client, and

(ii) the organization's incorporation or business identification number and the place of its incorporation or business identification number.

[199] The purposes of the client identification rules are "to ensure that the legal profession does not become an inadvertent participant in the improper processing of laundered money and that the fraud of identity theft is not aided and abetted by lawyers" (*Law Society of BC v. Wilson*, 2019 LSBC 25 at para. 21).

[200] As A is an individual, the Respondent was required to comply with Rules 3-100(1)(a) and (b). That is, the Respondent was required by Rule 3-100 to make reasonable efforts to obtain A full name, business address, business telephone number, home address, home telephone number and occupation.

DISCUSSION

[201] The Respondent's general position is that his conduct in not obtaining client information as alleged, if it can be characterized as misconduct, is fairly minor. He submits that he did make some reasonable inquiries and that his conduct does not rise to the level of a "marked departure."

[202] The Respondent submits that it is not automatically a serious matter to omit client identification information. For example, in regard to the issue of "occupation," the Respondent relies on *Smith v. McLean*, 1892 CanLII 110, 21 SCR 355. In that case, the Supreme Court of Canada held that the occupation of "trader" could be inferred from the contents of the deponent's affidavit.

[203] That case is distinguishable. In this case, the Respondent's occupation is listed as "manager" of a numbered BC company on the Respondent's Client ID Form. The

Respondent has no information on what business the numbered BC company is conducting. That lack of clarity should have prompted the Respondent to ask questions to obtain greater detail about A's occupation as a manager of a numbered BC company, and even more so in light of the media outlet article.

[204] That the Respondent did not pursue further client information, despite the Law Society requests to do so, may be because the Respondent later came to accept that his clients are drug trafficking money launderers. The Respondent testified that it was "artificial" for the Law Society to be concerned about his noncompliance with Rule 3-100 because he knew full well his clients were money launderers:

> I'll also say that it seemed pretty artificial at that point [in December 2018], because the issue was not that I didn't know who my client was. The issue was that I did know who he was, and he was a money launderer and, look, I understand the Law Society wants this information and you've got to get it no matter what, and I had no trouble with that, but — yes. I mean, but *do I have to find out these guys -- get this information and see whether they're money launderers? No. The whole issue at that point was I knew they were*, so I don't -- I don't mean for a second to say I didn't have to do this, and I would have done anything that I understood that Kurt wanted me to do to fit within the rules, but *it seemed a bit artificial to me*.
>
> [emphasis added]

[205] The Law Society submits that, in some cases, a breach of the client identification rule will not rise to the level of professional misconduct. It submits that in this case, it does.

[206] The Law Society says that "[number] B.C. Ltd. Manager" is not a meaningful description of A's occupation in the absence of any information what business the numbered company was carrying on. The Respondent testified he made no efforts to determine the nature of that company's business. Without that information, the Law Society submits that "[number] B.C. Ltd. Manager" is devoid of content. It does not convey any meaning as to A's occupation. The Respondent may as well have recorded similarly meaningless descriptions such as "businessperson" or "employee".

[207] Based on his testimony and documentary evidence, we find that the Respondent does not know what A does for a living. The occupation of "manager" says nothing on its own and may even contradict the occupation of "businessman" that was listed for both A and B in their affidavits filed in the Foreclosure Proceeding.

Is A's role as "manager" of a numbered BC company the same role as a "businessman"? The Respondent has provided no evidence of what kind of business A was conducting or what kind of company he was managing.

[208] The Respondent took few steps to obtain and verify his client information for nearly a full year, during which time the Respondent took a variety of litigation steps on behalf of A to advance the Foreclosure Proceeding towards hearing.

[209] Nearly a full year after being retained, the Respondent finally obtained client information said to be A's business address, business telephone number and occupation. However, the Panel finds that the information did not meet the requirements of Rule 3-100. First,

(a) "1630 Burlington Avenue", A's supposed business address, does not exist. The street addresses on Burlington Avenue run only from approximately 6500 to 6900. "1630 Burlington Avenue" is somewhat similar to the address in the recital of A's Affidavit #1, but the address given in the recital of an affidavit is typically the affiant's home address. The premises at that address is a residential apartment building;

(b) A gave the Respondent his home address in Vancouver, which is the home address on his driver's licence issued January 2, 2018; and

(c) Corporate records for [number] B.C. Ltd. as of January 15, 2019 give yet another home address for A in Burnaby.

[210] The Law Society submits that the Respondent did not attempt to resolve these contradictions and determine where A lives and where B conducts his business. The Panel agrees with the Law Society that the Respondent's failure to obtain A's business address, business telephone number and occupation was unreasonable in these circumstances.

[211] Accordingly, the Panel finds that the Respondent breached Rule 3-100(1)(a) and (b) and committed professional misconduct by:

(a) becoming counsel of record to A in the foreclosure proceeding before obtaining and recording A's business address, business telephone number and occupation;

(b) failing, for almost a year, to make any efforts to obtain A's business address, business telephone number and occupation; and

(c) eventually obtaining information, said to be A's business address and occupation, that is meaningless: an address that does not exist and "manager" of a numbered company the Respondent knows nothing about.

The *Kienapple* principle

[212] The Panel has considered whether a finding of professional misconduct on allegation 2, in addition to a similar finding on allegation 1, would offend the principle in *Kienapple v. R.*, [1975] SCR 729.

[213] The *Kienapple* principle applies to allegations of professional misconduct made against members of a self-regulated profession (*Macdonald v. Institute of Chartered Accountants of British Columbia*, 2010 BCCA 492 at paras. 54 and 55).

[214] In *Law Society of BC v. McGuire*, 2005 LSBC 43 at para. 33, a hearing panel applied the *Kienapple* principle to mean that a single act should not be treated as two instances of professional misconduct:

> Professional misconduct is not wholly comparable to crimes because it is not classified into distinct offences. There is, in a sense, only one "crime", that of professional misconduct. An act of professional misconduct can involve the breach of one principle of professional responsibility or several such principles. The *Kienapple* principle is that one wrongful act should not be treated as two crimes, even if the act meets the definition of two distinct crimes under the *Criminal Code*. Transposed into the context of professional discipline, we think this means that one act should not be treated as two instances of professional misconduct even if the act contravenes two principles of professional responsibility.

[215] There is a degree of overlap between the two allegations of professional misconduct in this case. The Law Society submits that a modest overlap is not problematic. As the Court of Appeal stated in *Macdonald* at para. 54, the *Kienapple* principle applies only when there are "no additional or distinguishing elements" between the two "offences".

[216] The Law Society submits, and the Panel accepts, that it would offend the *Kienapple* principle if the Respondent's failure to determine A's occupation and business address was the entire factual basis for both allegations of misconduct, because then the same omission would give rise to two instances of professional misconduct. The Law Society submits, and the Panel accepts, that it is not a

problem that the Respondent's failure to determine A's occupation and business address is part of the factual basis for both allegations.

[217] To be clear, the Panel found many facts to support allegation 1 and did not rely on the lack of client identification and verification information to ground our finding of professional misconduct under allegation 1.

[218] Based on our discussion above, the Panel finds that findings of professional misconduct regarding both allegations do not offend the *Kienapple* principle.

DETERMINATION ON ALLEGATION 2

[219] For the reasons discussed earlier, the Panel finds that the Respondent's failure to make reasonable efforts to obtain and record client identification in relation to A was a marked departure from the standard the Law Society expects of lawyers. We find that the Respondent has committed professional misconduct in relation to allegation 2.