2023 LSBC 30
Hearing File No.: HE20200041
Decision Issued: July 27, 2023
Citation Issued: June 8, 2020

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL

HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

HONG GUO

RESPONDENT

DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION

Hearing dates:	February 22, 23, 24, 25, 2022 May 16, 17, 18, 19, 20, 30, 31, 2022 June 1, 2022
Hearing Panel:	Michael F. Welsh, KC, Chair Jereme Brooks, Public representative Katharine E. Saunders, Lawyer
Discipline Counsel:	J. Kenneth McEwan, KC Kyle E. H. Thompson
Respondent Counsel:	Craig E. Jones, KC
Written Reasons of the Panel by:	Michael F. Welsh, KC

INDEX

INTRODUCTION

[1] There are 19 allegations against the Respondent in the Citation. They fall into three general groups, namely:

1. breach of her duty to avoid conflicts of interest by acting for more than one party to a transaction where there were conflicting interests and breach of her duty of undivided loyalty to each client by preferring the interests of certain of the alleged clients over those of others (all under allegation 1);

2. breach of her duty to cooperate in an investigation by making false or misleading representations to the Law Society (all under allegation 2); and

3. breach of her duty to provide competent service by failing to serve the alleged clients in a conscientious, diligent and efficient manner to the minimum required of a competent lawyer in a similar situation (all under allegation 3).

[2] Each allegation will be reviewed in more detail by the Panel in the "Analysis of the Citation" section of this decision.

[3] The evidence is composed of a Notice to Admit ("NTA") and Response, together with documentary evidence and the oral evidence of six witnesses located in BC and China. Some testified in person and others on the Zoom videoconference platform. Most required translation between Mandarin and English. The Notice to Admit contains thousands of pages of material to which the other exhibits added several hundred additional pages.

[4] As a preface to setting out the evidence, it is necessary to identify the many persons and corporate entities that play a part in the history of the underlying transactions leading to the Citation and in the investigation done by the Law Society. While unfortunately it can make following the narrative more difficult, in accordance with the practice in decisions of the LSBC Tribunal, the names of clients, witnesses, or others, connected to privileged, confidential or personal

information are made anonymous by use of acronyms or initials. The Law Society investigators and a lawyer who gave evidence are identified.

[5] The persons involved are:

(a) QY, a Chinese businessman located in China, married to KY, who testified in Mandarin in person;

(b) KY, Chinese businesswoman located in China, married to QY, who testified in Mandarin by Zoom;

(c) XX, a Chinese businessman located in China, married to XL, who did not testify;

(d) XL, a Chinese businesswoman located in BC, married to XX, who testified in Mandarin by Zoom;

(e) HZ, a Chinese businessman located in China, the sole shareholder of 103 BC Ltd., who testified in Mandarin by Zoom;

(f) SR, a Caucasian Canadian businessman who worked for a time for the Respondent, and who was at times material to these matters the sole director of 103 BC Ltd., who did not testify;

(g) TC, a Chinese businessman located in BC, who did not testify;

(h) M. Guo, the Respondent's sister, who did not testify;

(i) Linda Murray, a retired lawyer and former Law Society investigator, who testified in person;

(j) John Forstrom, a lawyer and Law Society investigator, who testified in person; and

(k) Tadhg Egan, a BC lawyer who formerly worked as an associate with the Respondent and then shared office space with her and who testified in person.

[6] The corporations (all incorporated in BC) involved are:

(a) S Holdings Corp., incorporated by the Respondent, of which KY was sole shareholder;

(b) C Inc., incorporated by the Respondent, of which XX and XL were shareholders;

(c) GSW Co., not incorporated by the Respondent;

(d) MU Inc., incorporated by the Respondent, of which XX was sole shareholder and XL sole director, and which company purchased the shares of GSW Co. and then sold them to C Inc.;

(e) V Ltd., incorporated by the Respondent, of which C Inc. and KY were initially shareholders and later C Inc. and 103 BC Ltd. were shareholders; and

(f) 103 BC Ltd., (identified in the Citation as [numbered company] BC Ltd. but will be referred to as 103 BC Ltd. in this decision) incorporated by the Respondent, of which HZ was sole shareholder and at times material to these matters, SR was sole director.

[7] The Panel has found that some but not all of the allegations in the Citation have been established on the evidence, but due to the Citation's length and complexity, the Panel will review each allegation and provide our finding in our reasons below rather than summarizing them here.

ADMITTED FACTS

[8] The Respondent, who immigrated to Canada from China and received her law degree at the University of Windsor, was called to the Bar of Saskatchewan on September 8, 2000, and to the Bar of British Columbia on May 4, 2009. She has had her own firm since April 2010, practising in Richmond, with a satellite office for a time in Beijing. The Respondent's practice at the time of the incidents leading to this Citation comprised residential and commercial real estate work, together with administrative law in areas of immigration, labour and other associated regulatory bodies.

[9] The Respondent speaks Mandarin and English.

[10] During the time of the BC Provincial Nominee Program for investment immigration (the "BC PNP"), the Respondent acted for a substantial number of potential immigrants who sought to apply for permanent residency under that program.

[11] KY was one of those immigration clients, who the Respondent met in China in 2010 and who sought immigration for herself, along with her husband QY and their daughter as dependents under the application. As the application progressed QY was often the person with whom the Respondent and her office communicated.

[12] In September 2010, the Respondent's firm and KY entered into an Immigration Agent Agreement authorizing the firm to act on the investment immigration application, and on August 17, 2011, a preliminary BC PNP approval was given by the BC government to KY. That fall, the Respondent prepared a formal BC PNP application to purchase a motel property in the BC lower mainland.

[13] That purchase did not complete, and the application was amended to substitute the purchase of a hotel in Merritt, to close in the fall of 2012. That purchase also did not complete.

[14] The Respondent incorporated S Holdings Corp. as the corporate vehicle for another purchase, this time a motel in Hope. That purchase was completed in or about November 2014.

[15] After the Respondent assisted KY with submission of the BC PNP final report in January 2015, her office received notice on February 11, 2015 that the application had been rejected. She also learned the program was ending on March 31, 2015. Her office assisted KY to make a further application based on an investment in what will be referred to as the M Project in this decision, referenced in more detail later. That further application was signed by the Respondent on behalf of KY and submitted on April 1, 2015. However, it was a day too late.

[16] Turning to the Respondent's involvement with XX and XL, they met in about 2005 and the Respondent did some legal work for them and became friends with XL. One of the legal matters was the incorporation of C Inc. in 2012 with XX as shareholder and XL as director.

[17] Another was the sale of a shelf company to XX named MU Inc., as a vehicle for the purchase of the shares of GSW Co. Those shares were then immediately sold to C Inc. The Respondent's office performed services for GSW Co. once it was owned by C Inc., as well as corporate services for MU Inc. and C Inc.

[18] In 2013, QY and XX met in the Respondent's Richmond office. How they met and the Respondent's role are in issue in the evidence. There were discussions about a joint venture for a development in Richmond (the "M Project"). The Respondent's office produced a joint venture agreement (the "JVA") between C

Inc. and KY, which was signed by KY and on behalf of C Inc. by XL, with both signatures witnessed by the Respondent. The JVA was in English only. The Respondent does not admit that she had any role in the JVA's development beyond that her office generated the document and she attended to its execution.

[19] While the Respondent denies that she was the only lawyer involved or that she was consulted by the parties about the JVA, she admits she cannot identify any other lawyers who the parties may have consulted in Canada or China.

[20] Under the JVA, KY was to invest $8 million for a 40 percent interest and C Inc. was to invest $12 million for a 60 percent interest.

[21] V Ltd. was incorporated by the Respondent to be the purchaser of the lands for the M Project. The shares were distributed 40 percent to KY and 60 percent to C Inc., and the corporate minute book was set up by the Respondent's office accordingly.

[22] In discussions between XX and QY that did not involve the Respondent and of which she had no knowledge at the time, QY and KY agreed to loan C Inc. $4 million, as XX said it was temporarily short of funds for its joint venture contribution. This loan agreement was verbal only. The funds were advanced.

[23] The funds were not repaid in 2014 as agreed. At some point, most likely the spring of 2015, the Respondent learned of the verbal loan and the failure to repay, and QY contacted her a number of times about this issue. When the Respondent knew, what she knew, what QY sought from her, and what if anything the Respondent did or advised are disputed in the witness evidence.

[24] At this point HZ, previously known by the Respondent, entered the picture, although his role is also the subject of contested evidence.

[25] It is admitted that HZ had retained the Respondent in 2013 to act in an immigration application under the BC PNP in which a motel was to be purchased. The application did not proceed.

[26] In 2015, the Respondent's office incorporated 103 BC Ltd. and did the documentation to appoint SR as sole director of 103 BC Ltd. Why this occurred, and on whose authority, and the role played by SR, are again the subject of what the Law Society called competing narratives.

[27] In August 2015, HZ appointed XL as his attorney under a general power of attorney in BC.

[28] Share Transfer Agreements ("STAs") from this time period were attached to the NTA and the Response and other entered exhibits, and admitted for their authenticity but not for the truth of their contents. One is between KY and 103 BC Ltd. and the other is between C Inc. and 103 BC Ltd. The authorship of these documents, the accuracy of their contents and the Respondent's role in their creation, amendment, or transmission of drafts to the parties is not admitted. Even her knowledge of some of them is an issue. The signed versions are in Chinese and there is also an unsigned English version and another unsigned Chinese version.

[29] Also in August 2015, the Respondent's office recorded a transfer of KY's shares in V Ltd. to 103 BC Ltd., but the Respondent held onto and did not deliver the share certificates for those shares until at least February 23, 2016. The Respondent caused a filing of a Notice of Change of Directors that removed KY as a director of V Ltd. effective September 1, 2015, and after that she took instructions regarding the affairs of V Ltd. solely from XL under the general power of attorney from HZ.

[30] In late 2015 or early 2016, XL also used the power of attorney to execute additional financing documents for V Ltd. on behalf of 103 BC Ltd. and HZ.

[31] Who, if anyone, the Respondent was acting for in these matters is disputed, as are her role in the financing for V Ltd., her knowledge of whether QY and KY agreed to or knew of the financing, her knowledge of and role in the removal of KY as a director of V Ltd., and her knowledge of and role in the share transfer of KY's shares.

[32] Also in 2015, TC, whom the Respondent had known for a long time, joined the narrative, but again the narrative has competing versions that the Panel must resolve, in particular the Respondent's role in a loan to QY by TC and its repayment.

[33] On October 2, 2015, XL withdrew $1,090,681 from V Ltd.'s bank account and paid it to the Respondent in trust with instructions to pay it over to KY (the "One Million Payment"). The main source of those funds was an advance made by XL to the company of $768,885 on June 29, 2015. That money came from a mortgage loan on XL's home obtained that same month in which the Respondent acted for XL as borrower.

[34] The Respondent sent an email dated March 16, 2016, addressed to KY regarding the Respondent being in a potential conflict of interest.

[35] On June 21, 2016, QY and KY filed a petition to the court naming as respondents XX, XL, 103 BC Ltd., C Inc. and the Respondent. That petition was eventually converted to an action and the Respondent was examined for discovery in that action on April 13, 2017. She did not file any Response to the action, and in October 2018 a default judgment was taken against her for damages to be assessed.

[36] In March 2017, QY filed the complaint that has led to this Citation.

[37] In 2016, the Law Society obtained mirror images of the contents of the Respondent's office work computers in another investigation of her practice and searched those mirror images. Some of the documentary evidence in the hearing of this matter came from those mirror images searches.

LEGAL PRINCIPLES REGARDING EVIDENCE FROM WITNESSES

[38] From the witness and documentary evidence the Panel must make findings of fact to fill the gaps in the admitted facts. In making these additional findings of fact, the Panel bears in mind certain legal principles in assessment of evidence.

[39] First, the onus, on a balance of probabilities, remains with the Law Society throughout to establish, both on the evidence and applicable legal principles, that the allegations in the Citation are proven. It is not for the Respondent to disprove them. As recently stated in *Law Society of BC v. Guo*, 2022 LSBC 30 ("*Guo 2022*"), another decision involving the Respondent1, at para. 13:

> [122] Whether or not the Respondent's behaviour amounts to professional misconduct must be considered in light of the provisions of the *Act,* the [Law Society] Rules, the *Handbook* and the [*Code of Professional Conduct for British Columbia* (the "*BC Code*")], which the Law Society alleges were breached.
>
> [123] It is the Law Society's burden to prove the facts necessary to support the finding of misconduct. Adopting the standard articulated by the Supreme Court of Canada in *F.H. v. McDougall*, 2008 SCC 53, [2008] 3 SCR 41, Law Society hearing panels, such as that in *Law Society of BC v. Seifert*, 2009 LSBC 17, have held that:

1 The Panel refers to this and another prior decision involving the Respondent only for applicable legal principles. All factual findings in this decision are based on the evidence in this proceeding.

> … the burden of proof throughout these proceedings rests on the Law Society to prove, with evidence that is clear, convincing and cogent, the facts necessary to support a finding of professional misconduct or incompetence on a balance of probabilities.

[40] Second, the principles for assessing the evidence of witnesses giving contradictory evidence are well-established. Most often quoted in a BC context is the venerable decision of our Court of Appeal, *Faryna v. Chorny*, 1951 CanLII 252, [1952] 2 DLR 354 (BCCA), where it said at para. 11, "[i]n short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions".

[41] In *Bradshaw v. Stenner*, 2010 BCSC 1398, at paras. 187 and 188, the court said that in addition to using the test of inherent plausibility articulated in *Faryna*, it is often helpful to evaluate testimony based on its consistency with that of other disinterested witnesses and with documentary evidence.

> [188] Most helpful in this case has been the documents created at the time of events, particularly the statements of adjustments. These provide the most accurate reflection of what occurred, rather than memories that have aged with the passage of time, hardened through this litigation, or been reconstructed. … The inability to produce relevant documents to support one's case is also a relevant factor that negatively affects credibility.

[42] In *Law Society of BC v. Cole*, 2021 LSBC, 40 at para. 13, the hearing panel adopted this approach, noting that it had the advantage of numerous emails, letters and other documents created at the time of the events to provide an accurate reflection of what had happened.

[43] With these principles in mind, the Panel will now review the relevant evidence of the witnesses and address pertinent documentary evidence. Most of the witnesses, other than the Law Society investigators, had distinct interests in the outcome of these proceedings, and it affected the integrity of their evidence. The Panel faced exaggeration, argumentative attitudes, giving of conclusions rather than evidence, memory lapses and many other frailties in significant portions of their testimony.

THE WITNESS EVIDENCE

The Law Society witnesses

QY

[44] QY was the first Law Society witness. He is the complainant in this matter and gave evidence over three days. As noted, his evidence was given in Mandarin. He said his spoken English was very elemental, and he had no ability to read English. His evidence was far from impartial. With his wife, KY, he has a judgment against the Respondent that is yet to be quantified and fully collected. As counsel for the Respondent noted a few times, the evidence in, and outcome of, this matter may be of use in that legal proceeding. It was also clear from QY's evidence that, despite his statements that he is a sophisticated businessman and investor, he has fixated on the Respondent as responsible for nearly all this wife's and his financial woes. For these reasons the Panel has looked to where QY's evidence is supported by other disinterested witnesses, by documentary evidence, and by other corroboration.

[45] QY gave evidence that he is a wealthy businessman who was worth, at the time his wife and he first looked to immigrate to Canada, some $30 million. His background was in property development and ownership and operation of hotels.

[46] QY said his first contact with the Respondent was in connection with his wife, KY, retaining the Respondent to act as her agent on the BC PNP immigration application. While it was KY who signed the Immigration Agent Agreement, it was QY's belief that the Respondent was equally acting for him as it was an immigration application for the whole family. He stated that it was his understanding and belief that the payment made under the Immigration Agent Agreement was for all consulting and advice needed for their immigration to, and investment made in, BC. The payment made by KY to the Respondent under that retainer agreement, was RMB ¥5,000 ($1,000 Canadian) for document preparation and RMB ¥35,000 ($6,886.50 Canadian) as service fees that were payable only if the application was successful. QY periodically in his evidence reiterated that he understood the Respondent remained retained for this single sum with respect to all the business dealings he and his wife had throughout the history of events underlying this Citation.

[47] QY expanded on that description of the Respondent's representation at various times, saying the scope of her retainer was "dealing with everything to do with the law of Canada with our application" and "everything to do with our immigration

and investment." He said that the Respondent never told them she was not their lawyer and that the Respondent was involved with all their investments as they trusted her. When asked how he expected the Respondent to protect KY's and his interests, QY said that he expected her to use her "full authority" to deal with their matters and that she said she would do that, repeatedly saying that, as she was their lawyer, no one would "bully" them or take advantage of them.

[48] The Immigration Agent Agreement itself states that the services to be provided "include but [are] not limited to: interpretation of immigration policy, formulation of an immigration application plan, preparation of immigration application materials, submission of immigration application materials and supplementary materials to relevant Canadian immigration departments, assistance [to the client] in interviews, application for immigration visas, guidance to applicants in landing, and coordination of the progress of areas of work in the immigration application." The signed agreement is written in Mandarin Chinese and was translated into English for the hearing.

[49] When questioned about the basis for his belief that the Respondent acted for him as well as KY, QY referenced a couple of paragraphs of the Immigration Agent Agreement, to which Law Society counsel referred him, that stated the Respondent would provide "[a]ssistance in providing consulting services for starting business enterprises(s)" and "long-term consulting services." QY stated a belief that all investments he and his wife made in Canada were tied to their immigration and covered by those contracted consulting services.

[50] QY also said that all property owned by his wife or himself belonged to both under Chinese law and cultural traditions (they "are considered as one") and that he was the main decision maker in the family on major decisions, "calling the shots", although he respected his wife's views. QY also said as a result the Respondent (whom he consistently called by the honorific "Lawyer Guo") represented their whole family. QY also said, especially as time passed, he was the one in contact with and instructing the Respondent, "taking over" from his wife, KY.

[51] QY gave detailed evidence of the history of the immigration investment plans under the BC PNP, much of which is not relevant here. He said that, in his opinion, the Respondent worked diligently on the application process and while he was impatient with how long it took, it was not her fault.

[52] QY testified that the Respondent was the one who told him of the M project and they looked at the M project property together. He said, based on his experience as a property developer in China, he felt it was a good project and agreed to

consider investment. At her office, the Respondent then introduced QY to XX. Within short order, QY agreed to invest as he thought it a good project and in "my reliance on Lawyer Guo" who he said was present throughout their discussions. QY said that XX and he then engaged the Respondent to draft the JVA and incorporate V Ltd. as the joint venture property owner and developer.

[53] QY said both XX and he were "very good businessmen," but that no notes of their agreement were taken by either to his knowledge.

[54] The Respondent, he said, told them she would give her full efforts to the project and deal with the banks, city planning department, and all dealings with the construction company and architect. QY said that she introduced him to a local city counsellor.

[55] QY's evidence was that XX and he met with the Respondent in her office to prepare the JVA, which was based on discussions amongst them and information from the Respondent and that her office then drafted the JVA. He said the Respondent translated it from English to Mandarin for them, but that only an English version was created. When asked if the Respondent recommended independent legal advice or advised of the risks of being a minority shareholder, QY said she did not. He also said he had no other lawyer involved in Canada or China.

[56] QY and others, including the Respondent, gave substantial evidence on how the funds for the JVA arrived from China into the Respondent's trust account given the Chinese government restrictions on sending funds abroad. As the circuitous route by which the funds arrived is not the subject of any of the allegations, the Panel will not go into the details. QY gave evidence and it is not refuted that the $8 million was received into trust.

[57] QY testified that he was told around the time of the closing of the purchase of the M Project property in 2013, by a person he called Peter, who was "in charge" of C Inc., that the company was short $4 million for its contribution. He said it was agreed that QY and KY, or one of them, would lend that sum on a short-term basis at 3 percent per month interest. It was all done verbally, and the funds came from a secured loan that either QY or KY, or both of them, took in China. QY said he made the loan based on his trust in the principals of C Inc. QY confirmed that he did not tell the Respondent about the loan at the time. He said he did so in late 2014 or early 2015.

[58] QY said that once he told the Respondent about the loan, he expected her to find a buyer for KY's shares (which he called "my shares") in V Ltd. QY was referred

by Law Society counsel to a document in Chinese, with English translation. QY identified the document as a log taken from his phone of "We Chat" texts2, and audio and video calls, between March 4, 2015 and July 8, 2015, that he said were between himself and the Respondent. The log includes texts from QY to the Respondent to ask if there is still hope for the immigration case, to ask the Respondent to call him, and to ask the amount for which 60 percent of the shares can be sold. QY also texted the Respondent that XX told him he should sell the shares in their entirety. The content of the audio and video calls are not documented so there are gaps in continuity of the conversations between them.

[59] With respect to the immigration application, after the first two proposed investments did not materialize, the application became based on the Hope motel purchase with S. Holdings Corp. as owner. However, as KY did not meet the residency requirements in Canada, the BC PNP application was denied. QY testified that he and the Respondent discussed using the M project as the basis of another application. QY said he suggested using the M project as his wife and he had invested into that project already. The Respondent's office prepared and submitted the application. It stated that KY was investing $12 million for a 60 percent share (not $8 million for 40 percent as the JVA stated). The application was by KY along with QY as her spouse. The Respondent signed as KY's representative.

[60] QY said that the Respondent told him the buyer for the shares in V Ltd. was a Caucasian, but did not tell him the name, and they referred to the potential buyer as the "foreigner". QY said he left the negotiations and share sale details with the Respondent. He was in China at the time. The Respondent came to China on business, and there was a meeting at a restaurant in Beijing with the Respondent, QY, KY and XX attending. In that meeting, they concluded the deal on the sale to 103 BC Ltd. of KY's 40 percent shareholdings in V Ltd., with C Inc. to also transfer an additional 20 percent of shares to 103 BC Ltd. so that it would hold 60 percent of the shares of V Ltd.

[61] A full version of the draft STA for KY, that was eventually signed, is found in another We Chat message and is in Chinese only. A transcript of this draft was provided with English translation. QY said there were versions sent in this manner with the Respondent responding on behalf of 103 BC Ltd. after she consulted with its principal. Even so, QY said he believed the Respondent was acting for his wife and him in the Respondent's communications with 103 BC Ltd. QY said the final version of the STA was sent to him by email from the

2 "We Chat" is an instant messaging communication platform used by the Respondent.

Respondent's sister, M. Guo, and he gave his consent to his wife to sign it. The final version of the STA and ancillary consents, along with an English translation is in evidence, signed by KY and on behalf of C Inc. by XX, but the documents in evidence have no signature on behalf of 103 BC Ltd. QY stated he repeatedly asked the Respondent for a copy signed on behalf of 103 BC Ltd. but did not get one.

[62] A review of the documentary evidence shows that the Chinese version of the agreement that was signed differs from the one in English found in the Respondent's computer system as well as from another Chinese version in evidence. In particular, the two Chinese versions contain an additional provision that is clearly to protect KY, where she is to get back the shares if the price is not paid by 103 BC Ltd. QY was not asked about who added this in the Chinese versions, or whether it was on his instructions, but it raises an issue of whether in fact KY and QY had a lawyer in China who reviewed the agreement and negotiated terms on their behalf, just as HZ said he had his Chinese lawyer do on his behalf.

[63] When asked if the Respondent ever billed him for any of this representation he said she was providing, QY said she had never done so, she never asked for any payment from him, and QY considered everything the Respondent did to fall under the rubric of the immigration retainer and the fee charged for that representation. Nevertheless, he considered the Respondent as his lawyer (and by implication also his wife's lawyer).

[64] QY also said he was never told the shareholder of 103 BC Ltd. was HZ, or of any details of the "Caucasian" or "foreigner" beyond that he was a friend of the Respondent whom she had met skiing, and who had strong financial connections in Vancouver.

[65] QY testified that he later learned the director of 103 BC Ltd. was SR and that they conversed on We Chat. He said that while SR refused to meet with QY, he did agree to provide a statutory declaration to a lawyer QY and KY retained when they commenced the legal proceedings. That statutory declaration is in evidence. In it SR states he is a former director of 103 BC Ltd., but he did not sign or know of the STAs under which 103 BC Ltd. took KY's shares in V Ltd. Again, the copies of the STAs attached to the statutory declaration are not signed on behalf of 103 BC Ltd. A register of directors of the company in evidence shows that SR was the sole director effective June 1, 2015.

[66] QY testified that when the balance of the payment for the shares was not received, he was in regular contact with the Respondent, who initially told him that the

"foreigner" was away on a trip. QY was being pressed to repay the loan in China from which he had in turn loaned C Inc. the $4 million.

[67] QY also testified to having no knowledge that his wife was removed as a director of V Ltd. and to never receiving a copy of the STAs. QY said he was expecting the Respondent to get back the money owed on the $4 million loan and the rest of the payment for his wife's shares.

[68] Reference was made in QY's testimony to more We Chat messages with the Respondent from August and September 2015 in which QY sends questions about when the money will be available. The Respondent responds that it will be at the end of August "based on the current situation" and then, on September 2, says there will be RMB ¥5 million (about $1 million Canadian) plus interest coming by wire that day, to which QY confirms receipt. QY testified the total received was about $1.2 million. (These references are to the One Million Payment.) That money was applied to the loan in China. QY says the Respondent told him the money was from 103 BC Ltd.

[69] QY's evidence is that he pressed the Respondent in multiple emails to take action to collect the money owed or get back the shares. Some of those emails are also in evidence. In one dated February 16, 2016, QY authorized the Respondent's firm to advise 103 BC Ltd. that the agreement is terminated and to cease any activities respecting V Ltd. In the email, QY further says he has asked the Respondent's office many times to urge 103 BC Ltd. to pay the $1.5 million balance owing. In another email dated March 7, 2016, written by QY on behalf of KY, he requests the Respondent's firm to "execute" the portions of the STAs to "return to me" the 20 percent of shares formerly held by C Inc., plus an additional 36 percent of the shares, and to reinstate his wife as shareholder and director.

[70] QY testified he made these requests to "restore our status" as shareholder and director and that he did not know until later that 103 BC Ltd. did not make the payment but that it came from V Ltd.

[71] QY said there was no response from the Respondent to these emails until she sent an email to QY dated March 8, 2016, tendered in evidence, in which she advised that KY should retain another lawyer:

> Subject: Re: [no subject]
>
> [KY]

> Now due to differences between shareholders, I hope you can find a lawyer each separately, and your respective interests can be better protected. I have raised this issue many times. If you still insist that I do it, I would like to confirm that I have already informed. Don't say that I didn't say it in future!
>
> Kind regards,
>
> Hong Guo
> B.A., M.A., J.D.
> Barrister and Solicitor
> BC and SK
>
> Guo Law Corporation
> [Address and phone and fax]

[72] QY testified that he was bewildered by this email as it was the first he had been told that the Respondent could not act with respect to the conflict that had arisen. As he put it, the shares had been sold to someone he did not know, he had lost $12 million, now the Respondent had said she would no longer be involved, and he had no direct channel of communication with 103 BC Ltd. other than through her office.

[73] QY was referred to an email from 103 BC Ltd. dated March 9, 2016, in which it is stated that the Respondent is legal advisor to 103 BC Ltd. and V Ltd. and that in the event of any dispute they will appoint the Respondent to represent them as against KY. It goes on to dispute much of what QY had stated, in particular any right to terminate or cancel the STAs. It states that [numbered company BC Ltd.] has a right to defer payment of the $1.5 million and to seek damages from KY. QY says that the Respondent forwarded this email to him from her personal email address.

[74] The March 9, 2016 email was in Chinese. QY says he queried why it was written in Chinese as he had understood the principal behind 103 BC Ltd. was the Caucasian "foreigner". QY felt that KY and he were being robbed.

[75] Further emails from March and April 2016 between these parties are also in evidence showing the growing conflict between them.

[76] QY rushed from China to Vancouver, retained legal counsel in BC and started the legal proceedings referenced earlier, getting a default judgment against the Respondent and entering into a settlement with 103 BC Ltd. by which the shares

in V Ltd. were recovered. He also said a partial settlement has been reached with XX and XL.

[77] In cross-examination, QY said the net worth of his wife and himself was about $30 million and their annual income was about $930,000 when she applied for immigration to Canada. His main business was in property development, and they also owned some hotels.

[78] Also, QY confirmed his evidence that he believed the Respondent to be their lawyer from the initial immigration application and purchase of the motel in Hope through the M project development and sale of their shares to 103 BC Ltd.

[79] He also said that until "this day" he has never met the person behind 103 BC Ltd. whom he termed the "buyer" and that all dealings were done by the Respondent.

[80] QY said he did not know the BC PNP was ended effective March 31, 2015, and that the revised application was received a day later, but QY confirmed his chat message of April 5 in which he asked the Respondent if there was any hope for the application. He said after that his wife and he did not hold much hope.

[81] QY was referred to a list of names including two lawyers in China and asked if they acted for him or his wife in these matters, and he denied it. He confirmed he has used several lawyers over the years in China but denied he consulted any with respect to these matters. A lawyer in Hubie, China was referenced in cross-examination. QY confirmed knowing that lawyer for years and said his wife had retained the lawyer on some "small" matters, but when that lawyer went to work for a government housing authority QY stopped retaining him.

[82] QY confirmed he filed his complaint to the Law Society in 2017.

[83] He also confirmed that he had no complaints about the way the JVA was documented or with any related documentation but said he did have complaints with what happened later when the JVA and other agreements were not followed.

[84] In his cross-examination, QY put all the blame at the Respondent's feet for the financial and other problems that arose, saying she did everything to his detriment and did not carry out anything that would be to his advantage. QY also criticized the Respondent's lack of response to his directions or answers to his questions. He said if she had acted to ensure the contracts made were carried out then he would not have been in the situation in which he found himself.

[85] QY also said his belief was that the Respondent's retainer started with the BC PNP immigration and then encompassed acting on all the business investments

his wife and he made in Canada, that they entrusted her to handle them all and she accepted this role. QY said the Respondent was part of all the business discussions he had with XX and that all his wife's and his decisions were based on their trust in, and reliance on, the Respondent. QY agreed, however, that he also based the investment decisions on trust in and reliance on XX and that both XX and he were sophisticated and experienced business people.

[86] By contrast, QY characterized his wife, KY, (who attended China Financial University to study accounting/bookkeeping) as a business person, but would not comment if she was intelligent or sophisticated and said it was he who made all major decisions.

[87] QY agreed that he never advised the Respondent of the loan he made to C Inc. until late 2014 or early 2015, after it went into default.

[88] QY said that in the fall of 2015 when he was having financial difficulties when 103 BC Ltd. did not pay, he spoke with the Respondent who arranged a short-term loan. He did not meet the lender, TC, and could not recall his name.

XL

[89] This witness, located in Kelowna, testified by Zoom and with an interpreter.

[90] XL is a friend of the Respondent and in her evidence clearly showed sympathy for the Respondent. A mark of their closeness is that the Respondent referred to her by a friendly nickname, as did the witness HZ, who also knew XL. An issue of whether her evidence was tainted by discussions she had with the Respondent featured prominently in her direct examination, as she said the Respondent and she spoke the night before she testified.

[91] XL had called the Respondent with questions about the hearing and what would happen when she was giving evidence and said they mostly discussed an exhibit that was shown to QY relating to a government fraud investigation into XL's husband in China and a request the Beijing City Public Security Bureau had made to QY for documents in the BC legal proceedings. XL said there was no discussion about the evidence she would give at the hearing. She also testified to a call she made to the Respondent a couple of weeks earlier where she asked about what to expect, as she knew nothing about the procedure and if she would be cross-examined and if she would participate in the whole hearing.

[92] When asked about her fluency in English XL said it was "about 70 percent."

[93] XL confirmed her husband and she were sued by QY and KY and that the lawsuit was continuing. While a settlement had been reached, it involved working out an accounting and that was not completed.

[94] XL has known the Respondent for many years. She first retained the Respondent to incorporate and act for a number of companies on some land transactions, and after that their friendship grew. She denied that the Respondent had ever acted personally for her husband, XX, or her.

[95] XL was wary when answering a number of questions in her direct evidence relating to her involvement in one of those companies, MU Inc., saying that she believed QY was using the hearing to obtain evidence for the lawsuit and for another person who was suing them, and she saw no relevance to her role in that company with QY's complaint about the Respondent.

[96] In cross-examination, XL added that QY said he would be watching these proceedings. Having been sued, she was concerned that evidence given before the Panel could be used in that lawsuit. She was consequently being careful not to say anything that could hurt them in the lawsuit.

[97] XL confirmed that she was a director of C Inc., that the Respondent was its lawyer from its incorporation to 2016 and that it was used initially to purchase a water company, GSW Inc., from MU Inc.

[98] XL also testified that the Respondent introduced her husband and her to QY and KY at a Chinese restaurant in Vancouver in the first half of 2013 and they discussed the M project. She believed her husband had met QY earlier. The Respondent told them that QY was very experienced in the development business, had "financial strength" and wanted to invest in Canada. She and her husband had already invested in the M project.

[99] The Respondent also told them that QY and KY were in the process of an immigration application and that she was acting for them on this application.

[100] This initial dinner was followed by others of which XL had no specific recollections except that she and her husband somehow always ended up paying the bill. The Respondent was at some, but not all the dinner meetings. She said the Respondent was there as a friend and not as anyone's lawyer.

[101] Once the agreement on proceeding with the M project was reached, XL said the Respondent did the JVA documentation and was the only lawyer involved. She confirmed that, to her knowledge, it was only produced in English.

[102] When asked about the M project, XL said it was a development of three properties in central Richmond. The properties had great potential for development due to their location and proximity to Richmond Centre and the hospital. She said they met many potential investors and interested contractors through the Respondent.

[103] XL's evidence was vague on some of the purchase documents she signed for the M project. She admitted signing them but said she could not recall them, including the purchase contract and an assignment. She said she signed a stack of documents she termed as almost as thick as a shoebox that were all in English and that she did not fully read, due to her limited English reading ability (stating she would have needed a dictionary) and as she relied on the realtor who witnessed her signature.

[104] XL said in direct examination that she believed the Respondent prepared these documents, but in cross-examination said she did not know and at the time did not care, just signing as instructed by the realtor. She also said that she could not remember which documents were provided by the realtor to sign and which by the Respondent.

[105] XL recalled being at the Respondent's office with her husband for hours into the night and almost falling asleep as more documents were prepared. She wondered why they had not been prepared in advance.

[106] XL then attended meetings with officials of the City of Richmond at which specifics of the development and the City's wishes, such as public housing and a library, were discussed. She did not recall the Respondent being there.

[107] XL testified that the Respondent assisted with arranging a loan for XL and her husband for the C Inc. contribution share and recalled the Respondent doing the loan documentation. Their funds came from the loan and a number of $50,000 deposits to the Respondent's trust account from China from sources she could not specify.

[108] XL denied knowing of any loan from QY or KY to C Inc. but testified that QY said his wife, KY, had to withdraw from the joint venture as their financial connection "was broken" and the Respondent arranged 103 BC Ltd. as a potential purchaser. XL said she believed the Respondent did this out the "kindness of her heart" to help find a buyer for KY's shares.

[109] The Respondent told XL that the person behind 103 BC Ltd. was a high-level executive in a Chinese company who had experience in real estate development.

He wanted 60 percent of the shares of V Ltd. XL and her husband did not want to sell any of their shares and lose control of the development, but as QY needed badly to sell, they agreed to sell 20 percent to help him.

[110] XL testified that she was the one who withdrew the money for the One Million Payment from V Ltd. and provided it to the Respondent to pay to QY and KY. XL was the only person with access to the company's account in Canada at the time and did so on instructions, although she did not say from whom they came.

[111] XL met SR on a couple of occasions, once at the Respondent's office and another time at a restaurant, but did not know at the time that he had previously been an employee of the Respondent or that he acted for HZ with respect to 103 BC Ltd. She was very surprised when she learned this information.

[112] In cross-examination by Respondent's counsel, XL confirmed that the Respondent's counsel was a participant in the phone conversation she had the prior day with the Respondent.

[113] XL also confirmed counsel's suggestion that the Respondent was the lawyer for the joint venture, and confirmed the Respondent did not represent her or HZ, who to her knowledge had his own lawyer. She also confirmed that (at some point) she knew that SR acted for HZ as his director in 103 BC Ltd.

[114] XL stated her belief that the Respondent was not representing QY or KY and that none of QY, KY or HZ behaved as if they thought the Respondent was representing them, and the Respondent never acted as if she was representing them. XL provided no other details to support those conclusions.

[115] XL did confirm that the Respondent represented C Inc. and 103 BC Ltd. as she had incorporated them, but that, with the M project, it was her understanding that the Respondent was acting for V Ltd.

[116] XL confirmed suggestions that the Respondent, knowing many people in the Vancouver area Chinese community, routinely introduced people to others in that community if she thought they could assist each other and that she acted like a "matchmaker".

[117] She said the Respondent is known in the community as "Lawyer Guo" as a formal term of respect.

[118] XL was shown an email dated March 26, 2015 sent by KY to the Respondent's conveyancer and copied to XL, referencing documents called "three pictures" from KY's lawyer in Hubie, saying "you can see if [they] can meet your

requirements," and another email sent by the Respondent's office to KY on March 27, 2015, again copied to XL, with the business card of a lawyer in Beijing who was also a member of a Canadian law society. XL could not recall any details of why these were sent to her.

[119] The lawyer in Hubie mentioned in the March 26, 2015 email of KY was the one that QY testified he had known for years and who acted on "small" matters in China, until he started working for the Chinese housing authority, and who QY said was never involved in the matters relevant to this proceeding.

[120] In summary, XL agreed with Respondent's counsel that the Respondent acted for V Ltd., that the Respondent liked to introduce people, that the Respondent periodically passed on messages between people, and that the Respondent went to lunch or dinner with people as friends. In doing so it was apparent that XL made this answer to assist the Respondent.

[121] In re-examination she confirmed she believed the STAs were prepared in China as they were in Chinese and not English.

KY

[122] KY testified by Zoom from China, and her evidence was translated from Mandarin to English. She confirmed she speaks no English. Her evidence was generally straightforward and uncontradicted by other witnesses or the documentary evidence.

[123] She confirmed she has some experience as a bookkeeper.

[124] KY met the Respondent at a restaurant near the Wutan Gardens in Beijing around 2010 as her husband, QY, wanted to emigrate to Canada and they learned of the Respondent from a contact. She said the Respondent introduced herself and showed proof of her status as a lawyer and KY retained her in KY's investor immigration case.

[125] In her direct examination, KY was shown the Respondent's Immigration Agent Agreement, which is in Chinese, and confirmed she paid the fees under that agreement. To her mind this agreement covered her whole family. She understood she needed a business investment as part of the BC PNP and said that, as they knew nothing about the process, they relied on the Respondent. KY said they trusted the Respondent to provide all advice and services on the immigration project and that all potential investments were provided to them by the Respondent.

[126] KY said she mainly provided the information for the application and mostly worked with the Respondent's assistant. Her husband became involved when they needed to speak with interested parties about the potential investment.

[127] After the initial potential investment in the Merritt hotel fell through, a motel was located in Hope. The Respondent incorporated S Holdings Corp. for that purchase. At this time, KY and her husband were in China. After the purchase, the Respondent found someone to manage the motel for them.

[128] Their introduction to the M project arose when they were introduced to XX by the Respondent at her office. KY says the Respondent told them XX headed a listed company in Hong Kong and had "financial strength", had land in Richmond for development, and was looking for investment partners. They then went to a restaurant where the potential benefits of the investment were discussed. As the purchase of the motel for the investor immigration application had not completed, she understood this to be a potential investment project under that program.

[129] When shown the JVA, KY recalled they were getting a 40 percent interest under her name and XX's company, C Inc., was getting 60 percent. The JVA was signed at the Respondent's office. KY understood the JVA had been prepared by the Respondent but did not say how she arrived at that conclusion. She confirmed there was no Chinese version of the JVA.

[130] When asked about any explanation she was given on its contents, KY said that they trusted the Respondent completely and were given a brief overview of the JVA's contents, "not each and every sentence."

[131] Soon after KY gave birth to a child, QY took over dealings on the matter, filling her in on important topics and, if she needed to sign anything, telling her so, and she would "just go along".

[132] After the JVA was signed, XX advised QY and KY that C Ltd did not have enough capital and asked for a three-month loan of $4 million that would be repaid with interest. The loan was made. It was not repaid despite demands KY made to XX.

[133] KY confirmed that the Respondent knew nothing about this loan until it went into default. She says she called the Respondent to tell her about it, with little response from the Respondent to this news.

[134] KY recalled a meeting in Beijing with her husband, herself and the Respondent, to discuss the need to repay the loan KY and her husband, QY, had taken out to

give C Inc. the $4 million. They needed to sell their shares as soon as possible and discussed having $4 million of C Inc. shares sold to repay the loan. KY thought having 103 BC Ltd. as purchaser was discussed, and she understood from the Respondent that the person behind 103 BC Ltd. was, as she termed it, a "big nose Caucasian." KY understood the Respondent represented 103 BC Ltd. and also was consulting with QY and KY.

[135] She said that as XX could not come up with the money to repay the $4 million loan, he agreed to sell 20 percent of C Inc. shares.

[136] KY said she understood that the Respondent introduced 103 BC Ltd. as the potential purchaser. KY was not involved in the details of the share sale and her husband, QY, did most of the communication. She did not know that the Respondent had incorporated 103 BC Ltd. KY said the Respondent told her the person behind it was a wealthy Caucasian investor with a big nose. She did not know his name, and she never learned that HZ was the shareholder until recently.

[137] KY was not involved with the STAs other than being told about them by QY. She attended a meeting in Beijing on August 7, 2015, at which the STAs were signed by XX and herself. Also present were QY and, she believed but was not sure, the Respondent.

[138] KY maintained that the Respondent was the only lawyer involved throughout. She did see a lawyer at one point in 2015 in Beijing (the one whose card the Respondent's office sent her) but only to witness her signature on a loan document.

[139] When asked about the use of the M project investment as part of a new BC PNP application in 2015, KY said that, after the prior application was rejected, the M project investment was substituted to see if it was possible to use that investment to satisfy the application criteria. A hotel was proposed in the original application as they had hotel experience in China. KY thought she signed this revised application. In re-examination she said it was the Respondent's idea they use the M project investment as part of that BC PNP application.

[140] KY denied that the Respondent ever said her retainer was limited to the immigration matters or that she was not their lawyer for the other investments, and KY said that the March 8, 2016 email was the first time the Respondent said to get another lawyer.

[141] KY also said the Respondent never advised her of the risks of being a minority shareholder in V Ltd. or to get a shareholder agreement in place, or to get security

for the share sale to 103 BC Ltd. She could not say if the Respondent ever provided this advice to her husband.

[142] KY did know that the shares were to be transferred to 103 BC Ltd. before full payment was made but understood if the price was not paid then the shares would be returned. She did not say how she came to this understanding.

[143] In cross-examination, KY said QY and she did not tell the Respondent of the $4 million loan to help "save a bit of face" for XX. She said in Chinese business culture a person who has to borrow in the way XX did is believed to lack financial strength, so they kept it quiet.

[144] KY confirmed that she never paid the Respondent for any legal services beyond the amount paid under the Immigration Agency Agreement.

[145] She confirmed the M project property has sold and that her husband and she have so far been paid a portion of what they are owed, with the balance of sale funds in trust while the litigation continues.

[146] KY was referred to an affidavit she made on June 20, 2016, in which she said she received legal advice from the Respondent respecting her role as shareholder and director of V Ltd. KY confirmed this evidence and said the Respondent gave her legal advice from the time of KY's introduction to the investment project to the drafting of the JVA and the incorporation of V Ltd. She said all dealings after that were between QY and XX.

HZ

[147] HZ also testified by Zoom from China in Mandarin with translation. He said he understands very little English, cannot speak it and mostly cannot read it. The Panel found him generally to be straightforward in his evidence, and while he was clearly sympathetic to the Respondent, he did not tailor his evidence for her benefit.

[148] He is in the petroleum engineering business as a senior executive for a Hong Kong company.

[149] HZ met the Respondent through a friend when he was seeking to apply for investment immigration to Canada in 2013 and retained her for a BC PNP application with an investment in a motel. Ultimately it was not successful. He said she was his lawyer on the immigration application until sometime around 2016 or later.

[150] The Respondent also incorporated 103 BC Ltd. in 2015 on his instructions as a vehicle for obtaining a licence for importing Irish milk powder into China. This was at the Respondent's suggestion. Due to Chinese regulatory issues, the project foundered.

[151] HZ was not asked and did not explain why 103 BC Ltd.'s incorporation took place at the same time as it appears the STAs were being prepared.

[152] He left all the incorporation details to the Respondent, including determining the initial shareholder and director. He subsequently became the sole shareholder.

[153] When the first named director resigned, he asked the Respondent to find another, and she arranged for SR to become director. She advised HZ that this new person was local and experienced and could be of assistance in the future. He was not told SR was a former employee of the Respondent or business associate of the Respondent's former husband, and he never met SR or communicated with him. SR later resigned for reasons unknown to HZ.

[154] HZ then asked XL (whom he consistently referred to by her nickname) to locate a new director.

[155] He learned of the M project from the Respondent in June or July 2015. The Respondent gave him an overview of the project and suggested he speak with XX, which he then did. He had met XX in about 2013 or 2014 over the proposed Irish milk powder import venture.

[156] He learned the 40 percent shareholder wished to withdraw. He learned her name.

[157] HZ then met in Beijing with the Respondent and XX to discuss the M project further. XX provided most of the details, although the Respondent advised how much KY wanted for her shares and that the purchase should happen as soon as possible.

[158] HZ was not interested in being a minority shareholder, as it would make finding financing difficult, so he wanted at least 51 percent. He told XX that he would have to sell some shares of C Inc. as well, so that HZ had a controlling interest as majority shareholder.

[159] Throughout, he never met with KY and never met or even heard of QY.

[160] HZ then got his own lawyer in China involved in the meetings and had XX explain the M project to the lawyer, and HZ instructed the lawyer on his own

requirements and ideas. He then entrusted further negotiations and proceeding with the share purchase to his lawyer and was not much involved personally.

[161] HZ saw no need to retain a lawyer in BC as the Respondent was the lawyer for the development company, V Ltd.

[162] He said he entrusted XL with full authority on his behalf with 103 BC Ltd. and suggested to Law Society counsel that questions about the sequence of matters be directed to XL.

[163] HZ confirmed evidence he gave in an examination for discovery in the civil proceedings that he did not seek advice from or hire any other lawyers for 103 BC Ltd. with respect to the share purchase, and said he entrusted these matters to XL. He did not retain any lawyer other than his lawyer in China.

[164] Somewhat surprisingly, it was only after the STAs were completed that he then did a "due diligence" investigation to confirm that the $12 million had actually been invested into the project by KY. He obtained accounting records of what was received into the Respondent's trust account, but he was not able to see that the investment was $12 million, only confirming $4 million being received. He asked the Respondent for details, but says he never got a clear explanation from her. He also spoke with XX. He then instructed his lawyer to write a letter. He says he saw a draft of the letter before it was sent, but could not recall if it was sent to the Respondent or to KY's lawyer. He recalled it was sent twice. That letter is not in evidence.

[165] The difficulty for HZ was that the trust account records showed money coming into trust from a number of different sources and he could not distinguish which portions were from, or on behalf of, KY and which from, or on behalf of, XX.

[166] HZ says that his lawyer told him KY replied to the letter, and he instructed his lawyer to demand that he be reimbursed what he paid and be removed from a guarantee he had signed for the rest of the price, and to say he would return the shares. He says that letter went to the Respondent's office.

[167] XX came to see him and said KY was experiencing a very difficult financial situation, and they agreed, in order to help solve the problem, that money be taken from V Ltd. It was arranged to withdraw that money to pay to KY. He understood the main source of that money was a mortgage loan on XL's home.

[168] In cross-examination, HZ said he never entrusted the Respondent to do anything, or sign anything, with respect to 103 BC Ltd. in these transactions, and never paid

her "a penny". He also said she never represented to him that she acted for QY, KY, XX, XL or C Inc.

[169] As to why he did not have a BC lawyer involved, HZ said he did not see the STAs as having much to do with Canada and so trusted his Chinese lawyer to deal with the matter.

[170] He confirmed there had been a sale of the M project property and that the sale funds were in trust while the litigation continued. QY and KY had received a total of $7 million to date.

The Respondent's Witnesses

John Forstrom

[171] Mr. Forstrom, who is a lawyer and one of the two Law Society investigators involved, was called by the Respondent.

[172] It was suggested to him that his investigation showed that the Respondent's roles were limited to acting for V Ltd., liking to introduce people to each other, passing messages between people and attending dinners. He disagreed.

[173] Mr. Forstrom said the Respondent or her staff also prepared documentation of agreements between the parties in this matter, acted and continued to act for the parties on other matters, and arranged for parties to get short-term loans when another party reneged on the agreements. In his opinion, that would not have been done if the Respondent was simply the lawyer for V Ltd. His investigation showed she did extensive legal work for the parties other than that company.

[174] Mr. Forstrom referenced the emails and messages where QY and 103 BC Ltd., in their dispute with each other over the STA, each indicated they considered the Respondent to be their lawyer.

[175] He did confirm that his investigation showed that the Respondent gained no direct financial interest from the transactions that form the basis behind this complaint.

[176] He also confirmed that, other than the retainer agreement with KY for the BC PNP application, he saw no written retainer agreements between the Respondent and any other person or entity relevant here, and no record of any of them paying her anything for services.

[177] Based on the investigation, he concluded that the Respondent had not acted for HZ with respect to the M project matters, although she had acted for him in an immigration application and another business project.

[178] Much of Mr. Forstrom's evidence related to the time it took to investigate this complaint and who he spoke with or did not speak with. It is not a matter this Panel needs to consider in this decision. As noted later, a delay application initially brought by the Respondent has, by agreement of the parties, not proceeded.

[179] Another significant part of his evidence related to allegation 2 of the Citation, in which the Respondent is alleged to have made representations to the Law Society that were false or misleading. He was referred to the transcript of a two-part interview with her on February 26 and April 30, 2019 and a letter she wrote him dated April 23, 2019. That letter is central to allegation 2.

[180] When he was referred to a paragraph in the April 23, 2019 letter where the Respondent quotes from, and attaches, the email sent by KY about the lawyer in Hubei, Mr. Forstrom said the Respondent told him that everyone had their own lawyers, and that HZ and QY had Chinese lawyers. He did not recall if he asked QY if he had a Chinese lawyer.

Linda Murray

[181] This witness testified in person and was the initial Law Society investigator of this complaint. She was also involved in the other Law Society investigations respecting the Respondent going back to June 2016. For a time, she was the primary investigator on all files concerning the Respondent.

[182] Most of Ms. Murray's evidence was detailing her investigations up to her retirement on May 31, 2018.

[183] She referred to the Respondent as a "lovely lady" with a young family who was "very very stressed" as a result of the events that led to the raft of investigations - Ms. Murray estimated as being some two dozen. She was empathetic to the Respondent's situation while doing her investigations, as she put it, "regardless of her culpability."

Tadhg Egan

[184] This witness, a BC lawyer, testified in person. He practised law in Ireland and the UK before moving to Canada.

[185] Mr. Egan worked for the Respondent's law firm from mid-2012 to the end of 2014 as a legal assistant while writing his NCA examinations. After articles with a different law firm, he sublet space from the Respondent for his own practice.

[186] He confirmed that the Respondent had a very busy practice and that her waiting room was often packed with clients, as he put it, more akin to a doctor's office than a lawyers. He said 99 percent of the people there spoke Mandarin.

[187] Mr. Egan said the Respondent's sister, M. Guo, was often in the office, and from his being referred to an email he had from her and other evidence in this hearing, M. Guo appears to have done some work assisting the Respondent.

[188] With the M project, Mr. Egan assisted with production of the commercial lending documents and, with the other lawyers, was involved in the closing of the purchase of the lands. As far as he understood from his involvement, their client was V Ltd. He knew that the Respondent acted for KY as an immigration client.

[189] When asked if he saw anything that indicated to him that the Respondent was giving advice or acting for any other party on the M project, Mr. Egan said no, but with a specific qualification that everyone involved spoke in Chinese which he does not understand.

[190] He was asked about any of the parties involved being sent for independent legal advice ("ILA"). He had no clear recollection but thought some of them were, as it is standard for guarantors to be sent for ILA. He could not say who if anyone obtained ILA.

[191] He was asked about the use of the M project as part of the BC PNP application process for KY and was shown an email dated August 8, 2013 sent to him by another staff member asking him to revise and add further detail to a letter to the program. He could not recall the email, but said it was quite common for him to assist by proofreading letters going out of the office. This letter references the V Ltd. purchase of the M project lands as the investment for the BC PNP application of KY. He did not know if the letter was ever sent.

[192] He was aware that an investment like the M project did not qualify under the BC PNP as it was not an active business acquisition but a purchase of land.

The Respondent

[193] The Respondent testified in person with an interpreter, although at times she spoke in English. Her evidence took some two days of hearing time.

[194] In giving her evidence she was, naturally, at times wary. At others, she was argumentative. Most surprisingly, given the stakes in this for her, she professed lack of memory about important matters, especially when shown documents that brought her evidence into question. On these occasions, she often retreated to what became a familiar theme: that the parties all had their own lawyers - whom she could not identify – but who (rather than her) were instrumental in preparing these documents.

[195] She was born and raised in China, attending a prestigious university in China for her undergraduate degree and then the University of Regina on scholarship for a Master's degree in Sociology. She obtained her LL.B. at the University of Windsor.

[196] She said her English had largely been learned from dictionaries which made speaking the language a more difficult learning experience. She continues to have issues with English. She still thinks in Mandarin and then translates in her head to English.

[197] After her articles and practising in Saskatchewan for a time, she returned to China where she married and gave birth to her two children. She wanted to return to practising law in Canada and qualified in BC, working initially for a firm in Vancouver before starting her own firm in Richmond in 2009.

[198] Her husband came to BC as well but after a time decided to return to China and the marriage ended.

[199] Her sister, M. Guo, who was in Oregon, came to live with the Respondent following her own marriage ending, and assisted the Respondent with her children.

[200] The Respondent's practice focus was on real estate and immigration. When the BC PNP was initiated, she started doing those investment applications as a regular part of her practice. All her clients were Mandarin-speaking-Chinese, and as a Mandarin-speaking lawyer she was well positioned to act for them on these applications. As a result, her practice boomed and she hired up to 30 staff to keep up with volumes. Of the Respondent's staff, some 10 to 12 worked on the BC PNP files.

[201] The Respondent was taken through the KY application, and she explained the process. She said it takes some months to put the proposal together and can take up to five years for approvals to be obtained.

[202] She said that business people came to her waiting room to speak with each other about business developments and they became her friends. She said these people came just to meet and associate with others.

[203] When shown the Immigration Agent Agreement with KY, she confirmed that the only fee she received from KY was the amount under that agreement (that she later said was about $30,000 in total) and that she did "not make a penny" from any of the other transactions respecting the M project and that no other party involved paid her anything.

[204] The Respondent took issue with several parts of the English translation of that agreement obtained by the Law Society and provided another translation she had obtained from a different translator. In particular, the Law Society version at item 9 said one service was assistance in providing consulting services for starting "business enterprise(s)" whereas her translator said for starting "a business". This she said is an important distinction as "every word, every comma" in the agreement is immigration related.

[205] Another difference was at item 13, that the Law Society translator had interpreted as "Advice on legally avoiding Canadian immigration prison (residence requirement)" and hers had as "Providing consultation to legally fulfill residency obligation." A third was item 15, that the Law Society translation stated was to "provide long-term consulting services" and her translator said were "permanent consulting services." She said the item 15 service was solely with immigration, as the whole agreement was only about immigration. She was adamant that she was never retained by KY or QY for any other purpose and the scope of her retainer was limited to the immigration application.

[206] The Respondent was then taken to a letter she wrote dated September 10, 2018. This letter forms the basis for allegation 2 of the Citation on misleading the Law Society. In a somewhat leading way, not objected to by the Law Society, she was asked to comment on the letter in a context where:

(a) the complaint underlying this Citation was one of over two dozen Law Society investigations, plus Practice Standards investigations;

(b) there was a custodianship of her practice;

(c) her focus was on pursuing the former staff member who stole millions of dollars of her trust funds and in which she made about 20 trips to China to get them charged; and

(d) she was required to contend with lawsuits and with bankruptcy of her law corporation.

She went through a description of this litany of events, including the other Tribunal hearings that have occurred or are awaiting her.

[207] The Respondent was also referred to her involvement in investigations in "money laundering" and her evidence to the Cullen Commission, which found no evidence of her being involved and, in her words, "cleared her." She said responding to the Law Society was her full-time job.

[208] She also detailed how her time was taken with obtaining funds to repay those taken from her trust account, borrowing funds and selling her home and a farm in Saskatchewan to do so, and in seeing all creditors paid in her firm's bankruptcy.

[209] With the "crash" of her practice, she is down to two staff, has closed her Beijing office, and has restricted herself to matters where she does not use a trust account.

[210] She was then shown a letter dated January 30, 2020 from Mr. Forstrom to her counsel in which he asks for clarification of 16 points arising from an interview by Mr. Forstrom of the Respondent.

[211] She said that she knew nothing about the $4 million loan to C Inc. until after it was made. She also queried the validity of an allegation made by QY to the Law Society that he expected she would arrange security for that loan, or that it be in writing, when she knew nothing about the loan until after the fact. QY did in fact make these allegations against her in a witness statement to the Law Society, stating (despite her having no idea it happened) that he was relying on customary Chinese business practices of not recording significant transactions in writing, and that she should have advised him otherwise.

[212] Relevant to allegation 2, she denied drafting the STAs.

[213] The Respondent said she contacted HZ, as she made calls to a few people she knew in an effort to help QY and KY when QY told her he needed money urgently and needed the shares sold. HZ was one of those people.

[214] The Respondent agreed she incorporated 103 BC Ltd. but insisted that when providing her responses to Mr. Forstrom, she did not remember that its shareholder was HZ. She said that his surname is common and she knew several hundred with that surname. She had incorporated hundreds of companies, and, as this was a numbered company, she could not recall it specifically. She said she

did not know who the principals of the company were at that time. She was overwhelmed with all that was happening and did not check before answering.

[215] The evidence about knowing the principal of 103 BC Ltd. is relevant to allegation 2(b). Similarly, allegation 2(a) is that the Respondent made representations to the Law Society that were false or misleading as to when her retainer from KY ended. She had told Mr. Forstrom it was around September 12, 2012. She said the work on the BC PNP application to her recollection ended around then, but the Social Insurance Number (SIN) cards for KY and QY did not arrive until early 2013. In her evidence, she did not address the comments from Mr. Forstrom in his letter about the motel purchase in Hope not completing until November 2013 or about the 2015 application based on the M project.

[216] Asked about the evidence of HZ of her participation in meetings with HZ about the potential share purchase, she said she was only ever counsel for V Ltd. She did not address HZ's evidence of her telling him about KY needing to sell shares or some details of the M project.

[217] The Respondent was adamant that she never intended to mislead the Law Society. She also said that, as she still thinks in Mandarin and then translates in her head to English, this can affect her understanding of what is being stated.

[218] In her evidence, she remained steadfast that she only ever acted for V Ltd. in the M project in order to close that transaction and that she did not know who drafted the JVA, even though she is witness to the signatures and all references in it to applicable laws, including dispute resolution law, are those of BC.

[219] When her evidence turned to the September 10, 2018 letter, she said she did her best to answer the questions posed of her, but again referenced the amount of work and stress she faced at the time. She said that rather than reviewing file material first, she answered largely from memory and maybe talked to one assistant. She reiterated that she had no intent to frustrate the investigation or to mislead.

[220] The Respondent said QY and XX met in her office waiting room where they discussed the M project and golfing. Later in cross-examination she added that she went to dinner with them. She agreed they asked for an English version JVA and she provided one with what she called a "very simple revision," putting in the percentages of investment and other details they provided. She insisted they had their own lawyers in China whom they were consulting, but provided no detail of who those were. It is clear, if they existed, she had no dealings with them. She

also incorporated V Ltd., which she said was her only client in this transaction. She called the JVA "just a planner" for the incorporation of the company.

[221] The Respondent said her office then received the funds for the investment, with much coming from "lots of transactions" due to the Chinese currency restrictions on sending money abroad. She checked the incoming money with XL to ensure it was allocated correctly as she was the only director in Canada at the time. The Respondent said her office was careful to allocate the funds correctly but did not determine their source as the current Law Society Rules on ascertaining sources of funds were not yet in place. She said the real estate purchase was completed and no one complained to her about the JVA itself.

[222] The Respondent admitted she assisted V Ltd. to obtain additional financing in late 2015 and the spring of 2016. When asked about this additional financing, which was obtained after the share sale and following KY being removed as director, the Respondent insisted she was acting solely for V Ltd.

[223] She said that she could not recall what she told HZ about the M project and KY needing to sell her shares but deferred to his memory of their conversation. She said her phoning him and others about this was not as lawyer for KY but simply to help her. She said she told these people she represented the company and one shareholder wanted to sell shares and if they wanted more details they could talk with "him" or to the directors.

[224] The Respondent's recollection was that when she met with HZ in China it was to get his signature on the power of attorney to XL and that she did this on her way to the airport.

[225] She said neither she nor her staff drafted the STAs, but that STAs may have been sent to them and they downloaded and forwarded what was received to the parties. In direct examination, she was not sure if her office made an English version, but said it was the Chinese one that was signed.

[226] She kept referencing how these matters were just one of many files she was handling and that on her trips to China, she would have 20 to 30 dinner meetings with clients. She said she did a lot of introducing people to each other and had over 70,000 people on her We Chat, so she did not read all the chats she received.

[227] She stated that SR was a lawyer formerly licensed in Saskatchewan who worked for her in 2012 and 2013 in her real estate practice. She did not know until after the fact that he had been a business associate of her ex-husband. She did not recall SR becoming director of 103 BC Ltd. She said it may have been done by her staff

and that his role was just as the required local contact for the company. She took instructions for 103 BC Ltd. from HZ as shareholder.

[228] With respect to HZ having 103 BC Ltd. cease paying KY, the Respondent said she recalled that after the initial payment was made there was a dispute, but (despite the We Chat messages from QY) she did not get details of that dispute from HZ or QY. She thought XL may have initially told her about the dispute.

[229] The Respondent said her involvement in the STAs was to do the corporate documentation as records office for V Ltd. when her office was instructed to do so. She resigned as records office for C Inc. in 2015 and resigned as records office for V Ltd. in 2016.

[230] She said no damages have yet been assessed on the default judgment taken against her in the civil litigation.

[231] The Respondent was referred to an Engagement Letter between her law corporation and V Ltd. that detailed the services to be provided, charge rates, and a caveat that acting for the firm did not include acting for any related party including shareholders, directors, or officers or joint venture partners. She said it was signed by XL and herself, and so clearly was made after XL became the sole director of V Ltd.

[232] The cross-examination began with respect to allegation 2 on misleading the Law Society. The Respondent was referred to documentation showing her office forwarded material to the BC PNP in 2014 on behalf of KY. She said she did not recall.

[233] Law Society counsel then turned to the part of allegation 1 on conflicts of interest, involving the further loan to V Ltd. for $10 million. She confirmed her signature on loan documentation as a witness.

[234] She said that when XX could not come up with the funds for the initial deposit on the M project lands, she personally loaned him the money for the deposit, $500,000. She said there was a delay in getting the money from China, so she paid the deposit to the realtor in the meantime. She could not recall if there was any record of her being repaid.

[235] The Respondent was then taken to the letter to Mr. Forstrom of September 10, 2018. She confirmed her awareness of her duty to respond fully and accurately to the Law Society. In answering this letter, she could not recall what, if anything, she reviewed from her files. She agreed she had legal counsel at the time. She said

the letter was drafted for her, she then read it and made any changes before it was sent.

[236] Contrary to what the letter states, she confirmed that she had probably seen the QY complaint before she wrote the letter and that it was incorrect on that point.

[237] The Respondent said in evidence about when she ceased acting for QY, that the letter said it ended with the motel purchase, which was correct, but that she got the date wrong.

[238] She emphasized that none of the parties had any issue with the terms of the JVA. The issue as she saw it was that the JVA was not followed by them, something she did not know at the time. She reiterated her belief that they had their own lawyers, none of whom she could identify, and that if they had felt they needed a Canadian lawyer, they were sophisticated business people who would retain one. She minimized her involvement to providing this "very short very brief agreement."

[239] She confirmed her knowledge that she is restricted from acting for multiple clients with conflicting interests, that she has an undivided duty of loyalty to her clients, that she owes them quality of service and that she has a duty to fully cooperate with the Law Society.

[240] The Respondent admitted never advising KY or QY on the risks of being a minority shareholder, saying they were sophisticated business people and the laws on this were largely the same in China. She said they never asked about it, and again said they had their own lawyers to assist them, whom again she could not identify.

[241] She said she could not recall the respective investments of KY or C Inc. when they were suggested to her ($8 million for 40 percent and $12 million for 60 percent, respectively).

[242] She saw no conflict of interest with her involvement, as her retainer was to incorporate and act for V Ltd. and it was her belief that she was not representing any of the shareholders. She stated, "so I did not represent them, and there was no issue with it."

[243] She was shown a letter she signed in connection with initial financing to V Ltd. in which she said she acted for C Inc. The Respondent agreed she acted for both companies but said she also had consent from each company to do so. There is no documentation of this consent. She said she was aware that if there was no

conflict, she could act for both companies by consent and that the same people were behind both companies.

[244] The Respondent was taken through the loan documentation, which included ILA certificates, from the various loan guarantors and creditors giving priority, including XX and XL. It was pointed out that there is no ILA certificate from KY. She responded there must be, and that she had sent KY a lawyer's card and urged her to get ILA on another occasion. The Respondent said she did the same this time and thought KY had obtained ILA. She said that if an ILA certificate from KY had not been obtained as part of the loan documentation, the lender would not have made the loan.

[245] The Respondent said that if a lawyer signs an agreement with a client, the lawyer has a duty to make sure the client understands the whole of the retainer matter and to give the necessary advice.

[246] She gave no clear answer on why the M project was used for the 2015 BC PNP application as she knew it did not qualify under the program as it was a real estate purchase. She seemed puzzled about why her office had used it for this application.

[247] The Respondent confirmed sending the STAs by We Chat to QY and XX and having dinner with them in China. She denied drafting involvement, saying she had no ability to draft such an agreement in Chinese and said at one point she believed she got the STAs from a Chinese lawyer and at another point from XL.

[248] She said it was not her "job" to tell QY that HZ was the person behind 103 BC Ltd.

[249] The Respondent was then referred to an unsigned English version of the two STAs (one with KY and one with C Inc.) that was recovered by the Law Society from a mirror imaging done of her office computer hard drives. That English version has her law firm name as a footer at the bottom of each page. Asked if her office created it, she responded, "If you say so." She had no explanation except to again say the parties had their own lawyers. She could not explain why these English versions were not in the files she produced to the Law Society except to suggest they had been provided and the Law Society had taken a lot of her files and then lost a number of them.

[250] She was also referred to some documents ancillary to the STA also in English and also recovered by mirror imaging, including a Bare Trust Agreement between KY and 103 BC Ltd. under which KY held the 40 percent of the shares as a bare

trustee for 103 BC Ltd. She said it was likely her office prepared it, but she was not sure.

[251] She was asked why she kept the certificates for the transferred shares in her possession for several months and said it was because the purchase price had not been paid in full, and so under the STA she was to hold the shares.

[252] The Respondent said QY likely did call her about not being paid by 103 BC Ltd. and to ask her to help him get payment.

[253] When asked why she never told QY about the additional financing after the share sale, she said that as QY was no longer a shareholder or director she could not give her this confidential information as a non-party.

[254] When asked about her role in the short-term loan from TC to KY, she said she provided TC as a contact for a loan to QY but did not introduce them. She denied guaranteeing the loan, but when shown her answers on examination for discovery where she said she did provide a personal guarantee, agreed with Law Society counsel it was not a guarantee "in a legal sense".

[255] When asked why she did not have the loan documented, the Respondent said TC and QY arranged it in China and all she did was give TC's name to QY as he badly needed money and asked for her help.

[256] When she received the One Million Payment from V Ltd. in her trust account to pay to KY (used to repay TC), she said she could not advise KY or QY where it came from as it was confidential.

[257] The Respondent said that she advised KY and 103 BC Ltd. to get other lawyers as soon as she found out there was a dispute between them. She admitted she had no written confirmation of having given advice earlier on having their own lawyers but said the Law Society had all her files and could search for it and find that advice.

[258] Overall, the Panel found much of the Respondent's evidence unconvincing. It was at variance with contemporary documents, rife with memory lapses, and clearly given with little, or any, preparation by review of documents. It was argumentative and at times repetitive, being fastened to the same themes of having to address too many investigations, lawsuits and other matters to be able to coherently provide evidence on these matters and the parties having their own lawyers. The Panel therefore only accepts those parts of the Respondent's

evidence that are supported by other credible witnesses or the documentary record.

FACTUAL FINDINGS

[259] The Panel finds that, based on the evidence of XL, neither she nor XX considered themselves clients of the Respondent. While the best evidence would come from XX, there is no other solid evidence to contradict XL. The Panel also finds that although QY gave evidence that he considered the Respondent to act for him as well as KY, the relationship between the Respondent and QY is ambiguous given it was KY who was the named immigration client and KY who was the JVA partner.

[260] HZ had his own lawyer whom he said was the only person he entrusted to act for him in the negotiations around the STA. We find his retainer of the Respondent was limited to his failed BC PNP application and the incorporation and corporate maintenance of 103 BC Ltd. He was otherwise not her client.

[261] This takes us to KY and the companies, C Inc., V Ltd. and 103 BC Ltd.

[262] The Panel accepts that the Respondent did not see any of the parties other than the three companies as her client with respect to her professional involvement in the M project. However, that is not a sufficient answer in the case of KY. We find that the lines were blurred for KY and QY on whether the work the Respondent did on the M project was part of the immigration-related retainer she had with KY, especially as KY was the JVA partner with C Inc. The Respondent seems not to have turned her mind to the need to clarify her retainer and to ensure that KY did in fact have other legal representation.

[263] The Panel further finds, despite her denial, that the Respondent drafted the JVA, as it was clearly done by a lawyer knowledgeable about BC law and there is no evidence of any other lawyer involved in any way who had that necessary background. The Respondent claimed that all she did was provide an English language JVA precedent, but the Panel finds that she, or someone in her office, prepared the actual JVA. At times the Respondent as much as admitted it, though with caveats. She said her office just filled in details on the precedent as instructed by the parties and that it was a simple and brief agreement and really just an agenda for the company incorporation. The agreement itself clearly shows otherwise, as it is extensive and details the investments. The Respondent also arranged to have it signed. We find that this was done without there either being other lawyers acting for any of the parties involved, or the Respondent getting

informed written consent from both KY and an authorized representative on behalf of C Inc. for her to act when performing these legal services.

[264] The Panel finds that the Respondent knew nothing about the $4 million loan until months afterwards when it was already in default. QY in his evidence stated a belief that the Respondent nevertheless bore some responsibility for not taking steps to protect the interests of KY and himself. The Panel finds that QY's evidence periodically overstated facts and was self-serving, this being one example. The horse had left the barn - due to a risk he took on his own initiative without advice. The Respondent could not call it back. We find the Respondent took no side in this dispute.

[265] Turning to the STAs, the Panel finds that, while the evidence is murky as to the degree to which lawyers were involved in China in the preparation of the STAs, the Respondent and her office, at the very least, had a significant involvement. The signed version is in Chinese, it was signed in China, and one instructing party, HZ, apparently had his Chinese lawyer handle negotiations on his behalf. However, as noted, an English version was found from the hard drive search of the Respondent's office and has her law corporation footer on that version. We also note that the English STA refers to some issues unique to Canadian law, such as identifying the vendor as a non-resident under section 116 of the *Income Tax Act*, indicating that the agreement was done by someone familiar with Canadian law and agreement drafting.

[266] The Respondent, when asked about the English agreement found in her computer system, stated that her office may have provided a precedent.

[267] The Chinese agreement was translated to English for this hearing. There are two Chinese versions. Both have some substantial differences to the one found in English on the Respondent's computer system that cannot be attributed to that translation. One of the Chinese versions has additional terms, in particular one (2b) that is not in the English agreement located on the Respondent's computers. It states that unless payment of the full price of $14 million is made as promised within six months, then the shares are to be returned to the seller and if only part payment is made, the shares for the portion unpaid are to be returned with the buyer keeping shares equivalent to the portion of the price paid.

[268] This term is interesting as it clearly protects the seller, KY. Who added it, and on whose behalf, was never established on the evidence.

[269] This Chinese agreement also uses the term "after friendly negotiations in good faith between the parties" rather than "for good and valuable consideration" and it

is missing the general terms and conditions section found in the English agreement.

[270] The other STA that was sent by We Chat from the Respondent's office, which she says she believed came from China, is significantly longer and more complex with many added clauses, some of which are of benefit to each party. These include the following:

(a) it references that the sale of the KY shares is linked to the sale of 20 percent of shares from C Inc., which likely benefits both parties;

(b) it says that payment will be in two instalments (rather than all on closing as the English version and the other Chinese version state), which benefits KY;

(c) it has terms for price re-negotiation if a plot ratio variance on the development is not obtained, which benefits 103 BC Ltd.;

(d) it has the right to the return of shares for non-payment tied to a formula dependent on the amount that was paid, which benefits both parties;

(e) it contains an interim loan from the purchaser to the seller, which benefits KY;

(f) it has an escrow type clause for the shares to be held by an unnamed lawyer, which again clearly protects KY; and

(g) it references the need for the parties to consult and "adopt the same approach to ensure that no goodwill infringements will occur" and to resolve disputes by "friendly negotiation."

[271] This was the version signed by KY. A similar agreement, also very different from the English version, was signed by XL for C Inc. for its 20 percent of the shares.

[272] Based on all this evidence, the Panel concludes that there were Chinese lawyers involved in the negotiation and drafting of the Chinese version STAs, clearly for HZ and more likely than not for QY and KY.

[273] Based on all the evidence about the TC loan, the Panel finds that the Respondent was not involved in that short-term loan from TC to KY other than to put QY in contact with TC.

[274] Based on admitted facts, the Panel finds that the Respondent knew that the $1,090,681 (the One Million Payment) she paid out to KY in 2015, that retired the loan from TC, was from V Ltd.'s bank account. She also knew that the main source of those funds was an advance made by XL to the company of $768,885 on June 29, 2015, which came from a mortgage loan on XL's home obtained that same month, and in which the Respondent acted for her as borrower.

[275] The Panel finds on admitted evidence that the Respondent, on instructions of XL as attorney for HZ, prepared all documents for the additional financing and that QY was never advised at the time of that additional financing being obtained. We also find on admitted evidence that the Respondent, or her office, arranged to remove KY as a director of V Ltd. and to transfer her shares to 103 BC Ltd., but held those share certificates for several months (until she ceased to act for the company) pending full payment of the share price.

[276] The Panel finds that when HZ on behalf of 103 BC Ltd. decided not to make payments beyond the initial payment, QY regularly asked the Respondent for assistance for his wife to collect the money from 103 BC Ltd. or alternatively terminate their STA and get the shares returned. The Panel finds that the Respondent did not advise QY that she could not act for KY on the dispute until her email of March 16, 2016.

[277] The Panel finds on the preponderance of all evidence that there were no other lawyers in Canada acting for QY or KY until they retained lawyers to commence the civil action, and in particular no other Canadian lawyers acting for them at all with respect to the JVA.

[278] The Panel finds that the first time the Respondent advised KY to get her own lawyer or that the Respondent did not, or could not, act for her was in the Respondent's email of March 16, 2016.

[279] The Panel finds that the Respondent, in her letter of September 10, 2019 to Mr. Forstrom, did not accurately state the facts with respect to the date the BC PNP retainer with KY ended (which is itself not clear, being at least late 2014 but with the final aborted application on March 31, 2015).

[280] She also did not accurately state her knowledge of who were the principals of 103 BC Ltd., or about her communicating with HZ that KY needed to sell her shares in V Ltd.

[281] We find that in this letter the Respondent was factually careless in response, not checking her files or doing other proper investigations for the facts, but we also

find that she did not set out to mislead the investigator. The level of that carelessness and its legal implications we analyze for each allegation later in this decision.

[282] Overall, the Panel finds that the Respondent in her dealings with the parties and the Law Society at no time acted in bad faith, but with good intentions. However, she was regularly careless about her professional obligations and seems to have failed to turn her mind to the looming conflicts present with her professional actions, and to the gravity of ensuring her answers to the Law Society were accurate.

DISPOSITION OF APPLICATIONS

[283] Before embarking on an analysis of the evidence and submissions on each of the allegations in the Citation, the Panel will address three discrete applications made by the Respondent.

Delay

[284] The Respondent led evidence and made argument in the Hearing on an issue of delay by the Law Society in how it proceeded with this case, and of prejudice to her flowing from that delay. After the hearing completed, the decision in *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29 was issued, and the Panel invited further submissions in light of the decision. The parties advised that they agreed that this issue of delay and any remedies that may flow from it should be addressed if a finding of professional misconduct is made and the matter proceeds to a disciplinary action hearing. The Panel will thus not address that issue.

Kienapple Application for Stay of Allegation 2

[285] The Respondent has been subject to two conduct reviews relating to her failure to provide correct answers to the Law Society in some of the many investigations it has conducted. This is also the crux of allegation 2 of the Citation found at Appendix A. As was included in the report on one of those conduct reviews, conducted on April 19, 2021: "At the meeting, it was made clear that the purpose was not to discuss the [Respondent's] conduct with respect to any individual file or client matter, but instead was to … discuss the defaults in her communications with the Law Society during its investigations." The Conduct Review Subcommittee accepted the Respondent's apology for her "failure to provide complete and accurate … responses to the Law Society" and recommended no

further action be taken beyond the conduct review. The Discipline Committee accepted that recommendation.

[286] In the second, April 30, 2021 conduct review that related to a specific immigration file, the same issue arose. The Respondent advised the Subcommittee that she never intended to mislead, but when she did not know the answer to a question she guessed as she was trying to help the investigator by answering even when she did not know the facts. She again apologized and said she would not do so again. As the Subcommittee put it: "She says that she will never again give the LSBC an answer just because she thinks it is an answer that the investigator wants to hear". Again, the Subcommittee recommended no further action be taken beyond the conduct review, and the Discipline Committee accepted this recommendation.

[287] The Respondent argues that these decisions of the Discipline Committee provide a complete answer to allegation 2 of the Citation and that, flowing from the principles in *Kienapple v. The Queen*, 1974 CanLII 14 (SCC), [1975] 1 SCR 729, as adopted in *Law Society of BC v. Hammond*, 2004 LSBC 18, this allegation should be stayed. She relies in particular on the following from *Hammond*:

> [20] … the Panel determined that the decision in *Kienapple* did govern in these circumstances, and that the Law Society was precluded from bringing a specific count of incompetence (in respect of a particular client's matters) when an omnibus complaint of incompetence had previously been alleged and successfully prosecuted for circumstances that existed at the same time as the specific incidents of incompetence which the Law Society would allege in support of the second citation.

[288] The Respondent asks the Panel to apply this statement in her circumstances where she alleges that her general failure to accurately respond to Law Society questions, as identified and dealt with in the conduct reviews, precludes the Law Society from proceeding with the particularized allegations arising from the underlying factual matrix in this case.

[289] *Kienapple* was an application of the principles of *res judicata* and of the rule precluding multiple convictions for the same matter to counts in a criminal indictment. As Laskin CJC states at p. 751 to 752:

> If there is a verdict of guilty on the first count *and the same or substantially the same elements make up the offence charged in a second count*, the situation invites application of a rule against multiple convictions … … [y]et it seems clear enough that on the second charge,

> *res judicata* would be a complete defence *since all the elements and facts supporting the conviction of [the first count] would necessarily be the same … .*
>
> [emphases added]

[290] As Law Society counsel notes in submission, the *Kienapple* principles have been held to apply, with appropriate modification, to allegations of professional misconduct. But there must be both a legal nexus (meaning no additional or distinguishing elements between the allegations) and a factual nexus (the same act grounds both charges). In other words, the impugned conduct must arise from the same transaction. In *Law Society of BC v. McGuire*, 2005 LSBC 43, the panel noted at para. 33:

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

[291] As stated in *C(K) v. College of Physical Therapists (Alberta)*, 1999 ABCA 253, at para. 63, "… in order for the rule to apply there must be both a legal nexus, that is no additional or distinguishing elements in the second offence, and a factual nexus, that is the same act must ground each of the charges."

[292] However, the recent decision of *McLeod v Law Society of BC*, 2022 BCCA 28, notes that the same factual conduct may found separate breaches of duty to different bodies (in that case the court and opposing counsel), and that the *Kienapple* principle is inapplicable in those circumstances, (see paras. 115 to 118). That is not the case here.

[293] The Panel finds that there is nothing in the evidence to support that the two conduct reviews related in any manner to the Respondent's conduct as set out in allegation 2, or that that the subcommittees were even aware of any facts relating to them. There is no factual or legal nexus with the matters involved in either conduct review on which one can conclude that "the same or substantially the same elements make up the offence(s) charged" here.

[294] The application is dismissed.

Chinese Cultural Business Practices

[295] The Respondent also raised in evidence and submissions that there is a different cultural milieu at play amongst business people and their professional advisors, including lawyers, in China and that it is relevant to our determinations. She gave evidence of this and there was some supporting evidence from other witnesses familiar with those cultural practices, including QY and XL.

[296] The Respondent references a Chinese way of doing business, known as *guanxi*, that has three subparts; friendship (emotional attachment), reciprocal exchange of favours, and interpersonal trust, that she submits applies to her professional dealings in this case. Her submission is that, in this cultural context, the business people (principally men) negotiate and arrive at agreements that they then have their professional advisors document. It is alleged that they do not rely on their lawyers during negotiation and would see their lawyers' involvement as displaying a lack of trust in each other.

[297] The Respondent took the position in evidence and argument that she, in order to be respectful of the parties and the culture, acted properly in not involving herself more fully in their dealings, or in providing more advice, or in addressing with them what might otherwise be seen as conflictual representation in Canadian legal culture.

[298] She also took the position that QY and XX, in particular, made their own deals, that she just assisted by incorporation of companies and preparing ancillary documentation and that, to the extent they were not relying on lawyers in China (if indeed they were), her following of traditional Chinese business practices answers many of the allegations in the Citation.

[299] This is not the first disciplinary hearing in which the Respondent made these submissions. They were dismissed by the hearing panel in *Guo 2022* at paras. 172 to 176. This Panel adopts the reasoning and conclusions from that case on this issue. The Respondent is a member of the Law Society of BC and subject to the *Act,* Rules and the *BC Code*, as are all lawyers in this province. The standards with which she must comply are the same ones that apply to all those lawyers; nothing less and nothing different.

[300] This is not to say that BC lawyers should be indifferent or insensitive to the cultural understandings and beliefs of their clients. We live in a multi-cultural society. That society and our system of laws have been colonially imposed on the

Indigenous peoples of this land. It in increasingly recognized that lawyers must understand and respect that Indigenous history and culture and, in fact, the cultural background of all those who live here, in order to practise ethically and competently. This understanding and respect is part of, but never derogates from or varies, the legal profession's requirement to practise under the statutory and regulatory rules that apply.

ANALYSIS OF THE CITATION

The Tests for Professional Misconduct

[301] The test for professional misconduct, repeated countless times in Tribunal hearing decisions, is whether the facts established disclose a marked departure from that conduct the Law Society expects of lawyers: *Law Society of BC v. Martin*, 2005 LSBC 16. It is an objective test, where first the panel must consider the appropriate standard of conduct expected and then determine if a respondent lawyer falls markedly below that standard in the circumstances, bearing in mind the *Act*, the Rules, the *BC Code* and the duties and obligations owed to clients, the court, other lawyers and the public in the administration of justice: *Law Society of BC v. Kim,* 2019 LSBC 43 at para. 45

[302] Given that much of the Respondent's case is based on her good intentions and desire to help others, it is important to note that the presence of good faith intentions (*bona fides*) will not excuse conduct that is otherwise professional misconduct under this test. Bad faith intentions (*mala fides*) are not a necessary ingredient to prove professional misconduct: See *Law Society of BC v. Harding*, 2014 LSBC 52, at para. 79, and *Law Society of BC v. Hittrich*, 2019 LSBC 24, at para. 73 to 74.

[303] Whether lapses by a lawyer meet the test for professional misconduct or are instead a breach of the Rules has been elucidated in several cases, one of which is *Law Society of BC v. McKinley*, 2019 LSBC 20, where the panel set out the test as:

> [33] In *Law Society of BC v. Lyons*, 2008 LSBC 9, the panel considered the difference between a finding of breach of the *Act* or Rules and a finding of professional misconduct and held:
>
> > [32] A breach of the Rules does not, in itself, constitute professional misconduct. A breach of the *Act* or the Rules that constitutes a "Rules breach", rather than professional

> misconduct, is one where the conduct, while not resulting in any loss to a client or done with any dishonest intent, is not an insignificant breach of the Rules and arises from the respondent paying little attention to the administrative side of practice (*Law Society of BC v. Smith*, 2004 LSBC 29).
>
> …
>
> [35] In determining whether a particular set of facts constitutes professional misconduct or, alternatively, a breach of the *Act* or the Rules, panels must give weight to a number of factors, including the gravity of the misconduct, its duration, the number of breaches, the presence or absence of *mala fides*, and the harm caused by the respondent's conduct.

> [34] To make findings of professional misconduct with respect to allegations in the Citation involving Law Society Rules, the panel should determine whether the facts, as made out, disclose a marked departure from that conduct the Law Society expects of lawyers, in reference to the factors articulated in *Lyons*.

[304] As recently stated in a 2023 decision respecting the Respondent, *Law Society of BC v. Guo*, 2023 LSBC 9 ("*Guo 2023*"):

> [143] Where the impugned conduct does not meet the test for professional misconduct, it is open to a panel to find that the respondent's actions have nevertheless resulted in a breach of the *Act* or Rules where the conduct is not insignificant and arises from insufficient attention being paid to the administrative requirements of a practice (*Lyons*, … at para. 32).

[305] To quote again from *Guo 2022*, the panel states at para. 171:

> It is, therefore, not the presence of *bona fide*s nor the absence of *mala fides* that determines whether a lawyer's actions amount to professional misconduct, but whether, having a view to the five factors found in *Lyons*, the lawyer is responsible for conduct that falls outside the permissible bounds of behaviour. The Panel, therefore, does not believe that we are constrained by the need to determine the nature of blameworthiness to evaluate whether or not the Respondent's behaviour constitutes a marked departure from that behaviour expected of competent counsel.

[306] The five *Lyons* factors are:

(a) the gravity of the misconduct;

(b) the duration of the misconduct;

(c) the number of breaches; and

(d) the presence or absence of *mala fides*; and

(e) the harm caused.

The Definition of a Client

[307] Section 1.1-1 of the *BC Code* defines a client as any person who consults a lawyer and on whose behalf the lawyer renders, or agrees to render, legal services to the person. Alternatively, a client is a person who, having consulted the lawyer, reasonably concludes the lawyer has agreed to render legal services on that person's behalf. Evidence relevant to establishing that relationship is varied. It includes some or all of:

(a) a retainer agreement or contract;

(b) a file being opened;

(c) meetings between the lawyer and the party;

(d) correspondence between the lawyer and party;

(e) rendering a bill to the party, or the party paying a bill;

(f) the lawyer acting on instructions given by the party;

(g) statements of the lawyer that the lawyer is acting for the party;

(h) a reasonable expectation by the party about the lawyer's role;

(i) giving of legal advice; and

(j) creating legal documents for the party.

[308] The Respondent submits that QY and KY were at most each a "near client", and that the Respondent is not alleged to have breached a duty to a "near client". This is based on there being no formal retainer agreement between the

Respondent and any party other than V Ltd. at the time the JVA was made. However, the lack of a formal retainer is not determinative.

[309] In *Law Society of Upper Canada v. Farkas*, 2016 ONLSTH 149, at paras.198 to 200, the hearing panel, faced with a submission that the lawyer was not in a solicitor-client relationship with some complainants as he only acted to assist them *pro bono*, said it was not persuaded, "… rather preferring the Law Society's submission that that [*sic*] once counsel undertakes to provide legal services for an individual, whether there is a financial retainer or not, a solicitor-client relationship is created. The existence of a financial retainer, or a good-willed decision to voluntarily assist *pro bono*, has no impact on a lawyer's professional obligations".

[310] The decision further states:

> [200] As referenced by the Law Society, in *Pearce-Ell v. Holgate*, 2013 SKQB 434, the court identifies what constitutes a solicitor-client relationship at paras. 17 and 18:
>
> > A solicitor-client relationship arises as soon as the potential client has his first dealings with the lawyer's office in order to obtain legal advice.
> >
> > It has long been settled that there need not be a formal retainer in order for the solicitor-client relationship to be constituted.
>
> [201] The panel is satisfied that Mr. Farkas was in a solicitor-client relationship with all the complainants when he agreed to assist them with their PIFs, regardless of whether the complainants had obtained or wished to obtain LAO funding or had provided Mr. Farkas with a financial retainer.

[311] Ascertaining the clients is crucial in this case. Given the weight of the evidence, the Panel finds that none of XL, XX or HZ were clients of the Respondent. The Panel also finds that QY was acting as an agent for his wife, KY, in his dealings with the Respondent. The larger issue, which is dealt with later, is the nature of the retainer between KY and the Respondent as lawyer and client, as well as the retainer between the Respondent and the companies she incorporated and for which her office was registered corporate records office; namely C Inc., V Ltd. and 103 BC Ltd.

[312] The Law Society submits that the Panel should find that the Respondent was acting for XL and HZ, despite XL and HZ specifically saying she was not acting for them. However, unless the Panel finds they are not being honest, it must accept their statements. Consulting a lawyer is a voluntary and informed act that a person must understand and appreciate has occurred. With these parties there is no evidence of that.

Analysis of each Citation Allegation

Allegation 1: conflict of interest – legal principles

[313] The conflicts alleged in the Citation are based on the *Canons of Ethics* in sections 2.1-3(b) and (g) of the *BC Code* and on sections 3.4-1 and 3.4-1 of the *BC Code*.

[314] They state *seriatim*:

> 2.1-3(b) A lawyer should disclose to the client all the circumstances of the lawyer's relations to the parties and interest in or connection with the controversy, if any, that might influence whether the client selects or continues to retain the lawyer. A lawyer must not act where there is a conflict of interests between the lawyer and a client or between clients.
>
> 2.1-3(g) … Having once acted for a client in a matter, a lawyer must not act against the client in the same or any related matter.
>
> 3.4-1 A lawyer must not act or continue to act for a client where there is a conflict of interest, except as permitted under this Code.
>
> 3.4-2 A lawyer must not represent a client in a matter when there is a conflict of interest unless there is express or implied consent from all clients and the lawyer reasonably believes that he or she is able to represent each client without having a material adverse effect upon the representation of or loyalty to the other client.
>
> (a) Express consent must be fully informed and voluntary after disclosure.
>
> (b) Consent may be inferred and need not be in writing where all of the following apply:

> (i) the client is a government, financial institution, publicly traded or similarly substantial entity, or an entity with in-house counsel;
>
> (ii) the matters are unrelated;
>
> (iii) the lawyer has no relevant confidential information from one client that might reasonably affect the other; and
>
> (iv) the client has commonly consented to lawyers acting for and against it in unrelated matters.

[315] The commentary to 3.4-1 clarifies the factors for consideration in determining if a conflict of interest exists and include:

(a) the immediacy of the legal interests;

(b) whether the legal interests are directly adverse;

(c) whether the issue is substantive or procedural;

(d) the temporal relationship between the matters;

(e) the significance of the issue to the immediate and long-term interests of the clients involved; and

(f) the clients' reasonable expectations in retaining the lawyer for the particular matter or representation.

[316] Under section 3.4-5 of the *BC Code*, for consent to be informed, the lawyer must advise each client that the lawyer has been retained to act for each of them; that no information received in connection with the matter from one client can be treated as confidential so far as any of the others are concerned; and if a conflict develops that cannot be resolved, the lawyer cannot continue to act for both or all of them and may have to withdraw completely.

[317] Under section 3.4-6 of the *BC Code*, where a lawyer has a continuing relationship with a client for whom the lawyer acts regularly, before the lawyer accepts a joint retainer from that client and another client, the lawyer must advise the other client of the continuing relationship and recommend that the client obtain independent legal advice about the joint retainer.

[318] Section 3.4-7 of the *BC Code*, referenced in allegation 1 reads: "[w]hen a lawyer has advised the clients as provided under rules 3.4-5 and 3.4-6 and the parties are content that the lawyer act, the lawyer must obtain their consent."

[319] Any consent obtained must be in writing, and there must be a separate letter from each client (See section 3.4-7 commentary).

[320] There are two tests for what constitutes a conflict of interest, the "bright line" conflict rule and the "substantial risk analysis" rule.

[321] The "bright line" rule arises from several cases including *R. v. Neil*, 2002 SCC 70, where the court at para. 29 said:

> The bright line is provided by the general rule that a lawyer may not represent one client whose interests are directly adverse to the immediate interests of another current client — *even if the two mandates are unrelated* — unless both clients consent after receiving full disclosure (and preferably independent legal advice), and the lawyer reasonably believes that he or she is able to represent each client without adversely affecting the other.
>
> [emphasis in original]

[322] In *Canadian National Railway v. McKercher LLP,* 2013 SCC 39, at para. 29, the court clarified that the "bright line" rule is not a rebuttable presumption of conflict and that the substantial risk analysis does not apply if the bright line rule is met. In other words, if clients have not provided their informed consent, there is an absolute bar to a lawyer acting for either party without consideration of substantial risk.

[323] As Respondent's counsel noted, *McKercher* says at para. 33: "First, the bright line rule applies only where the *immediate* interests of the clients are *directly* adverse in the matters on which the lawyer is acting." [emphasis in original]

[324] Respondent's counsel submits, where the "bright line" does not apply, a more nuanced analysis of conflict then follows, quoting from *McKercher*:

> [38] When a situation falls outside the scope of the bright line rule for any of the reasons discussed above, the question becomes whether the concurrent representation of clients creates a substantial risk that the lawyer's representation of the client would be materially and adversely affected. The determination of whether there exists a conflict becomes more contextual, and looks to whether the situation is "liable to create

> conflicting pressures on judgment" as a result of "the presence of factors which may reasonably be perceived as affecting judgment" …. In addition, the onus falls upon the client to establish, on a balance of probabilities, the existence of a conflict — there is only a deemed conflict of interest if the bright line rule applies.

[325] While the Respondent at times seemed to be motivated by good intentions and a desire to help, these motivations do not obviate this analysis. As stated in *Law Society of BC v. Coglon*, 2002 LSBC 21 at para. 47: "[T]he Law Society cannot have, and the public interest cannot have, any real assurance that well-motivated actions taken in conflict of interest will cause less harm than those basely motivated."

[326] The Panel thus must determine who amongst KY and the companies were the clients at various times, whether on either test there were conflicts, and if conflicts existed on a "bright line" analysis, whether informed consent was an available option and was obtained.

Allegation 1(a)

[327] Allegation 1(a) of the Citation is:

> 1. Between approximately May 2013 and April 2016, you acted in a conflict of interest while representing two or more of your clients QY, KY, XX, XL, C Inc., V Ltd., HZ, and 103 BC Ltd. in connection with the purchase of a real estate development project in Richmond, British Columbia (the "M Project"), and in particular you:
>
> (a) acted for two or more of your clients QY, KY, XX, XL, and C Inc. in connection with a joint venture agreement between C Inc. and KY through V Ltd. without first obtaining their written informed consent to the joint representation, contrary to rules 3.4-1 or 3.4-7 of the Code of Professional Conduct for British Columbia (the "BC Code") and your fiduciary duties;

[328] The Panel begins by reiterating its finding that the Respondent did not act for all these parties but in this case only for KY and C Inc. The evidence is clear that the Respondent made no efforts to determine if either of these parties had other legal representation. She seems to have assumed it for KY, personally or through QY, but this is not sufficient. Had she only introduced QY to XX to discuss the M project, that would not, in the Panel's view, have constituted a potential conflict of interest.

[329] The Respondent did more than introduce QY to XX. This was not a "near client" situation. The Panel has found she provided legal services, including drafting the JVA. She was the corporate lawyer for C Inc., and she was acting for KY on immigration-related matters, while simultaneously preparing the JVA that was between these two existing clients. The Panel concludes that it was not unreasonable for KY and QY to believe the Respondent's work on the JVA was part of the retainer that included starting "business enterprise(s)" or starting "a business", and in providing "long-term" or "permanent" advice. In undertaking this work, the Respondent inevitably had to consider and address the interests of both KY and C Inc. as the parties to that JVA.

[330] As noted, all of this was done without other lawyers acting for any of the parties involved, or the Respondent getting informed written consent from KY and on behalf of C Inc. for her to act. The Respondent was, and at the hearing remained, oblivious to this clear requirement. Even if, as she believed, there was no conflict between the parties about the outcome or terms of the JVA, she needed to ensure she had informed written consent. The allegation in paragraph 1(a) of the Citation is established.

Allegation 1(b)

[331] Allegation 1(b) of the Citation is:

> (b) continued to represent two or more of your clients QY, KY, XX, XL, C Inc., and V Ltd., when a contentious issue arose with respect to C Inc.'s contribution to the joint venture, contrary to rules 3.4-1 or 3.4-8 of the *BC Code* and your fiduciary duties;

[332] For the reasons stated above, the Panel finds that KY, C Inc. and V Ltd., were clients at the times relevant to this allegation. The Panel more importantly reiterates that the Respondent was kept in the dark about the loan made to C Inc. until substantially after the event, when the damage was already done. The loan, negotiated directly between QY and XX, apparently based on customary Chinese business practices, had not been documented, secured and most importantly, had not been repaid. The Respondent did not represent anyone in this transaction. The JVA that she drafted was already signed and did not contemplate the loan, and other than maintenance of corporate records of the two companies, there was nothing left for her to do for the joint venture at that time.

[333] While better practice, once she did learn of the loan, would have been to ask the parties to find another firm to do the corporate record keeping and to advise each party to get legal counsel on this dispute between them as she could not act for either, we do not find she contravened the *BC Code* or her fiduciary duties and we dismiss this part of allegation 1.

Allegation 1(c)

[334] Allegation 1(c) of the Citation is:

> (c) acted for two or more of your clients QY, KY, HZ, and 103 BC Ltd. in connection with the sale of KY's shares in V Ltd. to 103 BC Ltd. without first obtaining their written informed consent to the joint representation, contrary to rules 3.4-1 or 3.4-7 of the *BC Code* and your fiduciary duties;

[335] The Panel again notes that the Respondent did not act for all these parties. The evidence is clear that HZ had and relied on his own lawyer throughout. Again, for the reasons stated earlier, we also find that QY was not a client. The Panel has found that, while the Respondent was the corporate lawyer for 103 BC Ltd., HZ, the controlling mind of 103 BC Ltd., did not retain the Respondent to act in the negotiation and sale of these shares, but left it to his Chinese lawyer who apparently dealt with XX, who in turn dealt with QY. For reasons already stated, the Panel finds, based on all the evidence, that QY likely had a Chinese lawyer involved as well.

[336] However, the Respondent was at the time still acting for KY on the immigration matters. We have found KY still reasonably considered the Respondent as her lawyer at this time on the M project matters as well, whether the Respondent saw it this way or not. As noted, a lawyer does not have to recognize that a lawyer-client relationship exists if sufficient other criteria show it does: *Farkas*.

[337] The legal issue here is whether the *BC Code* section on obtaining informed written consent applies. It is clear from the evidence that QY knew that the Respondent acted for 103 BC Ltd., although he says he understood she was working on their behalf as well. Given the evidence of the Respondent's involvement in locating HZ, in participating in meetings about the sale of the shares, including the meeting in China, and the Respondent's involvement with the purchaser, 103 BC Ltd., the Panel concludes that this was a conflict situation.

[338] While to some extent it was a "bright line" conflict given the concurrency in representing KY and 103 BC Ltd., the Panel finds there was no way in which the divergence of interests between these two concurrent clients could be papered over with written consent. It was a case where the caveat on informed consent, as quoted earlier from *Neil*, applies. Before seeking consent, the lawyer must reasonably believe that she is able to represent each client without adversely affecting the other. On an objective basis, the Panel finds that the Respondent could not.

[339] Even on a substantial risk analysis, assuming the Respondent was not to any significant degree acting for 103 BC Ltd. at that point, in the words of *McKercher*, the Respondent's continued involvement on any level was "liable to create conflicting pressures on judgment". Each party needed its own lawyer. Only one party had a lawyer. And the Respondent was in the middle. She should have stepped back and not been involved at all in the STAs, even to the extent of creating the bare bones English version that was later expanded and adapted, or in providing drafts to the parties of the Chinese versions for review.

[340] However, as noted, that does not answer this specific allegation. Although the Panel has significant concerns over what occurred, the particulars of this allegation of the Citation, to obtain informed written consent, make the allegation not applicable to the factual situation as it developed on the evidence. While the allegation references the *BC Code* section 3.4-1 on avoiding conflicts, the actual phrasing of the allegation is on the particular need to obtain informed written consent to act under section 3.4-7.

[341] In short, the Citation does not limit the allegation to the Respondent acting for a client where there is a conflict of interest. Rather, it goes on to allege that the Respondent did so without obtaining written informed consent. However, the Panel finds that, in the circumstances here, written informed consent would not permit the Respondent to act for both KY and 103 BC Ltd. because she could not do so "without having a material adverse effect upon the representation of" KY or 103 BC Ltd. Therefore, the allegation in the Citation, as drafted, cannot be proven.

[342] A panel's task is just that - to determine whether the allegations in a citation have been proven. It has no ability to become a roving commission determining if there is other potential misconduct outside the particulars alleged in the citation. As stated by the review board in *Law Society of BC v. Lawyer 11*, 2011 LSBC 10:

> [13] Any finding of professional misconduct must be based not only on the evidence presented, but also on the allegations as framed in the citation. The Hearing Panel's analogy of a "lesser included offence" is, in our view, misconceived. The allegation that the Applicant participated in a scheme or design is not mere superfluous decoration; it was an essential ingredient of the allegations the Applicant faced.
>
> [14] The purpose of a citation is to advise the Applicant, with reasonable precision, of the allegations he or she is facing. …
>
> …
>
> [16] The Panel is required to dispose of the citation and, in doing so, must consider all of the evidence given but must consider the evidence within the framework of what is alleged in the citation and not otherwise.

[343] As further stated by our Court of Appeal in *Law Society of BC v. Cole,* 2022 BCCA 55:

> [24] These requirements are an important aspect of procedural fairness in professional misconduct proceedings. The citation informs the person facing the allegations of the nature of the alleged misconduct: This ensures that they know the case to meet and can adequately prepare their defense. Discipline decisions, including those made by law societies, have been overturned where a panel has made determinations of misconduct not contained in the citation before them. In *Kapoor v. Law Society of Saskatchewan* (1986), 1986 CanLII 3237, 52 Sask. R. 110 (CA), after acknowledging that disciplinary tribunals are not bound by the same technical rules applicable to indictments and informations in the criminal context, the Court had this to say:
>
> > [58] … Such freedom, however, does not extend to charging a member of the Law Society with conduct unbecoming by contravening the *Rules* in a particular fashion, discovering that there was other conduct which could have constituted conduct unbecoming, and making a determination of conduct unbecoming on the facts discovered and proved at the hearing, which do not conform to the charge as particularized. …

[344] As the commentary for section 3.4-7 of the *BC Code* itself states, elaborating on *Neil*, "[e]ven if all the parties concerned consent, a lawyer should avoid acting for more than one client when it is likely that an issue contentious between them will arise or their interests, rights or obligations will diverge as the matter progresses." The commentary for section 3.4-1 of the *BC Code* states, using the substantial risk analysis, "… the lawyer or law firm will still be prevented from acting if representation of the client would create a substantial risk that the lawyer's representation of the client would be materially and adversely affected by … the lawyer's duties to another current client, a former client, or a third person." This was such a situation; the Respondent simply could not act at all, consent or no consent. As a result, the allegation is dismissed because the Citation does not accurately reflect the facts found, and not because the Respondent acted professionally.

Allegation 1(d)

[345] Allegation 1(d) of the Citation is:

> (d) preferred the interests of XX, XL, C Inc., HZ, and 103 BC Ltd. over those of QY and KY in connection with the sale of KY's interest in V Ltd. to 103 BC Ltd., contrary to section 3.4 of the *BC Code* and your fiduciary duties;

[346] In addition to raising the issue of who the Respondent represented at the relevant time, this allegation raises an issue of what the Respondent did or did not do. Again, the Panel reiterates that it finds she was not acting for XX, XL, HZ or QY. This leaves the Panel to consider the representation of KY, C Inc., and to a limited extent, 103 BC Ltd.

[347] As noted with allegation 1(c), given the dispute between C Inc. and KY, if the Respondent acted as lawyer for both, then there was a clear conflict of interest at the time of the share sale. But the evidence is that QY and XX worked out the details whereby they both sold shares.

[348] While the Panel is not able to determine all those involved in the drafting of the STAs, we have found the Respondent, personally, or through the support staff for whom she was professionally responsible, had some role in the drafting as well as presentation of the drafts and final version to at least KY through her husband, QY.

[349] It is important to note here that there were no other lawyers working in the Respondent's office at the times relevant to these allegations. Tadhg Egan was

a foreign-trained lawyer, but at the time was not qualified to be called to the BC Bar. He worked as a legal assistant.

[350] As to the Respondent's involvement with the signing of the STAs, the evidence is again equivocal. KY was not clear if the Respondent was present in Beijing when KY signed the STA, although QY says the Respondent was present. The Respondent said she may have been present for a meeting with XX and QY in China, although it is not clear when this meeting occurred. She was not asked if it was to have the STAs signed. XL apparently signed on behalf of 103 BC Ltd. as attorney under the power of attorney, but there is no evidence of who was present when she signed the STA. The Panel is consequently unable to determine the Respondent's role if any in the signing of the STAs.

[351] We turn to the Respondent's role in the negotiation of the STA terms and in the admitted actions she took as corporate records office for V Ltd. in transferring the shares to 103 BC Ltd., another company for which she acted as corporate lawyer, then holding the share certificates for a number of months, and in preparing the documentation removing KY as a director of the company.

[352] QY's evidence is that the Respondent was in a meeting between himself and XX in China to discuss this share transfer, and the evidence of HZ is that the Respondent also met with XX and HZ in China and she told HZ how much KY wanted for her shares and that the purchase should happen as soon as possible. In her evidence, the Respondent did not directly address the discussions in the meetings, simply saying she attended these meetings on behalf of V Ltd.

[353] The Panel has found that the Respondent at no time clarified for anyone, in particular KY through her agent QY, her belief that she was not acting for KY with respect to her involvement in the documentation for this share transfer and the STAs.

[354] However, this is a different issue from preferring the interests of XX, XL, C Inc., HZ, and 103 BC Ltd. as clients over those of KY. The Panel accepts that the Respondent was trying to assist QY and KY in these discussions, even if she did not see herself as acting in any legal capacity. We have already found she was in a clear conflict. Should she also have taken steps to better protect KY given that the shares were transferred without full payment being made? This depends on whether she drafted or had a significant part in drafting the STAs and attendant documents.

[355] Due to the lack of clear evidence of who else was involved in the negotiation and drafting of the STAs this is a difficult question to answer. The Respondent testified that the negotiation happened in China and that she understood QY and KY had a lawyer, as did HZ. There is some significant indication, as noted earlier, on which we have found that it is likely that QY had a Chinese lawyer involved in the negotiating and drafting of the STAs, despite QY saying otherwise. KY was not involved and only signed when directed by her husband and her evidence is not helpful on this point. HZ left it to his Chinese lawyer to deal with the STAs.

[356] The Chinese agreements do bear evidence of involvement of other lawyers, as many additional terms were negotiated and included, some of which favoured KY and some of which favoured 103 BC Ltd. Despite QY and KY saying they relied on the Respondent on the share sale, it is highly unlikely that the Respondent on her own prepared these three versions, and equally unlikely that HZ's lawyer in China negotiated those terms with the Respondent in BC rather than a Chinese counterpart. It is more likely that the Respondent or her office produced and provided the English version that was taken and reworked in China and sent back to the Respondent, who in turn sent it out to QY. However, none of this is clear and instead, in the words of St. Paul, we see through a glass, darkly.3 In all the circumstances, the Panel cannot resolve the facts sufficiently to decide this allegation is proven, and it is therefore dismissed.

Allegation 1(e)

[357] Allegation 1(e) of the Citation is:

> (e) preferred the interests of XX, XL, C Inc., HZ, and 103 BC Ltd. over those of QY and KY in connection with a mortgage loan by V Ltd., contrary to section 3.4 of the *BC Code* and your fiduciary duties; and

[358] The evidence relating to this loan comes mostly from the Respondent, augmented to a degree from the agreed facts. She admitted her involvement in preparing the loan documents and said she was acting on behalf of C Inc. and V Ltd. as their corporate lawyer.

[359] Both QY and KY testified that they knew nothing about the loan until after the fact.

---

3 1 Corinthians 13:2

[360] During the time period of December 2015 to March 2016 when the Respondent was doing the legal work for this significant loan ($14.5 million), she knew that full payment had not been made for the shares sold by KY. The Respondent was holding the shares in an escrow-type arrangement until payment for the shares was completed. She knew or should have known that this loan would substantially reduce the equity in V Ltd.'s assets and that this could devalue the shares over which KY had a claim if unpaid.

[361] By this time the immigration retainer had ended. QY realized this as he had messaged the Respondent by We Chat on April 4, 2015, asking if there was "… still any hope for our immigration case?" just after the BC PNP program had closed. The Respondent emphasizes this, stating that KY and by extension QY ceased to be clients in any meaningful way between April and July 2015 and became, for conflict purposes, "former clients" after that time. As a result, the "bright line" analysis is inapplicable here as it requires concurrency of representation.

[362] However, it is also clear from subsequent We Chat messages that QY was regularly messaging the Respondent through the fall of 2015 asking what was happening with the payment for the shares. In September he asks if the STA has been signed and when the "foreigner" will pay the loan and states that they need the money urgently. He says that other than her, they have no other means. The Respondent replies about the short-term loan from TC to QY referenced earlier. In October, he asks repeatedly when they will receive RMB ¥5 million and pleads with her for assistance.

[363] It is clear from these messages that QY believes that the Respondent is still acting for them. They are not messages to a "go between", but pleas to her as a lawyer for assistance in getting funds owing, and in the case of his February 16, 2016 email, instructing her to advise 103 BC Ltd. that the STA was terminated and to cease any activity with V Ltd.

[364] The Respondent should have realized this continued reliance on her as a lawyer. From the evidentiary record it is patently obvious. She was in an untenable situation where she had a duty of confidentiality to the corporate clients, V Ltd. and 103 BC Ltd. on the work she was doing, but also had the husband of her former client seeking her continuing assistance. From a number of comments she made in evidence, the Respondent seems to have a transactional view of what constitutes a solicitor-client relationship, so that once KY was removed as shareholder and director, she no longer had any duty toward her. This simply was not accurate.

[365] In *Law Society of BC v. Strother*, 2015 LSBC 7, (aff'd 2017 LSBC 23 and 2018 BCCA 481) at para 57, the hearing panel quotes some applicable words from *Moody v. Cox and Hatt*, [1971] 2 Ch 71 (English Court of Appeal), per Lord Cozens-Hardy MR:

> A man may have a duty on one side and an interest on another. A solicitor who puts himself in that position takes upon himself a grievous responsibility. A solicitor may have a duty on one side and a duty on the other, namely, a duty to his client as solicitor on the one side and a duty to his beneficiaries on the other; but if he chooses to put himself in that position it does not lie in his mouth to say to the client "I have not discharged that which the law says is my duty towards you, my client, because I owe a duty to the beneficiaries on the other side." The answer is that if a solicitor involves himself in that dilemma it is his own fault. He ought before putting himself in that position to inform the client of his conflicting duties, and either obtain from that client an agreement that he should not perform his full duties of disclosure or say - which would be much better – "I cannot accept this business." I think it would be the worst thing to say that a solicitor can escape from the obligations, imposed upon him as solicitor, of disclosure if he can prove that it is not a case of duty on one side and of interest on the other, but a case of duty on both sides and therefore impossible to perform.

[366] By continuing to act in this mortgage transaction, the Respondent put herself in that impossible situation of owing conflicting duties and in so doing put the interests of her corporate clients ahead of those of KY. This allegation is proven.

Allegation 1(f)

[367] Allegation 1(f) of the Citation is:

> (f) continued to represent your clients KY, C Inc., V Ltd., and 103 BC Ltd. when a contentious issue arose between KY and 103 BC Ltd. in connection with the share transfer agreement between KY and 103 BC Ltd., contrary to rules 3.4-1 or 3.4-8 of the *BC Code* and your fiduciary duties.

[368] As noted in the Panel's discussion of allegation 1(e) above, the evidence of QY, supported by the We Chat records in evidence before the Panel (recognizing they are not complete and are translated into English),

establishes that he was in regular contact with the Respondent about getting full payment for KY's shares or recovering the shares. The emails from QY, in particular those from February 16, 2016 and March 7, 2016 give the Respondent explicit instructions to act on their behalf to recover the shares. She then received the responsive March 9, 2016 email from 103 BC Ltd. (apparently drafted by HZ's Chinese lawyer) stating that she was to act for the company against KY.

[369] In her March 8, 2016 email, quoted above at para. 71, the Respondent finally notified KY to get another lawyer, although somewhat cryptically she indicates that, if they insist that she continue to act, KY has been warned of her advice. She wrote to KY, in the email to QY, "[i]f you still insist that I do it, I would like to confirm that I have already informed. Don't say that I didn't say it in future!" This email seems to implicitly admit she knew that KY and QY considered her to be acting for them. She also continued to act for 103 BC Ltd., V Ltd. and C Inc. in this period.

[370] The conflicts were crystal clear well before her March 8, 2016, email. Applying by analogy the Panel's analysis of allegation 1(c) at paras. 337 to 341 of the decision, the Panel finds that this allegation is proven.

Allegation 2: making false or misleading statements to the Law Society – legal principles

[371] The Rules and *BC Code* require all lawyers to fully cooperate with investigations by the Law Society. That includes a positive duty to respond fully to all questions or requests made during an investigation.

[372] As the Law Society points out, while honesty with the Law Society is crucial, it is not essential that there be an intention to deceive. Recklessness as to the facts is sufficient.

[373] In *Law Society of BC v. Liggett*, 2011 LSBC 22, the hearing panel addressed the meaning of misrepresentation:

> [25] The definition of misrepresentation in *Black's Law Dictionary* includes the following:
>
> > The act of making a false or misleading assertion about something [usually] with the intent to deceive.

> [26] Accordingly, a misrepresentation can occur in the absence of intent to deceive and requires consideration of the entirety of one's conduct.
>
> [27] Recklessness involves "knowledge of a danger or risk and persistence in a course of conduct which creates a risk that the prohibited result will occur." See, *R. v. Sansregret*, 1985 CanLII 79 (SCC), [1985] 1 SCR 570 at 584.
>
> …
>
> [30] With respect to the mental element required for a determination of professional misconduct, there are varying degrees of culpability. At the lower end of the scale, the marked departure test may be met when the Respondent has displayed a gross culpable neglect of his duties as a lawyer and member of the Law Society. Recklessness falls within this spectrum.

[374] The need to comply with the obligation to respond fully to all questions or requests made during an investigation arises from the Law Society's paramount duty to uphold and protect the public interest. Without being able to rely on a lawyer providing prompt, candid and complete replies, this duty is compromised: *Law Society of BC v. Tak*, 2010 LSBC 7, at para. 23

[375] As the Respondent notes, making a mistake or even some degree of carelessness is not sufficient to establish a false or misleading statement. Memories are fallible, and so long as the lawyer takes seriously the duty to answer fully and truthfully, an innocent error is not a breach.

[376] Analyzing this distinction and the context of the questions to, and answers made by, the Respondent is particularly important in this case as the evidence, as noted earlier, shows a level of carelessness by the Respondent in her answers.

Allegation 2(a)

[377] Allegation 2(a) of the Citation is:

> 2. Commencing on or about September 10, 2018, in the course of an investigation into your conduct arising from a complaint made by QY, you failed to respond substantially and fully to the Law Society, or you made representations to the Law Society that you knew or ought to have known were false or misleading, or both, contrary to one or both of Rule 3-5(7) of

> the Law Society Rules and rule 7.1-1 of the *Code of Professional Conduct for British Columbia.* In particular, in a letter delivered September 10, 2018, you denied:
>
> > (a) acting for QY and KY after September 2012 in connection with their applications to the BC Provincial Nominee Program;

[378] The Respondent submits that the "expansive" set of questions she was asked and their lack of specificity are relevant in an analysis of this allegation.

[379] In a letter dated July 6, 2018 Mr. Forstrom asked:

> To start with, I ask that [the Respondent] provide me with a narrative account of her dealings with [QY] and his wife over the period described in the complaint. She should advise me specifically and clearly of any facts alleged by [QY] which she says are not true, and provide me with a clear, complete account of her version of events. She is also welcome to provide any additional information which she feels will assist me in understanding what happened.

[380] Also relevant was a second question:

> Without limiting the generality of that request, [the Respondent's] response should include a complete explanation of her relationship with each of the parties listed below. For individuals, please describe when and how [the Respondent] was first introduced to or became acquainted with them, and the extent of her personal and professional relationship with each. For corporations, please describe any role played by [the Respondent] in the formation or management of the company, and whether she (or a friend, relative or other client of hers) has had any direct or indirect interest in the company, at any time. If [the Respondent] provided legal services to any of these parties please describe what she was retained to do, and when:
>
> [18 people and corporations are listed including QY, KY, XX, XL, HZ, MU Inc., 103 BC Ltd., V Ltd., and C Inc.]
>
> For each of [4 companies including C Inc. and 103 BC Ltd.], please advise who [the Respondent] understood to be the shareholders and/or beneficial owners of the company, and the basis for her understanding.

[381] The impugned response by the Respondent to this set of queries was:

> Mr. [QY]'s wife, Ms. [KY], had been a client of my immigration practice. For a flat fee, I assisted her with her application under the BCPNP Entrepreneur program. This involved helping her develop and draft a business plan and fill out a number of forms, leading to an interview on August 15, 2012. The business plan was approved, the interview was successful and she was granted a work permit. The business plan involved the purchase of a small motel in Hope. I then assisted Mr. [QY] and Ms. [KY] with the purchase of that property (I believe it was roughly a $400,000 purchase). But that was the extent of my work for Mr. [QY] and Ms. [KY]. My work on Ms. [KY]'s immigration application had concluded on or about September 20, 2012, when I assisted them with the closing of the Motel purchase. At some point, Mr. [QY] and his wife decided not to follow through with their immigration to Canada, notwithstanding that their application had been a success.
>
> The [M] Property investment that is the subject of the Complaint was not related to the immigration application whatsoever.

[382] As the evidence has shown, that motel purchase did not complete until toward the end of 2014, and when the BC PNP application was rejected, the Respondent's office in the spring of 2015 prepared what Respondent's counsel called a "Hail Mary" application, signed by the Respondent for KY, using the M project.

[383] The Respondent's counsel submits that her statement to Mr. Forstrom was generally correct except for the timeline. Counsel also submits that, as her records were with the Law Society and the date of the motel purchase was a public record, she would have assumed the Law Society had the timeline. It was also part of responding to a question that was not focused on her immigration retainer.

[384] The Law Society counsel references the Respondent's immigration file records as they show her answers were incorrect. Also, the Law Society emphasizes to the Panel the Respondent's evidence, where she "doubled down" on asserting the truth of her answers to Mr. Forstrom in the face of contrary evidence from other witnesses and documents that she had heard and seen at the hearing. The Law Society also emphasizes that she often had no reasonable explanation for maintaining those positions.

[385] The Law Society says this reaches the level of at least recklessness if not dishonesty.

[386] On this particular allegation, the Panel finds that the reason the Respondent incorrectly stated the timeline and did not refer to the 2015 application was that she was caught by her own lack of preparation in answering the letter. We recognize that the questions posed were expansive and to that extent more difficult and time-consuming to answer. For that very reason, she should have done more to review her involvement before answering.

[387] However, the Panel finds that this carelessness in dates and failure to recall the "Hail Mary" application, in the context of the wide-ranging questions she was asked, did not reach the level of recklessness with the facts. She had many significant concurrent catastrophes to address, most significantly the multi-million dollar theft from her trust account and collapse of her practice. We also note that Tadhg Egan, despite his involvement in its completion, could not recall the final BC PNP application that was provided to him by one of the Respondent's assistants. As stated in *Liggett* earlier, "…making a mistake or even some degree of carelessness is not sufficient to establish a false or misleading statement."

[388] This does not end the analysis of this allegation, as it is three-fold; namely failing to respond substantially and fully to the Law Society; or making representations to the Law Society that the Respondent knew or ought to have known were false or misleading; or both. Having found she was not reckless with the facts, just careless, still leaves open the issue of whether the Respondent responded substantially and fully to Mr. Forstrom's questions.

[389] In the recent decision, *Law Society of BC v. Macdonald Weiser*, 2022 LSBC 50, the hearing panel stated with approval:

> [66] The Ontario Court of Appeal in *Law Society of Ontario v. Diamond,* 2021 ONCA 255, at para. 50, set out the factors that must be considered where there is an allegation of failure to cooperate, as follows:
>
> > (a) all of the circumstances must be taken into account in determining whether a licensee has acted responsibly and in good faith to respond promptly and completely to the Law Society's inquiries;
> >
> > (b) good faith requires the licensee to be honest, open and helpful to the Law Society;
> >
> > (c) good faith is more than an absence of bad faith; and

> (d) a licensee's uninformed ignorance of their record-keeping obligations cannot constitute a "good faith explanation" of the basis for the delay.

[390] *MacDonald Weiser* dealt with failure to respond in a timely way, and not as was the case with the Respondent, getting dates wrong and forgetting matters by failing to check files. However, the last factor references uninformed ignorance of record-keeping obligations as not being sufficient to amount to a good faith explanation for a delayed response. In the case of the Respondent, it was more a failure to check those records she had than not keeping records. The crux, answering without proper records or record review, is much the same.

[391] The factors listed in *Diamond* are not to be looked at in isolation but together. This is clear from the first factor; the overall circumstances in which the reply is made. While it is close to the line, the Panel finds that the totality of the Respondent's circumstances, as noted earlier, leads to the same conclusion. The Respondent should have checked her files more closely, but still gave an answer that was intended to openly, honestly and helpfully address what she understood to be the fundamental focus of the questions, the details of her immigration retainer with KY.

Allegation 2(b)

[392] Allegation 2(b) is: knowing the principals of 103 BC Ltd.

[393] The degree of inaccuracy in the answer given here, with the attendant inability of the Respondent to provide any coherent rationale for why this happened, causes the Panel to reach a different conclusion for this allegation.

[394] The impugned answer to the question noted earlier about 103 BC Ltd. and HZ was:

> It was Mr. [XX] who searched for and found an investor, 103 BC Ltd. At the time I did not know who the principals in this company were. I was later told that the owner of [103 BC Ltd.] is [HZ], who I know as a Chinese businessman. He has never been in Canada, and I have never had any communication with [HZ] about the company's involvement with [V Ltd.].

[395] This answer was wrong on almost every level. When asked in the hearing why she made that answer, her explanations were completely unconvincing.

She said she knows hundreds of people with the same surname as HZ and she has incorporated hundreds of numbered companies. She admitted she spoke with HZ about KY needing to sell shares and about the M project.

[396] Particularly troubling is the volume of clear evidence of the Respondent's knowledge of HZ, and of SR as the 103 BC Ltd. director, whom the Panel finds she referred to as a wealthy Caucasian with a big nose to KY. The Panel also finds that she told XL the person behind 103 BC Ltd. was a high-level executive in a Chinese company and had experience in real estate development. The Panel finds her apparent complete lack of memory of any of this when answering the letter is frankly astounding, even given the other professional and personal fires she was facing.

[397] The Panel finds the Respondent's failure to do any file or other review or to take any care in her response to this important question, given her duty of candour and care, reached the level of recklessness and failing to respond substantially and fully. This allegation is proven.

Allegation 2(c)

[398] Allegation 2(c) of the Citation is: communicating with HZ about V Ltd.

[399] For the reasons stated above with respect to allegation 2(b), the Panel finds that this allegation is also proven.

Allegation 2(d)

[400] Allegation 2(d) of the Citation is: drafting the share transfer agreement between KY and 103 BC Ltd.

[401] This response was in relation to the question of giving an account of her dealings with QY, KY and 103 BC Ltd. and any specific allegations in the QY complaint that were untrue. In that complaint was an allegation that she had assisted QY and KY finalize the STA. Her response was:

> I did not advise Mr. [QY] or anyone else with respect to the Share Transfer Agreement between Ms. [KY] and [103 BC Ltd.] I understand that the agreement was drafted by Mr. [QY]'s lawyer in Chinese.

[402] Given the muddiness of the evidence as to who was involved in the drafting and review of the STA, and lack of evidence from QY or KY or HZ about the Respondent providing any advice about the STA (as opposed to doing some

of the work on it), the Panel does not find this statement clearly false. The Respondent clearly had some involvement in the drafting and circulation of the STA. However, the Panel has found that the Chinese versions indicate involvement of Chinese lawyers. This allegation is not proven and is dismissed.

Allegation 3: quality of service – legal principles

[403] As the Law Society notes in its submissions, section 3.1-1 of the *BC Code* defines a "competent lawyer" as one who has and applies relevant knowledge, skills and attributes in a manner appropriate to each matter undertaken on behalf of a client and the nature and terms of the lawyer's engagement. Section 3.1-2 of the *BC Code* obliges all lawyers to perform all legal services undertaken to the standard of a competent lawyer. Section 3.2-1 states that the quality of service required of a lawyer is service that is competent, timely, conscientious, diligent, efficient and civil.

[404] The conduct that would be expected of a competent lawyer that is relevant to allegation 3 includes investigating facts, identifying issues, ascertaining client objectives, considering possible options and developing and advising the client on appropriate courses of action.

[405] As commentary [15] to section 3.1-2 of the *BC Code* states, the standard is not perfection. Even errors and omissions that may be actionable in negligence or breach of contract proceedings by a client against the lawyer may not necessarily constitute a failure to maintain the required standard of competence. What is relevant is gross neglect in a particular matter or a pattern of neglect or mistakes in different matters, regardless of tort liability.

Expert evidence on standards of practice

[406] An issue that was not addressed in any fulsome way in the submissions is the extent to which this Panel, in the absence of expert evidence on standards of practice for a commercial solicitor, may form conclusions on specific allegations of incompetency. A number of the allegations here relate to specific steps the Respondent should have taken to protect the interests of KY. The parties were asked in the hearing about this issue of lack of expert evidence and confirmed neither was calling any. They did not provide guidance to the Panel on how that affects any determination of these quality of service allegations.

[407] This issue has been raised, but not explored, in some prior decisions including *Law Society of BC v. Perrick*, 2014 LSBC 39 (aff'd 2016 LSBC 43 and 2018 BCCA 169), where the hearing panel noted:

> [45] Issues of quality of service can be divided into two general categories. One category can be described as the common sense category. An average person can determine this. This category would include such matters as: keeping the client informed, responding to correspondence, and filing court documents on time, to name a few.
>
> [46] The second category is more sophisticated. What is the standard of a competent lawyer in handling the file? How do you gather the facts? What legal research do you do? How do you prepare for settlement, mediation or trial? This *may* require evidence from other lawyers practising in the area. This could be described as the professional category.
>
> [47] This Panel wishes to make it clear that these two categories are not mutually exclusive. They can overlap. For instance, the failure of a lawyer to interview witnesses, to review important documents, to name a few, may be proved by a common sense approach or by professional evidence.
>
> [emphasis in original]

[408] The Court of Appeal has addressed this issue in two significant cases. In *Roberge v. Huberman*, 1999 BCCA 196, Esson JA (Prowse JA concurring) stated:

> [56] There may be cases in which the issue as to standard of duty turns so much on the question of "appropriate documentation" that only lawyers practising in the particular field can throw light on the question. Evidence of that kind is undoubtedly useful in some cases, most commonly where the issues involve abstruse questions of conveyancing practice. The issues in this case are sufficiently removed from such areas that it may be doubtful that expert evidence would be helpful to the court. The test for determining whether expert evidence is necessary was stated thus in *R. v. Abbey*, 1982 CanLII 25, [1982] 2 SCR 24 by Dickson J. (as he then was), speaking for the court, at 42:

> With respect to matters calling for special knowledge, an expert in the field may draw inferences and state his opinion. An expert's function is precisely this: to provide the judge and jury with a ready-made inference which the judge and jury, due to the technical nature of the facts, are unable to formulate. "An expert's opinion is admissible to furnish the Court with scientific information which is likely to be outside the experience and knowledge of a judge or jury. If on the proven facts a judge or jury can form their own conclusions without help, then the opinion of the expert is unnecessary": (*R. v. Turner* (1974), 60 Cr. App. R. 80, at p. 83, per Lawton L.J.).
>
> [57] … Expert testimony is not necessary for proof of negligence in nontechnical matters or matters of which an ordinary person may be expected to have knowledge.

[409] In *Zink v. Adrian*, 2005 BCCA 93, a lawyer's negligence case, Southin JA in a concurring opinion, without reference to *Roberge*, stated:

> [41] There is an aspect of this case which troubles me. My colleague says, in paragraph 22, "The judge correctly applied the test as to what a reasonably competent solicitor would do having regard to the instructions and expectations of the client."
>
> [42] In the case at bar, the respondent did not call any expert evidence. The judge was his own expert. Before us, the appellant made nothing of this.
>
> [43] But it does seem to me that in cases of alleged negligence by a solicitor, judges can only rarely make such a finding in the absence of expert evidence as to the standard of a competent solicitor conducting the business in question.
>
> [44] The judge can only properly do so, in my opinion, if the matter is one of "non-technical matters or those of which an ordinary person may be expected to have knowledge." See *Anderson v. Chasney*, 1949 CanLII 236 (MBCA), [1949] 2 W.W.R. 337 at 341. There is an underlying reason – the expert witness can be cross-examined with a view to showing he knows not whereof he speaks. But the parties have no means of discrediting a judge's implicit assertion that he knows the proper way to conduct a certain kind of legal business. One must not overlook that the reason some judges are judges is that whilst they

were practising the profession they were of a standard far above that of the ordinary reasonably competent member of the profession.

[410] Southin J.A.'s comments have been widely quoted and followed, including in the leading Ontario case of *Krawchuk v Scherbak*, 2011 ONCA 352, leave to appeal refused, [2011] SCCA No. 319, dealing with a realtor's alleged negligence. As stated in *Zedah v. Moadebi*, 2017 BCSC 2164, another realtor negligence case:

> [36] The defendant argued that expert evidence was required in order for the Court to determine the requisite standard of care. The leading high authority on this point is the decision of the Ontario Court of Appeal in *Krawchuk v. Scherbak*, ... In *Krawchuk*, the Court cited with approval Associate Chief Judge Stansfield's discussion regarding the need for expert evidence in *Walls v. Ross*, 2001 BCPC 187.
>
> [37] In *Krawchuk*, the Ontario Court of Appeal stated:
>
> > [131] In *Walls v. Ross*, 2001 BCPC 187, at paras. 66–74, Stansfield A.C.J. offers a lengthy discussion of the circumstances in which expert evidence will be necessary to define the standard of care in the real estate professional context:
> >
> > > Counsel for the realtors in this case argued I could not find negligence in the absence of expert evidence as to the standard of care the law requires of realtors in circumstances such as those disclosed by the evidence in this case. The claimant did not call any such expert evidence.
> > >
> > > [The Court then quotes from *Roberge v. Huberman* at para 58:]
> > >
> > > > … What the court was called upon to do . . . was to consider and assess, with the assistance of counsel's submissions, any evidence that was adduced by the plaintiff which was potentially relevant to the question whether there had been a breach of duty by the solicitor. That process involves the court applying its experience and knowledge in the way that judges and juries do every day, most often without expert evidence.

It is clear there can be cases in which expert evidence is not required to prove a realtor's failure to meet what the court will determine to be the standard of care expected of realtors in particular circumstances. An example is *Brown v. Fritz*, 1993 CanLII 1475 (BCSC), [1993] B.C.J. No. 2182, about which I will say more in due course.

It seems that whether expert evidence is or is not required is a question which falls to be determined on the facts (and most especially, one imagines, the egregiousness of the conduct or the very specialized or technical nature of the activity) in the particular case. So, for example, in *Shaak v. McIntyre*, unreported, (September 6, 1991), Doc. Vancouver A852424 (BCSC) Madam Justice Ryan (then of the trial court) dealt with a case of alleged negligence by a solicitor for failing to advise a plaintiff to obtain a survey certificate where the plaintiff called no evidence of the standards of the profession in that regard. She observed that:

> [T]here may be cases where the defendant has so clearly fallen below the standard required of him or her that expert evidence is not required although she said on the facts before her that “this is not one of those cases”.

In *Haag v. Marshall* (1989), 1989 CanLII 236 (BCCA), 61 D.L.R. (4th) 371 (B.C.C.A.), Mr. Justice Locke, concurring with two others in the result in a case of alleged solicitor's negligence, said:

> [t]he professional evidence led in this case was unsatisfactory … nowhere was it said that what was not done fell short of a professional standard of conduct. In cases of professional negligence above all, with the many difficult and varied situations met, if a plaintiff hopes to succeed on the grounds of lack of competency it must be fairly demonstrated that it has fallen below an established standard or practice in the profession.

> To similar effect in *Mileos v. Block Bros. Realty Ltd.* (September 30, 1994), Doc. Vancouver C913338 (BCSC), Mr. Justice Thackray, in the context of alleged realtor's negligence, said (at page 8):

… I am of the opinion that the onus is on the plaintiff to show that there was a certain standard of care required by the real estate agent and the agency, that that standard was breached, and that the breach caused damages. No evidence was called to establish the standard.

In *Shaak v. McIntyre* (*supra*), Madam Justice Ryan said:

> [T]he (selling) broker is under a duty to check information of which he or she is in doubt (or ought to have been in doubt) before passing it on to the purchaser . . . The selling agent must also check the completeness and accuracy of all information which it is usual or customary for brokers to verify. *In the case at bar there is no evidence of the usual or customary information which selling agents check. I cannot find that (the selling agent) fell below that standard, whatever it may be.* emphasis added)

The same difficulty was identified by Mr. Justice Drost in *Snijders v. Morgan*, unreported, (January 27, 1997), Doc. Nelson 4747 (BCSC) where he said:

> [I]t is alleged that (the selling realtors) were negligent in failing to properly investigate the nature, identity and extent of the property they advertised for sale. There is no evidence whatsoever of that being a duty or responsibility that the law or the custom or the nature of that business imposes upon persons in that type of business in this province.
>
> Similarly, … the allegation that they were negligent in failing to advise the Plaintiffs that a plot plan or survey should be obtained at any time, and more particularly once they became aware that a misdescription of the property was

> involved, there is no evidence of a standard of care that would impose upon them a duty to so advise the Plaintiffs accordingly.
>
> A review of the cases referred to in these reasons suggests that unless conduct is particularly egregious, the court *likely* requires expert evidence of the usual or customary standard …
>
> …
>
> [132] While the authorities discussed above indicate that, as a general rule, it will not be possible to determine professional negligence in a given situation without the benefit of expert evidence, they do indicate two exceptions to this general rule.
>
> [133] The first exception applies to cases in which it is possible to reliably determine the standard of care without the assistance of expert evidence. As explained by Southin JA, at para. 44 of *Zink*, this will be the case only where the court is faced with "non-technical matters or those of which an ordinary person may be expected to have knowledge".

[emphasis in original]

[411] Another recent summary of the law is found in *Yormak v. Ledroit et.al.*, 2022 ONSC 4615, a lawyer's negligence case:

> C. Expert evidence
>
> [216] In general, it is inappropriate for a trial court to determine the standard of care in a professional negligence case in the absence of expert evidence. *Krawchuk v. Scherback*, at para. 130, *Zink v. Adrian* at para. 43, and Adair, Grant and Rothstein *Lawyer's Professional Liability* (4th ed.) at page 56.
>
> [217] There are two exceptions: (1) where the court is faced with "non-technical" matters or those which an ordinary person may be expected to have knowledge; and (2) where the impugned actions of the defendant are so egregious that it is obvious that his or her conduct has fallen short of the standard of care, even without knowing precisely the parameters of that standard. *Krawchuk v. Scherback*, at paras. 133-135. *Larizza v. Royal Bank of Canada*, 2018 ONCA 632 at para. 37.

> [218] Courts have been cautioned against assuming the role of expert in cases of solicitor's negligence. In *Lawyers' Professional Liability*, [page 59] the learned authors commented on the situation as follows:
>
> > Indeed, in circumstances where no expert evidence has been tendered on what a reasonably prudent lawyer would have done, courts have cautioned against a judge, despite having practiced law and being familiar with the standard of a competent [*sic.*] of a lawyer, acting as his own expert on the basis that in these circumstances the "expert" opinion of the judge is not subject to cross-examination.

[412] With these cautions in mind the Panel turns to the specific allegations of failure to provide a proper quality of service under the *BC Code*.

Allegation 3(a)

[413] Allegation 3(a) in the Citation is:

> 3. Between approximately May 2013 and April 2016, you failed to serve one or more of your clients QY, KY, XX, XL, C Inc., V Ltd., HZ, and 103 BC Ltd. in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to that which would be expected of a competent lawyer in a similar situation, contrary to one or both of rules 3.1-2 and 3.2-1 of the *Code of Professional Conduct of British Columbia*, by doing one or more of the following:
>
> > (a) failing to recommend that the loan agreement between your clients QY and KY and your clients XX, XL, and C Inc. relating to C Inc.'s contribution to the joint venture agreement and any associate security interests or obligations, be clarified and reduced to writing;

[414] Based on the factual findings that the Respondent was kept in the dark about this loan until it was in default, the Panel dismisses this allegation.

Allegation 3(b)

[415] Allegation 3(b) in the Citation is:

> > (b) failing to advise your clients QY and KY about the risks associated with becoming a minority shareholder;

[416] The Panel, having found that KY was a client at the time the JVAs were prepared and signed, also finds that giving this advice is a matter of basic competency as a solicitor and does not require expert evidence. This is a "non-technical" matter where the average person would expect a lawyer to advise on risks associated with a transaction of this nature and this level of investment. As an example, HZ would not consider purchasing the V Ltd. shares unless he had control. While the Respondent suggested that the law in China with respect to minority shareholders is much the same and that a sophisticated business person like QY, as agent for KY, would know this, we have no independent evidence of the law in China to assess this suggestion. In any event, the fact remains that it is a matter the Respondent should have addressed or on which she should have recommended QY and KY get legal advice from a BC lawyer or at the very least consult their Chinese lawyer if she thought they had one. This allegation is proven.

Allegation 3(c)

[417] Allegation 3(c) of the Citation is:

> (c) failing to advise your clients QY and KY about the desirability of negotiating a shareholders' agreement;

[418] The specific steps that should be taken by a prudent commercial solicitor in the context of a joint venture arrangement, including documentation of the corporate vehicle and ancillary documents, is something the Panel cannot decide without the benefit of expert opinion. Was the appropriate action to recommend the obtaining of a shareholders' agreement? Was it to include provisions on voting and decision-making in the JVA itself? Was there some other preferable way of addressing the rights and obligations of the JVA participants, such as restrictive covenants or certain dispute resolution covenants? Again, without the benefit of expert advice, the Panel is unable to assess if this particular advice should have been given by the Respondent. While it is clear that advice was not given on the alternatives noted above or any other alternative, the wording of the allegation, by which we are bound, is failure to give this specific advice on the desirability of a shareholders' agreement. It is not an allegation of a more general failure to provide an adequate quality of service to KY as a 40 percent shareholder. As worded, this allegation is not proven.

Allegation 3(d)

[419] Allegation 3(d) of the Citation is:

> (d) failing to ensure that KY's shares in V Ltd. were appropriately secured pending receipt of the purchase price from 103 BC Ltd.;

[420] The Panel struggles with this allegation as it is clear that there were more legal hands at work on the STAs than the Respondent's. Unlike the situation with the JVA, the Panel is not convinced that QY and KY had no lawyers in China who reviewed and advised on the Chinese JVA agreement. While the Respondent had a role in it, the level of her involvement and her need to take these steps is again not clear, especially without expert evidence. A lawyer added the escrow provisions to the STA, clearly to protect KY. Whether the escrow provisions in the STA were sufficient to deal with this situation, or whether other security protections should have been instituted, is also a matter the Panel cannot decide without the benefit of expert evidence of proper commercial practice on a share sale in these circumstances. The allegation is dismissed.

Allegation 3(e)

[421] Allegation 3(e) of the Citation is:

> (e) transferring KY's shares in V Ltd. to 103 BC Ltd. and filing a Notice of Change of Directors prior to receipt of any funds;

[422] This allegation is complicated by the fact that the Respondent appears to have been acting as an escrow holder of the shares pending payment under the finalized STA, as well as performing the duties as corporate solicitor for V Ltd. An escrow holder must be a neutral third party and not acting for one of the parties to the agreement under which the escrow documents are held. As described in *Treiber v. Lougheed*, 1968 CanLII 703; 69 DLR (2d) 676 (BCSC) at p. 682, (quoting from *Re Giffen*, [1925] 4 DLR 627 at pp. 629 to 30, quoting in turn *Sheppard's Touchstone*, 8th ed., pp. 58 to 59):

> The delivery of a deed as an escrow is said to be where one doth make and seal a deed, and deliver it *unto a stranger* until certain conditions be performed, and then to be delivered to him to whom the deed is made, to take effect as his deed…

[emphasis added]

[423] The Respondent's muddling of these roles and her transferring and then holding the certificates for the shares was unwise to say the least, leaving her open to considerable conflicts.

[424] She stated that her office was only doing what was required as the corporate records office of the company to update its records in accordance with the STA. She also said she understood she was to hold the share certificates under the STA.

[425] What is the role of a corporate solicitor who acts for one party (here 103 BC Ltd.) as well as the company that is the subject of the share transaction (V Ltd.), and who is also an escrow holder of the shares transferred and thus supposedly neutral as between the parties in a situation where shares have been sold, but held in escrow? What should that lawyer properly do in updating corporate records by recording the share transfers and updating the register of directors? Is undertaking these legal services providing a quality of service that is less than that which would be expected of a competent lawyer in a similar situation? Without expert evidence of the bar that should be met in this type of situation the Panel cannot make a finding one way or another.

[426] The Panel does find that the Respondent's conduct here displayed a lack of thought about taking on conflicting roles but cannot conclude on the evidence provided that it reaches the level of gross neglect. The allegation is dismissed.

[427] However, while it is not part of the particulars of this or the immediately preceding allegations in the Citation, the Panel does find the conduct of the Respondent in her role as escrow holder very troubling. Her parting with possession of the share certificates when she ceased acting for V Ltd., but before the payment condition was fulfilled, without arranging for a substitute escrow-holder to hold them, is frankly astounding for a lawyer with her experience and in her position.

Allegation 3(f)

[428] Allegation 3(f) of the Citation is:

> (f) failing to ensure that any short term loan agreement between your clients QY or KY and your friend TC was reduced to writing;

[429] The Panel having found that the Respondent was not acting in a professional capacity and provided no legal services in putting QY in contact with TC, this allegation is dismissed.

Allegation 3(g)

[430] Allegation 3(g) of the Citation is :

> (g) failing to disclose to your clients QY and KY the source of the approximately $1 million which you caused to be paid to them on October 2, 2015;

[431] The Respondent said she did not advise QY or KY of the source of these funds (the One Million Payment) as KY was no longer a director or shareholder, although under the STA she had the right to recover the shares for non-payment and they were essentially held in escrow in the meantime. What was her duty to advise a shareholder who had sold shares and had not been fully paid? Did the Respondent have a duty to tell QY or KY where the funds came from to pay part of the price for KY's shares? Especially when the funds came from an outside source who provided funds to the company apparently without conditions? Is this a matter of competency or, assuming KY was still her client, a conflict of interest, or both or neither? Again, without the benefit of expert advice on the practice of a competent commercial lawyer the Panel cannot make any finding on her competence. It is not an allegation "where the impugned actions of the [Respondent] are so egregious that it is obvious that his or her conduct has fallen short of the standard of care, even without knowing precisely the parameters of that standard." The allegation is dismissed.

Allegation 3(h)

[432] Allegation 3(h) of the Citation is:

> (h) failing to advise your clients QY and KY that sometime before October 2, 2015, 103 BC Ltd. had disputed its obligation to proceed with the share transfer agreement with KY and refused to make any payment to KY pursuant to that agreement;

[433] Proceeding on the basis that KY was still a client, it seems from the evidence that QY and KY knew of this dispute from HZ directly, as QY messaged the Respondent about the problem and sought her assistance. What the

Respondent could have done to further elucidate the details of the dispute for QY and KY is not clear. This allegation is dismissed.

Allegation 3(i)

[434] Allegation 3(i) of the Citation is:

> (i) failing to disclose to your clients QY and KY information about financing activity which you facilitated on behalf of V Ltd. after KY had been removed as shareholder and director of the company.

[435] As noted earlier, the Respondent said she did not advise QY or KY of this as KY was no longer a director or shareholder, although under the STA she had the right to recover the shares for non-payment and they were essentially held in escrow in the meantime. This is a different situation from the distribution of the approximate $1 million received from XL, as this latter financing further encumbered the equity in the company's assets and potentially devalued its share value. That meant that even if KY recovered the shares there could be losses for her. However, despite these added and troubling layers, the same issue arises for the Panel. Is this again a matter of competency or, assuming KY was still her client, a conflict of interest, or both or neither? How does a competent commercial lawyer handle this type of situation beyond not acting in the first place?

[436] To reiterate the comments of Southin JA: "… in cases of alleged negligence by a solicitor, judges can only rarely make such a finding in the absence of expert evidence as to the standard of a competent solicitor conducting the business in question" and "[t]he judge can only properly do so, in my opinion, if the matter is one of non-technical matters or those of which an ordinary person may be expected to have knowledge." This is another situation where, without the benefit of expert advice on the practice of a competent commercial lawyer, the Panel cannot make any finding on competence. The allegation is dismissed.

FINDINGS AND DECISION

[437] The Panel finds that the Law Society has proven the underlying conduct in the following allegations in the Citation:

> 1(a), (e), (f)
>
> 2 (b), (c)

3(b).

[438] The Panel finds that the Law Society has not proven the following allegations in the Citation:

1(b), (c), (d)

2 (a), (d)

3(a), (c), (d), (e), (f), (g), (h), (i).

[439] Under section 38(4) of the *Act*, the Panel must determine if the proven underlying conduct constitutes professional misconduct. It is one of a number of options that can be alleged under section 38(4). For instance, the Law Society could have alternatively alleged in the Citation that the Respondent's conduct constituted breaches the *Act* and Rules, or incompetent performance of duties undertaken in the capacity of a lawyer. Instead, it put all its eggs in one basket; namely professional misconduct.

[440] In allegation 1(a), the Panel found a failure to obtain written informed consent before acting. Addressing potential conflicts of interest is one of the most fundamental requirements in our profession. The Canons of Legal Ethics that begin the *BC Code* state a lawyer should disclose to the client all the circumstances of the lawyer's relations to the parties and interest in or connection with the controversy, if any, that might influence whether the client selects or continues with the lawyer. The Respondent failed in this duty and that failure is clear professional misconduct.

[441] In allegation 1(e), the Respondent was found to have waded into a clear conflict where she could not avoid preferring the interests of one client over another by continuing to act. This is again a breach of an elemental duty seen on any objective basis and another clear act of professional misconduct.

[442] In allegation1(f), the Respondent again enmeshed herself in a conflict between clients, a situation exacerbated by her professional failure to even understand where she had placed herself. Again, on the *Martin* test, whether this arose from a lack of basic understanding of what constitutes a client or a conflict of interest, or from considerable carelessness, or a combination of both, her actions objectively fall far below the appropriate standard of conduct expected of lawyers. It is professional misconduct.

[443] For the two allegations in paragraphs 2(b) and (c) of the Citation incorporating failure to substantially and fully respond and to making misleading statements to

the Law Society, the Panel assesses this against the background of the chaos in the Respondent's life and practice at the time. As the investigator, Ms. Murray, put it, she was "very very stressed" and with good reason. In this particular context, we do not find that these misleading and incorrect responses amount to professional misconduct. Had we been given the option of finding a breach of the *Act* and Rules, we would have done so. While, as noted earlier, this also would have been a serious finding against the Respondent, it does not amount to professional misconduct (see *Guo 2023* at paras. 145 to 149).

[444] Allegation 3(b) raises a significant concern about the Respondent's general lack of competency as a lawyer practicing corporate commercial law, as it seems never to have crossed her mind to provide any advice about risks to KY in entering the JVA. However, that may or may not amount to professional misconduct. In *Law Society of BC v. Cranston*, 2011 LSBC 24, at paras. 60 to 62, the hearing panel noted that incompetence is a "… want of ability suitable to the task, either as regards natural qualities or experience, or a deficiency of disposition to use one's ability and experience properly", as opposed to professional misconduct which involves "… gross culpable neglect of the respondent's duties as a lawyer". While *Cranston* dealt with competency of the respondent lawyer generally, and here the allegation relates to a particular transaction, it is one of a number of apparent competency failures of the Respondent's legal abilities that are outlined in this decision. As noted earlier, commentary [15] to section 3.1-2 of the *BC Code* also states that relevant to when incompetency becomes professional misconduct is gross neglect in a particular matter or a pattern of neglect or mistakes in different matters.

[445] For these reasons the Panel posits that the Respondent's failure to even consider advice about these risks to KY, in the context of the Respondent's practice as a corporate commercial solicitor, could amount to incompetent performance of duties undertaken in the capacity of a lawyer. As we are not directed in the Citation to consider that option, we make no conclusion one way or another. We do conclude they do not cross over the line of gross culpable neglect into professional misconduct.

[446] In conclusion, the Panel finds for:

(a) allegations 1(b), 1(c), 1(d), 2(a), 2(d), 3(a), 3(c), 3(d), 3(e), 3(f), 3(g), 3(h) and 3(i), the underlying conduct was not proven and these allegations are dismissed;

(b) allegations 2(b), 2(c) and 3(b), while the underlying conduct was proven it does not amount to professional misconduct and these allegations are dismissed; and

(c) allegations 1(a), 1(e) and 1(f), the underlying conduct was proven and amounts to professional misconduct.