

2015 LSBC 19
Decision issued: April 20, 2015
Citation issued: August 1, 2013

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

CATHERINE ANN SAS, QC

RESPONDENT

**DECISION OF THE HEARING PANEL
ON FACTS AND DETERMINATION**

Hearing dates: June 23, 24, 25, 26 and 27, 2014
September 15 and 16, 2014

Panel: Dean Lawton, Chair
Dan Goodleaf, Public representative
Donald Silversides, QC, Lawyer

Discipline Counsel: Ken McEwan, QC and Rebecca Robb
Counsel for the Respondent: Peter Wilson, QC and Meagan Richards

INTRODUCTION

The Citation

- [1] The citation issued to Catherine Ann Sas, QC (“Ms. Sas”) contains five allegations of conduct by Ms. Sas that the Law Society asserts constitute professional misconduct, breaches of the *Legal Profession Act* (the “Act”) or breaches of Law Society Rules (the “Rules”).
- [2] The citation alleges that, between approximately March 3, 2011 and March 8, 2011 and on or about August 31, 2011, Ms. Sas misappropriated funds held in trust for

22 clients or improperly withdrew or authorized the withdrawal of trust funds contrary to Rule 3-56(1) to pay fees or disbursements billed to clients when she knew, or ought to have known, that those fees or disbursements were not properly charged to those clients.

- [3] The citation also alleges that, between approximately March 3, 2011 and March 8, 2011 and on or about August 31, 2011, Ms. Sas authorized the withdrawal of funds held in trust for 40 clients without delivering a bill to the person charged contrary to section 69 of the Act or without first preparing and immediately delivering a bill to the clients, contrary to Law Society Rule 3-57(2), or both. It alleges in the alternative that, if she did deliver any of the bills to those clients, she failed to retain copies of any bills, contrary to Rules 3-59 or 3-62.

BACKGROUND

- [4] Ms. Sas was called and admitted as a member of the Law Society of British Columbia on May 19, 1989 and established her own practice as a sole practitioner in June 1990. She subsequently incorporated Catherine A. Sas Law Corporation (the “Sas Law Corp.”) and carried on her practice through that corporation. For the purposes of these reasons it does not matter that Ms. Sas conducted her law practice through the Sas Law Corp. A lawyer who practises through a law corporation remains personally responsible for the activities and transactions of the law corporation.
- [5] Ms. Sas practises mainly immigration law. She ceased carrying on practice as a sole practitioner when she joined the law firm of Miller Thompson LLP (“Miller Thompson”) on March 25, 2010.
- [6] When Ms. Sas joined Miller Thompson she ceased to carry on her practice through Sas Law Corp. Her bills for legal services performed as a member of Miller Thompson were being generated through the accounting system maintained by Miller Thompson using Miller Thompson personnel. Clients were billed through Miller Thompson significantly differently from the manner in which Ms. Sas had billed her clients when she carried on practice through Sas Law Corp.
- [7] Before joining Miller Thompson, Ms. Sas, through Sas Law Corp., employed several legal assistants and a full-time bookkeeper and engaged, on a part-time basis, a certified management accountant, EL, to provide accounting advice. Sas Law Corp. also engaged, from time to time, ID, a chartered accountant and a certified management consultant, to provide practice management and accounting advice.

- [8] After Ms. Sas joined Miller Thompson in 2010, her legal assistants ceased to be employed by Sas Law Corp. and became employed by Miller Thompson. During the first three months of 2011, three of those legal assistants, KM, JS and TW, continued to assist Ms. Sas in her practice with Miller Thompson and with certain matters relating to Sas Law Corp. Although Miller Thompson provided bookkeeping and accounting services for Ms. Sas' practice with that firm, Sas Law Corp. continued to maintain both general and trust accounts and employed a part-time bookkeeper and continued to engage EL and ID from time to time to deal with bookkeeping, accounting and practice issues involving Sas Law Corp.
- [9] In July or August of 2010, AK, the bookkeeper employed by Sas Law Corp. for 13 years, quit.
- [10] In November 2010, Sas Law Corp. hired KP as a part-time bookkeeper to replace AK. KP worked three days a week and continued to perform bookkeeping services for Sas Law Corp. until July 2011. Shortly thereafter Sas Law Corp. hired PC as a part-time bookkeeper, and PC continued her employment in that capacity until July 2012.
- [11] A feature of the nature of Ms. Sas' immigration practice was that client files could remain open for long periods of time, which in some cases might be for years. When Ms. Sas joined Miller Thompson she was required to review her files with the objective of transferring ongoing files to Miller Thompson or closing and, in some cases, billing those files that were dormant (the "file review project").
- [12] The file review project began in early 2011 and involved 200 client matters.
- [13] The citation was issued as a result of the manner in which Ms. Sas billed clients and paid some of these bills with monies held in trust for clients as part of the file review project.

LEGISLATION AND RULES

- [14] The following provisions of the Act are relevant in this case:

Section 69

- (1) A lawyer must deliver a bill to the person charged.
- (2) A bill may be delivered under subsection (1) by mailing the bill to the last known business or residential address of the person charged.

- (3) The bill must be signed by or on behalf of the lawyer or accompanied by a letter, signed by or on behalf of the lawyer, that refers to the bill.
- (4) A bill under subsection (1) is sufficient in form if it contains a reasonably descriptive statement of the services with a lump sum charge and a detailed statement of disbursements.

[15] The following Rules are relevant in this case:

Rule 3-56

- (1) A lawyer must not withdraw or authorize the withdrawal of any trust funds unless the funds are
 - (a) properly required for payment to or on behalf of a client or to satisfy a court order,
 - (b) the property of the lawyer,
 - (c) in the account as the result of a mistake,
 - (d) paid to the lawyer to pay a debt of that client to the lawyer,
 - (e) transferred between trust accounts,
 - (f) due to the Foundation under section 62(2)(b) of the Act, or
 - (g) unclaimed trust funds remitted to the Society under Division 8.

Rule 3-57

- (2) A lawyer who withdraws or authorizes the withdrawal of trust funds under Rule 3-56 in payment for the lawyer's fees must first prepare a bill for those fees and immediately deliver the bill to the client.

Rule 3-59

- (1) A lawyer must record all funds received and disbursed in connection with his or her law practice by maintaining the records required under this Division.

Rule 3-62

- (1) A lawyer must keep file copies of all bills delivered to clients or persons charged

- (a) showing the amounts and the dates charges are made,
- (b) identifying the client or person charged, and
- (c) filed in chronological, alphabetical or numerical order.

STANDARD AND BURDEN OF PROOF

[16] A hearing of a citation by a Law Society hearing panel is a civil and not a criminal proceeding. There is only one civil standard of proof at common law, and that is proof on a balance of probabilities, and factual conclusions in a civil case must be made by deciding whether it is more likely than not that the event occurred (*FH v. McDougall*, 2008 SCC 53 at paras. 40 and 44). In this matter, the Law Society carries the burden of proof to establish on a balance of probabilities the facts that it alleges constitute professional misconduct or a breach of the Act or Rules.

ISSUES

- [17] This Panel is required to make a finding of facts with respect to each of the allegations in the citation, as provided in the Rules, and to then make a determination pursuant to section 38 of the Act on each allegation.
- [18] With respect to our findings of fact we must decide whether the evidence establishes that:
- (a) Ms. Sas, or the employees of Sas Law Corp. for whom she was responsible, billed clients for fees or disbursements that were not properly chargeable to them;
 - (b) Ms. Sas knew, or ought to have known, that clients had been billed for fees or disbursements that were not properly chargeable to them;
 - (c) Ms. Sas misappropriated trust funds by paying her bills to clients from monies held in trust for them when these bills included amounts not properly charged to the clients;
 - (d) Ms. Sas withdrew client trust funds for a purpose not authorized by Rule 3-56(1);
 - (e) Ms. Sas authorized the withdrawal of client trust funds to pay fees or disbursements in relation to client invoices without first preparing and immediately delivering a bill to clients; and,

- (f) if Ms. Sas did prepare and deliver bills that are the subject of the citation to the clients, she failed to retain copies of any bills delivered to those clients.

[19] Once we have made our findings of fact, the Panel must either dismiss the citation or determine whether the facts establish that the conduct of Ms. Sas constitutes one or more of professional misconduct or a breach of the Act or the Rules.

EVIDENCE AND FACTS

[20] The evidence in this hearing was heard over six days commencing in June 2014 and concluding in September 2014 and included a Notice to Admit and Response to Notice to Admit, several hundred documents and the oral testimony of witnesses.

[21] The Panel heard evidence from six witnesses. They were Ladan Khamisi, a certified general accountant, who, at the relevant time, was employed as trust assurance auditor with the Law Society, KP and PC who were both employed as bookkeepers by Sas Law Corp., EL, a certified management accountant, ID, a chartered accountant and Ms. Sas.

The file review project

[22] Ms. Sas testified that, in connection with joining Miller Thompson, she made decisions about which matters were going to be finalized by Sas Law Corp., which matters would be partially completed by Sas Law Corp. and completed by Miller Thompson and which matters would be dealt with completely by Miller Thompson. Sas Law Corp. used an accounting system developed for lawyers called PCLaw. Amongst the reports produced using the accounting system of Sas Law Corp. was a client ledger for every matter that showed what disbursements had been incurred, whether those disbursements had been billed, refunded or were still unbilled, all billings to the client for fees and for disbursements, all monies received and disbursed from trust and the balance of monies held in trust for the client, if any. Every financial transaction or entry made in PCLaw was automatically assigned a sequential transaction number by the system.

[23] In January of 2010, more than nine months after she had joined Miller Thompson, Ms. Sas' accounting system showed that there were 200 matters for clients of Sas Law Corp. in respect of which there were financial balances outstanding of one type or another. These balances consisted of accounts receivable, unbilled disbursements, or monies held in trust for clients. Some of those clients had matters that still needed to be dealt with, and legal services would be performed for

them through Miller Thompson. Many of the matters that had outstanding financial balances in the accounting system of Sas Law Corp., however, had been completed and had remained dormant for a long period of time.

- [24] The matters or files of Sas Law Corp. having outstanding financial balances were sometimes described in the evidence the Panel heard as being “unresolved.” The process for resolving these matters was variously referred to in the evidence as a “file review” or “cleanup” and is referred to in this decision as the file review project.
- [25] The object of the file review project was to determine what steps needed to be taken to deal with the outstanding financial balances of the 200 matters and then to deal with them. Options included billing clients for fees where legal services had been performed but not yet billed, billing unbilled disbursements, writing off accounts receivable as uncollectible bad debts, paying monies held in trust to Sas Law Corp. to pay outstanding bills or bills that were generated as part of the file review project, refunding monies to clients or paying monies held in trust to Miller Thompson for ongoing matters.
- [26] It was important to Ms. Sas that the file review project, which she described as being laborious, be completed as soon as possible and, in any event, not later than August 31, 2011, the fiscal year end of Sas Law Corp.
- [27] Sas Law Corp.’s bookkeeper, KP, was primarily responsible for the file review project under the supervision of the accountant for Sas Law Corp., EL. The legal assistant personnel employed by Miller Thompson to assist Ms. Sas were also essential since either they or Ms. Sas needed to review the files to determine whether any additional legal services were required to be performed through Miller Thompson and to make recommendations as to how the 200 financial balances should be dealt with.
- [28] KP testified that she did not have access to any files for unresolved matters. Her evidence was that she did not prepare any bills that were to be sent to clients and that she relied on the legal assistants to prepare bills in a form that should be sent to clients.
- [29] KP started the Sas Law Corp. file review project on January 25, 2011. During February and March of 2011, KP spent a significant amount of time on the file review project. This included meetings with the legal assistants on February 1 and February 10, 2011 and the generation of lists for the unresolved matters for which each of the three legal assistants involved in the file review project was responsible and a fourth list for those matters for which no legal assistant was responsible.

- [30] KP received instructions from the legal assistants and Ms. Sas about how the outstanding financial balances of the Sas Law Corp. unresolved matters should be dealt with. These instructions included writing off accounts receivable, paying trust funds to Miller Thompson where matters were ongoing or billing the client and paying the bill with monies held in trust.
- [31] Ms. Sas testified that it was her practice to bill clients of Sas Law Corp. with a bill that had a letterhead showing her name and a signature block for her signature and that she always signed such bills to clients of Sas Law Corp. and never delegated the signing of a bill or any covering letter to anyone.
- [32] Ms. Sas had a practice of charging many of her clients a file-closing fee of \$250.
- [33] KP testified her instructions from EL in dealing with the file review project were that, when monies were held in trust for a client in respect of a matter, she could bill all or part of a file-closing fee of \$250 or she could estimate and bill for office-related expenses such as photocopies with the overall objective of ensuring that the client was not billed for more than the monies held in trust, or she could do both. She also testified that she did bill several clients for estimated disbursements but that such estimates were not based on any evidence that such disbursements had been incurred and were amounts that she made up in order to create a charge that would equal the balance held in trust.
- [34] We think it important at this point in our decision to provide a detailed description of many of the bookkeeping transactions that occurred as part of the file review project and the people involved in them. It is through such a description that one can obtain an understanding of the pattern of practice implemented by Ms. Sas to carry out the file review project.
- [35] As part of the file review project, four spreadsheets were prepared (each an “Unresolved File List”) that listed Sas Law Corp. unresolved matters. Each of those Unresolved File Lists showed the initials of the responsible legal assistant, if any, the client number, a description of the matter, a matter or file reference number, the date the matter or file was opened, the amount of any unbilled disbursements, the date the matter was last billed, the date of the last entry on the PCLaw accounting system for that matter, the amount of all fees that had been billed, the amount of all fees, disbursements and taxes that had been billed, the account receivable balance, the balance of monies held in trust, and the date of the last entry for that matter on the PCLaw system, as well as the status of the matter. The status column showed what recommendations for dealing with the matter had been made.

- [36] A separate Unresolved File List was prepared for each of the three legal assistants assigned to work on the file review project. A fourth Unresolved File List was prepared, which listed Sas Law Corp. matters that had not been allocated to any of the three legal assistants and for which none of them was responsible.
- [37] On three different days during March 2011, KP prepared bills to clients in respect of Sas Law Corp. unresolved matters and generated these bills on the accounting system for Sas Law Corp. When she did so PCLaw assigned a system-generated sequential invoice number to the bill, and the client ledger for that matter then showed the date the bill was generated, the amount of the bill, the invoice number and the transaction number.
- [38] On each of the three days in March 2011 that KP prepared and generated bills to clients for unresolved Sas Law Corp. matters, she prepared trust cheques drawn on the trust account of Sas Law Corp. to pay most of those bills.

March 3, 2011 billings

- [39] The Unresolved File List for assistant KM listed 37 matters. Of these, 17 matters were ongoing and were to be transferred to Miller Thompson for legal services to be performed. On March 3, 2011, based on this list, KP prepared and generated bills on the Sas Law Corp. accounting system for 17 of the matters on the Unresolved File List for KM.
- [40] On March 3, 2011, before preparing bills for the unresolved matters of seven clients, KP entered a file-closing fee as a disbursement in the amount of \$250 to the client ledgers for each of those matters. This resulted in the unbilled disbursements for six of those matters exceeding the monies held in trust, and KP wrote off the excess amounts so that the unbilled disbursements for each matter were equal to the amount held in trust for that client. As a result, the unbilled disbursements shown on the system before billing for six of the seven clients were equal to the amount of monies held in trust.
- [41] The Unresolved File List for KM showed that, in respect of the matter for client number 716, unbilled disbursements were a negative amount of \$491.50 because of credits that the client should have received. Sas Law Corp. also held \$373.50 in trust for that client.
- [42] Before preparing a bill to client 716, KP entered both a file-closing fee disbursement in the amount of \$250 and a disbursement of \$123.50 for "Miscellaneous Non-Taxable." In order to eliminate the credit of \$491.50, she made a positive entry of \$491.50, which was described as "Expense Recovery:

Disbursements Written Off.” As a result of those entries, the total unbilled disbursements became \$373.50, which was an amount equal to the monies held in trust for that client.

- [43] After the entries were made by KP on March 3, 2011, the amounts held in trust for 14 of the 17 clients whose matters were billed on March 3, 2011 were equal to the amounts billed to those clients on March 3, 2011. There were no amounts held in trust for the other three clients for whom KP generated bills on March 3, 2011.

March 7, 2011 billings

- [44] On March 7, 2011, KP prepared and generated bills on the Sas Law Corp. accounting system to 18 clients for matters that were listed on the Unresolved File Lists. Five of these matters were listed on the Unresolved File List for JS and 13 were listed on the Unresolved File List for matters that had not been allocated to any of the three legal assistants and for which none of them were responsible.
- [45] Before preparing bills for the unresolved matters that were billed on March 7, 2011, KP entered a file-closing fee as a disbursement in the amount of \$250 to the client ledger for 11 of those matters.
- [46] As a result, the unbilled disbursements shown on the system before billing exceeded the amount of monies held in trust for nine of the matters. When generating a bill to these clients, KP made entries in the client ledgers for each of those matters writing off the disbursements that exceeded the amount held in trust, with the result that the unbilled disbursements shown on the accounting system for those nine matters before billing them was equal to the amount of monies held in trust.
- [47] In addition to adding file-closing fees, KP entered a disbursement of \$120 for a file administration fee to the client ledger for one client. After deducting a credit of \$12.23 for courier charges, this resulted in the client ledger showing there were net unbilled disbursements equal to the amount held in trust, which was the amount billed to him on March 7, 2011.
- [48] KP also entered disbursements other than file closing fees to the client ledgers for 12 of the matters that were billed on March 7, 2011. These disbursements had the effect of increasing the total disbursements shown on the accounting system as being unbilled amounts that were equal to the amounts held in trust for each of those clients. The 12 clients, the descriptions of the disbursements added, the total amount of disbursements billed to those clients and the invoice numbers assigned

to the 12 bills are set out in the following table:

Client Number	Description of disbursement added	Amount added	Total disbursement	Invoice Number
543	Photocopies Courier Miscellaneous Non-Taxable Colour copies	\$80.00 \$143.00 \$63.00 \$57.00	\$543.00	6130
790	Photocopies	\$19.00	\$19.00	6134
733	Photocopies	\$45.80	\$45.80	6135
601	Photocopies Colour copies	\$92.21 \$109.15	\$442.21	6136
257	Colour copies	\$34.73	\$34.73	6137
455	Miscellaneous Non-Taxable	\$164.60	\$414.60	6138
669	Miscellaneous Non-Taxable	\$4.00	254.00	6139
428	Colour copies	\$140.60	\$390.60	6140
505	Miscellaneous Non-Taxable	\$25.78	\$275.78	6141
671	Miscellaneous Non-Taxable	\$57.41	\$351.00	6143
739	Miscellaneous Non-Taxable	\$47.42	\$47.42	6144
565	Miscellaneous Non-Taxable	\$16.69	\$17.01	6146
	Total	\$1,100.39	\$2,835.15	

- [49] The Unresolved File Lists showed that nine of the 18 clients that were billed on March 7, 2011 had no unbilled disbursements. Of the remaining nine matters, the unbilled disbursements shown on the Unresolved Client Lists were less than the amounts held in trust and the amounts billed to those clients. The Unresolved File Lists and client ledgers for four of the clients who were billed on March 7, 2011 showed that they had credits for disbursements. These credits were all eliminated either by way of book entries or by adding disbursements that had not been incurred so that the unbilled disbursements were equal to the monies held in trust.
- [50] The ledger for client 455 showed that a trust cheque was issued to the client on September 19, 2007 returning \$414.60 held in trust. After the cheque was issued, no more monies were held in trust for the client, there were no unbilled disbursements for the matter, and the client did not owe Sas Law Corp. any accounts receivable. The client ledger also showed a credit for a previously billed disbursement of \$31.66 for courier charges that had been rebated. The 2007 trust cheque was cancelled on August 31, 2010 because it had not been cashed and had become stale-dated. KP made an entry in the client ledger adding a file-closing fee of \$250 and Miscellaneous Non-Taxable disbursements of \$164.60, which created

total unbilled disbursements of \$414.60, the amount held in trust. KP eliminated the client's credit for disbursements by entering a positive amount of \$31.66, which was described as "Expense Recovery: Disbursements Written Off". The client was billed \$414.60, which was paid with a trust cheque dated March 7, 2011.

- [51] After entering file-closing fee disbursements for 11 matters and other disbursements for 12 matters, which were all billed on March 7, 2011, the amounts held in trust for 17 of the 18 clients whose matters were billed on March 7, 2011 were equal to the amounts billed. No amount was held in trust for one of the 18 clients billed on March 7, 2011.

March 8, 2011 billings

- [52] On March 8, 2011, KP prepared and generated bills on the Sas Law Corp. accounting system to ten clients for matters that were listed on Unresolved File Lists. Four of these matters were listed on the Unresolved File List for TW, and six were listed on the Unresolved File List for matters that had not been allocated to any of the three legal assistants and for which none of them were responsible.
- [53] Before preparing bills for the ten unresolved matters that were billed on March 8, 2011, KP entered a file-closing fee as a disbursement in the amount of \$250 to the client ledgers for two of those matters.
- [54] In addition to entering file closing fee disbursements for two matters, KP entered other types of disbursements to the client ledger for five of the matters that were billed on March 8, 2011. The five clients, descriptions of the disbursements added, the total amount of disbursements billed to our clients and the invoice numbers assigned to the six bills are set out in the following table:

Client Number	Description of disbursement added	Amount added	Total disbursements billed and paid from trust	Invoice Number
771	Miscellaneous Non-Taxable	\$115.55	\$135.00	6147
389	Photocopies	\$65.63	\$28.60	6148
654	Miscellaneous Non-Taxable	\$83.50	\$83.50	6150
697	Photocopies Miscellaneous Non-Taxable	\$93.33 \$100.00	\$469.15	6151
777	Miscellaneous Non-Taxable	\$107.16	\$129.16	6152
695	Photocopies	\$69.83	\$320.59	6153

Client Number	Description of disbursement added	Amount added	Total disbursements billed and paid from trust	Invoice Number
	Total	\$635.00	\$1,166.00	

[55] Of the four clients billed on March 8, 2011 whose matters were listed on the Unresolved File List for TW, three were ongoing clients whose matters needed to be dealt with by Miller Thompson, and the monies held in trust for them by Sas Law Corp. exceeded the amounts billed to them on March 8, 2011.

Payment of March billings

[56] The bills generated on March 3, 7 and 8, 2011 were not in a form suitable for mailing or delivery to clients. Several bills in the form usually sent to clients of Sas Law Corp. were placed in evidence before the Panel. Unlike the usual form of bills, none of the bills generated in March, 2011 were printed on Sas Law Corp. letterhead or contained a signature block or showed a title for the clients such as “Mr.” or “Ms.” None of the system-generated accounts showed an address for the client and the reference on each account was the same as the reference for the matter on the accounting system, which was, in most cases, an abbreviated reference that would not be suitable for use on a bill being sent to a client.

[57] With one exception, there was no evidence before the Panel that any of the bills generated in March 2011 were converted into a form suitable for delivery to the client. The exception was invoice 6117 to client number 807 generated by the accounting system and a corresponding reformatted invoice 6117 with the same financial information prepared on Sas Law Corp. letterhead and signed by Ms. Sas. The system-generated bill did not show a title or address for the client or have a proper description of the matter, but the reformatted bill did. In addition, the reformatted bill contained information and was in a form suitable for delivery to a client, but the system-generated bill did not and was not. There was no evidence before us, however, as to when that signed bill was prepared or if or when it was sent to the client.

[58] On March 3, 2011, KP prepared 14 trust cheques payable to Sas Law Corp. in the aggregate amount of \$3,716.07 to pay the bills generated on that date, including invoice 6117.

[59] On March 7, 2011, KP prepared 17 trust cheques payable to Sas Law Corp. in the aggregate amount of \$3,765.01 to pay 17 of the 18 bills generated on that date.

- [60] On March 8, 2011, KP prepared ten trust cheques payable to Sas Law Corp. in the aggregate amount of \$4,814.85. This amount included payment of an account receivable of \$1,227.76 for an earlier bill. The balance of \$3,587.76 was to pay the ten bills generated on March 8, 2011.
- [61] After preparing the trust cheques to pay the bills generated in March 2011, KP took the cheques to Ms. Sas, who signed them and returned them to KP for deposit. The evidence did not establish the dates on which these cheques were presented to Ms. Sas, but it would have been no later than March 10, 2011 for the cheques paying the March 3, 2011 bills since each of those cheques cleared the bank on that day and no later than March 14, 2011 for the cheques paying the March 7 and 8, 2011 bills since each of those cheques cleared the bank on that day.
- [62] When KP presented the 14 trust cheques dated March 3, 2011, the 17 trust cheques dated March 7, 2011 and the 10 trust cheques dated March 8, 2011 to Ms. Sas for her signature, she did not show Ms. Sas, and Ms. Sas had not seen, any of the bills generated by the accounting system or any other form of bills to the clients who had been billed before she signed the cheques, with the possible exception of invoice 6117. There was no evidence as to when Ms. Sas signed invoice 6117.

Stale-dated cheques and August 31, 2011 billings and payments from trust

- [63] On August 31, 2011, three trust cheques issued by Sas Law Corp. had become stale-dated and both Ms. Sas and EL wished to deal with them before the financial year of Sas Law Corp. ended that day. By that time, KP was no longer employed as the bookkeeper by Sas Law Corp., and PC had been hired by Sas Law Corp. to replace KP as bookkeeper. A description of the handling of the stale-dated cheques in the file review project follows.
- [64] By November 2009, the matter for client 636 had been completed, and after all outstanding bills had been paid, Sas Law Corp. continued to hold \$9.53 in trust for the client. On November 9, 2009, Sas Law Corp. issued a trust cheque payable to the client in the amount of \$9.53 and sent it to the client. The cheque was not cashed and became stale-dated.
- [65] In 2010, a disagreement arose between Ms. Sas and client 679, whereupon Sas Law Corp. ceased its representation of that client. At that time, Sas Law Corp. held \$0.87 in trust for the client. On October 25, 2010, a trust cheque payable to the client was issued in that amount and sent to the client. The cheque was not cashed and became stale-dated.

- [66] In early 2010, Sas Law Corp. completed its representation of client 675. On January 12, 2010, Sas Law Corp. billed the client a file-closing fee of \$250, and this bill was paid from monies held in trust on January 19, 2010. Following that payment, Sas Law Corp. continued to hold \$78.10 in trust for the client. On January 19, 2010, a trust cheque in that amount was issued to the client and sent to the client. The cheque was not cashed and became stale-dated.
- [67] On either August 30 or 31, 2011, PC and EL met with Ms. Sas. During this meeting they discussed the three stale-dated cheques, which totalled \$88.50. PC testified that, during this meeting, it was decided to void the three stale-dated cheques and close the files related to them. Her evidence was that Ms. Sas and EL discussed the fact that they wanted the files closed and they told her that the files should be “closed out with whatever disbursements, however they could be closed out,” and that she was told by Ms. Sas to bill disbursements for general administration charges. PC testified that she specifically asked Ms. Sas what charges she should make to the clients and that Ms. Sas responded, “whatever you want to call them.”
- [68] Ms. Sas confirmed in her testimony that such a meeting with EL and PC took place and that, during this meeting, there was a discussion between Ms. Sas and EL in which they made it clear to PC that they wanted the files for which the stale-dated cheques had been written to be closed.
- [69] Ms. Sas denied, however, that she told PC she could bill the client for disbursements that had not been incurred. Ms. Sas’ evidence was that she was not paying a great deal of attention to a discussion that ensued at the meeting between EL and PC regarding how to deal with the stale-dated trust cheques and that she thought they were going to be dealt with by returning the monies to her trust account on which the cheques had been written.
- [70] EL testified that neither she nor Ms. Sas authorized PC to charge any disbursements to any of the three clients. Her evidence was that there was a brief meeting in Ms. Sas’ office during which they reviewed a number of things that had to happen and that EL had stated, “and we have to reverse those trust cheques,” referring to the stale-dated cheques. EL testified that PC then said, “I know what to do,” and got up and left Ms. Sas’ office.
- [71] At the time of this meeting, the client ledgers for each of the three clients concerned showed that no monies were held in trust; there were no unbilled disbursements and no accounts receivable for any of those clients, but that each had been issued a trust cheque that had not been cashed and that had been outstanding for more than six months. On August 31, 2011, after the meeting with

EL and Ms. Sas, PC made several entries to the client ledgers for each of those clients.

- [72] The first entry was to void the stale-dated trust cheque in the amount of \$9.53 payable to client 636. This had the effect of creating a trust balance of \$9.53. PC then entered a disbursement for photocopies in the amount of \$10 and generated a bill on the accounting system to the client for \$10.
- [73] PC made similar entries for client 679, voiding the cheque in the amount of \$0.87, which created a trust balance of \$0.87. She then entered a disbursement of \$1 for photocopies and generated a bill to the client for \$1 for photocopies, which were shown as being written down by \$0.12 resulting in a net billing of \$0.88 for photocopies.
- [74] An entry was made to the ledger for client 675 to void the cheque in the amount of \$78.10. PC then made entries adding disbursements of \$20 for photocopies and a file administration fee of \$60.00. She then generated a bill to the client in the amount of \$80.
- [75] As with the bills generated by the accounting system on March 3, 7 and 8, 2011, the bills generated by the accounting system on August 31, 2011 were not in a form suitable for mailing or delivery to the clients.
- [76] As a result of voiding the stale-dated cheques, the client ledgers showed that Sas Law Corp. held a total of \$88.50 in trust for the three clients.
- [77] PC testified that, after she had made the entries to void the three stale-dated trust cheques and had entered disbursements and generated bills for those disbursements for the three clients, she prepared a trust cheque payable to Sas Law Corp. in the amount of \$88.50 to pay those bills. On the same day, she took this cheque to Ms. Sas, who signed it and returned it to PC for deposit.
- [78] A copy of the trust cheque dated August 31, 2011 was placed in evidence before the Panel. The cheque clearly shows that it was drawn on the trust account of Sas Law Corp. It is made payable to "Sas Law Corp.," but not in trust, and the reference line shows the three client numbers for the three clients. When PC presented the trust cheque to Ms. Sas for payment, she did not show Ms. Sas, and Ms. Sas had not seen, any of the bills generated by the accounting system or any other form of bills to the clients concerned.
- [79] Ms. Sas testified that, when she signed the trust cheque, she did not realize that she was signing a trust cheque or that the monies were payable to Sas Law Corp. for

deposit to her general account and not her trust account and that she thought she was signing the cheque to return the stale-dated cheques to trust.

- [80] When asked whether she had considered trying to pay the amount of a stale-dated cheque to the Law Society as unclaimed trust monies, Ms. Sas testified that she considered this option but, at the time, there had not been a lot of contact with the client, and in order to pay unclaimed trust monies to the Law Society, one must demonstrate that efforts made in trying to reach the client had not been successful before one can remit those funds. In that case, those efforts had not yet been made.
- [81] When giving her evidence, particularly in cross-examination, we observed that EL was variously argumentative, imperious, self-serving and evasive. When giving her evidence, Ms. Sas was argumentative, evasive in answering some questions, and non-responsive in answering others. We did not find the evidence of EL or Ms. Sas credible.
- [82] Both EL and Ms. Sas gave testimony about certain aspects of accounting that were implausible. An example is a bill generated to a client on August 31, 2011 that was paid with monies held in trust for that client and deposited to Ms. Sas' general account the same day. The bill was subsequently cancelled, and an entry was made to the client ledger in late November or early December, 2011, reversing the payment from trust and restoring the former balance. Both Ms. Sas and EL took the position that, when the bill was cancelled and the reversing entries made several months later, the result was the transactions ceased to exist and had never occurred.
- [83] PC stood to gain nothing by billing the clients for disbursements that were not incurred or in preparing a trust cheque payable to Sas Law Corp. for deposit to its general account, whereas Ms. Sas both stood to benefit financially, and more significantly in the context of the file review project, stood to gain an administrative benefit by taking three outstanding stale-dated cheques off her accounting system and being able to close three files.
- [84] We find Ms. Sas' evidence that she did not know she was signing a trust cheque for \$88.50 on August 31, 2011 or that these monies were payable to her for deposit to her general account not to be credible.
- [85] We accept PC's evidence as to what was said by Ms. Sas and EL in the meeting on August 31, 2011 and what she was told to do with respect to the stale-dated cheques. To the extent that any evidence given by EL or Ms. Sas differs from the evidence of PC, we prefer and accept the evidence of PC.

Client A complaint investigation

- [86] Client A retained Ms. Sas to act for her and her husband in connection with their application for permanent residence in Canada. The client became dissatisfied with the legal services performed by Ms. Sas and requested that the file be delivered to her and her husband. At this time of this request, Ms. Sas held \$0.87 in trust for the client, consisting of the balance of a retainer. On or about October 25, 2010, Ms. Sas delivered her file to client A, together with a cheque payable to the client in the amount of \$0.87. This cheque was not cashed and became one of the three stale-dated cheques dealt with on August 31, 2011.
- [87] On or about November 1, 2011, client A made a complaint to the Law Society including allegations that Ms. Sas failed to send requested information to Citizenship and Immigration Canada in a timely manner; that Ms. Sas lacked the necessary experience to deal with her and her husband's case; and that she failed to respond promptly to phone and email messages left by client A and her husband or to keep them reasonably informed. Since Ms. Sas was a bencher of the Law Society at the time of the complaint, the Law Society engaged Daniel Bennett, QC as external counsel to investigate.
- [88] Mr. Bennett wrote a letter dated November 22, 2011 to Ms. Sas in which he informed her he had been retained by the Law Society to investigate and assess the complaint made by client A. With his letter he included particulars of the complaint, a statement by client A and extracts from the *Professional Conduct Handbook* of the Law Society that he thought were relevant. He asked Ms. Sas to provide a response to the complaint within three weeks and to address in her response all of the allegations made in the complaint.
- [89] After receiving the November 22, 2011 letter from Mr. Bennett, Ms. Sas reviewed the client ledger for client A with EL and discussed how she should deal with the complaint.
- [90] The client ledger for client A produced by the accounting system for Sas Law Corp. showed that a bill to the client for disbursements in the amount of \$1 had been generated on August 31, 2011 and that this bill was paid with monies held in trust for that client by way of a trust cheque. EL testified that, after Mr. Bennett's November 22, 2011 letter was received, she discussed with Ms. Sas the bill to client A, the payment of \$0.87 from the monies held in trust and the fact that the balance had been written off. EL's recollection of the conversation was that they discussed the bill for photocopies and that Ms. Sas expressed the opinion that those photocopies should probably not be charged to the client because they would have been made subsequent to a complaint. EL's evidence was that she advised Ms. Sas

that client A still had not been charged a file-closing fee, that a file-closing fee could now be charged to replace the bill for photocopies, and that the amount of the file-closing fee that exceeded the amount held in trust could be written off. EL testified that Ms. Sas agreed a file-closing fee could be charged but that she preferred to return the \$0.87 to the client. EL also testified that, at the time of this conversation, Ms. Sas was aware that the \$0.87 held in trust had already been transferred to Ms. Sas.

- [91] EL testified that, following this conversation, she made an entry in the Sas Law Corp. accounting system for client A that restored \$0.87 to trust and that this entry was backdated to August 1, 2011. This entry was made by EL no earlier than November 22, 2011, the date of Mr. Bennett's letter to Ms. Sas, and no later than December 13, 2011, the date of Ms. Sas' letter to Mr. Bennett responding to the complaint.
- [92] In her testimony Ms. Sas agreed that she discussed the client ledger for client A with EL after she received Mr. Bennett's November 22, 2011 letter. She agreed that EL had recommended charging a file-closing fee and writing off the balance that exceeded the amount held in trust but she had decided she wished to pay the \$0.87 to Mr. Bennett for the client. When preparing her response to Mr. Bennett, Ms. Sas asked EL to prepare a spreadsheet showing all of the trust transactions for client A. EL prepared a spreadsheet entitled "client ledger," which showed the client's name and file number and listed all of the monies received in trust and expended up to and including the transaction on August 31, 2011 voiding the stale-dated October 25, 2010 trust cheque and restoring the \$0.87 to trust. The client ledger spreadsheet did not, however, show the invoice dated August 31, 2011 for disbursements for photocopies in the amount of \$1 or that portion of the trust cheque payable to Ms. Sas that included a payment of \$0.87 held in trust for client A, or the backdated entry made in late November or early December, 2011 that restored the \$0.87 in trust to the client ledger for client A.
- [93] Ms. Sas wrote a seven-page letter dated December 13, 2011 to Mr. Bennett in which she responded to the complaint by client A and enclosed several documents. In that letter she said:

I enclose with this letter my initial fee estimate as well as all subsequent invoices for legal services and for disbursements. In addition I enclose our trust ledger which confirms all the entries and expenditures made on behalf of our clients, which is clearly reflected in the invoices that were sent to them.

- [94] The client ledger generated by the accounting system of Sas Law Corp. for client A, showing the bill dated August 31, 2011, the trust cheque dated August 31, 2011 and the backdated entry restoring the \$0.87 to trust, was not enclosed with the December 13, 2011 letter. Instead, the client ledger prepared by EL that did not show those entries was enclosed with the letter. As well, the bill was not enclosed with Ms. Sas' letter. The client ledger prepared by EL had the appearance of a client ledger that would have been generated by an accounting system. In her letter, Ms. Sas did not tell Mr. Bennett that the client ledger she enclosed was a replication of information contained in her actual client ledger for client A or that some of the information contained in the actual client ledger was not shown on the replica sent with her letter.
- [95] The failure to deliver the true client ledger for client A and the bill to Mr. Bennett had the effect of misleading him with respect to trust transactions involving client A.
- [96] When asked why the client ledger she prepared did not show all of the entries on the actual client ledger, EL testified that it showed all of the trust transactions that were deemed to be correct at the time she prepared it. She testified that, when she discussed the preparation of a response to Mr. Bennett, Ms. Sas stated it was her preference to return the \$0.87 through Mr. Bennett to client A so that, in effect, the bill was not paid, and Ms. Sas did not wish to say that it was outstanding. EL said that, when she prepared the client ledger, the entries involving the bill and the trust cheque paying that bill had been reversed so the transactions "did not exist." EL also said, if an amount of monies came out of trust at one point and was subsequently deemed to be an error and then subsequently returned, it has not been taken from the client for use by or for the benefit of Ms. Sas, and it was still there. She said the client still had the benefit of the money on the date she prepared the false client ledger because it clearly stated at the bottom "balance in trust 87 cents."
- [97] When questioned about the incorrect client ledger being enclosed with her letter to Mr. Bennett, Ms. Sas testified that EL had advised her that the payment from trust to Sas Law Corp. on August 31, 2011 had been cancelled. She said her understanding was that, when an account is reversed, it is in effect non-existent so it should not have been reflected in the client ledger sent to Mr. Bennett. When asked why the bill had not been sent to Mr. Bennett, Ms. Sas said she assumed that, "... the reason was because if the bill had been cancelled and the funds reversed the invoice doesn't exist anymore. In principle you cancel a bill it's not there."

[98] In cross-examination, when asked whether the backdated reversal by EL in late November or early December 2011 was equivalent to her not taking the money from client A in August 2011, Ms. Sas gave the following answer:

Like you never issued a bill. You cancelled the bill that you issued. And, yes, it's like you never took the money. If we billed it my understanding would be that we properly billed it so it would have been a proper bill that we would have cancelled to restore the money to trust so that we could give it to the client, and I saw this as being the kind of evidence that my – Mr. Bennett would want to see and the client would want to see, and we sent Mr. Bennett another cheque for 87 cents to give to the client.

[99] Ms. Sas admitted that she reviewed her financial records relating to client A before she prepared her responding letter to Mr. Bennett and that she discussed how to deal with the \$0.87 with EL. Given that she was in possession of the actual client ledger for client A, that it clearly showed all of the transactions that occurred on August 31, 2011 and that those transactions had occurred only recently, we do not accept Ms. Sas' evidence that, when she wrote her December 13, 2011 letter to Mr. Bennett, she did not know that she had received payment of the \$0.87 held in trust for client A. We find that, when Ms. Sas sent her December 13, 2011 letter and enclosures to Mr. Bennett, she knew that the client ledger enclosed with that letter did not accurately set out all trust transactions involving client A and that her statement from that letter quoted above in paragraph 93 was not correct. We also find that statement was made and a false client ledger was sent by Ms. Sas to Mr. Bennett with the intent to mislead him as to what trust transactions involving client A had occurred.

Compliance audit

[100] On March 1 and 2, 2012, a compliance audit of Sas Law Corp. was conducted for the period December 1, 2010 to December 31, 2011 by Ladan Khamisi, an assurance auditor on behalf of the Law Society. At the conclusion of the audit, Ms. Khamisi met with Ms. Sas and provided her with a written summary report that identified several inadequacies found during the audit. She stated that a letter would be sent under separate cover with specific Law Society requests. Those inadequacies included taking client funds from trust accounts that were not billed or accounted for in writing to the client and the three stale-dated cheques in the total amount of \$88.50 that were transferred to the general account on August 31, 2011 without invoices being issued and delivered to the clients.

- [101] The Law Society wrote a letter dated April 16, 2012 to Ms. Sas that recited two possible breaches of Rules 3-62 and 3-57 noted during the compliance audit. One was that, during March 2011, small trust balances held for approximately 40 clients were transferred to the general account and invoices were issued without reference to the method of delivery or address of the client and with general descriptions of services such as file-closing or miscellaneous expenses. The other was that, in one instance, a cheque was issued to transfer several stale-dated trust cheques to the general account.
- [102] Ms. Khamsi testified that, on March 2, 2012, she met with Ms. Sas and discussed the results of her compliance audit. She said she specifically discussed the three stale-dated trust cheques and the fact that the amount of these cheques had been transferred to Ms. Sas' general account, but she could not locate any invoices to the clients for those amounts. She also said that she discussed the several small balances held in trust for clients that were transferred to the general account in March 2011 without any bills being delivered to the clients. Ms. Khamsi testified that she discussed corrective action by Ms. Sas and told her that, if any funds had been transferred to her general account that did not belong to Ms. Sas, they should be sent back to the trust account. Ms. Khamsi said the advice she gave Ms. Sas to return monies to trust was the standard advice given to lawyers after completion of a compliance audit.
- [103] In cross-examination, Ms. Sas denied that Ms. Khamsi told her that any of the monies transferred to her general account should be returned to trust. Ms. Sas testified that, when she met with Ms. Khamsi on March 2, 2012, she asked her, "Should I take any steps or should I do anything?" and Ms. Khamsi replied, "No, wait until the letter from the Law Society. It will tell you what you need to do."
- [104] In November 2012, several months after the compliance audit was completed, Ms. Sas did return to her trust account monies taken from several clients in March and August 2011. She was asked repeatedly during her cross-examination why she did not return these monies to her trust account earlier, but she gave no responsive answer other than to say she had never been told by Ms. Khamsi or anyone else representing the Law Society that she should do so.
- [105] We accept Ms. Khamsi's evidence that she told Ms. Sas any monies that had been transferred to her general account and did not belong to Sas Law Corp. should be returned to trust. We do not accept Ms. Sas' evidence that Ms. Khamsi did not tell her to do so.
- [106] In its April 16, 2012 letter, the Law Society asked Ms. Sas to explain why invoices were not prepared for the transfer of the stale-dated cheque amounts to the general

account and how she delivered invoices to clients who were billed during March 2011 and to confirm that steps had been taken to ensure compliance with Rules 3-62 and 3-57.

[107] Ms. Sas wrote a letter dated May 18, 2012 to the Law Society in response to the Law Society's April 16, 2012 letter. In her letter, she stated that invoices were prepared for all the outstanding balances in the trust account but that she was unable to confirm whether they were in fact delivered to the clients. She explained that, during the period of time covered by the audit, she had hired a new bookkeeper, KP, whose work was overseen by EL. In that letter, she stated the following regarding delivery of bills to clients:

However it is always my practice to explain to all my staff, including my accounting staff, that it is necessary to not only issue a bill but to ensure that it is sent and forwarded to the client. I personally recall having this conversation with KP. It may be that the invoices that were prepared by KP were ultimately given to my paralegals who in turn, forwarded the invoices, but I regret I am unable to confirm that.

[108] Ms. Sas did not at that time, however, take any steps to send bills to those clients for whom bills were generated on March 3, 7 and 8, 2011 or August 31, 2011. As well, she did not at that time refund any trust monies taken from clients to pay any of those bills.

Post-audit investigation

[109] The Law Society engaged external counsel, John Forstrom, to conduct an investigation into the conduct of Ms. Sas as a result of the concerns identified during the March 2012 compliance audit of Sas Law Corp. Mr. Forstrom sent a letter dated September 6, 2012 to Ms. Sas in which he informed her he was conducting an investigation of her conduct disclosed by the compliance audit because it might constitute a discipline violation.

[110] In his letter, Mr. Forstrom mentioned that, between March 3 and 8, 2011, Ms. Sas had prepared invoices for approximately 40 client matters, which were immediately paid from amounts held in trust for those clients and that the charges to those clients consisted entirely of disbursements or administrative fees for matters that otherwise appear to have been substantially concluded and that a total of \$12,310.97 had been transferred to the Sas Law Corp. general account in payment of these invoices. He expressed the concern that those bills may not have been signed by Ms. Sas or on her behalf or accompanied by a letter to the client

signed by her or on her behalf. He also asked for clarification of the amount or basis for the fees or disbursements charged to the clients.

[111] In his September 6, 2012 letter, Mr. Forstrom also expressed concern regarding the three August 31, 2011 stale-dated cheques that were cancelled and a cheque written to pay the aggregate amount of those stale-dated cheques to the Sas Law Corp. general account when there was no invoice or transaction to account for the payment.

[112] Mr. Forstrom also raised the issue of a trust cheque for \$414.60 issued to a client that became stale-dated and a subsequent bill for \$414.60 to that client for administrative fees and miscellaneous disbursements that was generated and paid from the monies held in trust on March 7, 2011. Mr. Forstrom informed Ms. Sas that the professional conduct concern being investigated included unauthorized withdrawal of funds from her trust account contrary to Rule 3-56 and the possible misappropriation of monies held in trust for clients and asked Ms. Sas to respond to several questions and provided copies of certain documents.

[113] After receiving the September 6, 2012 letter from Mr. Forstrom, Ms. Sas engaged Jean Whittow, QC as counsel to represent her and respond to Mr. Forstrom's letter. Ms. Whittow wrote a letter dated November 19, 2012 to Mr. Forstrom in which she stated she was writing to respond on Ms. Sas' behalf to his September 6, 2012 letter. Ms. Whittow enclosed several documents with her letter. That day, Ms. Whittow also sent Mr. Forstrom a copy of her letter by email.

[114] Ms. Sas testified that the statements made on her behalf by Ms. Whittow in her communications to Mr. Forstrom were accurate and that she adopted what was stated by Ms. Whittow on her behalf.

[115] In her letter Ms. Whittow responded on behalf of Ms. Sas as to whether bills were actually sent to clients for the amounts billed on March 3, 7 and 8, 2011 as follows:

As set out above, Ms. Sas has reviewed the files. It appears that in many cases the bill was not in fact sent. This is her conclusion based upon the fact that the file contains no file copy of the bill and contains no file copy of a cover letter. This was not universally the case – for example, in one instance a small bill was apparently paid, and although there is no copy in the file, this suggests that the bill was in fact sent to the client.

[116] In the covering email, Ms. Whittow also stated:

But it is now apparent the process had two flaws. First of all, the invoices were not always sent to the clients. Ms. Sas and [EL], her accountant (CMA), say that it was up to KP to ensure that took place (by ensure I mean to get the bill and cover letter done and signed by Ms. Sas and into the mail). When I spoke to [KP] (no longer with the firm), she told me that once she did the “internal” invoices, it was up to the legal assistants to do the bills to the clients.

[117] A \$414.60 trust cheque refunding to the client the unused portion of her retainer became stale-dated, and the client was later billed this amount on March 7, 2011. Ms. Whittow wrote the following regarding that bill:

Still later, in March 2011, a bill was rendered for the file-closing fee and other disbursements. The file-closing fee was consistent with the firm’s practice. However, upon a review of the file, Ms. Sas has formed the view that the other disbursements are not supported by entries in the ledger. As a result, \$196.26 will be returned to trust.

[118] In response to Ms. Forstrom’s concern that trust funds of clients may have been misappropriated, Ms. Whittow stated:

Ms. Sas recognizes that insofar as accounts were rendered without proper support, client funds were inappropriately withdrawn.

[119] In her email to Mr. Forstrom, Ms. Whittow stated the following regarding the March 2011 billings to clients:

The second flaw is that some of the bills are just wrong. This is less than half of the cases. In some cases, some or all of the disbursements charged do not appear to be supportable. Now, it is of course not wrong that a bill should match the amount remaining in trust, what matters is that the invoice is for disbursements actually incurred and that the bill is sent to the client. Similarly, it is not wrong to “reconstruct” disbursements for example by counting copies, etc., provided you are accurate. At the time, Catherine assumed that things were working as they ought be. But now, when the files have been reviewed, Ms. Sas is just not satisfied that some of the bills were justifiable. So in such cases, she is in the midst of reversing the transactions, issuing a corrected bill if appropriate and if not, either returning the funds to the client or transferring the trust balance to Miller Thompson.

2012 Rebillings and refunds

- [120] After an exchange of correspondence and email between Mr. Forstrom and Ms. Whittow in late 2012, Ms. Sas made several changes to her March and August 2011 billings. Ms. Sas also made several payments of her own monies to her trust account to repay some or all of the amounts taken from trust to pay bills that had not been sent to clients. She also rebilled some clients a file-closing fee to replace bills previously issued for disbursements that were not incurred and, in some cases, wrote off that part of the file-closing fee that exceeded the amount held in trust that had previously been taken to pay the initial bill. At the same time, bills backdated to March 2011 and signed by Ms. Sas were sent to some clients who had been billed in March 2011 for disbursements that were properly billable and the bill paid from monies held in trust but no bill had been sent to the client.
- [121] From the client ledgers that were placed in evidence, we were able to determine the dates Ms. Sas made certain payments of monies to Sas Law Corp., in trust, for the credit of clients and the dates monies returned to trust were paid to third parties. The dates on which the replacement bills were prepared could not be determined and, in some cases where the clients were sent a replacement bill under cover of a letter, we have assumed the replacement bill was prepared on or about the date of the letter. In other cases, where there was a trust statement included in the evidence reflecting the changes made, we have assumed the replacement bill was prepared and sent to the client on or about the date shown on that trust statement. We find that all but one of the changes made by Ms. Sas to her March 2011 billings and her repayments of monies previously taken from trust in March 2011 occurred in November 2012. The other changes to her March 2011 billings were made on or about December 14, 2012.
- [122] In the cases of 21 of the bills generated and paid from trust in March 2011 and reformatted and sent to clients in November or December 2012, KP did not add disbursements other than file-closing fees. Although some changes were made to the descriptions of the disbursements shown on those bills, the net amount billed and the payments from trust remained the same, and no monies were repaid by Ms. Sas with respect to any of those bills. For other matters that were billed on March 3, 7 and 8 and August 31, 2011, several changes were made to client ledgers to remove disbursements that had been added to the client ledgers in March or August 2011. In some cases, those were replaced with a file-closing fee, and with respect to some of those matters, Ms. Sas paid her own monies to Sas Law Corp., in trust, for clients for whom she held monies in trust that she took and paid herself in 2011.

[123] We find that the actions taken by Ms. Sas in November and December 2012 with respect to matters to which disbursements that had not been incurred were added in March and August, 2011 and, in some cases, credits for disbursements were removed by book entry were as summarized in the following table:

Date of bill	Client Number	Invoice Number	Amount of bill paid from trust	Description of disbursements added other than file closing fees	Amount of disbursements added	Actions taken in November or December 2012	Amount repaid to client
March 3, 2011	716	6120	\$373.50	Miscellaneous-Non Taxable	\$123.50	1. Debt of \$491.50 owed by Ms. Sas to client for disbursements paid for by client but not incurred or refunded, which was eliminated by a book entry on March 3, 2011, was restored to the client ledger. 2. \$123 Miscellaneous Non-Taxable disbursement cancelled. 3. \$615 repaid to client.	\$615.00
March 7, 2011	543	6130	\$543.00	Photocopies Courier Miscellaneous-Non Taxable Colour copies	\$80.00 \$143.00 \$63.00 \$57.00	1. Debt of \$7 owed by Ms. Sas to client for disbursements paid for by client but not incurred or refunded, which was eliminated by a book entry on March 3, 2011, was restored to the client ledger. 2. \$250 file closing fee cancelled. 3. \$343 other disbursements cancelled. 4. \$50 account receivable written off restored. 5. \$550 repaid to trust by Ms. Sas. 6. \$550 paid to Miller Thompson as retainer.	\$550.00
March 7, 2011	790	6134	\$19.00	Photocopies	\$19.00	1. Disbursements for photocopies cancelled. 2. New \$250 file closing fee added to client ledger. 3. \$231 account receivable written off.	None
March 7, 2011	733	6135	\$45.80	Photocopies	\$45.80	1. Disbursements for photocopies cancelled. 2. New \$250 file closing fee added to client ledger. 3. \$204.20 account receivable written off.	None
March 7, 2011	601	6136	\$442.21	Photocopies Colour copies	\$442.21 \$109.15	1. Disbursements for photocopies and colour copies cancelled.	\$201.36

Date of bill	Client Number	Invoice Number	Amount of bill paid from trust	Description of disbursements added other than file closing fees	Amount of disbursements added	Actions taken in November or December 2012	Amount repaid to client
						2. New \$250 file closing fee added to client ledger. 3. \$201.36 repaid to client.	
March 7, 2011	257	6137	\$34.73	Colour copies	\$34.73	1. Disbursements for colour copies cancelled. 2. New \$250 file closing fee added to client ledger. 3. \$215.27 account receivable written off.	None
March 7, 2011	455	6138	\$414.60	Miscellaneous-Non Taxable	\$164.60	1. Debt of \$31.66 owed by Ms. Sas to client for disbursements paid for by client but not incurred or refunded, which was eliminated by a book entry on March 7, 2011, was restored to the client ledger. 2. Disbursements for Miscellaneous-Non Taxable cancelled. 3. \$196.26 repaid to client.	\$196.26
March 7, 2011	669	6139	\$254.00	Miscellaneous-Non Taxable	\$4.00	1. Debt of \$16.51 owed by Ms. Sas to client for disbursements paid for by client but not incurred or refunded, which was eliminated by a book entry on March 7, 2011, was restored to the client ledger. 2. \$250 file closing fee cancelled. 3. \$270.51 repaid to client. 4. \$270.51 held in trust after #3 paid to Miller Thompson as retainer.	\$270.51
March 7, 2011	428	6140	\$390.60	Colour copies	\$140.60	1. Disbursements for colour copies cancelled. 2. \$0.71 unbilled disbursement previously written off restored to client ledger. 3. \$139.89 repaid to client.	\$139.89
March 7, 2011	505	6141	\$275.78	Miscellaneous-Non Taxable	\$25.78	1. Debt of \$7.24 owed by Ms. Sas to client for disbursements paid for by client but not incurred or refunded, which was eliminated by a book entry on March 7, 2011, was restored to the client ledger. 2. Miscellaneous-Non Taxable disbursement cancelled.	\$16.02

Date of bill	Client Number	Invoice Number	Amount of bill paid from trust	Description of disbursements added other than file closing fees	Amount of disbursements added	Actions taken in November or December 2012	Amount repaid to client
						3. \$17.00 GST added. 4. \$16.02 repaid to client.	
March 7, 2011	671	6143	\$351.00	Miscellaneous-Non Taxable	\$57.41	1. Miscellaneous-Non Taxable disbursement cancelled. 2. \$57.41 repaid to client.	\$57.41
March 7, 2011	739	6144	\$47.42	Miscellaneous-Non Taxable	\$47.42	1. Miscellaneous-Non Taxable disbursement cancelled. 2. New \$250.00 file closing fee added to client ledger. 3. \$202.58 account receivable written off.	None
March 7, 2011	565	6146	\$107.97	Miscellaneous-Non Taxable	\$16.69	1. Miscellaneous-Non Taxable disbursement cancelled. 2. New \$250.00 file closing fee added to client ledger. 3. \$233.31 account receivable written off.	None
March 8, 2011	771	6147	\$135.00	Miscellaneous-Non Taxable	\$115.55	1. Miscellaneous-Non Taxable disbursement cancelled. 2. New \$250.00 file closing fee added to client ledger. 3. Send a bill to the client for the balance owing.	None
March 8, 2011	389	6148	\$28.60	Photocopies	\$65.63	1. Debt owed by Ms. Sas to client of \$37.97 for disbursements paid for by client but not incurred or refunded, which was eliminated by a book entry on March 7, 2011, was restored to the client ledger. 2. Disbursements for photocopies cancelled. 3. New \$250 file closing fee added to client ledger. 4. \$184.30 account receivable written off.	None
March 8, 2011	654	6150	\$83.50	Miscellaneous-Non Taxable	\$83.50	1. Debt of \$10 owed by Ms. Sas to client for disbursements paid for by client but not incurred or refunded, which was eliminated by a book entry on March 7, 2011, was restored to the client ledger. 2. Miscellaneous-Non Taxable disbursement cancelled.	None

Date of bill	Client Number	Invoice Number	Amount of bill paid from trust	Description of disbursements added other than file closing fees	Amount of disbursements added	Actions taken in November or December 2012	Amount repaid to client
						3. New \$250 file closing fee added to client ledger. 4. \$156.50 account receivable written off.	
March 8, 2011	697	6151	\$469.15	Photocopies Miscellaneous-Non Taxable	\$93.33 \$100.00	1. Disbursements for Photocopies and Miscellaneous-Non Taxable cancelled. 2. \$193.33 repaid to client.	\$193.33
March 8, 2011	777	6152	\$129.16	Miscellaneous-Non Taxable	\$107.16	1. Miscellaneous-Non Taxable disbursement cancelled. 2. New \$250 file closing fee added to client ledger. 3. \$142.84 account receivable written off.	None
March 8, 2011	695	6153	\$320.59	Photocopies	\$69.83	1. Disbursements for photocopies cancelled. 2. \$69.83 repaid to client.	\$69.83
August 31, 2011	636	6170	\$9.53	Photocopies	\$10.00	1. Disbursements for photocopies cancelled. 2. New \$250 file closing fee added to client ledger. 3. \$240.47 account receivable written off.	None
August 31, 2011	679	6171	\$0.87	Photocopies	\$1.00	1. Disbursements for photocopies cancelled. 2. \$0.87 repaid to client by crediting the client that amount from the Respondent's own monies held in her trust account.	\$0.87
August 31, 2011	675	6172	\$78.10	Photocopies File Admin. Fee	\$20.00 \$60.00	1. Disbursements for photocopies and file administration fee cancelled. 2. \$78.10 repaid to client.	\$78.10
TOTALS			\$4,554.11		\$2,299.89		\$2,388.58

[124] In addition to our findings summarized in the preceding table, we make those additional findings set out in the following paragraphs regarding the actions taken by Ms. Sas in November and December 2012.

[125] As described above, on March 3, 2011 Ms. Sas held \$373.50 in trust for client 716 who had a credit of \$491.50 for disbursements previously billed that either had not been incurred or had been refunded. On March 3, 2011, the credit was eliminated by way of a book entry made by KP. KP also added additional amounts totaling \$373.50 consisting of a \$250 file-closing fee and a disbursement of \$123 for Miscellaneous Non-Taxable, to make the unbilled disbursements equal the monies

held in trust. Those disbursements were billed and paid by way of a trust cheque payable to Sas Law Corp. in the amount of \$373.50.

- [126] Sometime after the bill to client 716 was generated on March 3, 2011, Ms. Sas prepared and signed a replacement invoice dated March 3, 2011 on Sas Law Corp. letterhead addressed to the client at an address in Europe. The bill stated that it was a credit note for disbursements previously billed, but not incurred and showed the following detail:

Disbursements

CIC Filing Fees (rebate)	(425.00)
Courier (rebate)	(60.00)
Bank Charges (rebate)	(6.50)
File-Closing Fee	<u>250.00</u>
Total Disbursement Credit	\$(241.50)

- [127] The evidence before the Panel included a trust statement for that client dated November 16, 2012 that contained the following information:

Statement of Trust through November 16, 2012

Trust Balance Forward	\$373.50
Nov-16-12 Credit from: Catherine A Sas	\$241.50
Trust Balance to be Returned	<u>\$615.00</u> _____
Totals	\$615.00 \$615.00

- [128] On November 16, 2012, Ms. Sas paid \$615 of her own monies to Sas Law Corp., in trust, for the credit of client 716. This payment represented both a return of the \$375.23 that she paid to herself on March 3, 2011 and the debt she owed the client for disbursement rebates in the amount of \$491.50 that she refunded, after deducting from that debt her file-closing fee of \$250.

- [129] Although the replacement bill that showed a disbursement credit of \$241.50 was dated March 3, 2011, we find that it was neither prepared nor sent until on or about November 16, 2012.

- [130] On March 7, 2011, Ms. Sas held \$543 in trust for client 543. On the same date she billed the client \$543 for disbursements, including a file-closing fee of \$250. This bill was paid on March 7, 2011 with the money held in trust. At the time of the billing, the Unresolved File List showed that the client had a credit for disbursements of \$7. The amount held in trust plus the credit for disbursements totalled \$550. On November 29, 2012, Ms. Sas paid \$550 of her own funds to Sas Law Corp., in trust, for credit to the client. On December 4, 2012, the \$550 held in trust by Sas Law Corp. was paid to Miller Thompson, in trust. Since the matter for client 543 had not been completed, that client should not have been billed a file-closing fee on March 7, 2011.
- [131] As described above, after making a book entry to eliminate a debt of \$31.66 owed by Ms. Sas to client 455, disbursements consisting of a file-closing fee of \$250 and Miscellaneous Non-Taxable disbursements of \$164.60 were added to the client ledger on March 7, 2011. That amount was equal to the \$414.60 held in trust for that client. On the same day, those disbursements were billed and paid from trust.
- [132] On November 4, 2012, entries were made to the client ledger cancelling the amount billed for Miscellaneous Non-Taxable disbursements and restoring the \$31.66 debt owed to client 455. Sometime after March 7, 2011, Ms. Sas prepared a replacement bill dated March 7, 2011 for a \$250 file-closing fee less \$31.66 for a rebate of courier charges, resulting in a total bill of \$218.34. The bill showed it was paid from trust. Since a trust statement for the client showing the transaction was dated November 16, 2012, it is likely the replacement bill was prepared on or about that date.
- [133] On November 26, 2012, Ms. Sas paid \$196.26 of her own monies to Sas Law Corp., in trust, for the credit of client 455. This amount was equal to the difference between the replacement bill of \$218.34 and the \$414.60 that Ms. Sas paid to herself on March 7, 2011 for the amount originally billed.
- [134] We find it troubling that Ms. Sas would bill client 455 a file-closing fee in November 2012, or even in 2011, when the services performed for that client had been completed on or before September 19, 2007 and the full balance of the retainer held for the client had been repaid to the client in 2007. We find that Ms. Sas must have known in September 2007 that the client was entitled to be repaid the full amount of her retainer. There was no evidence before the Panel that anything occurred after September 19, 2007 that would have changed the client's entitlement to a full refund of her retainer.
- [135] As described above, on March 7, 2011 Ms. Sas held \$254 in trust for a client, and she also owed that client a credit of \$16.51, for a total of \$270.51. The credit was

removed from the client ledger by way of a book entry and a file-closing fee of \$250 and Miscellaneous Non-Taxable disbursements of \$4 were entered on March 7, 2011, resulting in the client ledger showing total unbilled disbursements of \$254 on March 7, 2011. These were billed to the client, and Ms. Sas paid the bill from trust.

- [136] On November 4, 2012, entries were made to the client ledger cancelling the amounts billed in March 2011. On November 29, 2012, Ms. Sas paid \$270.51 of her own funds to her trust account for credit to the client. This was equal to the aggregate of the amount Ms. Sas paid herself from trust on March 7, 2011 and the debt owed to the client by Ms. Sas. On December 4, 2012, the \$270.51 returned to trust by Ms. Sas was paid to Miller Thompson, in trust. Since the client's matter had not been completed, that client should not have been billed a file-closing fee on March 7, 2011.
- [137] As described above, on August 31, 2011 Ms. Sas cancelled three stale-dated trust cheques payable to clients 636, 679 and 675, and bills to those clients for disbursements were generated. Then Ms. Sas paid herself the aggregate amount of \$88.50 held in trust for the clients. None of the three invoices were in a form suitable for to delivery to clients.
- [138] On August 31, 2011, after cancelling the stale-dated trust cheque payable to client 636, Ms. Sas held \$9.53, in trust, for him. PC then made an entry to the client ledger adding disbursements of \$10 for photocopies and generated a bill to him for \$10 for these disbursements. The \$9.53 held in trust for the client was included in the \$88.50 paid to Sas Law Corp. This amount was applied in payment of the bill, leaving an account receivable of \$0.47, which was written off by a ledger entry on October 6, 2011.
- [139] On December 12, 2012, entries were made to the client ledger cancelling the amount billed on August 31, 2011 for photocopies, restoring the \$0.47 account receivable that had been written off, adding a file-closing fee of \$250 and writing off the resulting account receivable of \$240.47. Sometime after August 31, 2011, Ms. Sas prepared a replacement bill dated August 31, 2011 for a \$250 file-closing fee, which showed that \$9.53 was paid from trust and that the balance of \$240.47 had been written off. Since the date of Ms. Sas' covering letter was December 12, 2012, it is likely that the bill was prepared on or about that date.
- [140] We find it troubling that Ms. Sas would bill client 636 a file-closing fee in December, 2012 when the services had been completed in 2009 and the balance of his retainer returned to the client at that time. It was the cheque returning the balance of his retainer that became stale-dated that Ms. Sas cancelled and paid to

herself on August 31, 2011. We find Ms. Sas must have believed in 2009 that the client was entitled to be repaid the full amount of the balance of his retainer. There was no evidence before the Panel that anything occurred after the retainer was returned that would have changed the client's entitlement to a full refund of the balance of his retainer.

[141] On January 12, 2010, Ms. Sas billed client 675 a file-closing fee of \$250, and this bill was paid on January 19, 2010 from trust. On January 19, 2010, Ms. Sas repaid the balance of his retainer in the amount of \$78.10, and that cheque was never cashed and became stale-dated.

[142] When Ms. Sas cancelled that stale-dated cheque on August 31, 2011, she held \$78.10 in trust for client 675. PC then made entries to the client ledger adding \$20 for photocopies and a file administration fee of \$60, which resulted in \$80 of unbilled disbursements. PC generated a bill for \$80, and the \$78.10 held in trust was included in the \$88.50 paid to Sas Law Corp., leaving an account receivable of \$1.90, which was subsequently written off.

[143] On December 17, 2012, entries were made to the ledger for client 675 cancelling the amounts billed on August 31, 2011 for photocopies and the file administration fee and restoring the account receivable that had been written off. That day, Ms. Sas paid \$78.10 of her own monies to Sas Law Corp., in trust, for the credit of client 675. This was the amount held in trust for the client when the 2009 stale-dated cheque had been cancelled, which Ms. Sas paid to herself on August 31, 2011. On December 12, 2012, she wrote a letter to the client at an address in China with which she sent him a statement of his remaining retainer and asked him to confirm the address to which the letter was sent was the address for delivery of his refund. The trust statement merely showed there was a balance of \$78.10 held in trust on December 12, 2012. Ms. Sas did not disclose to the client the August 31, 2011 bill for \$80 or that she had earlier paid the \$78.10 to herself and later repaid this amount to her trust account.

Other bills sent in November 2012

[144] In addition to the changes to her March and August 2011 bills, which she made in November and December 2012 described above, Ms. Sas changed the format, but not the amounts billed, of several other bills that were generated by the accounting system of Sas Law Corp. on March 3, 7 and 8, 2011. These reformatted bills had addresses for the clients, described the matters billed appropriately and contained a signature block for Ms. Sas to sign. With one possible exception, what was billed and the amounts billed were, however, the same as those billed in March, 2011.

- [145] With respect to the bill that is a possible exception, KP had added a disbursement for a file administration fee in the amount of \$120.20 and, after deducting a credit for courier charges in the amount of \$12.23, the client was billed \$107.97. The first reformatted bill changed that disbursement to a file-closing fee of \$250 but showed the same credit for courier charges resulting in a total bill of \$237.77, of which \$107.97 was paid from trust and the balance owing written off. The second reformatted bill did not show the credit for courier charges but showed a positive amount for courier charges resulting in a total bill of \$270.92. The amount paid from trust remained the same, but the balance was shown as being written off.
- [146] These reformatted bills were signed by Ms. Sas and sent to her clients with a covering letter dated November 7, 16 or 21, 2012 or December 14, 2012, which she signed. Each of the bills with signature blocks had the same date as the date they were generated by the accounting system in March, 2011. Each of these bills was either fully or partially paid from trust, either on the date of the bill or within a few days after that date.

Disbursements improperly billed

- [147] We find that disbursements that were not incurred were added to the client ledger for one client who was billed \$123.50 for those disbursements on March 3, 2011, to the client ledgers for 12 clients who were billed the aggregate amount of \$1,166 for those disbursements on March 7, 2011, and for six clients who were billed the aggregate amount of \$635 for those disbursements on March 8, 2011.
- [148] We find that disbursements that were not incurred were added to the client ledgers for three clients who were billed for those disbursements in the aggregate amount of \$88.50 on August 31, 2011.

Payment of improperly billed amounts with trust monies

- [149] We find that, on or before March 14, 2014, Ms. Sas paid Sas Law Corp. \$1,858.89 from monies held in trust for 19 clients to pay those disbursements that had not been incurred and were improperly billed as described above and that these payments were made without the knowledge or authorization of any of those clients.
- [150] We find that, on August 31, 2011, Ms. Sas paid Sas Law Corp. \$88.50 from monies held in trust for three clients to pay disbursements that were not incurred and improperly billed, as described above, and that these payments were made without the knowledge or authorization of any of those clients.

[151] The citation alleges that Ms. Sas misappropriated client trust funds from 22 clients or improperly withdrew or authorized the withdrawal of client trust funds to pay bills to 22 clients when she knew, or ought to have known, that the fees or disbursements billed were not properly charged to the clients.

[152] We have made a finding of fact that 19 clients were billed for amounts that were not properly chargeable to them and that these amounts were paid by Ms. Sas from monies held in trust for those clients in March, 2011. We must now make a finding of fact with respect to whether Ms. Sas knew, or ought to have known, those charges were not properly chargeable to the clients. In order to make that finding we must consider whether Ms. Sas was wilfully blind or reckless with respect to those improper bills.

[153] The issues of wilful blindness and recklessness in the context of criminal proceedings were considered by the Supreme Court of Canada in *Sansregret v. The Queen*, [1985] 1 SCR 570, 1985 CanLII 79. Writing for the Court, McIntyre, J. stated the following commencing at para. 21:

21. ... where wilful blindness is shown, the law presumes knowledge on the part of the accused ...
22. Wilful blindness is distinct from recklessness because, while recklessness involves knowledge of a danger or risk and persistence in a course of conduct which creates a risk that the prohibited result will occur, wilful blindness arises where a person who has become aware of the need for some inquiry declines to make the inquiry because he does not wish to know the truth. He would prefer to remain ignorant. The culpability in recklessness is justified by consciousness of the risk and by proceeding in the face of it, while in wilful blindness it is justified by the accused's fault in deliberately failing to inquire when he knows there is reason for inquiry.
- ...
24. ... Where the accused is deliberately ignorant as a result of blinding himself to reality the law presumes knowledge ...
25. ... Having wilfully blinded himself to the facts before him, the fact that an accused may be enabled to preserve what could be called an honest belief, in the sense that he has no specific knowledge to the contrary, will not afford a defence because, where the accused

becomes deliberately blind to the existing facts, he is fixed by law with actual knowledge and his belief in another state of facts is irrelevant.

[154] In *Sansregret* at para. 22, McIntyre, J. also quoted the following statements by Glanville Williams (*Criminal Law: The General Part*, 2d ed., 1961) at p. 157 and p. 159:

... the rule is that if a party has his suspicion aroused but then deliberately omits to make further enquiries, because he wishes to remain in ignorance, he is deemed to have knowledge.

...

... A court can properly find wilful blindness only where it can almost be said that the defendant actually knew. He suspected the fact; he realized its probability; but he refrained from obtaining the final confirmation because he wanted in the event to be able to deny knowledge.

[155] In our opinion, although *Sansregret* involves a criminal charge, the decision as to what constitutes wilful blindness and its effect apply equally to a civil proceeding such as this matter.

Ms. Sas' knowledge of improper billings

[156] Mr. Wilson submitted that the numerous examples of Ms. Sas billing clients for disbursements not incurred and the taking of client money from the Sas Law Corp. trust account to pay for bogus disbursements or fees were the fault of legal assistant KP. He submitted that KP created these sham disbursements and drew trust cheques for Ms. Sas to sign without the knowledge of Ms. Sas and did not tell Ms. Sas what she was doing.

[157] Mr. Wilson submitted that Ms. Sas was not negligent because she had an accounting system in place that had worked without problem for many years. He submitted that problems with the accounting steps in the course of the file review project came about in part because KP, "... decided to rid herself of [the] tiresome file review process by inventing bogus disbursement[s] to close files." Further, Mr. Wilson submitted that, "Ms. Sas actually did more than most lawyers would do to ensure that she had a workable system in place at her law firm."

[158] We have concluded that the evidence establishes that, even if she did not actually know specific disbursements that were billed to clients had not been incurred and

were not properly chargeable, Ms. Sas did not take any steps to determine what had been billed to her clients and whether all or any of those charges were properly billable before she took monies held in trust for those clients to pay those bills.

- [159] By late 2010 and early 2011, the 200 matters that still had a financial balance outstanding on the accounting system of Sas Law Corp. were causing Ms. Sas considerable concern. One of the primary reasons KP was hired in November 2010 was to assist Ms. Sas in dealing with the 200 outstanding financial balances so that the files for those matters could either be closed or transferred to Miller Thompson.
- [160] KP testified that EL trained her how to use the PCLaw system of Sas Law Corp., including how to make entries and generate bills. Her evidence was that she was instructed by EL that clients should be billed for unbilled fees and disbursements but that, in most cases, accounts receivable that exceeded the amount in trust should not be created. For the purpose of the file review project, she could either add a file-closing fee or add miscellaneous or office disbursements, such as photocopies, even though there was no record of those disbursements having been incurred; or she could charge both a file-closing fee and add such additional disbursements. She described the addition of such disbursements as being an estimate. KP also testified that, after she made entries and generated bills on the accounting system, EL would regularly review her work to ensure that it was correctly performed.
- [161] EL agreed in her testimony that she provided training to KP on the PCLaw accounting system and that she supervised KP and regularly reviewed her work. EL confirmed her instructions to KP with respect to the creation of accounts receivable and the charging of a file-closing fee. However, EL denied instructing or authorizing KP to add disbursements to the client ledger where there was no evidence that such disbursements had actually been incurred. It is highly unlikely that EL would have failed to notice that KP had added disbursements other than file-closing fees that had not been incurred when she generated bills in March 2011. Both the client ledgers and the Unresolved File Lists would have shown that disbursements were being added to inactive matters. EL was not a credible witness, and we accept KP's evidence that she was instructed or authorized by EL to add disbursements other than file-closing fees to the client ledger even though there was no evidence that such disbursements had been incurred.
- [162] KP testified that she did not receive instructions from Ms. Sas to add to the client ledgers or to bill clients for disbursements that had not been incurred and that she did not discuss doing so with Ms. Sas. There was no evidence that Ms. Sas had

authorized or instructed EL to, in turn, authorize or instruct KP to add to client ledgers to bill clients for disbursements that had not been incurred.

- [163] Ms. Sas testified that she did not know KP was adding disbursements that had not been incurred to client ledgers or that she was generating bills to clients for disbursements that had not been incurred.
- [164] There was no evidence, however, that Ms. Sas took any steps to ensure that disbursements that had not been incurred were not being added or billed to clients of Sas Law Corp. in March 2011. Ms. Sas was actively involved in the file review project that was taking place in early 2011 and participated in several meetings with legal assistants and KP with respect to the 200 files that had non-zero balances on the Sas Law Corp. accounting system.
- [165] The client ledgers, the Unresolved File List and invoices generated by the accounting system would have shown that disbursements that had not been incurred had been billed. The reports provided by KP to Ms. Sas, particularly the March 18, 2011 report, showed that, up to March 18, 2011, no monies had been returned to any client but that \$13,431 of monies held in trust had been transferred to the general account of Sas Law Corp. It is significant that, when the Respondent received the 41 cheques in March 2011 to pay Sas Law Corp.'s bills to clients, she did not receive any cheques payable to any clients to refund any monies held in trust.
- [166] Ms. Sas testified that she did not receive any backup material before signing the 41 cheques withdrawing monies held in trust for her clients in March 2011. We find that, when Ms. Sas signed those 41 cheques, which included 19 trust cheques that paid disbursements not incurred and improperly billed, she did not receive, request or see any documents or information showing what the clients had been billed for or that any disbursements that had been billed had actually been incurred.
- [167] Ms. Sas had a duty to put in place a system or procedures that would ensure that only disbursements that had been incurred or charges that were authorized by clients were charged to them. She did not check and confirm what was being billed to the clients of Sas Law Corp., and she serially signed many cheques paying Sas Law Corp. the amounts billed, including disbursements that were not incurred, without ever seeing the bills. This was not a situation involving a random or inadvertent error. Ms. Sas must accept responsibility for actions taken by those persons who were employed to assist her in the practice of law or to provide services ancillary to the practice of law.

- [168] Ms. Sas owed a fiduciary duty to her clients, before she transferred monies held in trust for those clients to pay the bills she issued to them, to ensure that any disbursements that were billed had actually been incurred. She failed to do so.
- [169] We find that Ms. Sas was aware that she should have made enquiries as to what had been billed to her clients before she signed trust cheques paying those bills, that she declined to request that information because she preferred to remain ignorant, and that she deliberately failed to make those enquiries when she knew there were reasons to do so. We find that the failure to make such enquiries amounted to wilful blindness on her part.
- [170] We therefore find that Ms. Sas either knew or was wilfully blind to the fact that 19 of her clients had been improperly billed for disbursements that were not incurred as described in paragraph 147.
- [171] If we had not found that Ms. Sas was wilfully blind with respect to the fact that the 19 invoices described in paragraph 147 included disbursements that had not been incurred and were not properly charged to clients, we would have found that her conduct in failing to make any enquiry as to whether the disbursements were properly chargeable before she signed trust cheques paying those bills amounted to recklessness.
- [172] We therefore find that Ms. Sas actually knew or, through wilful blindness is deemed to have known, that the March 2011 bills to 19 of her clients included charges for disbursements that were not properly chargeable to them.
- [173] Adding disbursements to the ledgers for those three clients where stale-dated cheques payable to those clients were cancelled on August 31, 2011 is different from the clients who were billed in March 2011, and who had those bills fully or partly paid with monies held in trust for them.
- [174] We find that, on August 30 or 31, 2011, Ms. Sas instructed PC to add disbursements that had not been incurred to the client ledgers for the three clients. We also find that, when Ms. Sas signed a trust cheque payable to Sas Law Corp. in the amount of \$88.50 on August 31, 2011, she knew that these monies were being paid to the Sas Law Corp. general account for her personal benefit and that these monies were being used to pay for disbursements that had not been incurred for any of the three clients. We find she did so in order to facilitate the closing of files for the Sas Law Corp. as part of the file review project and to assist her in completing the transition from a sole practitioner to her position with Miller Thompson.

Misappropriation

[175] Mr. Wilson submitted that, to be guilty of misappropriation, Ms. Sas must have done more than receive money to which she was not entitled, and he relied upon *Law Society of BC v. Gellert*, 2013 LSBC 22, where the panel stated at para. 71:

Misappropriation of a client’s trust funds occurs where the lawyer takes those funds for a purpose unauthorized by the client, whether knowingly or through negligence or incompetence so gross as to prove a sufficient element of wrongdoing. As this definition indicates, there must be a mental element of wrongdoing or fault, yet this mental element need not rise to the level of dishonesty as that term is used in the criminal law. See *Law Society of BC v. Ali*, 2007 LSBC 18, paras. 79-80, 105; *Law Society of BC v. Harder*, 2005 LSBC 48, para. 56.

[176] Mr. Wilson also relied on *Harder* in which the panel stated at para. 55:

“Misappropriation” or “wrongfully converting money” at least requires proof of the appropriation being wrongful, and means more than merely receiving money to which you are not entitled. There must be some mental element amounting to wrongdoing. This need not be the equivalent of criminal conduct such as dishonesty or fraud. Incompetence or some degree of carelessness may be all that is necessary.

[177] The panel in *Harder* also quoted with approval at para. 56 the following statement by the Court in the American decision *Charles W. Summers*, 114 NJ 209 @ 221 [SC 1989]:

... knowing misappropriation consists simply of a lawyer taking a client’s money entrusted to him, knowing that it is the client’s money and knowing that the client has not authorized the taking.

[178] We have found that Ms. Sas either knew or was wilfully blind to the fact that 19 of her clients had been improperly billed for disbursements that were not incurred and that, if she had not been wilfully blind, she was reckless as to whether those billings were proper. She then used client trust funds to pay those 19 bills and three other bills she clearly knew included charges for disbursements that had not been incurred. We make similar findings with respect to these payments. We find that, with respect to payment of the 19 bills, Ms. Sas either knew or was wilfully blind to the fact that she was not entitled to use trust funds to pay those bills and that, if she had not been wilfully blind, then she was reckless as to whether she was entitled to make those payments. As to the payment of those bills on August 31,

2011 with monies held in trust for clients, we find that Ms. Sas knew she was not entitled to use trust funds to make those payments because she knew the disbursements she billed were never incurred.

[179] We find that, between March 3, 2011 and March 14, 2011, Ms. Sas paid to Sas Law Corp. for deposit to its general account a total of \$1,858.89 held in trust for 19 clients to pay amounts billed to those clients for disbursements that had not been incurred and that she was not entitled to pay Sas Law Corp. these monies. We also find that Ms. Sas knew or ought to have known at the time she took these monies that she was not entitled to do so and that these monies belonged to those 19 clients and should have been returned to them.

[180] We find that, even if Ms. Sas did not actually know in March 2011 when she paid herself these monies that she was not entitled to them, she nevertheless actually knew not later than May 18, 2012, the date of her letter to the Law Society responding to the compliance audit queries, that she was not entitled to do so. Ms. Sas took no action until at least six months after May 18, 2012 to repay these monies that had been wrongfully taken.

[181] We find that, on August 31, 2011 when Ms. Sas paid herself \$88.50 from monies held in trust for three clients to partly pay bills to those clients for disbursements that had not been incurred, she knew that she was not entitled to do so and that these monies belonged to those three clients and should have been returned to them.

[182] Ten of the 22 clients who were billed in March 2011 and one of the three clients who were billed on August 31, 2011 for disbursements that had not been incurred were not billed for a file-closing fee in March or August 2011. In November and December 2012, the client ledgers for those 11 clients were altered to cancel the disbursements that had never been incurred but were nevertheless billed in 2011, and to add a file-closing fee of \$250. The invoices to those 11 clients were altered to remove the previously billed disbursements that had never been incurred and to add a file-closing fee. One of those 11 clients was repaid a portion of the monies that Ms. Sas had paid to herself from trust, but the other ten were not repaid any monies by her.

[183] We have considered whether, if Ms. Sas had originally been entitled to bill these ten clients a file-closing fee in March or August 2011, the actions taken by her in substituting a charge for a file-closing fee in November or December 2012 had the effect of justifying the payments that the Respondent made to herself in 2011 from monies held in trust for those clients. We find it did not.

[184] Even though Ms. Sas may have been entitled to bill those 11 clients a file-closing fee in March or August 2011 instead of billing them for disbursements that had not been incurred, that is not what she did. At the time she paid Sas Law Corp. monies held in trust for those 11 clients in March and August 2011, she had no entitlement to do so because she had not billed, and was not claiming that she was entitled to bill, a file-closing fee. Those payments that she made to herself from monies held in trust were made to pay for disbursements that had not been incurred and that she was not entitled to charge clients.

[185] We find that, in March 2011 and on August 31, 2011, Ms. Sas took monies held in trust for 22 clients when she was not authorized by any of those clients to do so and that, when she took those monies and paid them to Sas Law Corp., she knew the monies were the property of her clients, that she had not been authorized to take those monies and that she was not entitled to do so. We find that, by doing so, Ms. Sas misappropriated \$1,947.39 of monies held in trust for those 22 clients.

Withdrawal of client trust funds not authorized by Rule 3-56(1)

[186] Rule 3-56(1) prohibits lawyers from withdrawing or authorizing the withdrawal of any trust funds except for those six purposes described in the rule. The rule is set out in its entirety above in paragraph 15. The only relevant permitted purposes are those set out in paragraphs (a) and (d), which are reproduced below:

3-56(1) A lawyer must not withdraw or authorize the withdrawal of any trust funds unless the funds are

(a) properly required for payment to or on behalf of a client or to satisfy a court order,

...

(d) paid to the lawyer to pay a debt of that client to the lawyer,

[187] The payments of trust funds that Ms. Sas made to Sas Law Corp. were made to pay for disbursements billed to clients that had never been incurred, none of which should have been billed to those clients. Those trust funds were therefore not properly required for payment to, or on behalf of, a client. As well, none of those clients were indebted to Sas Law Corp. for the disbursements that had been billed because those disbursements had never been incurred.

[188] We therefore find that the 19 payments of trust funds in the aggregate amount of \$1,858.89 made by Ms. Sas to Sas Law Corp. and the payment of \$88.50 of trust funds by Ms. Sas to Sas Law Corp. constituted the withdrawal of funds held in trust for clients by Ms. Sas for purposes that were not authorized by Rule 3-56(1).

Delivery of bills to clients

[189] The next issues are whether bills were delivered to clients and whether Ms. Sas authorized the withdrawal of funds held in trust to pay her bills for fees without first preparing and immediately delivering those bills to clients. They relate to 43 bills that were sent to clients and paid in full or in part from monies held in trust for those clients. Those transactions consisted of the following:

- (a) 13 bills generated on March 3, 2011 and fully or partly paid with trust monies shortly thereafter;
- (b) 17 bills generated on March 7, 2011 and fully or partly paid with trust monies shortly thereafter;
- (c) ten bills generated on March 8, 2011 and fully or partly paid with trust monies shortly thereafter; and
- (d) three bills generated on August 31, 2011 and partly paid with trust monies on the same day.

[190] Three bills generated on March 3, 2011 and one generated on March 7, 2011, were not paid with monies held in trust for the clients who were billed.

[191] All of the invoices not suitable for delivery to clients that were generated by the Sas Law Corp. accounting system in March 2011 and the reformatted replacement bills prepared in November 2012 and sent to clients showed a file-closing fee as a disbursement. The evidence before the Panel was that this fee was charged to many clients because, in her immigration practice, it was often necessary for Ms. Sas to retain client documents for a very long period of time, during which additional services could be necessary. The file-closing fee did not include payments made to third parties or other expenditures for or on behalf of clients and was intended to compensate Sas Law Corp. for services performed for clients. It is significant that Ms. Sas described this charge on her bills as a fee. We find that the file-closing fees charged to clients by Ms. Sas were fees and not disbursements.

[192] A file-closing fee was included in 20 of the bills to clients generated by the Sas Law Corp. accounting system on March 3, 7 and 8, 2011 and shortly thereafter,

fully or partly paid with monies held in trust for those clients. We find that these 20 billings for file-closing fees were billings for fees.

[193] Ms. Whittow wrote a letter dated December 20, 2012 to Mr. Forstrom, the contents of which were adopted by Ms. Sas. Ms. Whittow stated that replacement or adjusted bills had been sent to the 43 clients described in paragraph 189 because bills had not previously been sent or misdescribed disbursements.

[194] In the letter dated May 18, 2012 that she wrote to the Law Society to respond to queries regarding the compliance audit, Ms. Sas stated that invoices were prepared for all of the matters where payments had been taken from monies held in trust for the bills prepared in March 2011 and on August 31, 2011, but she was unable to confirm whether they were delivered to clients. In that letter, she stated, "It may be that invoices that were prepared by [KP] were ultimately given to my paralegals who in turn forwarded the invoices, but I regret I am unable to confirm that."

[195] KP testified that she did not prepare any bills to clients other than those that were generated by the Sas Law Corp. accounting system. We find none of these were suitable for sending to clients.

[196] In the Response to Notice to Admit, which forms part of the evidence in this matter, Ms. Sas admitted that it could not be confirmed a bill in a form intended for delivery to the clients had first been prepared, or that a bill was delivered to the clients, or that a bill or invoice in the form customarily signed by Ms. Sas and sent to her clients was prepared, signed or sent to the clients at the time the trust transfers were authorized with respect to 40 specified invoices.

[197] In her testimony Ms. Sas acknowledged that, except for one bill to a client on March 3, 2011, none of the 42 clients who were billed on March 3, 7 and 8, 2011 and August 31, 2011 were sent a bill before November 2012.

[198] We find that Ms. Sas did not first prepare and immediately deliver bills to 13 clients who were billed on March 3, 2011 before she paid all or part of those accounts from trust on or before March 10, 2011. We find that no bills were sent to any of those clients before November 2012.

[199] We find that Ms. Sas did not first prepare and immediately deliver bills to 17 clients who were billed on March 7, 2011 before she paid all or part of those bills from trust on or before March 14, 2011. We find that no bills were sent to any of those clients before November 2012.

- [200] We find that Ms. Sas did not first prepare and immediately deliver bills to ten clients who were billed on March 8, 2011 before she paid all or part of those bills from trust on or before March 14, 2011. We find that no bills were sent to any of those clients before November 2012.
- [201] We find that Ms. Sas did not first prepare and immediately deliver bills to three clients who were billed on August 31, 2011 before she paid a portion of each of those bills from trust on August 31, 2011. We find that no bill was sent to one client before November 2012 and no bill was ever sent to the other clients.
- [202] We find that Ms. Sas never sent bills to a client for \$373.50 withdrawn from trust on March 3, 2011 or to two other clients for \$543 and \$254 withdrawn from trust on March 7, 2011. In each of these three cases, Ms. Sas repaid those clients the full amount of monies withdrawn from funds held in trust for them on March 3 and 7, 2011.
- [203] Ms. Sas testified that, when she withdrew the monies held in trust for 40 of her clients on March 3, 7 and 8, 2011, she thought each of those clients had already been sent a bill for the amounts withdrawn from trust because, before signing the cheques payable to Sas Law Corp., she asked KP if the clients had been billed and KP said they had been billed. With respect to this issue, KP said in her evidence that, at least on one occasion when she presented trust cheques to Ms. Sas in March 2011, Ms. Sas had asked her whether the clients had been billed and KP told her that they had been billed. This answer was correct since KP had billed each client on the accounting system and generated an invoice for them before preparing the trust cheque to pay the bills. Ms. Sas did not ask KP, and KP did not tell her, that any bills had been sent to any of the clients for the amounts that were being withdrawn from trust to pay those bills.
- [204] By late 2010 and early 2011, the 200 matters that still had a financial balance outstanding on the accounting system of Sas Law Corp. were causing Ms. Sas considerable concern.
- [205] ID, the accountant whom Ms. Sas consulted with respect to practice management and accounting issues, testified that, as a result of discussions he had with Ms. Sas, he believed Ms. Sas felt she was putting an inordinate amount of cost into the accounting area of her practice because she had at that time her external accountant, EL, who was a qualified certified management accountant, KP or PC in an accountant bookkeeping role, while at the same time she was receiving accounting, bookkeeping and management services through Miller Thompson. ID testified that he met with Ms. Sas on December 1, 2010, at which time she asked him to advise her how she could best use all of these bookkeeping and accounting

resources, and he gave her advice on what tasks should be assigned to which people.

[206] Ms. Sas was actively involved in the file review project and in dealing with the 200 matters in which there were outstanding financial balances. She arranged a luncheon meeting with KP in which she reiterated to KP what her duties and responsibilities were, including managing the file review project. Ms. Sas received written reports from KP in March 2011 as to what steps KP had taken to resolve the outstanding financial balances, including a written summary prepared on March 18, 2011 in which KP reported that, at the beginning of the file review project, there had been 200 files in the Sas Law Corp. accounting system with non-zero balances and that, out of these, since January 2011, 129 files had been finalized, unbilled disbursements billed and amounts transferred from trust accounts. In this report, KP stated that, at the beginning of January 2011, the balance of monies held in trust by Sas Law Corp. was \$58,530 and that, by March 18, 2011, \$13,431 had been transferred to the general account of Sas Law Corp., leaving a balance of \$45,099, which continued to be held in trust.

[207] Ms. Sas testified that, in her practice, on average, she sent approximately 20 bills per month to clients.

[208] No bills to the clients for which Sas Law Corp. held monies in trust were prepared between the time KP was hired in November 2010 and when KP generated the first set of bills on March 3, 2011. Over a period of five days beginning on March 3, 2011 and ending on March 8, 2011, KP generated bills to 45 clients of Sas Law Corp. who had non-zero balances in the accounting records. Ms. Sas held monies in trust for 41 of these clients. During the same period of time, KP prepared 41 trust cheques payable to Sas Law Corp. to pay 41 of those 45 bills and presented them to Ms. Sas for signing. Ms. Sas testified that she never received copies of invoices or other backup documentation before signing any of the cheques and, when she was given the cheques to sign, she did not receive any bills for her to sign that should have been sent to the clients whose trust funds she was withdrawing by way of the 41 trust cheques to pay those bills. Ms. Sas testified that she never allowed any of her staff to sign bills or letters accompanying bills that were sent to clients and that it was her practice always to sign bills to clients personally.

[209] The Miller Thompson billing procedures were different from those Ms. Sas used in Sas Law Corp., and Miller Thompson and Sas Law Corp. operated separate trust accounts. We find that Ms. Sas could not reasonably have thought any Miller Thompson bills she sent to clients were bills to clients for whom Sas Law Corp.

held monies in trust. Ms. Sas steadfastly maintained that she thought bills had been issued and that she must have signed them before signing any trust cheques payable to Sas Law Corp. She admitted, however, that she could find no bills for the transactions forming the substance in the citation. She made this admission both in her Response to the Notice to Admit and in her oral testimony.

[210] Had we been dealing with a single instance of her signing a trust cheque without an account being issued, there may have been a basis for her to suggest an administrative error had occurred. In the present case, however, we are faced with multiple trust account transactions over a concentrated period of time in which trust cheques were drawn payable to Sas Law Corp. and signed by Ms. Sas when no bills had been issued. Given the volume and nature of these transactions, the importance to Ms. Sas of cleaning up the outstanding 200 client files and non-zero balances for clients of Sas Law Corp., her involvement in them in the context of the objectives of the file review project and the fact that, for several months, no bills had been sent to the clients of Sas Law Corp. for which she held monies in trust, it is implausible that Ms. Sas would have been unaware when she signed the 41 trust cheques in March 2011 that she had not signed and sent bills to 40 of those clients.

[211] We find that, when Ms. Sas signed 40 trust cheques withdrawing monies held in trust for clients to pay bills to those clients in March 2001, she knew no bills signed by her, or on behalf of the Sas Law Corp., or a letter accompanying the bill had been signed or sent to any of those clients.

Failure to retain copies of bills

[212] We have found that, although bills to several clients were created by the Sas Law Corp. accounting system and issued during the period of time between March 3, 2011 and March 8, 2011 and on August 31, 2011, those bills were not in a form suitable for sending to clients and were not sent to any of the clients until at least November 2012. Therefore, until November 2012, it was not possible for copies of any such bills to be made and kept in the files of Sas Law Corp. We find that the Law Society has not proved that Ms. Sas failed to keep file copies of any bills delivered to clients or persons charged as required by Rule 3-62(1) or to record all funds received and disbursed by maintaining the records required by Rule 3-59(1).

[213] The Panel finds as follows:

- (a) between March 3, 2011 and March 14, 2011, Ms. Sas withdrew and paid to Sas Law Corp. for her own benefit, \$1,858.89 held in trust for 19 of her clients to pay bills to those clients for disbursements that had not

been incurred when she knew, or ought to have known, that those disbursements were not properly chargeable to those clients;

- (b) by taking \$1,858.89 held in trust for her 19 clients between March 3, 2011 and March 14, 2011 to pay bills to those clients for disbursements that had not been incurred, Ms. Sas misappropriated those trust funds;
- (c) on August 31, 2011, Ms. Sas withdrew and paid to Sas Law Corp. for her own benefit \$88.50 held in trust for three of her clients to pay bills to those clients for disbursements that had not been incurred when she knew that those disbursements were not properly chargeable to those clients;
- (d) by taking \$88.50 held in trust for her three clients on August 31, 2011 to pay bills to those clients for disbursements that had not been incurred, Ms. Sas misappropriated those trust funds;
- (e) the withdrawals of \$1,858.89 and \$88.50 in trust funds between March 3, 2011 and March 14, 2011 and on August 31, 2011 were made for purposes not authorized by Rule 3-56(1);
- (f) between March 3, 2011 and March 14, 2011, Ms. Sas withdrew funds held in trust for 40 clients and paid those monies to Sas Law Corp. for amounts she charged without immediately delivering bills to any of those clients. Thereafter, Ms. Sas did not send bills to those clients for any amounts charged until November 2012; and
- (g) on August 31, 2011, Ms. Sas withdrew funds held in trust for three clients and paid those monies to Sas Law Corp. to pay bills to them without immediately delivering bills to any of those clients. Thereafter, Ms. Sas did not send one of these clients a bill until November 2012 and never sent a bill to the other two clients.

DETERMINATIONS

Breach of the Legal Profession Act

[214] Section 69 of the Act does not stipulate when a lawyer must deliver a bill to the person charged. In our view, section 69 should be interpreted to mean that the bill must be delivered within a reasonable period of time, and what is reasonable will depend on the circumstances. In the case of Ms. Sas, payments for 40 bills to clients were taken in March 2011 and payments for bills to three clients were taken

on August 31, 2011, but no bills were sent to any of those clients until November 2012, at the earliest. We find this delay was not reasonable and that the failure by Ms. Sas to send bills to any of those clients before November 2012 constitutes a breach of section 69 of the Act.

Breaches of the Rules

- [215] We find that, by withdrawing trust funds in March, 2011 and on August 31, 2011 to pay 22 bills to clients that included \$1,947.39 of disbursements that had not been incurred, Ms. Sas breached Rule 3-56(1).
- [216] We find that the withdrawal by Ms. Sas of trust funds between March 3 and 14, 2011 to pay bills to 20 clients, which included file-closing fees, without first preparing and delivering bills to any of those clients constitutes breaches of Rule 3-57(2).
- [217] We find that the Law Society has failed to prove that Ms. Sas took any actions, or failed to take any actions, that would constitute a breach of Rules 3-59 or 3-62.

Professional misconduct

- [218] What constitutes professional misconduct is not defined in the Act or the Rules or described in the *Code of Professional Conduct*. Since the decision by the hearing panel in *Law Society of BC v. Martin*, 2005 LSBC 16, the vast majority of panels have adopted as a test for professional misconduct whether the conduct of the member in question exhibited a “marked departure” from the standard of conduct the Law Society expects of lawyers. This is a subjective test, which must be applied after taking into account decisions of other hearing panels, publications by the Law Society, the accepted standards for practice currently accepted by the members of the legal profession in British Columbia and what, at the relevant time, is required for protection of the public interest.
- [219] We agree with the description of what constitutes a “marked departure” from the standard of conduct the Law Society expects of lawyers described by the panel in *Gellert* at para. 67 where the panel stated there must be culpability demonstrating a “fundamental degree of fault” or “gross culpable neglect.”
- [220] Conduct that may be a “marked departure” from the conduct expected by the Law Society of lawyers is not limited to the conduct of the lawyer. It may also include conduct of persons for whom the lawyer is responsible. Similarly, persons who have fiduciary duty cannot avoid that duty by delegating it to an employee or other person. (See *Rowland v. Vancouver College Ltd.*, 2001 BCCA 527 at paragraph

140.) An exception would be where an employee commits an act of fraud or criminality that could not reasonably have been foreseen or avoided through some appropriate intervention or oversight by the lawyer.

[221] The panel in *Law Society of BC v. Edwards*, 2006 LSBC 27, found at paras. 52 and 53 that, although the respondent in that matter had not engaged in any fraudulent conduct or had otherwise been dishonest, he was reckless with respect to an investment scheme and that his reckless conduct was a marked departure from the standard expected of a competent solicitor and therefore amounted to professional misconduct.

[222] A breach of the Act or failure to comply with a Rule will not necessarily amount to professional misconduct, but it may do so if the breach or failure to comply is serious.

[223] Guidance for when a breach of the Rules can constitute professional misconduct will be found in a number of discipline panel decisions. When determining whether a Rule breach may constitute professional misconduct, panels must give weight to a number of factors, including the gravity of the misconduct, its duration, the number of breaches, the presence or absence of mala fides, and the harm caused by the member's conduct (see *Law Society of BC v. Lyons*, 2008 LSBC 09 at para. 35).

[224] We have found that, when Ms. Sas paid her law corporation monies held in trust for 43 clients in March 2011 and on August 31, 2011, she knew that no bills had been prepared and delivered to any of them and that she took no steps to send any bills to those clients for several months later in November 2012. This inordinate delay is even more unacceptable when it is clear from the letter dated May 18, 2012 sent by Ms. Sas to the Law Society that she was then aware that no bills had been sent to those clients. Under these circumstances, we find that the conduct of Ms. Sas in failing to comply with Rule 3-57(2) by not delivering bills to those clients until November 2012 is a marked departure from the standard of conduct the Law Society expects of lawyers and it therefore constitutes professional misconduct.

[225] We have found that Ms. Sas misappropriated monies held in trust for 22 clients. Misappropriation of trust funds is a marked departure from the standard of conduct the Law Society expects of lawyers. We find that the misappropriation of trust funds from these 22 clients constitutes professional misconduct.

[226] If we had not made a finding of fact that Ms. Sas was wilfully blind and therefore knew, or was deemed to know, that clients had been billed for disbursements that

were not incurred and that she was therefore not entitled to withdraw monies held in trust for them to pay those bills, we would have found that her conduct was nevertheless reckless. We would have also made a finding that this reckless conduct was a marked departure from the standard of conduct the Law Society expects of lawyers and therefore constituted professional misconduct.