

Admission to Discipline Committee

MIMI MANKIU LUK

AGREED STATEMENT OF FACTS

Member Background

1. The Respondent was admitted to the bar of the Province of British Columbia on August 31, 1990.
2. The Respondent worked for four different firms in the Lower Mainland between August 1990 and October 2000, following which she practised as a sole practitioner.
3. On October 24, 2005, the Respondent was suspended from practice, initially pursuant to section 39 of the *Legal Profession Act*. Pursuant to the decision of a hearing panel issued March 9, 2007, The Respondent was suspended for a period of 18 months.
4. The Respondent returned to practice on July 27, 2007, and practised until June 18, 2008 as " Mimi M. K. Luk Law Corporation" at #728 - 6081 No. 3 Road (the " Premises"), Richmond, British Columbia.
5. On June 18, 2008 the Respondent voluntarily terminated her membership in the Law Society and a custodian was appointed to wind up her practice.

Citation

6. The citation in this matter was authorized by the Chair of the Discipline Committee on June 18, 2008. On or about July 10, 2008, counsel for the Respondent agreed to waive the requirements of Rule 4-15.
7. On December 11, 2008, additional allegations were authorized by the Discipline Committee.
8. The citation was issued January 22, 2009.
9. The Respondent admits that that she was served through her counsel with the citation and that she has waived the requirements of Rule 4-15 of the Law Society Rules.

Allegations #1 to 4 - Rule 4-43 Investigation Order

10. On June 12, 2008, the Chair of the Discipline Committee of the Law Society ordered that an investigation be made of the books, records and accounts of the Respondent, Mimi M.K. Luk Law Corporation and MMKL Consulting Services Inc.
11. On June 17, 2008, at approximately 11:15 a.m., Paul Willms, an investigator employed by the Law Society, attended at the Premises and served the Order on the Respondent. Mr. Willms was accompanied by other Law Society employees, including Ms. Jo Orton, an investigative accountant. The Respondent refused to permit the Law Society employees to enter the Premises and stated that she wished to obtain legal advice. The Respondent went into the Premises and locked the door.
12. At approximately 1:00 p.m., the Respondent came into the hallway to speak with the Law Society

staff, at which time Mr. Willms advised her that the Law Society wished to make a mirror image of her hard drive and Ms. Orton advised her that she wanted to review documentation related to the financial aspect of her practice, including all trust and general accounting documents, such as bank statements, cleared cheques, deposit slips, cash receipts, receipt books, general ledger, client trust ledgers, client trust listings, and bank reconciliations for the trust and general bank accounts. The Respondent continued to refuse access to the Premises throughout the day on June 17, 2008 and refused to permit copying of any documents whatsoever. During this time, the Respondent had not yet obtained legal advice.

13. The Respondent admits that on or about June 17, 2008, she failed to comply with the Order, which required her to immediately produce and permit the copying of all files, vouchers, records, accounts, books and any other evidence and that her conduct in doing so constitutes conduct unbecoming.

14. On June 17, 2008 at approximately 3:30 p.m., Shelley Ion, a lawyer in the Professional Conduct Department of the Law Society, caused to be sent to the Respondent by email a letter. In this letter Ms. Ion enclosed a copy of Rule 4-43 of the Law Society Rules, and wrote that the forensic team would attend at the Premises at 9:00 a.m. the next day (June 18, 2008) to commence the 4-43 investigation. She further wrote that:

You must not remove from your office, or alter, damage or destroy any files, vouchers, records, accounts, books or any other documentation in your office, whether in paper or electronic form. If you do so, you may be subject to disciplinary action.

The Respondent admits that she received and read this letter on June 17, 2008 and the enclosed copy of Rule 4-43 and that she understood the letter and the provisions of Rule 4-43.

15. Between the close of business on June 17, 2008 and 8:30 a.m. on June 18, 2008, and after she read the letter from Ms. Ion dated June 17, 2008, the Respondent removed from her office and loaded into her car personal items, personal files, 17 boxes of file materials, two computers, and two large plastic garbage bags filled with garbage and documentation, some of which was shredded. On the morning of June 18, 2008, Ms. Orton took photographs of the Respondent's car. The Respondent admits that she removed some of this material in order to avoid the Law Society having access to it in the course of its investigation pursuant to the Order.

16. The Respondent further destroyed some draft records and accounts related to her practice by shredding them. She deleted from her computer files some documents related to her client HH.

17. The Respondent admits that on or about June 18, 2008, after the Order had been served upon her, she removed some files, vouchers, records, accounts and books related to her practice from the Premises, and that her conduct in doing so constitutes conduct unbecoming.

18. The Respondent further admits that she destroyed some draft records and accounts related to her practice by shredding or by deleting them from her computer, and that her conduct in doing so constitutes conduct unbecoming.

19. On the morning of June 18, 2008, Jo Orton asked the Respondent why these items were in her car, to which the Respondent responded that she was embarrassed about the state of her office and had just cleaned it up, and that the items were mostly personal items and older closed files. Ms. Orton looked at the materials inside the Respondent's car, and stated to the Respondent that the materials

inside the plastic garbage bags looked like client trust ledgers and faxes from lawyers. In response to this comment, the Respondent stated to Ms. Orton that there were "duplicate copies" in the bags. The Respondent admits that, although the materials in her car did include duplicates, the responses she gave to Ms. Orton were untrue or misleading and she knew this when she made them. The Respondent further admits that the items in her car included files related to matters which she knew were the subject of investigation by the Law Society.

20. The Respondent admits that on or about June 18, 2008, she was asked by Law Society staff what materials she had removed from the Premises, to which she stated words to the effect that they were personal items, duplicates and older closed files, which response was untrue or misleading and she knew this when she made it. The Respondent admits that her conduct in giving a response she knew to be untrue constitutes conduct unbecoming.

Allegations #5 to 9 - Conduct Related to the IG File

21. In or about September 2001, IG retained the Respondent to prepare and submit an application (the "Application") to Citizenship and Immigration Canada ("CIC") on behalf of his mother-in-law, AL.

22. The Respondent did not submit the Application to CIC in September 2001 or at any time thereafter.

23. On or about September 5, 2001, the Respondent prepared and gave to IG a statement of account in the total amount of \$2,480.00, which was comprised of legal fees of \$825, a tax exempt disbursement of \$1,525 in respect of a "Right of Landing & Application fee" , as well as other disbursements and tax.

24. On or about September 6, 2001, IG delivered to the Respondent a personal cheque in the amount of \$2,480. The Respondent negotiated this cheque on September 6, 2001 by depositing the funds to her personal bank account at TD Canada Trust. She did not record receipt of these funds in any client trust ledger for IG nor in her trust or general account records.

25. The Respondent admits that at September 6, 2001 when she deposited this cheque from IG in the amount of \$2,480 to her personal bank account, she had not completed the services for which she was retained as she had not submitted the Application to CIC, nor had she paid any disbursement in the amount of \$1,525 in respect of the "Right of Landing & Application fee" and she was therefore not entitled to the full amount of these funds. The Respondent further admits that she misappropriated funds of at least \$1,525 received by cheque from IG by negotiating the cheque and depositing the money to her personal account, when she was not entitled to those funds. The Respondent admits that this conduct constitutes professional misconduct.

26. The Respondent admits that she failed to serve IG 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 by: _

(a) failing to do the work in hand in a prompt manner so that its value to her client was not diminished or lost, and

(b) failing to disclose all relevant information to her client, and candidly advise him about the position of the matter, whether such disclosure or advice might reveal neglect or error by her,

which was contrary to Chapter 3, Rule 3 of the *Professional Conduct Handbook* and constitutes professional misconduct.

27. From time to time between September 2001 and February 2007, IG contacted the Respondent to request information regarding the status of the Application, to which the Respondent responded words to the effect that the matter was "still in process". The Respondent admits that when she made these responses, she knew that the Application had not been submitted for processing and she made these responses in order to mislead him as to the true status of the Application. The Respondent admits that her conduct constitutes professional misconduct.

28. The Respondent further admits that in response to an inquiry by IG of the status of the Application, the Respondent gave to him a photocopy of a document ostensibly dated October 11, 2001 which she purported to be a receipt from CIC for the payment of \$1,525 for the "Right of Landing & Application fee" in respect of the Application. The Respondent admits that this document is not a photocopy of a genuine receipt from CIC, that she never paid the \$1,525 "Right of Landing & Application fee" and that she created this document to give to IG for the purpose of misleading him as to the true status of the Application. The Respondent admits that her conduct constitutes professional misconduct.

29. On or about February 21, 2007, IG made a complaint to the Law Society.

30. On or about August 24, 2008 in the course of the investigation of the complaint of IG, the Respondent provided a written response to the Law Society in which she wrote in respect of the purported receipt from CIC dated October 11, 2001, that:

I am unable to locate the original cancelled cheque for the payment of the \$1525 right of landing and application fee. IG had asked me to provide to him a copy of the receipt for the payment of the right of landing fee and the application fee and I did provide this to him. I apologize that a copy of this receipt was not contained in IG's file that I had provided to me. I do not know why a copy of the receipt for this payment was not contained in IG's file which I had provided you.

The Respondent admits that this response was untrue because no such payment had been made and CIC had not issued any such receipt, and she made this representation for the purpose of misleading the Law Society in its investigation of the complaint of IG. The Respondent admits her conduct constitutes conduct unbecoming.

31. On or about March 22, 2007, Ms. Ion of the Law Society wrote to the Respondent and requested that she provide "all contact information for BL, both past and present, to the best of [Ms. Luk's] knowledge". The Law Society wished to obtain this contact information for BL because in her letter to the Law Society dated March 16, 2007 the Respondent stated that she had delegated the Application to BL.

32. On April 30, 2007, the Respondent wrote to the Law Society and stated that the last known number she had for BL was her cellphone number of [number] and wrote "I have no other telephone number or contact information for BL". On May 8, 2007, the Respondent wrote to the Law Society and stated that "I have provided you with all contact information for BL that I have, both past and present".

33. The Respondent admits that her representations to the Law Society made on April 30, 2007 and May 8, 2007 were not true, as she did have in her possession before April 30, 2007 contact information for BL. The Respondent further admits that she refused to disclose this contact information to the Law

Society. The Respondent further admits that her conduct in this regard constitutes conduct unbecoming.

Allegation #10: Misappropriation of Funds from GV and RV (the 1st TA Cheque)

34. In or about June 2007, the Respondent was retained by clients, GV and RV, to act for them in respect of the sale of property located at [address], Richmond (the " Old Property"), and the purchase of property located at [address], Richmond (the " New Property"). The purchase of the New Property completed on June 27, 2007, prior to the completion of the sale of the Old Property on July 16, 2007. GV and RV mortgaged the Old Property for funds to complete the purchase of the New Property, which transaction was handled by the Respondent under client file #13059 (the " V Mortgage File").

35. On October 16, 2007, the Respondent prepared and signed a trust cheque in the amount of \$36,753.97 payable to TA (the " 1 st TA Cheque"). On the " re line" of this 1st TA Cheque, the Respondent handwrote " #13059" , which is a reference to the V Mortgage File.

36. GV and RV did not authorize the TA Disbursement either orally or in writing and at all material times were unaware of the TA Disbursement.

37. On November 29, 2007, the Respondent negotiated the 1st TA Cheque at the Richmond Main Branch of TD Canada Trust by depositing the full amount of \$36,753.97 to a personal account held jointly by the Respondent and TA. The Respondent states that TA was unaware of the fact of the TA Disbursement and of the 1 st TA Cheque.

38. The Respondent admits that she misappropriated funds held in trust for GV and RV, by causing the payment of \$36,753.97 to TA without the authorization of her clients and depositing those funds to a personal account which she jointly held with TA. The Respondent further admits that her conduct constitutes professional misconduct.

39. On July 16, 2008, through her counsel, the Respondent advised the Law Society that she had transferred the sum of \$36,753.97 from funds held in trust for GV and RV and her counsel further advised that she had provided such funds to him, which he held in trust. On July 31, 2008, after receiving direction from the custodian of the Respondent's practice, her counsel provided to the Law Society a cheque which included the sum of \$36,753.97 to hold in trust for GV and RV, pending proper disbursement by the custodian of the Respondent's practice.

Allegation #10 - Misappropriation of Funds from HH (the 2nd TA Cheque)

40. In or about 2005, the Respondent was retained to act for her client HH in connection with the purchase and mortgage of property located at [address], Vancouver and a related transaction involving the mortgage of property located at [address], Richmond. The Respondent opened a file under the name of HH, under the number of 12960, which file she closed on October 13, 2005. During and following these transactions, the Respondent held money in trust for HH.

41. On October 6, 2005, the Respondent prepared and signed a trust cheque in the amount of \$81,105.83 payable to TA (the " 2 nd TA Cheque"). On the " re line" of this 2nd TA Cheque, the Respondent handwrote " #12960 Holdback Release" , which is a reference to her file number for HH.

42. HH did not authorize the payment of these trust funds to TA, either orally or in writing, and at all material times was unaware of this payment to TA.

43. On October 22, 2005, the Respondent negotiated the 2nd TA Cheque at the Richmond Main Branch of TD Canada Trust by depositing the full amount of \$81,105.83 to a personal account held jointly by the Respondent and TA. The Respondent states that TA was unaware of the 2nd TA Cheque and the payment of those funds into the bank account owned jointly with the Respondent.

44. The Respondent admits that she misappropriated funds held in trust for HH by causing the payment of \$81,105.83 to TA without the authorization of her client and depositing those funds to a personal account which she jointly held with TA. The Respondent further admits that her conduct constitutes professional misconduct.

45. On July 16, 2008, through her counsel, the Respondent advised the Law Society that she had transferred the sum of \$81,105.83 from funds held in trust for her HH and her counsel further advised that she had provided such funds to him, which he held in trust. On July 31, 2008, after receiving direction from the custodian of the Respondent's practice, counsel for the Respondent provided to the Law Society a cheque which included the sum of \$81,105.83 to hold in trust for HH, pending proper disbursement by the custodian of the Respondent's practice.

Allegations #12 to 14: Conduct Related to AF

46. On or about January 30, 2006, the Respondent was retained by AF to prepare and submit to CIC a sponsorship application and applications for permanent residence of her husband and her step-children (together, the " F Applications"). At this time and through to July 27, 2007, the Respondent was suspended from the practice of law.

47. On January 30, 2006, AF gave to the Respondent a cheque payable to Mimi Luk in the amount of \$3,000, which cheque the Respondent negotiated on February 2, 2006 and deposited the funds to her personal account.

48. The Respondent admits that at February 2, 2006 when she deposited this cheque from AF in the amount of \$3,000 to her personal bank account, she had not performed services for AF. The Respondent admits that this conduct constitutes conduct unbecoming.

49. In September 2006, the Respondent requested that AF pay to her the expected amount of the immigration processing fees in respect of the F Applications, which totaled \$1,975. AF gave to the Respondent a cheque dated September 5, 2006 made payable to Mimi Luk in the amount of \$1,975, which cheque the Respondent negotiated on September 8, 2006.

50. AF asked the Respondent to provide to her a receipt in respect of the payment of the immigration fees. On or about September 12, 2006, the Respondent gave to AF a photocopy of a document ostensibly dated September 12, 2006 which she purported to be a receipt from CIC for the payment of \$1,975 for the immigration processing fees in respect of the F Applications. The Respondent admits that this document is not a photocopy of a genuine receipt from CIC, that she never paid the \$1,975 immigration processing fees to CIC, and that she created this document to give to AF for the purpose of misleading her as to the payment of the immigration fees. The Respondent admits that her conduct constitutes conduct unbecoming.

51. The Respondent admits that she did not file any of the F Applications as she had agreed to do, and her failure to complete these services constitutes conduct unbecoming.

Allegation #15: Conduct Related to JV

52. In or about February 2008, the Respondent was retained by JV to act for her in the purchase of a property located at [address], Richmond. The completion date in this property transaction was April 24, 2008.

53. At the conclusion of this property transaction, the Respondent held \$13,862.09 in trust for JV.

54. The Respondent prepared a Purchaser's Statement of Adjustments dated April 24, 2008, which set out the total fees and disbursements of \$10,130.55 charged to JV. The Respondent also prepared an unsigned Statement of Account in this matter dated April 24, 2008, which set out total fees and disbursements of \$10,130.55.

55. After deduction of total fees and disbursements of \$10,130.55, the balance left in trust should have been \$3,731.54. However, the Trust Account Sub-Ledger shows a debit of \$10,562.09 to Mimi M.K. Luk Law Corp.

56. By cheque dated June 12, 2008, the Respondent prepared and signed a trust cheque made payable to Mimi Luk Law Corp. in the amount of \$13,862.09, by which she transferred to her general account the balance of the funds held in trust for JV, including the balance in trust of \$3,731.54. The "re line" on this cheque references "#13155 JV (SOA)".

57. On June 18, 2008, the Respondent negotiated this cheque by depositing the funds to her general account.

58. JV did not authorize the payment of the trust funds in the amount of \$3,731.54 to the Respondent, either orally or in writing.

59. On June 18, 2008, the Respondent withdrew \$63,000 from her general account, which amount included the \$3,731.54 of funds which ought to have been held in trust for JV.

60. The Respondent admits that she misappropriated funds of \$3,731.54 held in trust for JV when she withdrew those funds from her pooled trust account on June 18, 2008 and transferred them to her general account, without the authorization of her client and when she had no entitlement to those funds, and then used those funds for her personal purposes. The Respondent further admits that her conduct constitutes professional misconduct.

61. On or about March 5, 2009, the Respondent paid to JV a total of \$14,150.88 in full reimbursement of the \$3,731.54 withdrawn from trust on June 18, 2008. In addition the Respondent refunded in full the \$10,130.55 representing legal fees and disbursements and also paid JV interest of \$288.79.

62. As a result of these admissions the Respondent undertakes as follows:

1. Not apply for reinstatement to the Law Society of British Columbia for a period of 15 years from June 18, 2008, the date she terminated her membership in the Law Society.
2. Not to apply for admission to the law society of any other province or territory in Canada without first providing written notification to the Law Society of British Columbia.
3. Not to permit her name to appear on the letterhead of any lawyer or law firm or otherwise work for any other lawyer or law firm in British Columbia without the written consent of the Law Society of British Columbia.