Citation Issued: April 20, 2017
Citation Amended: October 19, 2017

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

DANIEL KAR-YAN KWONG

RESPONDENT

AGREED STATEMENT OF FACTS

Member Background

1. Daniel Kar-Yan Kwong (the "Respondent") was called and admitted as a member of the Law Society of British Columbia on January 1, 2013. He was called and admitted as a member of the Law Society of Upper Canada on July 23, 2004.

2. Since his call to the BC bar, and throughout his career, the Respondent practised almost exclusively in the area of immigration law. After his call to the BC bar, the Respondent practised as an associate at a small firm in Vancouver until March 10, 2016. From March 10, 2016 until February 27, 2017, the Respondent practised as a sole practitioner in Vancouver.

3. The Respondent resigned his membership in the Law Society on February 27, 2017 and is now a former member of the Law Society.

Citation and Service

4. The citation in this matter was authorized by the Discipline Committee on April 6, 2017 and was issued on April 20, 2017. The citation was amended pursuant to Rule 4-21(1)(a) on October 19, 2017.

5. The Respondent admits that on April 26, 2017, he was served through his counsel with the citation and waived the requirements of Rule 4-19 of the Law Society Rules 2015.

Attachments

6. Except where otherwise stated, it is agreed in respect of each document attached to this Agreed Statement of Facts that:

    a. it is a true copy of the original document,

    b. it was written or created on the date on the face of the document,

    c. where by the content or nature of the document it was intended to be sent or delivered, that it was sent or delivered on the date it bears on its face and was subsequently received by the intended recipient,

    d. where on its face the document purports to have been written or created under the instructions of the person who signed it or where on its face the document's creation was authorized by the person who signed it, that it was so written, created or authorized,

    e. where the document purports on its face to have been received on a particular date or time, that it was so received, and

    f. it is admitted into evidence for the proof of the truth of the matters recorded in it.

Background Facts

RA and CA

7. In December 2013, RA and CA, a Swiss couple, retained the Respondent to assist them in immigrating to Canada. RA and CA had purchased a wilderness lodge in British Columbia and intended to start a business in, and eventually move to, British Columbia.

8. The Respondent advised RA and CA to apply for a work permit in Canada as an exemption to the Labour Market Impact Assessment process under the "Significant Benefit to Canada" category.

9. On February 12, 2014, the Respondent told RA and CA, by email, that he would aim to submit their applications by the end of February 2014. The Respondent received RA and CA's completed application forms on February 18, 2014.

10. On February 20, 2014 the Respondent issued an account to RA and CA for the services he had rendered in the amount of $3,217.50. The Respondent did not provide a copy of this account to RA and CA. As directed by the Respondent, the account was paid from funds held in trust by the Respondent's employer.

11. On May 9, 2014, RA and CA emailed the Respondent and asked if "the papers" had been filed, and the Respondent replied by email on May 13, 2014 that "the application is indeed in process …" and "it could be a few more weeks, unfortunately". This was not true, as the Respondent had not yet filed the application.

12. By email of August 6, 2014, RA and CA asked the Respondent to prove their application was really in process, stressing the importance of obtaining the work permit for them to operate the wilderness lodge. By email response sent the same day, the Respondent apologized for the delay, and said he expected to hear something soon. It was not true that the Respondent expected to hear something soon, as RA and CA's application had not yet been filed.

13. On August 15, 2014, the Respondent emailed RA and CA and stated:

> A copy of the application material is attached for your records. Apologies for the delay in getting this to you.
>
> You mentioned in your email that you have now signed the sale contract. I was thinking that it would be a good idea to send that in to the visa office, and take the opportunity to inquire about the status and processing of the application.

….

A copy of the application material (dated April 23, 2014), was attached to the email. The Respondent implied in his email that the application had been submitted, when it had not been.

14. On September 8, 2014, the Respondent submitted RA and CA's work permit application.

15. By email dated September 15, 2014, in response to an inquiry from RA and CA about the status of their working permit, the Respondent told RA and CA their application was still in process, and that it could take significantly longer for applications under the "Significant Benefit to Canada" category to be processed than for other types of work permit applications. The Respondent did not reveal to RA and CA that their application had only been filed a week before he sent the September 15, 2014 email.

16. RA and CA's application was refused by Citizenship and Immigration Canada on September 20, 2014. On September 25, 2014, the Respondent notified RA and CA of the rejection of their application and recommended they apply under the Labour Market Impact Assessment ("LMIA") process.

17. On October 28, 2014, the Respondent issued an account to RA and CA in the amount of $1,310 which was paid from funds held in trust, as he directed. The Respondent did not provide a copy of this account to RA and CA.

18. On November 6, 2014, the Respondent sent draft LMIA application forms to RA and CA and requested they provide the required supporting documents.

19. On December 29, 2014, the Respondent issued an account to RA and CA in the amount of $2,000 which was paid from funds his employer held in trust, as he directed. The Respondent did not provide a copy of this account to RA and CA.

20. On January 23, 2015, the Respondent emailed RA and CA and told them he was working on the LMIA application. By email dated April 20, 2015, when RA and CA asked about the status of their application, the Respondent told them:

> Hi [CA],
>
> Sorry for the delayed reply. I'm expecting a decision in the LMIA application in June. I'll have some new forms for you to sign later this week.

The Respondent's email was misleading because it implied the application had already been submitted, when it had not.

21. By email dated May 7, 2015, RA and CA asked the Respondent about the new forms he mentioned in the April 20, 2015 email. By email dated May 13, 2015, the Respondent replied that if the LMIA and work permits were not issued by the time RA and CA were travelling to Canada on May 25, 2015, he would send them a document package to assist them in obtaining entry into Canada. The Respondent did not tell RA and CA in this email that he had not submitted the LMIA application.

22. By email dated May 22, 2015, the Respondent provided RA and CA with the LMIA application forms, which they signed and returned to the Respondent by email on May 26, 2015.

23. RA and CA arrived in Canada in late May 2015, and did not require a work permit to enter Canada because they were entitled to enter as visitors.

24. By email dated August 10, 2015, RA and CA emailed the Respondent and asked if he had any news about their working permits. Following the email, the Respondent spoke with RA and CA by telephone but he did not tell them that he had not yet submitted their LMIA application, and allowed them to believe the application was "in process". He asked RA and CA for additional supporting documents, which he intended to submit with the LMIA application. RA and CA provided the requested documents on or about September 8, 2015.

25. During October 2015, RA and CA asked the Respondent to speak to their local MP, in the belief this could assist in obtaining the LMIA permit. The Respondent told RA and CA he would contact their MP, but he did not. RA and CA emailed the Respondent on October 23, 2015 and expressed concern that they had not yet received the working permits. The Respondent replied by email dated October 27, 2015 that the application could take a long time, especially if it "is outside of the usual employer/employee situation". The Respondent did not tell RA and CA that their application had not yet been submitted.

26. The Respondent says he contacted Employment and Social Development Canada ("ESDC") (otherwise known as Service Canada) on November 20, 2015 to discuss RA and CA's application. RA and CA and the Respondent exchanged emails dated November 20, 2015 and in that email exchange, the Respondent told RA and CA he had contacted ESDC two days previously, and was told a program officer would contact him within ten days. The Respondent did not tell RA and CA their application had not been submitted.

27. On November 23, 2015, the Respondent replied to an email RA and CA sent him in September, wherein RA and CA provided information on the work and improvements they had completed on the wilderness lodge. In his email, the Respondent told RA and CA the information they provided "would be helpful in a new significant benefit work application".

28. On November 25, 2015, the Respondent emailed RA and CA's updated application forms to sign, which were necessary as ESDC updated their forms in October 2015. RA and CA signed and returned the forms to the Respondent, together with supporting documents, by email on November 27, 2015.

29. RA and CA followed up with the Respondent in December 2015 and by email dated December 18, 2015, the Respondent told them:

> … I'm cautiously optimistic about getting this work permit based on recent communications with Service Canada about the owner/operator category. However, information specific to your

> case has been hard to get. I will forward the planned investment information and again push for an update.

The Respondent did not mention in this email that the application had not yet been submitted.

30. In response to inquiry from RA and CA, by email dated January 15, 2016, the Respondent told RA and CA:

> I do think it's likely that we will hear from Service Canada this month. I'll keep you posted.

The Respondent did not tell RA and CA in this email that their LMIA had not yet been submitted.

31. The Respondent says there were a number of phone calls he had with RA and CA starting in the spring of 2015 wherein he told them their application was in process, when this was not true, because he had not yet submitted it.

TC

32. In February 2014, TC contacted the Respondent's firm about an application under the British Columbia Provincial Nominee Program ("PNP"). If accepted as a nominee under the PNP, an applicant can then apply for permanent residence in Canada.

33. The Respondent met with TC on March 4, 2014 and quoted an estimate of $4,000 plus taxes and disbursements to TC. The Respondent and TC exchanged emails and met several times.

34. On June 30, 2014, the Respondent instructed staff at the firm that a file be opened for TC. TC signed a retainer letter and provided a $2,500 retainer. The Respondent provided an invoice for $2,000 to TC with the retainer letter, in accordance with the terms set out in the retainer letter.

35. In July 2014, the Respondent and TC prepared the PNP application, and the Respondent submitted it on August 8, 2014. The Respondent emailed TC a copy of the completed application form on August 13, 2014.

36. In March 2015, TC's application was approved and a "confirmation of nomination" was issued, with an expiry date of September 6, 2015.

37. On March 31, 2015, the Respondent emailed TC that the next step was to submit the application for permanent residency which would be processed in about eight months, and he described a slight modification to the retainer to pursue this new application.

38. During May and June 2015, the Respondent gathered the documents required for submission with TC's permanent residence application. On Tuesday, June 9, 2015, the Respondent emailed TC and stated he would submit the permanent residence application by Tuesday of the following week. The Respondent did not submit the permanent residence application by Tuesday of the following week as he said he would.

39. On June 22, 2015, TC emailed the Respondent about the permanent residence application. The Respondent replied by email dated June 25, 2015 and stated:

> …
>
> I confirm that the application has been submitted and will scan you a copy shortly.

40. When the Respondent stated to TC in the June 25, 2015 email that the permanent residence application had been submitted, he knew it was untrue. The Respondent did not submit the permanent residence application before the PNP confirmation nomination expired September 6, 2015. The Respondent did not advise TC at any time that the PNP confirmation nomination was set to, and did expire on September 6, 2015.

41. On September 11, 2015, the Respondent contacted the British Columbia PNP to ask for a new certificate of nomination, which was required because the previous certificate had expired. Ultimately the British Columbia PNP rejected the Respondent's request for a new certificate, and the Respondent did not advise TC of his request or its rejection.

42. On November 3, 2015, TC contacted the Respondent to follow up about the permanent residence application, and noted that his work permit was set to expire in four months. On November 4, 2015, the Respondent emailed TC and told him the application was pending with Citizenship and Immigration Canada, even though this was not true because the Respondent had not filed the application.

43. By December 2015, Citizenship and Immigration Canada established a program called "Express Entry" program, an alternative method from the PNP by which application could be made for permanent residence. Without informing TC or receiving instructions from him, the Respondent submitted an "Express Entry Profile" on TC's behalf in December 2015. The Respondent also emailed TC on December 9, 2015 and told him that by the Tuesday following, he would submit an application for an extended work permit and would confirm that with TC.

44. In response to the "Express Entry" application, TC received (through the Respondent) an "Invitation to Apply", which gave him 60 days to apply for permanent residence. The Respondent did not tell TC that he failed to apply for permanent residency through the PNP and was now proceeding through the "Express Entry" program.

45. On January 11, 2016, the Respondent emailed TC and told him that his permanent residence application was "moving along" but neither the permanent residence application nor the extended work permit application had been filed.

46. On February 11, 2016, the Respondent submitted TC's permanent residence application. On February 18, 2016, TC told the Respondent he was being terminated from his employment, and the Respondent emailed TC in response and

said, “I think we should be ok” and did not disclose that he filed an “Express Entry” application, not a PNP application.

47. After TC’s employment was terminated, his former employer reported the termination to the PNP, and sent a letter to TC, who forwarded it to the Respondent. The Respondent emailed TC and told him that he had applied for a bridging open work permit, that TC was eligible under the skilled worker program, and did not require the PNP nomination. The Respondent did not disclose that the PNP nomination had expired.

YD

48. On July 27, 2013, E Consultancy emailed the Respondent about advising one of its shareholders, YD. YD had already received permanent residence status in Canada and wanted to sponsor his wife and son in applications for permanent residence as well. The Respondent was retained by YD on September 3, 2013.

49. YD opted to sponsor his wife and son through the “in-country” application process, which meant that he would be required to remain in Canada, and would be eligible for permission to remain in Canada during the application process, and eligible for a work permit. During the fall of 2013, the Respondent and YD exchanged emails regarding the preparation of the necessary documents for the application. In early December 2013, YD’s sponsor documents were finalized when he visited Canada. In May 2014, YD’s wife’s and son’s documents were finalized.

50. On October 1, 2014, the Respondent paid the application fee to Citizenship and Immigration Canada, but he did not file the applications. By October 13, 2014, the Respondent had everything required to file the applications and led YD to believe the permanent residence applications had been filed on October 13, 2014, when they had not been.

51. The Respondent took steps to file an application to extend YD's wife's and son's visitor status in Canada. An extension of YD's wife's and son's visitor status was granted on March 26, 2015.

52. In response to emails from the client expressing concern about the delay in obtaining the permanent residence status for YD's wife and son, the Respondent emailed YD's wife and assistant on April 28, 2015 and stated:

> Please find attached an excerpt of the permanent residence application. I am also re-sending the Visitor Record documents.
>
> Please carry these documents with you when you travel and only present them to the customs officer if requested to do so.
>
> When asked about your (wifes) purpose of entry, it is to accompany her husband, who is a permanent resident. You have submitted an application for permanent residence, and have maintained valid status. If the officer needs proof of this, then please show him/her the attached documents.
>
> …

The Respondent attached to his email of April 28, 2015, an extract from a false application for permanent residence application that he had prepared, for the purpose of misleading the clients that the permanent residence applications had been filed.

53. On May 26, 2015, the Respondent met with YD and his wife and told them the permanent residence applications had been filed. Between May and November 2015, the Respondent misled YD and his wife when he spoke to them by suggesting the applications were delayed due to processing times when he knew the applications had not been submitted.

54. In November 2015, YD and his wife instructed the Respondent to file an "outland" application for permanent residence, as they understood their previous application filed "in-country" had been delayed. The Respondent obtained the necessary materials to file the "outland" application but did not file the application. By email dated November 26, 2015, the Respondent wrote to YD's

assistant that he would file YD's wife's work permit application the following week, but he did not do so.

55. In reply to an email from YD's wife asking whether she was eligible to apply for a work permit, the Respondent emailed the wife on November 16, 2015, the Respondent told the wife she was eligible to apply for a work permit because the permanent residence application had been filed. However, this was untrue as the Respondent had not filed the permanent residence application.

56. On December 18, 2015, the Respondent emailed the clients in response to their telephoned and emailed requests for written confirmation of the permanent residence applications:

> Sincere apologies for the delayed response. I will forward the acknowledgment email separately. I did not provide any commentary in that message so that you can print a clean copy to present to MSP. Sorry for not forwarding it earlier – it came in while I was out of the office during the summer. In addition, I have attached the government application fee receipt in case MSP needs additional evidence of submission.
>
> …

The Respondent had not filed or received any acknowledgment of the permanent residence applications, and the fee receipt he attached to the email was false.

57. YD's wife was expecting a baby, and Medical Services Plan ("MSP") coverage would be important if the baby was born in British Columbia. If an application for permanent residence is in process, the applicant may apply for provincial MSP coverage.

58. On January 4, 2016, in response to an email inquiry from the client about whether or not the new permanent resident applications had been filed, the Respondent said they had, when this was not true.

59. By email dated January 25, 2016, the client told the Respondent that MSP had advised the proof of the filing of the permanent residence applications provided to

them was insufficient. The Respondent replied to the client by email on January 26, 2016 and advised that he believed Citizenship and Immigration Canada had made an error, and that he would get a new document from them.

60. During February 2016, the client followed up repeatedly with the Respondent about MSP coverage, the outstanding work permit, and the permanent residence applications. By email to the client dated March 2, 2016, the Respondent implied the permanent residence applications had been filed, when they had not been.

61. At no time did the Respondent advise YD and his wife that they were ineligible for coverage under the BC MSP because no application for permanent resident had been submitted on his behalf.

62. Because the Respondent misrepresented to the client that the applications had been submitted, the clients believed YD's wife was eligible to apply for MSP coverage, but she was not. As a result, when she gave birth in British Columbia, YD and his wife had to pay for the hospital services.

YZ

63. On April 10, 2015, the Respondent was retained by YZ to file an application for the British Columbia PNP, with a view to later applying for permanent residence. A retainer of $2,500 was received by the Respondent's firm but no retainer agreement was executed.

64. By June 26, 2015, the Respondent had gathered all of the necessary material and needed only to do a submission letter. The Respondent did not file the application by the close of business on June 30, 2015 and the PNP was suspended July 1, 2015 and relaunched on July 2, 2015 with requirements that YZ did not meet.

65. By emails dated August 25, 2015, November 12, 2015, December 16, 2015, January 26, 2016 and February 5, 2016, the Respondent told or implied to YZ that the application had been filed.

66. On November 12, 2015, the Respondent also sent a fabricated email to the client, which he represented was confirmation of the receipt of the filed application received on September 1, 2015.

67. On April 30, 2015, the Respondent issued an account to YZ in the amount of $2,240 for legal advice and services regarding the permanent residence application, but he did not provide a copy of the account to the client.

TY

68. In June 2013, the Respondent was consulted by TY and his employer about obtaining a work permit for TY. The Respondent was retained to act for TY.

69. The Respondent advised TY seek a work permit in two different ways, both by making application under the LMIA program, and through an exemption to the LMIA known as the "Significant Benefit" program. A former name for LMIA was "Labour Market Opinion" ("LMO"), which was the appropriate program in TY's case. The Respondent was also to submit an application to extend TY's visitor status in Canada.

70. TY's employer provided a $4,000 retainer. The retainer agreement provided for payments in installments, upon completion of certain phases of the work permit application. Pursuant to the agreement, the first installment of $2,000 could be withdrawn from trust upon commencement of the work on the work permit applications. The Respondent submitted an account regarding TY's file on June 18, 2013 when he commenced work on the work permit applications.

71. On August 22, 2013, the Respondent issued two accounts to TY, for fees of $1,000 and $2,000 and transferred funds from trust to satisfy the accounts. The retainer agreement provided that accounts could be rendered: 1) in the amount of $1,000, upon delivery to the client of "draft support letters from the relevant corporate entities to support the work permit applications" and 2) in the amount of $2,000 when the SBWP Application was submitted to the Canadian visa office. When the August 22, 2013 account for $2,000 was rendered, the Respondent had

not submitted a SBWP Application, but rather submitted it approximately one month later on September 23, 2013.

72. The August 22, 2013 account for $1,000 was in compliance with the retainer agreement as the draft support letters had been provided when it was rendered. The August 22, 2013 account for $2,000 was not in compliance with the retainer letter as the SBWP was not yet submitted. Accordingly, the Respondent was not entitled to the $2,000 when it was transferred from trust. Both of the August 22, 2013 accounts were not sent to the client until July 2014.

73. The Respondent gathered the necessary documents and filed a LMO application on TY's behalf on August 28, 2013. The same day, the client emailed and asked for the Respondent to send proof of filing the Significant Benefit Work Permit ("SBWP") Application, and the Respondent replied, "sure thing – I will send you a copy of the significant benefit application later today". The Respondent had not yet filed the SBWP Application.

74. On September 20, 2013, the Respondent submitted an application to extend TY's visitor status. On September 23, 2013, the Respondent sent a SBWP application to a Canadian visa office for processing.

75. On October 1, 2013, the Respondent was advised by email that the SBWP Application had been submitted to the wrong visa office and would be returned, unprocessed. The Respondent did not convey this information to TY. Subsequently, TY communicated with the Respondent by email and telephone on several occasions, but the Respondent did not advise that the SBWP Application had been rejected.

76. By email dated October 22, 2013, in response to an inquiry from the client when a response could be expected regarding the SBWP, the Respondent stated that it "could be a few more weeks". The Respondent did not tell TY the application had been rejected.

77. By email dated November 17, 2013, the Respondent told TY that the SBWP was still pending, when this was not true, as the application had already been rejected.

78. In December 2013, the Respondent learned that the LMO had been approved, meaning he could submit a work permit application supported by the LMO, but the Respondent did not submit such an application until April 8, 2014.

79. By email dated February 4, 2014, in response to an inquiry if TY's working visa was ready, the Respondent replied by email that "the visa is taking longer than expected", which was untrue. The Respondent did not advise the SBWP had been rejected, and no LMO permit application had yet been filed.

80. By email dated April 3, 2014, the Respondent emailed and asked for a photograph of TY and stated it had been requested by Citizenship and Immigration Canada and advised that "things were moving at last". The photograph was necessary to file the LMO application, and no request had yet been made for it specifically from Citizenship and Immigration Canada.

81. On April 9, 2014, TY's employer inquired about the status of the visa application and the requirement for a photograph. The Respondent replied in an email dated April 9, 2014 "It appears there is some movement at the visa office", even though he had not.

82. In an email dated April 10, 2014, the Respondent again advised the photo was required "by Beijing which now has the file. I believe that it will finalize the work permit application in due course". In another email dated April 10, 2014, the Respondent repeated that the photo was requested by Beijing. In response to a further request from the client about how much longer it would take, the Respondent wrote, "It's hard to predict. If they just started working on the file, it could be several more weeks. As I said before, I am confident in a successful outcome. We just need to keep waiting, unfortunately."

83. The Respondent submitted the work permit application on April 8, 2014, and it was approved June 12, 2014.

84. The Respondent's emails of April 9 and 10, 2014 were misleading because Citizenship and Immigration Canada had not requested the photograph on an in-progress application.

AR and NB

85. On May 9, 2014, AR and his spouse, NB had an initial consultation with the Respondent about AR sponsoring NB as a permanent resident of Canada. The Respondent provided a retainer agreement to the clients but they did not retain him at this time.

86. On December 7, 2014, NB emailed the Respondent that he was now ready to start the process. NB and AR paid a retainer fee of $1,000 and signed the retainer agreement.

87. As provided for in the retainer agreement, the Respondent issued an account dated December 30, 2014, to NB after he commenced work on the file. The account included a $1,000 charge for fees, plus taxes of $120, for a total of $1,120. Funds to satisfy the account were transferred from the retainer held in trust, but the Respondent did not send a copy of this account to the clients at any time.

88. Between January and March, 2015, the Respondent prepared the materials for the application. On March 30, 2015, the Respondent issued an invoice for $2,500 in fees to NB, as contemplated by the retainer agreement this amount was due "just prior to submission of the application". A copy of the invoice was provided to the clients and a transfer was provided by them to satisfy the account.

89. By March 31, 2015, the Respondent had everything necessary to complete the application, and by approximately April 15, 2015, the application package had been compiled by a paralegal working at his firm. The Respondent drafted a

letter dated April 6, 2015 to submit with the application package, but he did not complete the letter or submit the application.

90. On May 18, 2015, AR called the Respondent to ask him about the application, and the Respondent told him the application had been filed, although this was not true.

91. In October 2015, AR again called the Respondent to ask about the application. On October 18, 2015, the Respondent emailed AR in reply and implied the application had been filed although it has not yet been filed:

> Thank you for your voice message last week. Apologies for not getting back to you earlier.
>
> I just wanted to let you know that I have not yet heard from CIC, but I do expect to hear from them soon. I will get in touch as soon as I do. For now, I believe everything is proceeding normally.

92. On approximately three occasions between November 2015 and March 2016, AR called the Respondent about the application. On each occasion, the Respondent told AR that the application was still in process, although the application had not yet been submitted.

93. On March 7, 2016 the Respondent and his firm advised AR that the Respondent had failed to file the application.

The Complaint

Admission to Employer

94. In March 2016, the Respondent told his employer that he failed to perform services and misled a number of clients. On March 9, 2016, the Respondent made a self-report of his conduct in respect of the clients named in the citation to the Law Society.

95. On April 18, 2016, AR made a complaint to the Law Society.

96. In the course of investigating the complaint, the Law Society received a detailed written response from the Respondent dated July 12, 2016, about AR's complaint and about his self-report.

Admission of Misconduct

Admission of Misconduct – RA and CA

97. The Respondent admits that in the course of representing RA and CA in their applications to Citizenship and Immigration Canada for work permits, he misrepresented to the clients the status of their applications by making statements that he knew or ought to have known were false or by failing to disclose information, contrary to Rules 2.2-1 and 3.2-2 of the *Code of Professional Conduct for British Columbia,* in some or all of the following communications:

(a) in an email dated May 13, 2014 to his client(s) he stated their "Significant Benefit" applications had been filed when they had not;

(b) in an email dated August 6, 2014 to his client(s), he represented that he expected to hear something soon about their "Significant Benefit" applications when they had not been filed;

(c) in an email dated August 15, 2014 he sent the client(s) a copy of their "Significant Benefit" application materials and told the client(s) it would be a good idea to submit the signed contract of purchase and sale to the visa office and take the opportunity to inquire about the status of the processing of the applications, when the applications had not been filed;

(d) during his conversation with the client(s) on September 15, 2014 he told the client(s) their "Significant Benefit" applications were "in process" but did not disclose that the applications were filed on September 8, 2014;

(e) in an email dated April 20, 2015 he told the client(s) he expected a decision regarding their Labor Market Impact Assessment in June when he had not yet submitted the Labor Market Impact Assessment;

(f) in an email dated May 13, 2015 he told the client(s) that if the Labor Market Impact Assessment and work permit were not issued by their arrival in Canada on May 25, he would send a package to obtain a visitor visa entry, when he had not yet submitted the Labor Market Impact Assessment;

(g) on August 10, 2015 he spoke to the client(s) by phone in response to their inquiry as to the status of their work permits but he did not tell them the Labor Market Impact Assessment had not been submitted;

(h) in an email dated October 27, 2015 he told the client(s) that the application could take a long time because it was "outside of the usual employer/employee situation" when the application had not yet been submitted;

(i) in an email dated November 20, 2015 he told the client(s) he contacted Service Canada two days previously to discuss their Labor Market Impact Assessment, when it had not been submitted;

(j) in an email dated December 18, 2015 he told the client(s) he was "cautiously optimistic" about obtaining the work permits but he did not tell them the Labor Market Impact Assessment had not been submitted; and

(k) in an email dated January 15, 2016 he told the client(s) it was likely he would hear back about the work permits later that month, but he did not tell them the Labor Market Impact Assessment had not been submitted.

The Respondent admits that his conduct in doing so constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.

98. The Respondent admits that between February 2014and April 2016 in the course of representing RA and CA in their applications to Citizenship and Immigration Canada for work permits, he failed to provide his clients with the quality of service that is expected of a competent lawyer in a similar situation contrary to one or more of Rules 2.2-1, 3.1-2 or 3.2-1 of the *Code of Professional Conduct for British Columbia* by doing one or more of the following:

(a) failing to keep the clients reasonably informed about the status of their applications for work permits;

(b) failing to take appropriate steps to obtain the work permits;

(c) failing to inform or explain to the clients when the work permits had not been obtained;

(d) failing to ensure the work was done in a timely manner so that its value to clients was maintained; and

(e) failing to provide the clients with complete and accurate relevant information about the applications.

The Respondent admits that his conduct in doing so constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.

99. The Respondent admits that in the course of representing RA and CA in their applications to Citizenship and Immigration Canada for work permits, he withdrew or authorized the withdrawal of trust funds in payment of fees without first delivering a bill to the clients, contrary to Rule 3-57(2) of the Law Society Rules then in force (now Rule 3-65(2)). In particular, he withdrew or authorized the withdrawal of trust funds as follows:

(a) $3,217.50 on February 20, 2014;

(b) $1,310 on October 28, 2014; and

(c) $2,000 on December 29, 2014.

The Respondent admits that his conduct in doing so constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.

Admission of Misconduct – TC

100. The Respondent admits that in the course of representing his client, TC, in his application for permanent residence in Canada pursuant to the British Columbia Provincial Nominee Program, he made misrepresentations to his client regarding the status of his application, by making statements that he knew or ought to have known were false or by failing to disclose information, contrary to Rules 2.2-1 and 3.2-2 of the *Code of Professional Conduct for British Columbia* in some or all of the following communications:

(a) in an email dated June 9, 2015 he told his client that he would submit his application for permanent residence the following week and on June 25, 2015 he confirmed to his client the application for permanent residence had been submitted when it had not;

(b) he failed to advise his client that his Provincial Nominee Program nomination had expired on or about September 6, 2015;

(c) in an email dated November 4, 2015 he told his client that his permanent residence application was pending with Citizenship and Immigration Canada when the application had not been filed;

(d) in December 2015, he filed on his client's behalf an application under the Express Entry Program, another method by which an application could be made for permanent residence, but without informing his client that he had done so, until March 2016; and

(e) in an email dated January 11, 2016, he told his client that his permanent residence application was "moving along", when the application had not been filed.

The Respondent admits that this conduct in doing so constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.

101. The Respondent admits that between June 2015 and March 2016, in the course of representing his client, TC, in his application for permanent residence in Canada, he failed to provide his client with the quality of service that is expected of a competent lawyer in a similar situation contrary to one or more of Rules 2.2-1, 3.1-2, or 3.2-1 of the *Code of Professional Conduct for British Columbia*, by doing one or more of the following:

(a) failing to keep the client reasonably informed about the status of his application;

(b) failing to take appropriate steps to obtain permanent residence status;

(c) failing to inform or explain to the client when it was not possible to obtain permanent residence status with the type of application that had been submitted;

(d) failing to ensure work was done in a timely manner so that its value to the client was maintained; and

(e) failing to provide his client with complete and accurate relevant information about the status of his application and steps taken or not taken on this behalf.

102. The Respondent admits that in the course of representing his client, TC, in his application for permanent residence in Canada pursuant to the British Columbia Provincial Nominee Program, he filed an Express Entry Profile with Citizenship and Immigration Canada without notice to his client, when he had not sought or received instructions to do.

The Respondent admits that his conduct in doing so constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.

Admission of Misconduct – YD

103. The Respondent admits that in the course of representing his client YD in his application to sponsor his wife and son for permanent residence in Canada, he

made misrepresentations to his client about the status of the application by making statements that he knew or ought to have known were false or by failing to disclose information, contrary to Rules 2.2-1 and 3.2-2 of the *Code of Professional Conduct for British Columbia*, in some or all of the following communications:

(a) he led his client to believe he had submitted the application, via the "in-country" application process, on October 13, 2014 when he had not;

(b) in an email dated April 28, 2015, he represented that he had submitted the application when he had not;

(c) on May 26, 2015, he met with his client and told him the application had been filed when it had not;

(d) between May and November 2015, he represented to his client that the application was delayed due to processing times when the application had not been submitted;

(e) in an email dated December 18, 2015, having received instructions from his client to file a second application for permanent residence via the "overseas" application process, he represented to his client that the acknowledgement of the second application had been received when the second application had not been submitted;

(f) in an email dated January 4, 2016 he told his client the second application had been filed when it had not;

(g) in an email dated January 26, 2016 responding to his client's email in which the client stated that Medical Services Plan had told his client that proof of the filing of the application was insufficient, he stated that Citizenship and Immigration Canada had made an error when he had not submitted the application; and

(h) in an email dated March 2, 2016, he represented to his client that both applications had been submitted when they had not been submitted.

The Respondent admits that his conduct in doing so constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.

104. The Respondent admits that in the course of representing his client YD in his application to sponsor his wife and son for permanent residence in Canada, he falsified one or both of the following documents and provided them to his client in order to misrepresent that he had submitted the application, contrary to Rules 2.1-5, 2.2-1, and 3.2-2 of the *Code of Professional Conduct for British Columbia*:

(a) on April 28, 2015 he provided a copy of false application materials to the client and represented that the materials had been submitted to Citizenship and Immigration Canada when they had not; and

(b) on December 18, 2015 he provided to the client a false acknowledgment of receipt by Citizenship and Immigration Canada of the "overseas" permanent residence application, and a false fee receipt for the same.

The Respondent admits that his conduct in doing so constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.

105. The Respondent admits that between October 2014 and March 2016, in the course of representing his client YD in his application to sponsor his wife and son for permanent residence in Canada, he failed to provide his client with the quality of service that is expected of a competent lawyer in a similar situation contrary to one or more of Rules 2.2-1, 3.1-2, or 3.2-1 of the *Code of Professional Conduct for British Columbia* by doing one or more of the following:

(a) failing to file the first application via the "in-country" application process;

(b) failing to file the second application via the "overseas" application process;

(c) failing to advise his client that his wife and son were ineligible for the BC Medical Services Plan because no application for permanent residence had been submitted on their behalf; and

(d) on November 26, 2015, he told his client's assistant he would file the work permit application the following week but he did not.

The Respondent admits that his conduct in doing so constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.

Admission of Misconduct – YZ

106. The Respondent admits that in the course of representing his client, YZ, in his application for permanent residence in Canada, he made misrepresentations to his client regarding the status of his application by making statements that he knew or ought to have known were false or by failing to disclose information, contrary to Rules 2.2-1 and 3.2-2 of the *Code of Professional Conduct for British Columbia,* in some or all of the following communications:

(a) in an email dated November 12, 2015, he told the client the application had been filed when it had not; and

(b) in emails dated December 16, 2015, January 26, 2016 and February 5, 2016 he did not tell the client the application had not been filed, thereby creating the impression it had been filed when it had not.

The Respondent admits that his conduct in doing so constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.

107. The Respondent admits that in the course of representing his client, YZ, in his application for permanent residence in Canada, he provided a false email to his client on November 12, 2015 that he represented was a confirmation of receipt of the application from Citizenship and Immigration Canada, contrary to Rules 2.1-5, 2.2-1, and 3.2-2 of the *Code of Professional Conduct for British Columbia*.

The Respondent admits that his conduct in doing so constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.

108. The Respondent admits that between June 2015 and February 2016, in the course of representing his client, YZ, in his application for permanent residence in

Canada, he failed to provide his client with the quality of service that is expected of a competent lawyer in a similar situation contrary to Rules 2.2-1, 3.1-2, or 3.2-1 of the *Code of Professional Conduct for British Columbia* by failing to proceed with the application in a timely manner.

The Respondent admits that his conduct in doing so constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.

109. The Respondent admits that on or about April 30, 2015, in the course of representing his client, YZ, in his application for permanent residence in Canada pursuant to the British Columbia Provincial Nominee Program, he withdrew or authorized the withdrawal of trust funds in the amount of $2,240 in payment of fees without first delivering a bill to the client, contrary to Rule 3-57(2) of the Law Society Rules then in force (now Rule 3-65(2)).

The Respondent admits that his conduct in doing so constitutes professional misconduct or breach of the Act or rules, pursuant to s. 38(4) of the *Legal Profession Act*.

Admission of Misconduct – TY

110. The Respondent admits that on or about August 22, 2013, he improperly withdrew client trust funds held on behalf of his client, TY, to satisfy his account dated August 22, 2013, purportedly to pay fees or disbursements, when he was not entitled to the funds, contrary to Rule 3-56 of the Law Society Rules then in force (now Rule 3-64).

The Respondent admits that his conduct in doing so constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.

111. The Respondent admits that in the course of representing his client, TY, in his application for a Canadian work permit, he made misrepresentations to his client regarding the status of his application by making statements that he knew or ought to have known were false or by failing to disclose information, contrary to Rules

2.2-1 and 3.2-2 of the *Code of Professional Conduct for British Columbia*, in some or all of the following communications:

(a) in an email sent on August 28, 2013, in response to his client's request for proof the "Significant Benefit" application had been filed, he said he would send a copy of the "Significant Benefit" application later that day, thereby creating the impression the "Significant Benefit" application had been filed when it had not;

(b) having subsequently filed the "Significant Benefit" work permit application and learning on October 1, 2013 that it had been returned, he failed to advise his client that it had been returned and not refiled;

(c) in an email dated October 22, 2013, he told the client it could take a few more weeks to receive a response to the "Significant Benefit" work permit application when it had already been returned and not refiled;

(d) in an email dated November 17, 2013, he told the client the "Significant Benefit" application was still pending when it had already been returned and not refiled;

(e) in an email dated February 4, 2014 he told the client the visa was taking longer than expected but did not tell the client the "Significant Benefit" work permit application had been returned;

(f) in an email dated April 3, 2014 he requested a photograph of the client and said it had been requested by Citizenship and Immigration Canada when no request had been made;

(g) in an email dated April 10, 2014, he told the client by email that a photograph from the client was required "by Beijing, which now has the file" when no application had been filed and no request had been made; and

(h) in an email dated April 9, 2014 to his client's employer, he represented that there appeared to be some progress regarding the client's application when no application had been submitted.

The Respondent admit that his conduct in doing so constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.

112. The Respondent admits that between August 2013 and July 2014, in the course of representing his client, TY, in his application for a Canadian work permit he failed to provide his client with the quality of service that is expected of a competent lawyer in a similar situation contrary to one or more of Rules 2.2-1, 3.1-2, or 3.2-1 of the *Code of Professional Conduct for British Columbia*, by doing one or both of the following:

(a) failing to submit an application for a work permit pursuant to the "Labor Market Impact Assessment" process after learning the Labor Market Opinion was approved in December 2013; and

(b) failing to advise the client that the "Significant Benefit" work permit application had been rejected.

The Respondent admits that his conduct in doing so constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.

113. The Respondent admits that on or about August 22, 2013, in the course of representing TY in his application for a Canadian work permit, he withdrew or authorized the withdrawal of trust funds in the amount of $3,000 purportedly in payment of fees without first delivering a bill to the client, contrary to Rule 3-57(2) of the Law Society Rules then in force (now Rule 3-65(2)).

The Respondent admits that his conduct in doing so constitutes professional misconduct or a breach of the Act or rules, pursuant to s. 38(4) of the *Legal Profession Act*.

Admission of Misconduct – AR/NB

114. The Respondent admits that between April 2015 and March 2016, in the course of representing his client AR in his application to sponsor his spouse for permanent residence in Canada, he made misrepresentations to his client regarding the status of the application by making statements that he knew or ought to have known were false or by failing to disclose information, contrary to Rules 2.2-1 and 3.2-2 of the *Code of Professional Conduct for British Columbia*, in some or all of the following communications:

(a) on May 18, 2015 he spoke to his client and implied he had filed the application when he had not;

(b) in an email dated October 18, 2015, he stated that he had "not yet heard from" Citizenship and Immigration Canada regarding the application and he believed "everything is proceeding normally" when the application had not been submitted; and

(c) between November 2015 and March 2016, he told his client that the application was still in process when it had not been submitted.

The Respondent admits that his conduct in doing so constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.

115. The Respondent admits that between April 2015 and March 2016 in the course of representing his client, AR, in an application to sponsor his spouse for permanent residence in Canada, he failed to provide his client with the quality of service that is expected of a competent lawyer in a similar situation, contrary to Rules 2.2-1, 3.1-2 or 3.2-1 of the *Code of Professional Conduct for British Columbia* by doing one or more of the following:

(a) failing to keep his client reasonably informed about the status of the application;

(b) failing to take appropriate steps to file the application;

(c) failing to ensure that the application was filed in a timely manner so that its value to his client was maintained; and

(d) failing to provide his client with complete and accurate relevant information about the application.

The Respondent admits that his conduct in doing so constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.

116. The Respondent admits that in the course of representing his client AR in his application to sponsor his spouse for permanent residence in Canada, he withdrew or authorized the withdrawal of trust funds in payment of fees without first delivering a bill to his client, contrary to Rule 3-57(2) of the Law Society Rules then in force (now Rule 3-65(2)). In particular, he withdrew or authorized the withdrawal of trust funds of $1,120 on or about December 30, 2014.

The Respondent admits that his conduct in doing so constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.

Mitigating Circumstances

117. The Law Society of Upper Canada issued a Certificate of Standing in November 2012 when the Respondent transferred his Law Society membership to British Columbia. It confirmed that the Respondent had no history of discipline, no outstanding complaints, and no practice restrictions from the time of his call in Ontario in July 2004, to his date of transfer to British Columbia. Similarly, to date, there had been no complaints or other concerns regarding his professional conduct within British Columbia. Approximately two months before the issuance of the citation, the Law Society also received letters of support from several lawyers who had extensive familiarity with the Respondent.

118. The Respondent has taken the following steps in addressing the consequences of his actions:

- He provided a detailed self-report of his misconduct to the Law Society, and cooperated fully throughout the subsequent investigation;

- He apologized to each of his affected clients, and assisted his former firm in efforts to mitigate any resulting harm;

- He resigned his Law Society membership and wound up his practice prior to the issuance of the citation.

119. He also obtained two medical assessments from appropriately qualified practitioners. Each diagnosed the Respondent as having an underlying condition associated with significant avoidance. One of the reports commented that "*the extent to which [the Respondent] deceived his clients still disturbs him. He appears to fully appreciate the degree to which he betrayed his fiduciary responsibilities as a lawyer, and the degree to which he dishonoured himself*". The second foresaw the likelihood of dramatic improvement with treatment, and provided the opinion that "*the probability of reoffending is very low*".

As a result of these admissions, the Respondent has undertaken as follows:

(a) not to engage in the practice of law with or without the expectation of a fee, gain or reward, whether direct or indirect, until such time as he may again become a member in good standing of the Law Society;

(b) not to apply to re-admission to the Law Society of British Columbia or elsewhere within Canada prior to April 6, 2020;

(c) not to apply for membership in any other law society (or like governing body regulating the practice of law) prior to April 6, 2020 without first advising in writing the Law Society of British Columbia; and

(d) not to permit his name to appear on the letterhead of, or work in any capacity whatsoever, for any lawyer or law firm in British Columbia, without obtaining the prior written consent of the Discipline Committee of the Law Society unless he again becomes a member in good standing (subject to the express consent of the Discipline Committee of the Law Society to work in the capacity as a "Workers' Advisor" for the Ministry of Labour).