

2007 LSBC 13

Report issued: March 09, 2007

Oral Reasons: January 8, 2007

Citation issued: December 2, 2005

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

Mimi Mankiu Luk

Respondent

Decision of the Hearing Panel

Hearing date: January 8, 2007

Panel: Leon Getz, Q.C., Single Bencher Panel

Counsel for the Law Society: Brian McKinley

Counsel for the Respondent: Christopher Hinkson, Q.C.

Background

[1] On December 2, 2005, a citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rule 4-13 of the Law Society Rules by the Director of Professional Regulation of the Law Society of British Columbia pursuant to the direction of the Chair of the Discipline Committee. The citation directed that this Panel inquire into the Respondent's conduct as follows:

1. Regarding a complaint from your client D.S., you attempted to mislead the Law Society by providing the Law Society with a false document, a photocopy of the front and back of two different cheques, while claiming that the copy was of the front and back of the same cheque.
2. You failed to provide your client V.W. with a quality of service at least equal to that which would be provided by a competent lawyer in a similar situation, in that you failed to keep your client reasonably informed of the status of the matter, and failed to take necessary steps to advance the matter in a timely fashion, contrary to Chapter 3, Ruling 3 of the *Professional Conduct Handbook*

[2] This matter proceeded before a single Bencher, with the consent of the President, pursuant to Rule 5-2(2).

[3] This citation came before this Panel as a conditional admission of a disciplinary violation and consent to a specific disciplinary action pursuant to Rule 4-22 of the Law Society Rules. The Respondent admitted that she had professionally misconducted herself and consented to the following disciplinary action:

1. suspension for 18 months, to commence on October 24, 2005 (the date of the interim suspension);

2. pay costs of the proceedings in the amount of \$8,000, such costs to be paid within three months of the date of acceptance;
3. conditions on the Respondent's return to practice as set out below:
 - (a) practise only in a capacity approved by the Practice Standards Committee;
 - (b) provide an undertaking to respond to the Law Society within 14 days of receiving a request for response;
 - (c) undergo a practice review within three months of returning to practice and comply with all recommendations of the Practice Standards Committee;
 - (d) continue to take treatment from a psychiatrist and have the psychiatrist provide a report every three months to the satisfaction of the Practice Standards Committee until relieved of this condition by the Practice Standards Committee; and
 - (e) register for and complete to the satisfaction of the Practice Standards Committee the new small firm practice course within six months from the date of acceptance of the proposed Rule 4-22 conditional admission.

[4] A Statement of Agreed Facts was filed as Exhibit 2 in these proceedings. The Statement of Agreed Facts provided as follows:

1. Mimi Mankiu Luk was called to the bar in British Columbia on August 31, 1990. From her date of call to approximately November 1991, she practised at Clark Wilson. She was inactive in practice between November 1991 and March 1992. From April 3, 1992 until May 1992, she resumed practice with Lawrence Wong & Associates. From June 1992 until February 2000, the Respondent practised at Cohen Buchan Edwards. From February 7, 2000 until October 31, 2000, she practised with V. Brent Louie Personal Law Corporation. From November 1, 2000 until November 2002, she practised in an office-sharing arrangement with V. Brent Louie Personal Law Corporation. From November 2002 until October 24, 2005, she practised as a sole practitioner in Richmond.

V.W. Complaint

2. By letter received October 29, 2004, Ms. V.W., a client of the Respondent, complained to the Law Society about the Respondent.
3. V.W. retained the Respondent at the end of 2000 to obtain a divorce. She complained that there had been considerable delays and that the Respondent had misled her about what she had done to advance the file. By the time of her complaint, V.W. had not obtained her divorce. She also complained that she had provided the Respondent with a \$2,000.00 retainer in January 2001 and never received an accounting from the Respondent for the funds.
4. By letter dated February 8, 2005, the Respondent responded to the complaint from V.W.

5. On June 8, 2005, V.W. attended the Law Society offices and provided a taped interview with Law Society Investigator Paul Willms. During that interview, she provided a chronology of events, which she had prepared in note form prior to the interview. She also provided a copy of a statement from her bank showing the withdrawal of \$2,000.00 in cash on the 3rd of January, 2001.
6. V.W. provided the Respondent with a \$2,000.00 cash retainer on or about January 3, 2001. In January 2001, the Respondent and V.W. arranged for a friend of V.W. to serve her ex-husband with divorce papers in Hong Kong.
7. In February 2001, V.W.'s friend R.L. signed a document in the Respondent's office to prove that she had served the divorce papers on V.W.'s husband.
8. On January 12, 2001, the Respondent filed on V.W.'s behalf a Writ of Summons, Statement of Claim, Marriage Agreement Upon Separation and a Certificate of Marriage. A Notice from the Court was issued on April 12, 2001 to the Respondent, advising that the desk Order application for divorce was returned. Following the return of the desk Order application, no documents were filed in Court with respect to the matter until October 3, 2002, when a file search was conducted on behalf of the defendant.
9. On or about May 31, 2003, V.W. attended the New Westminster Civil Registry and determined that nothing had been filed in her Court file by the Respondent following the rejection of the application on April 12, 2001.
10. V.W. claims that she spoke to the Respondent on June 1, 2003, and that the Respondent advised her that she (the Respondent) had resubmitted the application. V.W. alleges that the Respondent suggested that the registry staff may have lost the application and that the Respondent was going to check with them about it.
11. The Respondent asserts that part of the reason the Order was returned was that the Child Support Affidavit (Form 133) had to be completed and that she advised V.W. that, until she could provide information about her spouse's annual income, the form could not be submitted.
12. In July and August of 2004, V.W. went to the New Westminster Civil Registry to determine if the Respondent had filed anything on her behalf. She was advised that nothing had been filed.
13. V.W. claims that in August 2004, she contacted the Respondent by telephone, and the Respondent advised her that she had sent the application to Toronto, that Toronto was the place in charge of all divorce applications in Canada and that everything would have to go through them.
14. The Respondent denies that she advised V.W. anything about sending the application to Toronto.
15. V.W. then retained other counsel and obtained her divorce in August 2005. She claims that, as a result of not obtaining the divorce earlier, her ex-husband reduced the amount of child support payments he was making and refused to provide her with items that were required within the divorce order and that she was not able to take possession of property in Hong Kong and the property lost some value.

16. The Respondent admits that she failed to provide her client V.W. with a quality of service at least equal to that which would be provided by a competent lawyer in a similar situation. The Respondent admits that she failed to take necessary steps to advance the matter in a timely fashion and that she failed to keep V.W. reasonably informed of the actual status of her matter.

17. The Respondent admits that her failure to provide a reasonable quality of service to V.W. in the circumstances was professional misconduct.

D.S. Complaint

18. By letter dated July 29, 2003, another client, Ms. D.S., complained to the Law Society about the Respondent. D.S. stated that she retained the Respondent in September 2001, to give her some legal advice about a custody agreement and to prepare and file an application for a change of name for her son. D.S. paid the Respondent the prescribed fee of \$137.00 in advance. D.S. complained that in July 2003, she still did not have the Change of Name Certificate and that she had been having difficulty reaching the Respondent for an explanation.

19. The Respondent responded to the complaint by letter dated September 22, 2003, stating that she was scheduled to meet with D.S. in an attempt to resolve the matter directly with her. The Respondent responded further to the complaint by letter dated September 28, 2003, in which she stated that the delay in dealing with the application was partly due to the B.C. Vital Statistics office confusing D.S. with another person who had a similar name. The Respondent also cited " a change in policy and forms and requirements from the B.C. Vital Statistics office for name changes" as a further reason for the delay in processing the application. By letter dated October 2, 2003, the Respondent provided a copy of her file to the Law Society.

20. By letter dated October 2, 2003, D.S. wrote to the Law Society and advised that she had met with the Respondent on October 2, 2003, and that the Respondent had advised her that she had actually met with someone at the Vital Statistics office on May 1, 2003, and that, at that time, there was a record of the name change application and that the method of payment for the original application had been by cheque. A review of the Respondent's file and Ms. S.'s additional information by Law Society staff raised questions about the Respondent's handling of the file. Kensi Gounden, then a staff lawyer with the Professional Conduct Department, wrote to the Respondent on October 16, 2003, for clarification.

21. The Respondent responded by letter dated October 17, 2003, advising that she had obtained the Change of Name Certificate for D.S. The Respondent further responded by letter dated November 22, 2003. In that letter, the Respondent advised that she had mailed the original application for the name change along with the required fee in October 2001. She claimed that she had issued a cheque from her general account prior to receiving retainer funds from D.S. She claimed that she was " informed by the Department of Vital Statistics that they had received D.S.'s application" .

22. By letter dated December 4, 2003, Law Society staff pressed the Respondent for further information to substantiate her explanation.

23. On December 8, 2003, the B.C. Vital Statistics Agency advised that their records showed that the change of name process for Ms. S.'s son was first initiated on October 7, 2003.

24. On January 19, 2004, Mr. Hinkson, Q.C. wrote to the Law Society to advise that he had been retained by the Respondent. Law Society staff continued to press for an explanation for the inconsistency between the Respondent's earlier response that she had initiated the application in 2001, and the records from Vital Statistics that the process had not started until October, 2003.

25. On June 7, 2004, Howie Caldwell, staff lawyer with the Professional Conduct Department, wrote to Mr. Hinkson to advise that he now had conduct of the matter and to request a response from the Respondent.

26. By letter dated August 24, 2004, the Respondent responded directly to Mr. Caldwell. In that letter she confirmed that she did complete and mail the name change application for Ms. S. and that she was told by the Vital Statistics Department that her application had been received. She claimed to have made no record of the name of the individual to whom she spoke to at the Vital Statistics office on May 6, 2003.

27. By letter dated August 26, 2004, Mr. Caldwell requested that the Respondent provide the Law Society with a copy of the cancelled general cheque that was issued in payment of the fee. By letter dated October 6, 2004, Mr. Hinkson forwarded a letter from the Respondent dated September 30, 2004, in which she forwarded an enclosed copy " of the general cheque in the amount of \$137.00 that was issued to pay for the Vital Statistics filing fee. I have been unable to locate the original cancelled cheque." By letter dated February 1, 2005, Mr. Caldwell wrote to Mr. Hinkson requesting a copy of the cancelled cheque from the Respondent's bank.

28. By letter dated March 21, 2005, Mr. Hinkson forwarded " a copy of the cancelled cheque which Ms. Luk has sent to me with regard to the above matter."

29. By letter dated May 2, 2005, D.P. of the British Columbia Vital Statistics Agency advised the Law Society that it appeared that the front and back of the copy of the cheque provided by the Respondent were from two different cheques. She also advised that the apparent back of the cheque bore a number which appeared to be associated with a file from the Respondent's Law Corporation for another client.

30. In response to further inquiries from the Law Society Mr. Hinkson wrote on July 5, 2005, to advise that he had received instructions from the Respondent that " the photocopies of the cheque which accompanied my letter of March 21, 2005 were indeed photocopies of two different cheques and that as you have previously determined the back of the cheque relates to a payment on behalf of another client."

31. The Respondent admits that she attempted to mislead the Law Society in its investigation of the complaint against her by providing the Law Society with a false document, and in so doing committed professional misconduct.

[5] After considering the circumstances set out in the Statement of Agreed Facts and having heard the submissions of counsel, the Panel accepts the admission and finds the Respondent guilty of professional misconduct.

[6] The Panel finds the penalty proposed by the Respondent, and recommended by the Discipline Committee, to be appropriate in all of the circumstances.

[7] It is accordingly ordered that the Respondent:

1. be suspended for 18 months, to commence on October 24, 2005 (the date of the interim suspension);
2. pay costs of the proceedings in the amount of \$8,000, such costs to be paid within three months of the date of acceptance;
3. have conditions placed on the Respondent's return to practice as set out below:
 - a) practise only in a capacity approved by the Practice Standards Committee;
 - b) provide an undertaking to respond to the Law Society within 14 days of receiving a request for response;
 - c) undergo a practice review within three months of returning to practice and comply with all recommendations of the Practice Standards Committee;
 - d) continue to take treatment from a psychiatrist and have the psychiatrist provide a report every three months to the satisfaction of the Practice Standards Committee until relieved of this condition by the Practice Standards Committee; and
 - e) register for and complete to the satisfaction of the Practice Standards Committee the new small firm practice course within six months from the date of this order.

[8] The Executive Director is instructed to record the Respondent's admission on the Respondent's Professional Conduct Record, to impose the disciplinary action proposed by the Respondent and accepted by the Panel and to inform the Respondent and the complainant of the disposition.

[9] There will be publication of this decision in the normal course.