2009 LSBC 20
Report issued: June 25, 2009
Citation issued: April 9, 2008

The Law Society of British Columbia
In the matter of the *Legal Profession Act*, SBC 1998, c.9
and a section 47 review concerning

Lu Chan

Respondent

Decision of the Benchers on Review

Review date: April 3, 2009

Benchers: **Majority decision**: Haydn Acheson, Carol Hickman, David Mossop, QC, Thelma O'Grady, G. Glen Ridgway, QC, Dr. Maelor Vallance **Minority decision**: Gordon Turriff, QC, Chair, Joost Blom, QC, Barbara Levesque, David Renwick, QC, James Vilvang, QC

Counsel for the Law Society: Henry Wood, QC
Counsel for the Respondent: William G. MacLeod

Majority Decision

[1] A citation against the Respondent was issued on April 9, 2008. On August 27, 2008 a hearing was conducted. The Panel concluded that the Respondent had committed a breach of Rule 3-51.1 of the Law Society Rules, but that he had not committed professional misconduct.

[2] Pursuant to s. 47(3) of the *Legal Profession Act,* the Law Society sought a review on the record of the Hearing Panel's decision on Facts and Verdict. The Law Society sought an order setting aside the determination of the Hearing Panel and a finding that the conduct that was admitted by the Respondent should have been determined to be professional misconduct.

[3] On June 22, 2006, the Respondent received $40,000 US in cash from his client in respect of a single client matter or transaction and deposited those funds into his trust account, in breach of Rule 3-51.1.

[4] The Respondent completed a Trust Report for the period ending December 31, 2006 and submitted it to the Law Society.

[5] Question 14 of Section B of the 2006 Trust Report required the Respondent to answer yes or no as to whether his practice had received into trust or general, in respect of one client or transaction, an aggregate amount of cash of $7,500 or more. The Respondent answered " yes" to that question and provided the following particulars:

> On June 22, 2006, I received a total amount of $40,000 USD in cash from a client from China who intended to apply for immigration to Canada under the Province of PEI's " Business Partners" program. The PEI government requires an applicant to commit to learn the English language and to reside in PEI after their immigration to Canada. Accordingly, an applicant is required to put down in escrow

> $20,000 CAD as guaranty for residency in PEI and $20,000 CAD as a language deposit, until they fulfill these two conditions. ... This client brought the funds to Canada in cash because she was not able to transfer the funds from China to Canada via a bank in China, due to China's foreign currency control policy. On the other hand, she did not have a bank account in Canada.

[6] The Respondent was not in his office at the time the cash was paid. His secretary/bookkeeper took the cash and waited for his instruction. When the Respondent returned to the office and saw this amount of cash, he was concerned that the bank may not accept this amount of cash. He called his client and requested a bank draft, a certified cheque, traveler's cheques or a wire transfer. The Respondent was told by the client that it was not possible due to China's foreign currency control policy. They did not have any overseas bank account to make the wire transfer.

[7] The Respondent stated that he was generally aware of his duty under Canadian law and under the requirements of the profession to be on guard against money laundering. During the following day, and before depositing the money, he reviewed the *Professional Conduct Handbook.* Specifically he reviewed Chapter 4, Section 6: " 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 ..." . And " a lawyer has a duty to be on guard against becoming the tool or dupe of an unscrupulous client ..." . The Respondent acknowledged that he was not aware of Rule 3-51.1(3), and did no further research of the Law Society Rules. His evidence was that if the *Handbook* had been cross-referenced to the Law Society Rules, he would have followed up with a review of the Rules as well.

[8] The Respondent then assessed that he'd known his clients over a number of years, they had a business in China that involved them referring to him clients who wanted to apply for admission to Canadian universities, apply for Canadian student visas, or immigrate to Canada. The Respondent's clients now wanted their son to attend university in Canada and, at the Respondent's suggestion, determined to immigrate to Canada under the PEI PNP program. They would use their savings for this purpose.

[9] A couple of weeks later, the clients confirmed they did not want to proceed with the immigration. By that time the Respondent had not done any work on the file and decided to close it without charging a fee. The clients confirmed that they wanted to keep the funds overseas in case they decided to send their son overseas for a university education and they needed the foreign currency to pay for tuition fees. They provided the Respondent with the name of their relative/friend and instructed him to make the cheque payable to this person. A trust cheque was issued upon the client's instruction.

[10] In an exchange of letters with the Law Society in the summer of 2007, the Respondent acknowledged his breach and admitted that he had been completely shocked to realize that he clearly breached the Rule. He retained an independent accountant to review all his records and confirm there were no other incidences of breach of the Rule.

[11] One of the driving factors in this case is the history and importance of Rule 3-51.1. Lawyers in British Columbia are currently exempt from the regulations passed under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, which would otherwise require a reporting of certain cash transactions. The Law Society's implementation of this Rule was designed to demonstrate that the legal profession is in the forefront of the fight against money laundering, while also protecting solicitor-client privilege and the independence of the profession.

[12] Because of the importance of this Rule, the Law Society published information about the new Rule on 12 occasions between 2004 and April, 2006 ? primarily in the *Benchers' Bulletin*. However, these communications, while noting the importance of the Rule, never stated that the breach of the Rule would automatically result in a finding of professional misconduct. Only one of the publications

(September-October 2004 *Benchers Bulletin*) spoke of serious consequences. It stated that in the case of " wilful blindness" as to the reasons a client is dealing in cash and regarding the reasons for making cash deposits in a lawyers trust account, there would be no defence to the finding of professional misconduct. In the current matter, by now asking for a ruling that there is a presumption that a breach constitutes professional misconduct, the Law Society is, in fact, asking for new standards without any prior notice to the profession.

[13] The Law Society argues that, due to the importance of this Rule and the Respondent's ignorance of the Rule, there is a presumption of *prima facie* professional misconduct. However, the importance of a Rule provides an uncertain guide to when its breach should be found to be professional misconduct. There should be no hard and fast linkage of the importance of the Rule and the severity of the treatment of a breach. It all depends on the facts. An inadvertent breach of it should not presumptively be professional misconduct. The onus is on the Law Society to prove " a marked departure" from what it expects of its members (*Law Society of BC v. Martin,* 2005 LSBC 16) in order to establish professional misconduct. This onus should not be circumvented by giving the Rule in question more significance after the fact and without warning to the profession.

[14] It is the finding of this Panel, while in no way lessening the importance of this Rule for public safety and independence of the profession, that the facts in this case do not warrant a finding of professional misconduct. While it is important to the Law Society to ensure that lawyers do not inadvertently assist in money laundering transactions, the facts of each case must be examined.

[15] The Hearing Panel in the *Law Society of BC v. Norton* penalty decision, 2008 LSBC 36 (which was subsequent to the hearing in this matter) considered it appropriate to impose only a $500 fine and costs of $500 for breach of Rule 3?51.1. While, arguably, there is a difference in degree between this case and the *Norton* case, it is not sufficient to result in a finding of professional misconduct. At the time of the Respondent's breach, there were no other citations issued in British Columbia and no panel hearing decisions regarding this new Rule in any Canadian jurisdiction. There are no precedent cases that hold that a breach of this Rule is a *prima facie* case of professional misconduct unless demonstrated otherwise.

[16] While the Law Society has enacted this Rule for critical reasons, the independence of the profession only underscores the importance of a lawyer being tried by the principles of justice and precedent, and not by a panel looking backwards over its shoulder at the Federal Government or being influenced by political consequences.

[17] To date there are no cases with a finding for professional misconduct regarding this new legislation without a *knowing* breach of the Rule. In fact, the frequency of lawyers actually receiving cash since the enactment is only five occasions over five years in all of Canada. While the Review Panel cannot condone the Respondent's ignorance of the law, it must consider the specific facts of the case.

[18] An examination of the facts in this case demonstrate:

> (a) The Respondent did not deliberately breach this Rule (in contrast to the case of *Law Society of BC v. Lyons*, 2008 LSBC 09, where the lawyer knew but disregarded the Rule);
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> (b) The Respondent did not expect to receive the money in cash, and tried to get his clients to submit the funds by another method;
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> (c) The Respondent did research his duties and acted in a way that was consistent with what he read in the *Handbook.* However, he did not research extensively enough;
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> (d) There was no evidence of money laundering here, only a Chinese couple trying to send funds

from China and take steps to arrange for their son's education in Canada;

(e) There was also no evidence of harm caused to the Canadian public, or the Respondent's client. A reasonable member of the public will not feel alarmed by a finding of a breach; and

(f) The Respondent was shocked and acknowledged his breach, and was prompt and forthright in his dealings with the Law Society. The Respondent has acknowledged a breach of the Rules and willingly accepts the consequences for this breach.

[19] In the result of all the foregoing, we find that the decision of the Hearing Panel was based on a careful assessment of the facts before it, and a consideration of other decisions considering breaches of Rule 3-51.1, and a proper application of the principles governing findings of professional misconduct. The Hearing Panel had the opportunity to hear the Respondent, and to consider his credibility and the sincerity of his explanation of how he came to be in breach of the Rule. The Hearing Panel concluded that the Respondent had committed a breach of Rule 3-51.1 of the Law Society Rules, but has not committed professional misconduct. The result before the Hearing Panel should not be disturbed.

Minority Decision

Facts

[20] The facts found by the Hearing Panel included the following:

(a) The Respondent has practised as a sole practitioner since his call to the bar in November of 1993. His preferred area of practice is in the field of immigration law and his clientele consists overwhelmingly of residents of the People's Republic of China and of Taiwan.

(b) Pursuant to Law Society Rule 3-72, practising lawyers are required to complete an annual Trust Report and submit it to the Law Society.

(c) The Respondent completed a Trust Report for the period ending December 31, 2006 and submitted this report (the " 2006 Trust Report") to the Law Society.

(d) Question 14 of Section B of the 2006 Trust Report required the Respondent to answer " yes" or " no" as to whether his practice had received, into trust or general, in respect of one client matter or transaction, an aggregate amount of cash of $7,500 or more. The Respondent answered " yes" to that question and provided the following particulars:

On June 22, 2006, I received a total amount of $40,000 USD in cash from a client from China who intended to apply for immigration to Canada under the Province of PEI's " Business Partners" program. The PEI government requires an applicant to commit to learn the English language and to reside in PEI after their immigration to Canada. Accordingly, an applicant is required to put down in escrow $20,000 CAD as guaranty for residency in PEI and $20,000 CAD as language deposit, until they fulfill these two conditions. Usually, clients would request Canadian lawyers to make these payments on their behalf to the government appointed escrow agent in PEI.

This client brought the funds to Canada in cash because she was not able to transfer the funds from China to Canada via a bank in China, due to China's foreign currency control policy. On the

other hand, she did not have a bank account in Canada.

I am aware of my duty under chapter 4, section 6 of the *Professional Conduct Handbook* and do not usually take cash in large amount [sic] from clients. In this particular case, before I agreed to accept the cash in trust, I reviewed the client's situation carefully and was satisfied that the client was a legitimate business person and the source of the funds was legitimate.

The cash amount so received in trust was duly recorded on the cash receipt book.

The client did not eventually go ahead with her application for immigration to PEI and the full amount in my trust was returned to her without deduction or service charge.

(e) Respondent's counsel elaborated on the circumstances surrounding the admitted breach in a letter to the Law Society dated November 30, 2007. The relevant parts of this letter are:

Facts re the Cash Transaction

On May 10, 2006, Mr. Chan received a phone call from a potential client in China, Ms. YW, a Chinese citizen residing in China (the " Client"). The Client inquired about a Canadian student visa application for their son who was, by that time, in his last year in high school in China and was considering pursuing a university education in Canada in 2007

Mr. Chan had known YW and her husband, RZ, for years. As far as Mr. Chan knew, they were both university educated. They used to work for a state owned TV set manufacturing company in China. He was a sales manager. In or about 2000, they started a small family owned consulting business which provided career planning and business planning services to their clients. From time to time, they referred clients to him who wanted to apply for admission to Canadian universities and to apply for Canadian student visas, as well as clients who wanted to apply for immigration to Canada.

This time, YW was anxious to get a Canadian student visa for their son before August, 2007 ...

He told her that their son might not be able to get a Canadian student visa from the Canadian Embassy in Beijing because the Embassy would require proof of sufficient funds to support a student in Canada and the sufficiency of funds, as required by the Embassy, was an amount over ¥ 800,000 (approximately $100,000 CAD) deposited in a bank for a period of over 18 months. The couple did have that amount of saving, but the money was not deposited in a bank. Most of their savings were in the stock market in China. Even if they cashed in their investments and deposited the proceeds in a bank account, it still would not meet the Embassy's requirement of an 18 month history of such a bank deposit.

Mr. Chan, then, suggested that she and her family consider immigration to Canada. By doing this, their son would not need a student visa to study in Canada. They were interested. Mr. Chan then suggested that they consider the Provincial Nominee Program (" PNP") of the Province of Prince Edward Island. The immigration process under that program for PEI is very fast. It could be a matter of 9 to 12 months, while a student visa application would take as much as 4 to 5 months in Beijing and a Federal immigration process would take 3 to 5 years for Chinese citizens.

YW decided to pursue immigration under the PEI PNP program, instead of the student visa application. She and Mr. Chan moved very fast in order to meet their target date of August 2007 for getting their son into university in Canada for the fall of 2007. The Client signed a retainer agreement

on May 31, 2006, and provided basic personal information and some of the supporting documents for the immigration application on the same day.

YW decided to pursue immigration under the PEI PNP program, instead of the student visa application. She and Mr. Chan moved very fast in order to meet their target date of August 2007 for getting their son into university in Canada for the fall of 2007. The Client signed a retainer agreement on May 31, 2006, and provided basic personal information and some of the supporting documents for the immigration application on the same day.

To apply for the PEI PNP program, the PEI government requires an applicant to deposit $100,000 in a provincial government designated escrow account in PEI, plus a $25,000 good faith residency deposit and a $20,000 language deposit. The total amount to be deposited in the PEI government account is $145,000. Without receiving the funds, the government would not assess an applicant's application and issue a Certificate of Nomination.

In the retainer agreement, it was stipulated that the Client could make the payment of the funds to the PEI government directly or, to Mr. Chan in trust. If the payment is made to the PEI government, it should be in Canadian currency. The Client was not able to get Canadian dollars in China as it was not a major currency in China. Therefore, they decided to remit the funds in US dollars to Mr. Chan in trust and he would convert it to Canadian dollars and make the payment to the PEI government on their behalf. They then proceeded to prepare other documents and to make the payments.

In regard to the background of this matter, it is important to keep in mind the very different conditions that apply in China in regard to carrying out financial transactions. In China, personal cheques are simply not available and are not used. Also, bank drafts payable to parties outside China are generally not available to individuals. Similarly, it is generally not feasible for an individual to send funds from China by wire transfer. There is a limit of about $5,000 US per year, per person on such transfers. Accordingly, it is normal for individuals to carry out business there on a cash basis.

Cash Payment.

On June 16, 2006, Mr. Chan received the first payment from the Client. It was USD $60,000 paid in traveler's cheques. On June 22, 2006, he received a further USD $40,000 in cash from the Client. Mr. Chan was not in the office at the time when the cash was paid to his office. His secretary/bookkeeper took the cash and waited for his instruction.

When he returned to office and saw this amount of cash payment, Mr. Chan was concerned that the bank may not accept this amount of cash. He called the Client to get payment in another form. He requested a bank draft or certified cheque or traveler's cheque or even wire transfer. Mr. Chan was told by the Client that it was not possible due to China's foreign currency control policy. They did not have any overseas bank account to make the wire transfer. They were anxious to start the immigration process as soon as possible and requested that he assist them in order to avoid any delay.

Mr. Chan was aware of the Chinese policy on foreign currency controls. In the past, he had some immigration clients from China whose applications were delayed simply due to the difficulties in transferring funds out of China. Mr. Chan wanted to assist the Client.

On the other hand, Mr. Chan was generally aware of his duty under Canadian law and under the requirements of the profession and to be on guard against money laundering. On that day, before Mr. Chan called the Client about the cash payment, he double-checked the *Professional Conduct*

Handbook. He specifically reviewed Chapter 4, Section 6:

> 6. 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, including a fraudulent conveyance, preference or settlement.
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> Note 3 of that section provides:
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> 3. A lawyer has a duty to be on guard against becoming the tool or dupe of an unscrupulous client or of persons associated with such a client and, in some circumstances, may have a duty to make inquiries. For example, a lawyer should make inquiries of a client who:
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> (a) seeks the use of the lawyer's trust account without requiring any substantial legal services from the lawyer in connection with the trust matters, or
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> (b) promises unrealistic returns on their investment to third parties who have placed money in trust with the lawyer or have been invited to do so.

Mr. Chan assessed the background of the Client and their family and felt that in light of the Client's family and business background and in light of the circumstances, it was safe for him to conclude that they were not involved in money laundering. Mr. Chan, thus, decided to facilitate them in accepting the cash payment into his trust account, so that he could expedite their immigration application.

The mistake Mr. Chan made here, and which he acknowledges, was that he did not know or further check the Law Society Rules. Particularly, he was not aware of Rule 3-51.1(3). The Rule is simple and clear: it is an absolute bar for a lawyer to accept cash payment into their trust account of $7,500 or more, no matter whether money laundering is involved or not.

Disbursement of Funds to a Third Party.

The disbursement of the funds was a result when the Client stopped their immigration application in July, 2006.

At the time of receipt of the cash payment, Mr. Chan also had a thorough discussion with the Client about the $25,000 residency deposit required by the PEI government. This amount was required by the PEI government to assure that immigrant families will reside in PEI after they become landed immigrants. She told Mr. Chan that they wanted to reside in Vancouver instead of PEI, so that they could be closer to their home country. Mr. Chan told them that he could not make representations on their behalf to the PEI government that they would reside in PEI, while their true intention was to reside in Vancouver. Mr. Chan also advised them that the Provincial Nominee Program in the Province of BC would not be suitable for them. The Client hesitated and requested more time to consider.

On or about July 6, 2006, after further consideration, the Client confirmed with Mr. Chan that they definitely did not want to reside in PEI and they wanted him to stop their work. By that time, Mr. Chan had not done any work on this file and decided to close the file without charging them a fee.

He further asked the Client for instruction on the disbursement of the funds. The Client advised Mr. Chan that they wanted to keep the funds overseas in case they made a decision to send their son overseas for a university education and they needed the foreign currency to pay for tuition fees. They provided him with a name of their relative/friend WW and instructed him to make the cheque payable to

this person.

Mr. Chan then prepared an Instruction to Pay. It was signed back by the Client on or about July 12, 2006. A trust cheque was issued on the same day upon the Client's instruction.

[21] The Hearing Panel said this about the circumstances related in the letter:

[9] The Respondent essentially confirmed this account in his oral evidence before us. It will be noted, however, that it differs in one respect from the disclosure contained in the Trust Report. In the latter, the Respondent indicated that the funds had been returned " *to her* without deduction or service charge." [emphasis added]. That, it seems, is not strictly accurate. The funds were in fact returned to a person ? WW ? designated by the Client but apparently not known to the Respondent.

[22] In submissions on this Review, counsel for the Respondent summarized additional evidence considered by the Hearing Panel:

(a) This was the only occasion in the Respondent's practice before or since that he has received amounts of cash in excess of $7,500.

(b) The Respondent had received no previous warning that these clients were going to send cash to him.

(c) The Respondent made inquiries with the clients to satisfy himself that there was no concern regarding money laundering, which is reflected in his contemporaneous notes.

(d) The Respondent checked the *Professional Conduct Handbook* for guidance on the issue of rules governing money laundering. While he found the provision in Chapter 4, Section 6, which cautioned against assisting or encouraging dishonesty crime or fraud, he did not check the Rules of the Law Society. The Respondent testified that if there had been a cross-reference from the *Professional Conduct Handbook* to the Rule, he believed that he would have taken prompt steps to remedy the situation.

(e) The Respondent did not profit from this transaction at all. He even absorbed the Trust Administration Fee.

(f) When the Respondent learned that he had failed to comply with Rule 3?51.1, he immediately expressed to the Law Society his shock and regret. He confirmed that he took steps to prevent any such re-occurrence. This included providing written instructions to his bank and to his bookkeeper.

[23] For the purpose of this decision, the Review Panel accepts the above stated facts, with the exception of the assertion that the funds had been returned to the client. The Review Panel accepts that the funds were returned to a person ? WW ? designated by the client as was found by the Hearing Panel.

Issue

[24] In the circumstances of this case, does the Respondent's failure to comply with Rule 3-51.1 constitute professional misconduct?

Standard of Review

[25] Section 47 of the *Legal Professions Act* governs reviews of decisions of hearing panels. Section 47(5)

states:

(5) After a hearing under this section, the benchers may

(a) confirm the decision of the panel, or

(b) substitute a decision the panel could have made under this Act.

[26] The test to be applied by the Benchers in a Review under Section 47 is " correctness" . In other words, the Review Panel may substitute its decision for the decision of the Hearing Panel, if it concludes that the Hearing Panel did not make the " correct" decision:

Law Society of BC v. Dobbin, [1999] LSBC 27;

Law Society of BC v. Hops, [1999] LSBC 29;

Law Society of BC v. Hordal, 2004 LSBC 36; and

Law Society of BC v. Geronazzo, 2006 LSBC 50.

Analysis

[27] We have considered *Law Society of BC v. Lyons*, 2008 LSBC 02, issued March 14, 2008. In some ways, the Respondent's conduct is similar to Mr. Lyons' conduct. Neither took the Rule seriously enough. Mr. Lyons' view was that the Rule was just a technical one that he could breach without disciplinary consequences. The Respondent had a vague recollection that there was a Rule but looked no further than the *Professional Conduct Handbook*.

[28] Because the Respondent thought he had found the proscription, and because:

(a) he knew the people; and

(b) he knew the Chinese culture, which relies more heavily on cash than North American culture,

he wrongly concluded that he was entitled to use his own judgment in deciding whether or not to accept the cash.

[29] One of the purposes of the " no cash" rule is to free lawyers from the need to make judgments, which, if wrong, could result in the lawyers having facilitated criminal action.

[30] It is clear from the way the Rule is worded that its purpose is to remove the exercise of judgment from the lawyer. By making a hard and fast rule, the Law Society is clearly conveying the message to its members that accepting cash carries with it unacceptable risks: " Keep yourself out of trouble by simply saying that you cannot accept over $7,500 in cash."

[31] A hard and fast rule also relieves lawyers from pressure from clients who may say to their lawyers, things like: " Look, you know me. You have acted for me for many years. Why can't you do this for me?" The existence of this Rule is like a " no shirt, no shoes, no service" sign outside a restaurant. As long as clients understand that this is an inviolable rule, they will not be offended by their lawyers' refusal to accept cash. Also, once the public fully understands the strength and inflexibility of this Rule, it will be much less common for them to attempt to have lawyers accept cash. They will realize that it is impossible to expect their lawyers to accept cash so, hopefully, lawyers will not even be asked to do so.

[32] Counsel for the Law Society stressed the number of times the profession had been notified of the Rules against accepting cash. What was not mentioned were the basic ethical guidelines drummed into law students embarking on their careers. That is, " If you are not sure if it is the right thing to do, don't do it. Get advice from a senior lawyer. Ask a Bencher. Call a Law Society Practice advisor."

[33] The Respondent simply did not do enough to determine what professional duty he owed.

[34] Here, the only question is whether the Respondent's breach of the no-cash rule constitutes professional misconduct. We have no doubt that it is. We are guided by the words of the panel in the decision in *Law Society of BC v. Kirkhope*, 2005 LSBC 23:

> [11] We want to be clear that in our view for conduct to be considered professional misconduct it must be " morally blameworthy" . We do not believe lawyers should be disciplined for mere negligence. But, where a lawyer fails to arm himself with the basic knowledge needed to function as a lawyer and that failure leads him or her into error, that can be seen as " morally blameworthy" .
>
> [12] For example, it would be no defence for a lawyer to say " I didn't know what an undertaking was" or " I didn't know I wasn't entitled to treat money in my trust account as if it were my own" . This level of knowledge is expected of all lawyers. Certainly there may be circumstances where a lawyer might not understand the precise requirements of a certain undertaking and might make an honest and understandable mistake as to his duties. Such a situation would probably not constitute professional misconduct. But a prudent lawyer would not simply proceed on a course of action presuming he is right unless he was well and properly armed with knowledge or had sought guidance from others.
>
> [13] Here, the Respondent failed to acquire adequate knowledge of some of the fundamental information he needed to properly practise law. He also failed to seek guidance or even consider that he might be proceeding in error. These failures, in the circumstances of this case, constitute professional negligence.
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> [14] Here, the Respondent was ignorant of the law.
>
> [15] We accept that every lawyer cannot be expected to know every law. For example, the day after the rule was passed by the Bencher's [sic] prohibiting lawyers from accepting $10,000 or more in cash from a client except in certain circumstances, it would be understandable that many lawyers would not be aware of that new rule. If a lawyer accepted more than $10,000 on that day, then said they were unaware of the requirement, it might be an excusable error. Six months later the same error becomes less understandable and excusable. The lawyer should have acquired the necessary knowledge. The laws that the Respondent was unaware of were not new. Section 193(1)(a) of the *Criminal Code* have [sic] been in place since about the late 1970's, and the concept of the privilege attached to solicitor-client communications is much older than that.
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> [16] In the case of *Law Society of BC v. Hops*, 1999 LSBC 29 (review), the Benchers held:
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> > The Benchers are of the opinion that the Member's contention that he acted improperly out of carelessness or ignorance can not excuse him if the actions or inactions of the Member amount to a defence to almost any allegation of professional misconduct. **(p. 8, para. 35)**
> >
> > and
> >
> > From a review of the development of the legislation and the decisions of the Benchers going back

to 1983 (no index being available prior to that year) it is clear that the Benchers have decided that members should be disciplined for offences less serious than those which would have required only suspension or disbarment as late as 1955. After 1955, the concept of a reprimand had entered into the legislative scheme but no power to fine the member had been added. From the legislative development, the definitions set out above from Oxford and the decisions of the Benchers, it can only be concluded that the Benchers have recently determined it to be appropriate to broaden the scope of professional misconduct in order to more closely regulate the activities of its [sic] members. These developments also allow less draconian punishments from those which were available when the standard of disgraceful or dishonourable conduct was required for a finding of professional misconduct. If the standard for professional misconduct still requires "disgraceful' or "dishonourable' conduct the Benchers have lowered the level of impropriety to attract those descriptions. c.f. *Prescott* quoted in Paragraph 10 hereof. It is clear that conduct matching those descriptive adjectives is no longer required for a finding of professional misconduct. **(p. 14, para. 45)**

[17] The majority went on to refine those apparently broad statements by finding:

(a) The member ignored signs of trouble with the corporate capacity of his client to issue the bonds which were the supposed raison d'ê tre for the deposits to the members trust account (Underlining added)
p. 16, para. 53

(b) The very peculiar nature of the circumstances by which large sums of money are flowing through the Member's trust account, from unknown sources, for an unknown purpose, must raise for the Member the applicability of Ruling 1, Chapter 4 of the Handbook.
p. 17, para. 58

By the use of the word " ignored" the majority in *Hops* was conveying the sense of a deliberate, wilful, disregard.

[18] The other paragraphs quoted above from the majority decision in *Hops* in our view, further illustrate the Benchers [sic] conclusion that for conduct to be professional misconduct or conduct unbecoming, it must be more than negligent. It must contain an element of advertence to the fact that what the member is doing is wrong or wilful blindness to that fact. In short, the conduct must be blameworthy to a greater degree than the " blame" that would be placed upon a lawyer who was merely negligent. Where a lawyer fails to arm himself with the basic knowledge needed to function as a lawyer and that failure leads him or her into error, that can be seen as " morally blameworthy" .

[35] We adopt, as did the Hearing Panel, the definition of professional misconduct provided in *Law Society of BC v. Martin*, 2005 LSBC 16, at para. 171. The question is: is the impugned conduct " a marked departure from that conduct the Law Society expects of its members; if so, it is professional misconduct."

[36] In June of 2006, the no-cash rule had been in place for about two years. When it was enacted it had received extensive and repeated publicity in the Law Society's communications with the profession. Further publicity accompanied subsequent revisions of the Rule. Para. 8 of the Agreed Statement of Facts, which was part of the record in this case, sets out 12 occasions on which the profession had been given notice of the no-cash rule between April 2004 and April 2006. These included eight articles in the *Benchers' Bulletin*, a news release to the public (April 2004), a notice to the profession (June 2005) when the limit was reduced from $10,000 to $7,500, and two articles in the Society's Annual Reports for 2004 and 2006.

[37] The Respondent's argument is, essentially, that his unfamiliarity with an important and well-publicized Law Society Rule was not a " marked departure" from the professional standard because the no-cash rule had not been around long enough to permeate fully the consciousness of members of the profession. The Hearing Panel seemed to accept that argument at para. 20 of its decision when it said that " the Rule has now been in place long enough and its importance and seriousness have been emphasized often enough, that we are close to the point where a failure to comply with the Rule due to ignorance of its existence and requirements should ordinarily no longer be considered exculpatory."

[38] In our view, by June 2006, we were past the point referred to by the Hearing Panel. Members of the Law Society have an obligation to stay reasonably current with major changes in the Rules. The no-cash rule was a major change of which prominent and repeated notice was given. We do not think that by June 2006, any member could avoid a finding of professional misconduct by simply saying he or she had never heard of the Rule.

[39] The question is whether the Respondent is (as the Hearing Panel put it in para. 20 of its decision) saved from a finding of professional misconduct by the fact that he did have some recollection that there was a Rule to prevent money-laundering and tried to locate it. We are satisfied he is not.

[40] We do not find it necessary to consider the point made by counsel for the Law Society that professional misconduct should be presumed where a member acts in ignorance of a rule.

[41] Under these circumstances, the Respondent's failure to ascertain and observe the no-cash rule is, in our view, a marked departure from the standard of conduct that the Society expects of its members and is therefore professional misconduct.