2016 LSBC 03
Decision issued: January 25, 2016
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 DISCIPLINARY ACTION AND COSTS

Hearing date:	September 24, 2015
Panel:	Dean Lawton, Chair Dan Goodleaf, Public representative Donald Silversides, QC, Lawyer
Discipline Counsel:	J. Kenneth McEwan, QC and Rebecca Robb
Counsel for the Respondent:	Peter Wilson, QC

INTRODUCTION

The citation

[1] The citation issued to Catherine Ann Sas, QC ("Ms. Sas") contains allegations of conduct by Ms. Sas that the Law Society asserted constitute professional misconduct or breaches of the *Legal Profession Act* (the "Act") or the Law Society Rules (the "Rules").

Findings of fact and determination

[2] In March, 2010, Ms. Sas ceased practising as a sole practitioner and joined a larger firm of lawyers. In early 2011, she still held monies in trust that had been received from clients while she was practising as a sole practitioner, and there were several outstanding files and unbilled time and disbursements relating to her former sole practitioner practice that needed to be dealt with. At that time, she embarked on a file review project to deal with those outstanding files, including unbilled fees and disbursements and monies held in trust.

[3] We have made those findings of fact and determinations described below with respect to the conduct of Ms. Sas that was the subject of the citation.

[4] On March 3, 7 and 8, 2011, 19 clients of Ms. Sas were improperly billed for disbursements that were not incurred. Ms. Sas either knew, or was wilfully blind to the fact that they had been improperly billed for disbursements that were not incurred and, if she had not been wilfully blind, then she was reckless as to whether those billings were proper.

[5] Between March 3, 2011 and March 14, 2011, Ms. Sas paid to her law corporation for deposit to its general account a total of $1,858.89 held in trust for those 19 clients to pay amounts billed to those clients for disbursements that had not been incurred when she knew, or ought to have known, the disbursements were not properly chargeable to those clients.

[6] On August 30 or 31, 2011, Ms. Sas instructed her bookkeeper to add disbursements that had not been incurred to the client ledgers for three clients, and Ms. Sas then signed a trust cheque payable to her law corporation in the amount of $88.50 on August 30 to pay those disbursements when she knew that those monies were being paid to her law corporation's general account for her personal benefit and that those monies were being used to pay for disbursements that had not been incurred for any of the three clients.

[7] When Ms. Sas took monies held in trust for 22 clients in March and August, 2011 and paid them to her law corporation, she knew the monies were the property of her clients, that she had not been authorized to take their monies and that she was not entitled to do so.

[8] By taking $1,947.39 from trust in March and August, 2011 to pay her bills to 22 clients for disbursements that had not been incurred, Ms. Sas breached Rule 3-56(1) and misappropriated those trust funds, and such misappropriation constituted professional misconduct.

[9] Between March 3, 2011 and March 14, 2011, Ms. Sas withdrew funds held in trust for 40 clients and paid those monies to her law corporation for amounts she charged those clients without immediately delivering bills to any of those clients. The same occurred on August 31, 2011 with respect to another three clients. By doing so she breached section 69 of the Act.

[10] When Ms. Sas paid her law corporation monies held in trust for 43 clients in March and August, 2011 to pay bills for those clients, her failure to send the bills to any of those clients also constituted a breach of Rule 3-57(2). We determined that such conduct also constituted professional misconduct.

[11] The billings to clients for disbursements that had not actually been incurred and the failure to immediately deliver bills to clients when funds were withdrawn from trust to pay those bills were drawn to the attention of Ms. Sas by way of a letter sent to her by the Law Society on April 16, 2012, following a compliance audit that was conducted on March 1 and 2, 2012. Despite receiving the letter from the Law Society, Ms. Sas failed to take steps to rectify the problems identified until November, 2012.

[12] In November and December 2012, Ms. Sas took corrective action in one of two ways with respect to those clients whose monies she had taken from trust to pay bills for disbursements which had not been incurred. In some cases, she either repaid from her own funds all or part of the monies taken from trust and then either repaid these monies to the clients or paid them to her new firm, in trust for the clients. In other cases, she rebilled the clients a file-closing fee to replace bills previously issued for disbursements that were not incurred. At the same time, she also prepared and sent bills to clients where monies had previously been taken to pay her bills but bills had not actually been sent to the clients. The bills prepared in November and December 2012 were backdated to the dates of the original billings in 2011.

EVIDENCE

[13] No *viva voce* evidence was heard at the hearing held with respect to disciplinary action, and no agreed statement of facts was filed.

[14] Forty-six letters of support and reference were filed as exhibits by counsel for Ms. Sas. These included letters from five lawyers who had formerly practised with Ms. Sas. Seven letters were from lawyers who were involved with Ms. Sas in volunteer and other activities performed for the Canadian Bar Association, many of whom held senior positions in the Association. Nine letters were from lawyers who

practise in the field of immigration law, the same area of law in which Ms. Sas practises, and each had extensive dealings with her. Three letters were from lawyers for whom Ms. Sas had acted as a mentor. Nine letters were from other lawyers who had extensive dealings with, and knowledge of, Ms. Sas, including a former Supreme Court of British Columbia judge and Attorney General and two letters from lawyers who served as benchers of the Law Society at the same time as Ms. Sas. Nine letters were from lawyers and non-lawyers who had served with, or observed, Ms. Sas in her performance of community service, and four letters were from former clients of Ms. Sas.

[15] Almost all of the authors of the reference letters said they were familiar with the findings of fact and determination by us, and many said they had read our decision.

[16] Many of the letters of reference were written by very senior and experienced counsel who are leaders in their fields of practice. The letters of reference attested to the good reputation, honesty, integrity and high principles and dedication of Ms. Sas, both in her practice of law and in her contributions to the profession and the less privileged and more vulnerable members of our community. We have no doubt that Ms. Sas has been a leader of the bar and has made extraordinary contributions to the legal profession.

[17] Those authors of letters who spoke directly to the issue of Ms. Sas' misappropriation of monies from her clients clearly stated that such actions were not consistent with the character of Ms. Sas.

[18] The other evidence placed before the Panel at the hearing held with respect to disciplinary action consisted of a letter dated September 22, 2015 addressed to the Law Society from Benson & Company, Chartered Accountants, a resume of Ms. Sas and a letter dated September 23, 2015 written by Ms. Sas to her counsel, Mr. Wilson.

[19] The letter from Benson & Company described steps that have been taken by them, or that Benson & Company are prepared to take, in order to assist Ms. Sas to comply with the Law Society's trust account requirements.

[20] The resume of Ms. Sas reveals what can only be described stellar contributions to both the legal profession and the public, including extensive involvement with both the provincial and national Canadian Bar Association and related organizations.

[21] The letter written by Ms. Sas to her counsel provides a history of her practice and the effect these proceedings have had, both on her practice and on her personal life. As a result of the citation, Ms. Sas resigned as a bencher of the Law Society.

Shortly after our decision as to the facts and determination was released, she was forced by her law firm to resign as a partner and has since been practising immigration law as a sole practitioner. Her letter states that these proceedings and our findings have taken a significant toll on her financially, physically and emotionally and led her to consider suicide.

AUTHORITIES

[22] Counsel for the Law Society and Ms. Sas relied on a common book of authorities that included several previous decisions made by the Law Society as to disciplinary action.

[23] In *Law Society of BC v. Lessing*, 2013 LSBC 29 at para. 44, the Benchers on review considered whether the decision of the hearing panel as to disciplinary action should be overruled in the case of a lawyer who had committed professional misconduct by being in contempt of court. They quoted the following passage by the review board at para. 14 in *Law Society of BC v. Hordal*, 2004 LSBC 36:

> Similarly, questions of whether particular misconduct should lead to particular penalties can often be easily answered by the Benchers. *Should particular conduct lead to penalty of disbarment versus a penalty of suspension, is a question often faced by Benchers, and again is a question which is relatively susceptible to the test for correctness*. For example, it is the nearly unanimous view of the Benchers, that a misappropriation of client funds, the ultimate breach in trust, should carry the ultimate penalty of disbarment. Should a panel find to the contrary, it would not be surprising for the Benchers to substitute their judgment in seeking to establish a "correct" determination in that matter.
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> [emphasis added by the Benchers in *Lessing*]

[24] The Law Society also relies on a statement by the Benchers in *Lessing* at para. 47 that there are two factors that will, in most cases, play an important role in determining the appropriate disciplinary action: the first being the protection of the public, including public confidence in the disciplinary process and public confidence in the professional generally, and the second being the rehabilitation of the lawyer.

[25] In *Law Society of BC v. McGuire*, 2006 LSBC 20, a lawyer withdrew client funds from his pooled trust account for his personal use between July, 2002 and September, 2003 when he was not entitled to do so and without his clients'

knowledge or consent. This included taking monies held from one client to pay the bill or other liability of another client for whom no monies, or insufficient monies, were held in trust. The hearing panel found that, by doing so, he was guilty of professional misconduct. At the time the hearing was held in April 2006, the lawyer was still continuing to practise but with controls on his trust account. Several letters of reference were considered and described by the panel at para. 26:

> The 30 letters of reference written on the Respondent's behalf are impressive. They affirm, and we fully accept, that the Respondent is a kind, generous, public-spirited man and a lawyer who gives good and dedicated service to his clients. Clients, close friends and lawyers who have dealt with him express their complete confidence in his fundamental integrity. As already mentioned, each of the writers of these letters had received a copy of our Decision on Facts and Verdict, so their comments were made with full knowledge of what the Respondent was found to have done. Those who discuss the reasons for his conduct attribute it to the stress he was under owing to the breakup of his marriage and other emotional strains, as well as his willingness to take on clients who could not pay him adequately. Some say that his self-reliant, stoic nature played a role because it held him back from asking his friends for help in dealing with his difficulties.

[26] In considering the lawyer's argument that there was convincing evidence he could continue to practise with no risk to the public because he had done so since 2003, subject to a condition restricting his sole access to his trust account, and that disbarment was therefore not necessary and the public could be protected by continuing to place restrictions on his trust account, the panel in *McGuire* stated the following at paras. 23 and 24:

> We cannot accept the Respondent's argument, for two reasons. First, a restriction on a lawyer's use of his trust account is appropriately used, as it was in this case, as an interim measure pending a full examination of the lawyer's conduct. Once the misappropriation has been proved, however, we cannot see how such a restriction can properly be used as a permanent condition on a lawyer's ability to practise. To put it bluntly, a lawyer who, in light of his past conduct, cannot be completely trusted with sole control of his trust accounts should not be practising law.
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> The second reason relates to the protection of the public. We accept that disbarment is a penalty that should only be imposed if there is no other penalty that will effectively protect the public. Protecting the public, however, is not just a matter of protecting the Respondent's clients in future. Even if the latter could properly be done by imposing restrictions on the Respondent's use of his trust account, we do not think that such a measure adequately protects the public in the larger sense. Wrongly taking a client's money is the plainest form of betrayal of

> the client's trust. In our view, the public is entitled to expect that the severity of the consequences reflect the gravity of the wrong. Protection of the public lies not only in dealing with ethical failures when they occur, but also in preventing ethical failures. In effect, the profession has to say to its members, "Don't even think about it." And that demands the imposition of severe sanctions for clear, knowing breaches of ethical standards. A penalty in this case of a fine and a practice restriction is, in our view, wholly inadequate for the protection of the public in this larger sense.

[27] The hearing panel in *McGuire* disbarred the lawyer, and he appealed the decision to the British Columbia Court of Appeal. The Court of Appeal, after considering the panel's reasoning in paras. 23 and 24 of the decision, upheld the disbarment of Mr. McGuire (*McGuire v. the Law Society of BC*, 2007 BCCA 442.

[28] The Court of Appeal also quoted, with approval, the following statement by the panel in *McGuire* at para. 29:

> The Respondent is a good man, but at a time of great difficulty in his life he allowed himself to do what a lawyer, regardless of what strains or pressures he is under, must never do. The standard he broke was not one of unattainable perfection, which humans are expected to fall short of from time to time. On the contrary, it is an absolute standard. When it is deliberately broken, as it was here, the seriousness of the misconduct is, except in very unusual circumstances, impossible to mitigate. No case was cited to us in which the deliberate, repeated recourse to trust funds to ease the lawyer's personal cash flow problems was sanctioned with anything less than disbarment.

[29] In *Law Society of BC v. Harder*, 2006 LSBC 48, the lawyer was found guilty of professional misconduct for knowingly misappropriating an amount of between $42,396.11 and $56,626.21 from at least 20 clients and using these funds for his personal benefit to pay his personal and business expenses. Approximately $23,500 was paid to the lawyer's clients by the Law Society's Special Compensation Fund to compensate them for the misappropriations.

[30] At the time of the hearing in *Harder*, the lawyer had ceased practising law for health reasons. While practising as a lawyer, he had been a high profile and significant volunteer in his community, having served as a city councillor, a member of the Human Rights Commission and a trustee and vice-chair of the hospital board.

[31] When the misappropriations occurred, the lawyer's health was significantly deteriorating, and he used the misappropriated funds to support the continuation of

his practice and to pay his living expenses. The panel in *Harder* stated the following at para. 57:

> In circumstances such as these, it is our opinion that the protection of the public demands that this Respondent be disbarred and this decision is necessary not just because we must ensure that this Respondent is no longer able to practise and that we provide a safeguard to the public by this action, but also we must generally deter any other member of the Law Society who might think that deteriorating health will offer a defence to a misappropriation scheme such that disbarment will not necessarily follow in the result.

[32] In *Law Society of BC v. Hammond*, 2004 LSBC 32, the lawyer had been found to have professionally misconducted himself with respect to 15 different matters. Six related to his failure to respond to enquiries from the Law Society, four dealt with breaches of undertakings, one was a failure to report a judgment against him to the Law Society, one was in respect of his unauthorized practice of law, one was in respect of his failure to remit tax withholdings deducted from employees and two were in respect of his misappropriation of client funds. The amount of monies misappropriated was approximately $5,000. The hearing panel considered four previous Law Society of British Columbia decisions where there was an element of either misappropriation or questionable fee billing practices that did not result in disbarment [*Law Society of BC v. Long*, (*Discipline Case Digest*, 89/2), *Law Society of BC v. Andres-Auger*, (*Discipline Case Digest*, 94/11), *Law Society of BC v. Ranspot*, (*Discipline Case Digest*, 97/9) and *Law Society of BC v. Payne*, 1999 LSBC 44].

[33] The panel in *Hammond* noted that, in all instances of misappropriation that did not lead to disbarment, there were exceptional circumstances. In Mr. Hammond's case, the panel concluded that there was no evidence of depression, substance abuse issues or any mitigating circumstances and that the panel had no information as to his intent in misappropriating funds. The hearing panel disbarred Mr. Hammond after making the following comment in para. 38:

> … The moneys taken by this device amounted to a direct misappropriation of client's money and for those acts, there is but one penalty outcome, absent extraordinary extenuating circumstances. We have noted above the absence of extenuating circumstances. We particularly note that the argument "that the magnitude of the misappropriation could not have a meaningful impact on the financial difficulties facing the member" is of no persuasive value. It is surely the case that the test of whether a misappropriation is worthy of sanction is not based upon the extent to which the outcome of the theft will improve the plight of the thief.

[34] In *Law Society of BC v. Gellert*, 2014 LSBC 05, the lawyer misappropriated a total of $14,486.61 of monies held in trust for 31 clients. The amounts involved ranged from $0.01 to $5,200 and occurred over a span of more than two years from March 2008 to September 2010. Most of the transactions involved cancelling a stale-dated trust cheque made out to a client, after which the amount was paid either to the lawyer's firm or a company operated by his wife. The misappropriations were discovered as a result of a routine compliance audit by the Law Society. At para. 36, the panel in *Gellert* described the purpose of disciplinary proceedings as follows:

> The primary purpose of disciplinary proceedings, including any disciplinary action imposed, is not to punish the Respondent but rather to protect the public and maintain its confidence in the legal profession. … This overarching goal is reflected in s. 3 of the Act, which mandates the Law Society to "uphold and protect the public interest in the administration of justice."

[35] In paras. 43 and 44, the panel in *Gellert* described the circumstances in which disbarment is appropriate, as follows:

> Granted, disbarment is the most serious penalty available, and will often have a drastic impact on many aspects of a lawyer's life, including his or her economic well-being, sense of self and reputation in the community.
>
> Yet this sanction is usually imposed for deliberate misappropriation from a client – almost always where the amount is substantial *(Harder,* para. 9; MacKenzie, *Lawyers and Ethics: Professional Responsibility and Discipline*, loose-leaf (Toronto: Carswell, 1993), p. 26-1) – because in such cases disbarment is usually the only means of fulfilling the goal of protecting the public and preserving public confidence in the legal profession. Deliberate misappropriation of funds is among the very most serious betrayals of a client's trust and constitutes gross dishonesty. Disbarment absolutely ensures no further recurrence of such conduct on the part of the lawyer. It also promotes general deterrence *(McGuire v. Law Society of BC*, 2007 BCCA 442, para. 15; *Goulding,* 2007 BCSC 39, para. 17; *Harder,* para. 57). And disbarring a lawyer who has deliberately misappropriated client funds is usually the only way to maintain public confidence in the legal profession.

[36] After considering the amount of money involved, that the misappropriation occurred over a period of almost three years and that the respondent's professional conduct record was a particularly aggravating factor, the hearing panel in *Gellert* concluded the only appropriate disciplinary action in the circumstances was disbarment and they disbarred the lawyer.

[37] In *Law Society of BC v. Schauble*, 2009 LSBC 32, the lawyer was found to have professionally misconducted himself by misappropriating funds from his law firm. The panel found that the respondent had taken fees from billings to clients for himself rather than sharing them with his firm and that he did not honestly believe that he was entitled to do so and that he knowingly and intentionally misappropriated those funds. At the time of the hearing, the respondent had been called to the bar in British Columbia for ten years and to the bar in Alberta eight years before that, and he had no prior professional conduct record. He provided 65 supporting letters that the panel described as glowing character references.

[38] Counsel for the Law Society in *Schauble* submitted the appropriate penalty would be a suspension in the range of six to nine months and costs in the amount of $32,000, while counsel for the lawyer submitted that the appropriate penalty would be a fine and costs that, in the aggregate, would not exceed $12,000. After concluding that misappropriation from one's firm was slightly less serious than misappropriation of a client's funds, the panel suspended the lawyer for three months and awarded costs in the amount of $32,000.

[39] In *Law Society of BC v. Pham*, 2015 LSBC 14, the lawyer made a conditional admission of professional misconduct and consented to disciplinary action consisting of a suspension of two months and costs in the amount of $1,800. There were eight separate incidents of professional misconduct. Two consisted of issuing accounts to clients for fees for services that were not performed and withdrawing funds from trust to pay those accounts in order to "clean up the trust account." Five consisted of billing clients either for disbursements not actually incurred or in amounts that exceeded the actual amount of a disbursement, either by adding an administrative "mark-up" or basing the amount billed for disbursements on an estimate. One consisted of improperly recording retainer funds to the wrong client ledger and preparing a fictitious letter and invoice in support of the withdrawal of funds from trust.

[40] The two acts of professional misconduct that consisted of billing for fees where no services were performed related to cheques issued by the lawyer to two clients, one in the amount of $1,508.10 and the other in the amount of $913.77. In both cases the client did not cash the cheque, and it became stale-dated. In the lawyer's words, to "clean up the trust account to finally get the funds out of trust," in each case he cancelled the cheque and billed the client for the amount of the stale-dated cheque. Each bill was paid with the monies that were returned to trust when the stale-dated cheque was cancelled.

[41] With respect to the five incidents involving billings for disbursements not incurred, or that exceeded disbursements incurred, all related to the purchase of title insurance or the cost of obtaining insurance binders. They included charging for title insurance that was not purchased in the amounts of $495, $165.58, $812, $1,658, $1,684.50 and $797.85. They also included overbilling for insurance binders in the amounts of $115, $129.80 and $60.

[42] With respect to the final incident of professional misconduct, the lawyer billed one client $3,640 for services performed for a second client and not for the client who was billed. The lawyer paid his bill with monies held in trust for the client who was billed.

[43] The lawyer's conditional admission and his consent to the disciplinary action of a two-month suspension and costs in the amount of $1,800 were accepted both by the Discipline Committee and the hearing panel in *Pham*. In reaching its decision, the panel, after referring to factors described in *Law Society of BC v. Ogilvie*, 1999 LSBC 17, gave the following reasons for accepting the proposed disciplinary action at paras. 92 to 95:

> Of the *Ogilvie* factors, we are particularly mindful of the need to ensure the public's confidence in the integrity of the profession. For that reason, the elements of dishonesty and lack of integrity displayed by the Respondent's conduct militate in favour of the proposed suspension. That is true both in respect of the Respondent's dishonesty in the excess of the fees billed and the improper billing of disbursements, as well as the fictitious letter and invoice created to avoid the payment of the TAF.
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> That conduct, however, is somewhat mitigated by the Respondent's co-operation with the Law Society, both in respect of the compliance audit that gave rise to the citation as well as the admission and proposed disciplinary action in this proceeding. In our view, together, that co-operation and admission indicate that the Respondent has learned from these proceedings and is not likely to repeat the conduct in the future.
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> While the dishonesty and lack of integrity may have otherwise warranted a suspension of more than two months, we take note that the effect of a two month suspension on a sole practitioner will not be inconsequential. Not only will the suspension likely have a financial impact on the Respondent, he will also have to notify his clients and incur costs to have someone maintain his practice during the period of the suspension.
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> We are confident that, together with the ongoing obligation to produce the Accountant's Report to the Law Society, the imposition of the two-month suspension will serve the important function of rehabilitation and ensuring public confidence in the disciplinary process.

[44] In *Law Society of BC v. Ali*, 2007 LSBC 57, the lawyer misappropriated trust funds over a period of two years from six clients. Although the lawyer expressed regret for "the many mistakes" she had made and, by the time of the hearing, had ceased to be a member of the Law Society for failing to pay her fees, no reasonable explanation was given by her for the misappropriation of funds. The lawyer did not participate in the hearings either on facts and verdict or on penalty. The panel heard no evidence and received no explanations for the lawyer's conduct and had no information from which it could draw comfort that the conduct would not occur again. The panel was also unable to assess the possibility of remediation or rehabilitation of the lawyer. The panel concluded that, as a result of lacking any such evidence, disbarment was necessary to protect the public interest, maintain the public trust and maintain the reputation of the profession. At para. 30, the panel quoted the following passage from *Lawyers and Ethics* by MacKenzie:

> It would be a mistake, however, to assume that disbarment is a penalty reserved for cases that combine the worst imaginable offence with the worst imaginable offender. In cases involving fraud or theft, in spite of evidence of prior good character and financial or other pressures, lawyers are almost certain to be disbarred. In one such case, a discipline hearing panel held that "disbarment is as much required for the lawyer who throws away a hard-earned reputation for integrity as it is for the scoundrel who caps a disreputable career with more of the same." Thus the profession sends an unequivocal message in the interest of maintaining public trust and the reputation of the profession.

[45] In *Law Society of BC v. Faminoff*, 2015 LSBC 20, the lawyer did not misappropriate any monies but was found to have professionally misconducted himself by preparing and back-dating 44 statements of account with the intention of misleading the auditor conducting a Law Society compliance audit. The lawyer was also guilty of several breaches of the Rules with respect to monies held in trust for clients and breached undertakings he gave to the Insurance Corporation of British Columbia. Although there was no misappropriation, the disciplinary action consisted of a suspension of two months and costs of $8,430.

[46] The panel in *Faminoff* considered several authorities cited to them regarding disciplinary action and, although the panel found that they were helpful and that they provided some guidance in context for assessing the appropriate disciplinary action, the panel also found that there was a perplexing range of disciplinary action in those authorities. The panel stated the following at para. 80:

> In the Panel's view, a decision on disciplinary action includes a review of authorities, but must in the end be grounded on the particular facts of each case and on the experience and common sense of the hearing panel.

We adopt that approach in this case.

[47] In *Law Society of BC v. Lail*, 2012 LSBC 32, the lawyer intended to resign from the law firm he was employed by and, in preparation for his departure, he billed 24 clients for amounts that were equal to the balances held in trust for those clients and then arranged for those accounts to be paid with the monies held in trust. As with Ms. Sas, Mr. Lail took no steps to cause any of the accounts to be delivered to the clients before the bills were paid with monies held in trust, and none were delivered before being paid with trust funds. Similar to several bills that were the subject of this inquiry, many of his bills were incomplete and lacked addresses or complete client names.

[48] One of the 24 bills that were the subject of *Lail* was for $750 billed to client C Inc. and paid from monies held in trust for C Inc. when no services had been performed for C Inc. The lawyer believed that C Inc. was related to J Co., another client of the firm, for which services had been performed that were billable but for which no monies were held in trust. C Inc. did not consent to Mr. Lail using the monies held in trust for it to pay the obligation of J Co.

[49] The lawyer made a conditional admission that his conduct in paying bills with monies held in trust without first delivering bills to his client and his improper billing of C. Inc. and paying the bill with monies held in trust for C. Inc. amounted to professional misconduct. He consented to disciplinary action consisting of a fine of $3,500 and costs in the amount of $2,000. The admission and proposed disciplinary action were accepted by the Discipline Committee and approved by the hearing panel.

[50] The Law Society submits we should be guided by the following comments of the Master of the Rolls at para. 16 of the decision of the Court of Appeal of England and Wales in *Bolton v. Law Society*, [1994] 2 All ER 286:

> … It often happens that a solicitor appearing before the Tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem bis (sic) reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. Thus it can never be an objection to an order of suspension in any appropriate case that the solicitor may

> be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely to be, so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.

[51] With respect to what weight we should give to the 46 letters of support and references provided by Ms. Sas, counsel for the Law Society referred us to the decision of the Benchers on review in *Hordal*. In *Hordal*, the hearing panel had determined the lawyer had professionally misconducted himself by breaching an undertaking and inducing another lawyer to deliver a release of mortgage by making false representations. The hearing panel had imposed a reprimand, a fine of $12,500, a suspension of two months and ordered him to pay costs of $5,000. The Benchers increased the period of suspension to six months. At paras. 68 and 69, the Benchers stated:

> We note that this Respondent produced at the Hearing an unprecedented array of letters of support from his colleagues at the Bar in the community in which he practices. The support was characterized as coming from virtually every lawyer of significance in the community in which this member conducted his practice. It is also true that these letters of support were generated from members of the Bar who were fully apprised of the circumstances of the Respondent's misconduct. It is clear that this significant outpouring of support for the Respondent had a bearing upon the Hearing Panel as well it should have done.
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> It is however improper to confuse popularity with probity. Most letters of support noted that this conduct was out of character for this Respondent. The apparent inconsistency of that observation appeared to be lost on many of the members providing letters of support. They were faced with two essentially identical and concurrent events of misconduct within twelve months of each other, and in those circumstances it must be difficult to suggest that this conduct is out of character. It is clear that this is a very popular member of the community Bar in which he practices. It is however also true that he has significantly impaired the reputation of the legal profession in that community by this conduct. That misconduct must be identified, criticized and penalized in an appropriate manner.

[52] Although not referred to by either counsel at the hearing with respect to disciplinary action, the *Bencher's Bulletin* recently published in the Fall of 2015 as No. 3 summarized a conduct review that dealt with conduct that, in certain aspects, appears to be somewhat similar to Ms. Sas' conduct in dealing with monies held in trust for her clients. The summary published in the *Bencher's Bulletin* is as follows:

> During a compliance audit, it was discovered that a lawyer transferred several small unclaimed trust balances to his firm's general account, contrary to then Law Society Rule 3-56(1) (now Rule 3-64(1)).
>
> A conduct review subcommittee advised the lawyer that, even though the amounts of money were small and it was difficult, time-consuming, and expensive to deal with those funds properly, it was his obligation as a lawyer to do so.
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> The lawyer acknowledged the impropriety of his conduct and assisted in the investigation. He did not seek to make excuses but noted that, at the time of the improper transfers and invoices, he was experiencing considerable stress due to his wife's illness.
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> The audit identified 31 improper transfers and, after undertaking a review of all files, the lawyer identified and self-reported 18 additional matters. He promptly rectified all 49 errors by returning the funds to the proper parties.
>
> The lawyer has implemented new procedures at his office that will assist him in returning small trust balances to the proper parties with fewer administrative difficulties. He now requires clients to provide the details of their bank accounts so that the funds can be transferred to their accounts directly. Many of the trust balances resulted from clients failing to cash the cheques he sent to them returning small amounts left in trust. (CR 2015-14)

[53] For several years, Law Society hearing panels and review boards have quoted, with approval, paras. 9 and 10 of the hearing panel in *Ogilvie* and have used the applicable factors set out in para. 9 to determine what disciplinary action is appropriate. They are reproduced below:

> 9. Given that the primary focus of the *Legal Profession Act* is the protection of the public interest, it follows that the sentencing process must ensure that the public is protected from acts of professional misconduct. Section 38 of the *Act* sets forth the range of penalties, from reprimand to disbarment, from which a panel must choose following a finding of misconduct. In determining an appropriate penalty, the panel must consider what steps might be necessary to ensure that the public is protected, while also taking into account the risk of allowing the respondent to continue in practice.

10. The criminal sentencing process provides some helpful guidelines, such as: the need for specific deterrence of the respondent, the need for general deterrence, the need for rehabilitation and the need for punishment or denunciation. In the context of a self-regulatory body one must also consider the need to maintain the public's confidence in the ability of the disciplinary process to regulate the conduct of its members. While no list of appropriate factors to be taken into account can be considered exhaustive or appropriate in all cases, the following might be said to be worthy of general consideration in disciplinary dispositions:

a) the nature and gravity of the conduct proven;

b) the age and experience of the respondent;

c) the previous character of the respondent, including details of prior discipline;

d) the impact upon the victim;

e) the advantage gained, or to be gained, by the respondent;

f) the number of times the offending conduct occurred

g) whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;

h) the possibility of remediating or rehabilitating the respondent;

i) the impact on the respondent of criminal or other sanctions or penalties;

j) the impact of the proposed penalty on the respondent;

k) the need for specific and general deterrence;

l) the need to ensure the public's confidence in the integrity of the profession; and

m) the range of penalties imposed in similar cases.

CONSIDERATION OF THE *OGILVIE* FACTORS

[54] The factors identified by the panel in *Ogilvie* as being relevant to what disciplinary action should be taken are neither exhaustive nor are they necessarily applicable in every case. Many panels have, however, found them to be a useful framework for their analysis of what disciplinary action is appropriate, and so do we.

[55] Counsel for both the Law Society and Ms. Sas referred extensively to the *Ogilvie* factors in making their submissions as to what disciplinary action is appropriate.

Nature and gravity of the conduct

[56] Knowingly taking monies from someone else without their permission is wrong at all levels. A member of the legal profession who misappropriates client funds betrays the fundamental precepts of trust and honesty underlying the legal profession.

[57] Misappropriation of trust funds from a client by a lawyer can never be tolerated or excused, and counsel for both the Law Society and Ms. Sas agree that such conduct is extremely serious. The Law Society submits that failing to send bills to her clients before paying those bills with monies held in trust is also serious. Counsel for Ms. Sas, however, urges us to take into account that the failure to send bills to those clients occurred not long after Ms. Sas had lost the services of her long time and experienced bookkeeper when, with respect to the March 2011 billings, a new and inexperienced bookkeeper was generating the bills and, in August 2011, by a second newly hired bookkeeper.

[58] Counsel for the Law Society submits that, although monies of several clients were involved, the individual amounts were not substantial and the total misappropriated from 23 clients was less than $2,000. Counsel for the Law Society concedes that the monies that were misappropriated were taken by Ms. Sas from her clients to eliminate the amounts held in trust and to clean up the accounting records relating to her previous sole practice and that the amounts were not taken to enrich herself.

[59] We are satisfied that, when Ms. Sas wrongfully took approximately $1,947 from 23 of her clients and did not send them bills, she did not do so to enrich herself. Instead, her primary motive was to clean up the accounting records relating to her sole practice and to wind up that practice. She did, however, stand to gain a significant benefit by paying these monies to herself when she was not entitled to receive them because that disposition was expedient and reduced the inconvenience and cost of dealing with those monies in an appropriate and lawful manner.

[60] She could have taken efforts to locate her clients for the purposes of refunding the monies held in trust, which they were entitled to, or where appropriate, she could have made an application to pay the monies to the Law Society as unclaimed trust funds. She chose, however, to do neither in order to reduce the inconvenience and cost of dealing with the trust funds properly. By making this choice, Ms. Sas took advantage of her clients for whom she held monies in trust and wrongfully deprived them of these monies.

Age and experience of the respondent

[61] At the time her professional misconduct occurred, Ms. Sas had been practising as a lawyer for almost 22 years and was a very experienced and capable lawyer and a leader in the field of immigration law. She was a bencher of the Law Society at the time; she knew what her obligations were with respect to monies held in trust for her clients and, as she acknowledged in her testimony, was fully aware of the unclaimed trust monies provisions of the Act and that she could have taken advantage of those.

[62] Ms. Sas was not unfamiliar with the rules as they relate to the management of trust accounts. On the contrary, she was well versed in the protocols governing client trust, having drawn on the necessary expertise over years to build the requisite systems within her practice to manage such accounts, and a nearly 21-year practice in the same field ought to have yielded a better understanding of what constitutes acceptable conduct by a lawyer.

[63] The Law Society submits that Ms. Sas' age and experience are aggravating factors, and we agree.

Previous character and prior discipline

[64] Ms. Sas does not have any prior conduct record. We are satisfied from the evidence we heard, including the 46 letters of reference we received, that Ms. Sas' previous character, prior to her professional misconduct in 2011, was unblemished. Ms. Sas was an excellent lawyer with an enviable record both as counsel and respecting her contributions to the legal professional and society generally.

[65] Her prior good character and lack of conduct record are significant mitigating factors.

Victim impacts

[66] The Law Society concedes that there was no evidence that the misappropriation of trust funds from 23 clients or the failure to send bills to clients before paying those bills with monies held in trust had any impact on Ms. Sas' clients. All monies that Ms. Sas misappropriated were refunded or otherwise credited to the clients from whom they were taken no later than November or December 2012, although the clients from whom she misappropriated trust funds were deprived of those funds for, in most instances, approximately 18 months.

Advantage gained

[67] While Ms. Sas did obtain a financial advantage for a period of up to 18 months from her misappropriations, this advantage was limited to an amount of less than $2,000 and was not significant. We are satisfied this advantage did not motivate her to pay trust monies to herself when she was not entitled to do so. Instead, her motivation was administrative convenience. She did obtain a significant advantage as a result of her misappropriations. She deliberately decided not to send bills to clients before paying them with trust monies because this was more convenient and resulted in a saving of both her time and the staff cost that would have been incurred to deal properly with the trust monies and billings. We made a finding of fact that Ms. Sas was motivated to deal with outstanding files and trust monies before her law corporation's fiscal year end of August 31, 2011 to avoid the time and money that would be expended in carrying them into another fiscal year.

The number of occurrences

[68] Counsel for Ms. Sas points out that the professional misconduct essentially occurred on only two occasions. These were on three separate days during March 2011 and on one day in August 2011. He submits that Ms. Sas had, at that time, been in practice for 21 years with no prior problems, and he described her as a lawyer who was "not a frequent flyer" as that metaphor applies in the context of disciplinary encounters with the Law Society. Counsel for the Law Society submits that, although the professional misconduct occurred over a very short period of time, there were several separate incidents of the misconduct, with monies being misappropriated from 23 clients and 43 bills being paid with monies held in trust for clients without bills being sent to the clients. Counsel for the Law Society submits the number of separate incidents of misconduct is an aggravating factor.

[69] We agree the number of clients involved, particularly with respect to the misappropriation of trust monies, is an aggravating factor. We also agree that the fact the incidents of misconduct occurred over a short period of time on essentially two occasions is a mitigating factor, especially since all of the incidents related to a single objective, which was the file cleanup and winding up of Ms. Sas' practice as a sole practitioner. On balance we have concluded the mitigating aspects of the limited duration and sole objective significantly outweigh the aggravating aspect of the number of clients involved.

Acknowledgement of misconduct and steps taken to redress the wrong

[70] Ms. Sas, when initially responding to queries made by the Law Society at the time the compliance audit was conducted in 2012, and thereafter, has acknowledged that she is ultimately responsible for how monies held in trust for her clients were dealt with and for how those clients were billed. She denied that she had any personal knowledge at the time that monies were taken and paid to herself when she was not entitled to receive those monies or that bills had not been sent to clients. In her testimony at the hearing of this matter, and in her submissions with respect to disciplinary action, she continued to accept that she is ultimately responsible for what occurred but placed most of the blame on her staff. She has never acknowledged to this Panel, either in her evidence or through submissions made on her behalf, that she took monies held in trust for her clients when she knew or ought to have known she was not entitled to do so, or that she knew when she paid bills with monies held in trust for clients that bills had not been sent to those clients.

[71] Ms. Sas clearly knew not later than May 18, 2012 that clients had been billed for disbursements that had not been incurred, that monies held in trust for clients had been paid to her law corporation without the authority of those clients when they should not have been paid, and that bills had been paid from monies held in trust for several clients when bills had not been sent to them. Despite this knowledge, she took no steps to rectify any of these matters until late November 2012. This delay is an aggravating factor.

[72] Ms. Sas did eventually, in late November and early December 2012, make payments to, or for the benefit of, all of those clients from whom she had misappropriated trust monies and also sent bills to all of her clients whose monies had been taken from trust in 2011 without bills having being sent to them. These actions taken by Ms. Sas are mitigating factors.

Remediation of rehabilitation of the respondent

[73] The professional misconduct and breaches of the Act and Rules committed by Ms. Sas were isolated events that were not consistent with the previous conduct of Ms. Sas or her subsequent conduct. Ms. Sas submitted evidence, both at the hearing held on facts and determination and at the subsequent hearing on disciplinary action, that she has taken steps to ensure that such misconduct will not be repeated.

[74] We do not believe that disciplinary action needs to be taken to ensure the remediation or rehabilitation of Ms. Sas.

Impact on the respondent of criminal or other sanctions or penalties

[75] The Law Society submits that there has been no impact on Ms. Sas of any criminal or other sanctions or penalties.

[76] Counsel for Ms. Sas submits that, even though there have been no criminal or administrative sanctions imposed on Ms. Sas in respect of her professional misconduct, the issuance of the citation and subsequent findings by us as to facts and determination have had a significant impact upon Ms. Sas. As a result of the issuance of the citation Ms. Sas found it necessary to resign as a bencher. After our findings with respect to the facts and our determination were issued Ms. Sas was almost immediately forced by her law firm to resign as a partner. As a consequence, she found it necessary to begin again practising as a sole practitioner, and this has led to increased costs and a loss of income.

[77] We agree with counsel for Ms. Sas that our findings of fact and determination have already had a significant impact on Ms. Sas and that she has already suffered financially, emotionally and professionally as a result of our findings and determination.

Impact of the proposed penalty

[78] Counsel for the Law Society submits that, after taking into account all of the *Oglivie* factors and considering the facts we have found and the determination we have made, disbarment of Ms. Sas is not appropriate. He submits that, instead, the appropriate disciplinary action should be a suspension for a period of time of between three and six months.

[79] Counsel for Ms. Sas also submits that disbarment would be inappropriate but concedes that some period of suspension is likely to be imposed. He submits that the appropriate disciplinary action would be a suspension of one month coupled

with an imposition of conditions on her practice relating to her accounting system with a report either annually or semi-annually being submitted to the Law Society by a Certified Professional Accountant certifying that Ms. Sas is in compliance with the Law Society's rules with respect to her trust and general accounting.

[80] Counsel for the Law Society acknowledges that a suspension within his suggested range of three to six months will have a significant impact both on the practice of Ms. Sas and on her personal life.

[81] Counsel for Ms. Sas submits that, after taking into account the effect these proceedings have already had on Ms. Sas, a suspension of one month with conditions relating to compliance with the Law Society's accounting requirements are appropriate and will have a significant impact on Ms. Sas professionally, financially, emotionally and personally. Counsel for Ms. Sas submits that, if a longer period of suspension is imposed, it may destroy Ms. Sas' practice and could result in her being unable to continue to practise. He submits that, if a suspension in the range of one month is imposed, this will enable Ms. Sas to recover from the suspension and continue practising once the period of suspension has been completed.

[82] We agree that a suspension in the range proposed by counsel for the Law Society would have an extremely serious impact on Ms. Sas and could conceivably result in her being unable to return to practice, although we think it is more likely that she would be able to continue to practise even after being suspended for a period of time that is toward the high end of the range suggested by counsel for the Law Society.

Specific and general deterrence

[83] We think it is highly unlikely that Ms. Sas will ever again misappropriate monies held in trust for clients or pay a client's bill from monies held in trust without first sending them a bill. There is therefore no need to take any disciplinary action having the objective of deterring Ms. Sas from future similar misconduct.

[84] Dealing with small amounts of monies held in trust for clients who cannot be located, particularly when a trust cheque refunding these amounts to clients has not been cashed and becomes stale-dated, is problematic for lawyers. Lawyers may be tempted to take unacceptable shortcuts in dealing with trust monies in such situations, particularly where efforts to locate a client or to make a report to the Law Society in support of an application to pay monies to the Law Society as unclaimed trust funds can be time-consuming and expensive for the lawyer and there is little or no likelihood the lawyer will recover costs incurred by doing so. In

our opinion, it is necessary for a message to be sent to all lawyers that, even though it may be inconvenient and expensive to do so, they cannot take monies held in trust for clients unless they are properly payable to the lawyer and a bill has been sent to the client.

[85] It is therefore important that this Panel's decision act as a deterrent to lawyers who may be tempted to improperly take monies held in trust for clients for administrative convenience. Disciplinary action in this case must send a clear message to the legal profession that monies held in trust for clients can only be dealt with in accordance with the Act and Rules.

Need to ensure public confidence in the integrity of the profession

[86] Protection of the public and its interest, particularly clients of lawyers, is of paramount importance in this case, as it is in every case where a lawyer has committed professional misconduct by misappropriating monies held in trust for clients.

[87] The public interest requires that confirmation be sent to the legal profession that misappropriation, even of relatively small amounts and even where the motivation is administrative convenience and not personal enrichment, cannot, and will not, be tolerated.

[88] Almost as important as taking steps to prevent future misappropriations of trust funds from clients is the need to assure members of the public, particularly clients of lawyers, that the Law Society will take appropriate disciplinary action whenever a lawyer takes monies held in trust for a client when they are not authorized to do so. The Law Society must demonstrate to members of the public that it will not treat such misconduct lightly.

Range of penalties imposed in similar cases

[89] Counsel for the Law Society submits that the professional misconduct committed by Ms. Sas is singular in many ways and is not similar to any of the authorities cited by counsel. Counsel for Ms. Sas agrees for the most part, but submits the most similar case is that of *Pham*.

[90] Relying on the authorities described in this decision, both counsel submitted that the appropriate disciplinary action is a suspension and not disbarment, although counsel do not agree on how long the suspension should be. Counsel for Ms. Sas submits one month is appropriate, and counsel for the Law Society submits the period of time should be from three to six months. We agree that a review of

previous decisions with respect to disciplinary action indicate that disbarment in this case is not warranted and that an appropriate disciplinary action would be a suspension for a period of time.

ANALYSIS

[91] As noted by the panel in *Faminoff*, a decision on disciplinary action should include a review of the authorities but must, in the end, be based on the particular facts of each case and the experience and common sense of the hearing panel.

[92] We start with the proposition that misappropriation of monies held in trust for clients can never be tolerated, notwithstanding the motivation of the lawyer. This is so even though, as here, the amounts involved were not substantial, the lawyer gained very little financial advantage and all amounts taken were fully repaid within a period of 18 months.

[93] The conduct of Ms. Sas was very serious. She misappropriated trust monies from her clients and that misconduct is inexcusable. We have concluded that any disciplinary action must protect the public and its interest, both by deterring lawyers from misappropriation in similar circumstances and by assuring clients of lawyers and other members of the public that appropriate disciplinary action will be taken in such circumstances. We have also taken into account the other factors in *Ogilvie* referred to by counsel. Overall, after considering all of those other factors, we have concluded that those that are mitigating significantly outweigh those that are aggravating.

[94] We believe there are two important considerations in deciding what the appropriate disciplinary action ought to be in this case. One is the protection of the public by deterring other lawyers from engaging in similar misappropriations when they may be motivated to do so by administrative convenience. The other is to assure the public that the Law Society will protect clients of lawyers against misappropriation of monies held in trust for them.

[95] In our view, the actions of Ms. Sas were serious enough that a suspension for a period of one month would not be sufficient to protect the public interest and provide the assurance the public requires. That protection and assurance can only be provided by imposing a longer period of suspension. In our view, the appropriate length of time of a suspension would be four months.

[96] Based on our findings that no disciplinary action needs to be taken to remediate or rehabilitate Ms. Sas, an order imposing the conditions suggested by her counsel is unnecessary.

COSTS

[97] The Law Society seeks costs of $42,203.06 based on the following bill of costs:

Schedule 4 Tariff Items – At Unit Value of $100 per unit

Item	Description	Range	Units Claimed	Amount Claimed
1.	Preparation/amendment of Citation, correspondence, conferences, instructions, investigations or negotiations after the authorization of the Citation to the completion of the discipline hearing, for which provision is not made elsewhere	1 to 10	7	$700.00
3.	Disclosure under Rule 4-34	5 to 20	15	$1,500.00
8.1	Preparation of Notice to Admit	5 to 20	12	$1,200.00
10.	All process and communication associated with contacting, interviewing and issuing summons to all witnesses	2 to 10	7	$700.00
13.	Attendance at hearing, for each day of hearing, including preparation not otherwise provided for in tariff *FD Hearing: 7 days* *DA Hearing: 1 day*	30 per day	240	$24,000.00
14.	Written submissions, where no oral hearing held *Submissions Re: Panel Composition*	5 to 15	5	$500.00
Subtotal				**$28,600.00**

Disbursements (Rule 5-11(5))

Description	Amount Claimed

Court Reporter Fees – Attendance at hearing	
• FD Hearing: May 14, 2014	$404.25
• FD Hearing: June 23 – 27, 2014 (4 ½ days at $420 per day)	$1,890.00
• Cont'd FD Hearing: September 15, 2014 (1 day at $420 per day + $126.00 fee for attendance after hours)	$546.00
• Cont'd FD Hearing: September 16, 2014 (1 day at $420 per day + $63.00 fee for attendance after hours)	$483.00
• DA Hearing: September 24, 2015 (1 day at $420 per day)2	$420.00
Courier	$123.00
Agency Fees	$476.49
Transcripts	
• Transcripts of Proceedings (June 23 – 27, 2014)	$5,655.84
• Transcripts of Proceedings (September 15 – 16, 2014)	$3,604.48
Subtotal	**$13,603.06**
Total Fees & Disbursements Claimed:	**$42,203.06**

[98] Counsel for Ms. Sas submits that certain tariff items claimed by the Law Society should not be allowed and that some disbursements should also not be allowed.

[99] He submits there should be a reduction in item 3 for disclosure made under Rule 4-34 where, out of a possible range of 5 to 20 units, the Law Society has claimed 15 units for a total of $1,500. He submits that a very significant portion of the disclosure by the Law Society was accomplished by simply reorganizing the material disclosed by the Respondent to the Law Society through her then counsel and that, in the circumstances, only 5 units should be allowed. Counsel for the Law Society submits that extensive efforts were devoted by it to organizing the documents in a manner by which the Law Society could demonstrate the evolution of Ms. Sas' responses to the Law Society in the course of its investigation and the pattern of her conduct in relation to the closing of her client files. He also submits that disclosure was not limited to information provided by Ms. Sas. We agree that disclosure by the Law Society in this hearing was extensive, and we have concluded that the 15 units claimed for item 3 are appropriate.

[100] Counsel for Ms. Sas also seeks a reduction in item 13 for which the Law Society claimed 30 units per day for eight days of hearing, which results in a total for this item of $24,000, on the grounds that, during the seven days that related to the findings of fact and determination by the Panel, the Law Society did not succeed in proving the allegations contained in paragraph number 4 of the citation that she breached Rule 3-59 or Rule 3-62 in force at the time. He submits that it would be appropriate to reduce the amount claimed for item 13 by one-third, which would result in a reduction of $8,000.

[101] Paragraph number 3 of the citation alleged that, in March 2011, Ms. Sas authorized withdrawal of client trust funds to pay fees and disbursements to some or all of 40 clients identified in the citation without delivering a bill to the person charged contrary to section 69 of the Act or without preparing and immediately delivering a bill to the client contrary to Rule 3-57(2) and that such conduct constituted professional misconduct or a breach of the Act or Rules. We have found that Ms. Sas did commit the acts and omissions alleged in that count and that by doing so she breached both the Act and the Rules and was also guilty of professional misconduct.

[102] Paragraph number 4 of the citation is reproduced below:

> 4. In the alternative to paragraph 3, you failed to retain copies of any bills delivered to clients in relation to some or all of the 40 client invoices identified in Schedule C contrary to Law Society Rules 3-59 or 3-62.
>
> This conduct constitutes professional misconduct or breach of the Act or rules pursuant to s. 38(4) of the *Legal Profession Act*.

[103] Counsel for the Law Society submits that paragraph 4 was included in the citation for two reasons, first because of the response by Ms. Sas to the Law Society in which she stated that invoices had been prepared for all outstanding balances but that she was unable to confirm whether they were in fact delivered to clients and second because of a letter written by her then counsel to the Law Society in December 2012 that stated that, until Ms. Sas received a letter from Law Society questioning whether bills had been sent to clients, she believed that invoices had been sent to every client.

[104] Almost all of the evidence at the hearing on facts and determination that related to whether copies of bills had been retained also dealt with whether or not, and was necessary to establish that, proper bills had not been prepared or signed and delivered to clients, which we found to be the case. Almost no hearing time was spent exclusively on the issue of whether copies of bills had been retained, as alleged in the alternative in paragraph 4 of the citation. We are satisfied that the $24,000 claimed pursuant to item 13 is appropriate and no reduction is justified on the basis that the Law Society failed to establish that Ms. Sas had breached Rule 3-59 or Rule 3-62.

[105] The hearing of this citation was originally scheduled to be heard by a different panel. On the first scheduled day of the hearing it was adjourned without advance notice to the parties because a member of that panel had recused herself that

morning. During submissions regarding the rescheduling of the hearing heard on that day the then chair of the panel raised with counsel the fact that he knew Ms. Sas and had on one occasion attended her house. Counsel were asked to make submissions as to whether the chair of the panel should continue to be a member of the panel, and counsel prepared and filed those submissions. The then president of the Law Society, by way of a memorandum dated May 26, 2014 addressed to both counsel, informed them that, before she had received the submissions and read them, she had already independently decided to replace the former chair of the panel as a member of the panel.

[106] Included as item 14 in the bill of costs submitted by the Law Society is a claim for five of the possible five to 15 units for making written submissions on whether the chair of the panel should be replaced. The total amount claimed for item 14 is $500.

[107] Counsel for Ms. Sas submits that, since the decision to replace the chair of the panel had been made without reading or considering the submissions submitted by counsel, the $500 claimed for item 14 should not be allowed. Counsel for the Law Society submits that it would be appropriate to reduce the number of units awarded for this item. We are satisfied that, in the circumstances, the claim for item 14 should be disallowed in its entirety.

[108] The Law Society's bill of costs includes a disbursement of $404.25 for the attendance of the court reporter for the first day of the hearing scheduled to be heard on May 14, 2014 when that matter did not proceed because a member of the panel announced that a conflict disqualified her from sitting on the panel. Counsel for Ms. Sas submits that Ms. Sas had prepared for and was ready to proceed with the hearing on that day and that the delay caused by recusal of the member of the panel led to expenses incurred by Ms. Sas in connection with the preparation for, and attendance at, that hearing being thrown away. He submits that costs for this disbursement should not be allowed. Counsel for the Law Society concedes that would be appropriate, and we agree.

[109] The Law Society also claims disbursements of $9,260.32 for the preparation of transcripts for the seven days of hearing that were held on June 23 to 27, 2014, inclusive, and on September 15 and 16, 2014. Counsel for the Law Society submits these disbursements were reasonably incurred to ensure the Law Society's submissions accurately captured the state of the evidence, considering the extensive evidence involved the importance of each witness' evidence in relation to Ms. Sas' state of knowledge, and to ensure a full and accurate record, given the credibility

issues raised by the nature of Ms. Sas' defence to the allegations contained in the citation.

[110] Counsel for Ms. Sas submits that transcripts are not an essential requirement for any hearing. He speculates that they were ordered to assist counsel for the Law Society because proceedings were protracted and there was a lengthy adjournment of almost three months from June 2014 to September 16, 2014. He suggests the transcripts of the first five days of the hearing, which were held in June, were likely ordered by counsel for the Law Society to assist him in continuing his cross-examination of Ms. Sas, which had begun in June and was continued in September. Counsel for Ms. Sas submits that ordering Ms. Sas to pay the cost of the Law Society obtaining transcripts in these circumstances would be unfair since, once the Law Society had decided to order transcripts, it was necessary for Ms. Sas to also order and pay for copies of those transcripts.

[111] The Law Society was represented by two counsel at this hearing. All examinations-in-chief of witnesses and cross examinations of witnesses were conducted by Mr. McEwan, as senior counsel. His junior, Ms. Robb, was present at all times and available to take notes of the testimony of witnesses. Under the circumstances, we have concluded that, although transcripts may have assisted counsel for the Law Society in making submissions to the Panel, they were not essential and, since Ms. Sas was also required to pay for her copies of transcripts, it is appropriate that the very substantial disbursement for transcripts not be included in the costs that we will order Ms. Sas to pay.

[112] Counsel for Ms. Sas referred us to Rule 5-11(4) which provides that if, in our judgment, it is reasonable and appropriate to do so, we may order that an applicant or respondent recover no costs or costs in an amount other than that permitted by the tariff in Schedule 4. Counsel for Ms. Sas also submits that Rule 5-11(5) provides for disbursements that are reasonably incurred to be added to the costs payable and that this is permissive. He submits that the expenses incurred to date by Ms. Sas as a result of the citation have been substantial, that she will continue to incur further expenses, that she has few financial resources and that her financial circumstances will become worse as a result of the suspension that will be imposed. He therefore submits that we should exercise our discretion to impose costs in a nominal amount, which he proposes should be $10,000.

[113] Counsel for the Law Society submits that, other than for the reduction in the costs claimed by the Law Society that it has agreed to, we should award the full amount of costs sought and not the lesser nominal amount of $10,000 proposed by counsel for Ms. Sas.

[114] He submits that, overall, the Law Society's bill of costs is reasonable after taking into account the seriousness of her professional misconduct, her financial circumstances, the total effect of the disciplinary action that we will impose and what effect, if any, the conduct of Ms. Sas and the Law Society had on the accumulation of, or reduction in, the amount of costs. These are the factors set out by the hearing panel in *Law Society of BC v. Racette*, 2006 LSBC 29, and followed in several subsequent cases, such as *Law Society of BC v. Xia*, 2014 LSBC 24.

[115] Ms. Sas' misconduct included misappropriating trust monies from her clients. This is misconduct that can never be tolerated or excused and must, by any measure, be considered very serious.

[116] Based on financial statements and other materials submitted by counsel for Ms. Sas, we are satisfied that the revenue she has earned by practising law since being expelled from her law firm has not been substantial. We also appreciate that the period of suspension we will impose will cause her to lose a significant amount of professional income. Ms. Sas did not, however, provide us with any evidence as to what other sources of income she may have or what other assets or resources are available to her.

[117] Ms. Sas has an excellent reputation as counsel in the field of immigration law, and we have no doubt that she will be able to resume her practice after her suspension and that she will be capable in the not-too-distant future of earning a significant amount of income from the practice of law, even as a sole practitioner.

[118] We do not believe that the actions of Ms. Sas or the actions of the Law Society had the result of either protracting or reducing the time required for the hearing.

[119] We are satisfied that the costs claimed, after making the reductions we have concluded are appropriate, are reasonable and that any difficulty Ms. Sas may have in paying these costs can be appropriately addressed through an application for time to pay.

[120] We therefore decline to exercise our discretion to impose a nominal award of costs of $10,000, as proposed by counsel for Ms. Sas.

[121] The total amount of costs claimed by the Law Society is $42,203.06, consisting of $28,600 for tariff items plus $13,603.06 in disbursements. We will disallow $500 on account of the tariff items claimed and $9,664.57 of the disbursements claimed, consisting of the following:

Written submissions, where no oral hearing held, regarding panel composition	$ 500.00
Court reporter fees for facts and determination hearing on May 14, 2014	$ 404.25
Transcripts of proceedings on June 23 to 27, 2014	$ 5,655.84
Transcript of proceedings on September 5 and 16, 2015	$ 3,604.48
Total disallowed:	$10,164.57

[122] After deducting the amounts disallowed, the total costs Ms. Sas will be required to pay the Law Society will be $32,038.49. Given the amount of these costs, and considering Ms. Sas is currently not earning a substantial amount from her practice of law, that she will earn no income from the practice of law during her suspension and that she will incur additional expense in re-establishing her practice, she will be allowed one year after the commencement of her suspension to pay these costs. In the event this time is insufficient, she may apply under Rule 5-12 for an extension of the time to pay.

DISCIPLINARY ACTION

[123] This Hearing Panel makes the following orders:

(a) Ms. Sas will be suspended from the practice of law for a period of four calendar months;

(b) the suspension of Ms. Sas will commence March 1, 2016;

(c) Ms. Sas must pay costs of $32,038.49 to the Law Society on or before March 1, 2017.