

The Law Society of British Columbia
In the matter of the *Legal Profession Act*, SBC 1998, c.9
and a s. 39 proceeding concerning

Mimi Mankui Luk

Respondent

Decision of Three Benchers

Hearing date: October 7, 2005

Panel: Ralston Alexander, QC, Chair, G. Glen Ridgway, QC, David Zacks, QC

Counsel for the Law Society: Brian McKinley

Counsel for the Respondent: William Clark

Background

[1] This matter came before the three Benchers hearing this matter on a referral from the Discipline Committee pursuant to Section 39 of the *Legal Profession Act*, S.B.C. 1998, Chapter 9 and Rule 4-17 of the Rules of the Law Society.

[2] Section 39 of the *Legal Profession Act* provides as follows:

39 (1) The benchers may make rules permitting the chair of the discipline committee or any 3 other benchers to do any of the following until the decision of a hearing panel or other disposition of the subject matter of the hearing:

(a) suspend a respondent, if the respondent's continued practice would be dangerous to the public or the respondent's clients;

[3] Pursuant to the authority provided in that section of the *Legal Profession Act*, the Benchers have made Rule 4-17 as follows:

4-17 (1) If there has been a direction under Rule 4-13(1) to issue a citation, any 3 Benchers may do one or more of the following with or without notice to the respondent:

(a) suspend the lawyer, if the 3 Benchers consider, on the balance of probabilities, that the continued practice of the lawyer will be dangerous or harmful to the public or the lawyer's clients;

(b) in any case not referred to in paragraph (a), place conditions on the practice of the lawyer;

[4] The three Benchers hearing this matter were satisfied, on the strength of evidence provided, that a direction under 4-13(1) to issue a citation had been given by the Discipline Committee in respect of two

matters involving complaints against this Respondent.

[5] In the same resolutions, the Discipline Committee resolved to refer this Respondent to three Benchers pursuant to the provisions of Section 39 of the *Legal Profession Act* and Rule 4-17.

[6] There are two complaints extant with respect to this Respondent. The first complaint relates to a failure of this Respondent to provide her clients with a quality of service at least equal to that which would be expected of a competent lawyer and specifically that she failed to keep her client reasonably informed as to the status of the matter and failed to take necessary steps to advance the matter in a timely fashion. The three Benchers hearing this matter did not deal with this referral in any detail, concentrating instead on the more serious allegation with respect to the second complaint.

[7] The second matter before the three Benchers hearing this matter relates to conduct of the Respondent in providing to the Law Society a document in response to Law Society inquiries concerning a complaint from a client.

[8] The three Benchers hearing this matter proceeded on the basis that the essential facts necessary to make out the following complaint had been conceded by the Respondent as true, but that the concession was made only for the purposes of this s. 39 proceeding.

[9] The Respondent was retained in the early fall of 2001 to effect a change of name for an infant child of her client. A long saga ensued as between the Respondent and her client, with the client seeking activity from the lawyer and with the lawyer providing information from time to time as to why no change of name certificate was being obtained. This dialogue carried on for fully two years until the change of name certificate was ultimately obtained in October of 2003.

[10] The veracity of the representations made to the client by the Respondent with respect to the various causes of the delay, which were provided over the two year course of this correspondence, was neither admitted nor denied.

[11] As a result of the frustration suffered by the client in the two year process to obtain the change of name certificate, the client made a complaint to the Law Society. The Law Society began an investigation and wrote to the Respondent seeking information as to the reason for the delay in processing the requested services. The Law Society asked for evidence that an application for the change of name had been made. It asked for a copy of the cheque issued to pay the fees for the change of name application. Both the application form and the cheque copy were requested to verify the fact that the application had been made when the Respondent said that it had been made.

[12] In response to that inquiry the Respondent provided the Law Society a photocopy of the front of a general account cheque in the amount of \$137.00 which indicated on its face that it was issued to pay the Vital Statistics filing fee for the change of name. The Respondent said that she had been unable to locate the original cancelled cheque.

[13] In subsequent correspondence to the Law Society, the Respondent, through counsel, provided the Law Society with a copy of the front and back of a cheque, suggesting that it was the cancelled cheque being sought by the Law Society. The Law Society inquired of the Division of Vital Statistics with respect to the cancelled cheque and was advised by an official of the Vital Statistics agency that the front and back of the cheque provided appeared to be from two different cheques.

[14] The Law Society concerns with respect to this matter were provided to counsel for the Respondent in early May of 2005, and on July 5, 2005, counsel for the Respondent acknowledged that the cheque provided to the Law Society as a cancelled cheque was indeed the front and back of two different cheques.

[15] By way of explanation for this behaviour, Counsel for the Respondent advised the Law Society that the Respondent had been under a great deal of stress, that the Respondent deeply regretted her prior advice to the Law Society, and that the Respondent provided an apology in that regard.

[16] This hearing proceeded on the basis of an agreement from counsel for the Respondent that the Respondent had provided to the Law Society a fabricated document as if it were a genuine copy of an original document.

Discussion

[17] The three Benchers hearing this matter are required to consider whether this Respondent ought to be suspended if, following our consideration of these matters, we determine on the balance of probabilities that the continued practice of the Respondent will be dangerous or harmful to the public or to the lawyer's clients.

[18] The Law Society is mandated by Section 3 of the *Legal Profession Act* to govern the legal profession with the best interests of the public in the administration of justice as a primary focus of its attention. One of the functions undertaken by the Law Society in its regulatory supervision of the legal profession is the investigation of complaints and the determination as to the appropriate outcome which should flow from that investigation process.

[19] There is much Bencher jurisprudence on the subject of problems occasioned the Law Society in its regulatory function when members do not respond to inquiries from the Law Society with respect to complaints. The investigation of complaints and the appropriate treatment of them is seen to be at the core of the Law Society's work in the fulfillment of its regulatory function. It is in this context that we must consider the behaviour of this Respondent. She responded to the inquiries regarding the complaint, but did so in such a way as to intentionally mislead the Law Society as to the truthfulness of an earlier statement made by her to the Law Society in circumstances where the Respondent knew that the response was false and was provided for the sole purpose of misleading the Law Society.

[20] If the Benchers of the Law Society are concerned (and they are) with members whose reluctance to respond to communications with respect to the complaints frustrate the investigation process, then *a fortiori* the Benchers must be concerned when a member responds in a manner that is designed to intentionally obstruct or frustrate that investigation. That is the case here.

[21] The three Benchers hearing this matter find this behaviour by this Respondent to be of the kind of behaviour that indicates that the continued practice of this Respondent will be dangerous and harmful to the public. That is because this Respondent cannot be relied upon to respond truthfully to inquiries of her Law Society with respect to ongoing investigations of complaints. The deliberate attempt to mislead the Law Society in its investigations conducted in the public interest is behaviour contrary to that public interest and is dangerous and harmful to the public and to her clients.

[22] We have been referred to a number of authorities in respect of the obligation on tribunals such as this when considering a suspension of a member for behaviour dangerous or harmful to the public or the members' clients. The authorities speak of the need for the suspension remedy to be used only when no other reasonable alternative is possible. The remedy is described as draconian and as one that ought to be used only in the most extreme of circumstances.

[23] The suspension remedy is described in the authorities as one that ought to be reserved for those circumstances where no conditions can be imposed that will protect the public interest and the member's clients. The three Benchers hearing this matter considered, at some length, alternatives to the suspension

sought by the Law Society. We considered whether we could impose a condition that would require the Respondent to reply truthfully to inquiries of the Law Society. We similarly wondered if a condition could be relied upon to require the Respondent to deal truthfully with her clients in their file matters.

[24] Having given the matter considerable consideration, the three Benchers hearing this matter were unable to settle upon any conditions which could be imposed in the circumstances which would serve to protect the public from a recurrence of the impugned behavior.

[25] In many of the case authorities provided to us the need to be cautious about imposing a suspension penalty was discussed in language which spoke to the preliminary nature of the process and the absence of any proof (at that early stage) of actual misconduct by the affected member. In the circumstances of this case, we are able to be comforted by the fact that the misconduct of the member has been acknowledged, and no one has suggested that it is not very serious misconduct. It was pointed out by the Law Society that the uttering of a forged document is a criminal code offense.

[26] We accordingly direct that the Respondent be suspended from the practice of law effective at the close of business October 24, 2005, and that the suspension remain in effect until a final disposition of the citations to which we refer in the introduction to this decision, or until a contrary order is made under Rule 4-19 of the Law Society Rules.