

2009 : No. 4

Lu Chan

Burnaby, BC

Called to the bar: November 19, 1993 (BC) and February 9, 1993 (Ontario)

Discipline hearing : August 27, 2008 (facts and verdict) and October 15, 2009 (penalty)

Panel : William Jackson, Chair, Leon Getz, QC and Meg Shaw, QC

Bencher Review : April 3, 2009 (facts and verdict)

Benchers : Gordon Turriff, QC, Chair, Haydn Acheson, Joost Blom, QC, Carol Hickman, Barbara Levesque, David Mossop, QC, Thelma O'Grady, David Renwick, QC, Glen Ridgway, QC, Dr. Maelor Vallance and James Vilvang, QC

Report issued : September 19, 2008 (2008 LSBC 30), June 25 (2009 LSBC 20) and October 21, 2009 (2009 LSBC 31)

Counsel : Eric Wredenhagen for the Law Society and William G. MacLeod for Lu Chan (facts and verdict); Henry Wood, QC for the Law Society and William G. MacLeod for Lu Chan (Bencher review); Eric Wredenhagen for the Law Society and Lu Chan on his own behalf (penalty)

Facts

Lu Chan is a sole practitioner whose preferred area of practice is immigration law. His clientele consists primarily of residents from the People's Republic of China and Taiwan.

On May 31, 2006 Chan was retained by a client in China that he had known for a number of years. The client wanted to immigrate to Canada under Prince Edward Island's " Business Partners" Program. The PEI government requires an applicant to deposit \$100,000 in a designated escrow account, plus a \$25,000 good faith residency deposit and a \$25,000 language deposit. The retainer agreement specified that Chan would pay these funds to the PEI government directly, on behalf of the client.

As Canadian dollars are not a major currency in China, and cheques and wire transfers are also uncommon, the client remitted the funds in US dollars to Chan in trust, with the intention that Chan would then convert and submit payment.

On June 16, 2006 Chan received a payment of USD \$60,000 in traveller's cheques. On June 22, 2006, he received a further USD \$40,000 in cash from the client.

On the day he received \$40,000 in cash, Chan reviewed Chapter 4, Rule 6 of the *Professional Conduct Handbook*. After reviewing the client's situation carefully, he was satisfied that the client was a legitimate business person and the source of the funds was legitimate.

A couple of weeks later, the client decided not to proceed with the application for immigration to PEI. Chan had not done any work on the file and decided to close it without charging a fee. The client provided Chan with the name of a relative/friend and instructed him to make a trust cheque, in the full amount, payable to this person.

Chan reported the cash on his trust report submitted in March 2007.

Decision of the Hearing Panel

Chan stated he was unaware of the " no cash" rule, but was aware of his obligations to guard against money laundering. Chan admitted he breached Rule 3-51.1 by accepting cash in an aggregate amount of \$7,500 or more.

A breach of the "no cash" rule may, depending on the circumstances, rise to the level of professional misconduct. The panel accepted Chan's account that he did make an effort to consider his professional obligations in the circumstances and to comply with them. The panel found Chan had breached the Law Society rules; however, he had not committed professional misconduct.

Decision of the Benchers on Review

The Discipline Committee referred the decision on Facts and Verdict to the Benchers for review under section 47 of the *Legal Profession Act*.

Majority (Acheson, Hickman, Mossop, O'Grady, Ridgway, Vallance)

The Law Society argued that, due to the importance of the "no cash" rule and Chan's ignorance of it, there is a presumption of *prima facie* professional misconduct.

Upon review, the majority concluded that the facts did not warrant a finding of professional misconduct. The panel found that, while in no way lessening the importance of this Rule for public safety and independence of the profession, the facts in this case did not warrant a finding of professional misconduct. While it is important to the Law Society to ensure that lawyers do not inadvertently assist in money laundering transactions, the facts of each case must be examined.

Minority (Turriff, Blom, Levesque, Renwick, Vilvang)

In June of 2006, the "no cash" rule had been in place for about two years. When it was enacted it had received extensive and repeated publicity in the Law Society's communications with the profession.

Chan was ignorant of the no cash rule and failed to acquire adequate knowledge of some of the fundamental information he needed. He also failed to seek guidance or even consider that he might be proceeding in error.

The minority concluded that Chan's failure to ascertain and observe the "no cash" rule was a marked departure from the standard of conduct that the society expects of its members and is therefore professional misconduct.

Penalty

The panel ordered that Chan pay a fine in the amount of \$1,000.