

2010 LSBC 06

Report issued: March 31, 2010

Oral Reasons: March 23, 2010

Citation issued: September 21, 2009

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

**Kheng-Lee Ooi**

Respondent

### **Decision of the Hearing Panel**

Hearing date: March 23, 2010

Panel: Leon Getz, QC, Chair, Patricia Bond, Robert Brun, QC

Counsel for the Law Society: Maureen Boyd

Counsel for the Respondent: Richard Fernyhough

## **Background**

[1] On September 21, 2009 a citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rule 4-13 of the Law Society Rules. The citation, as amended, directed that this Panel inquire into her conduct as follows:

1. In or about 2007 in the course of acting for your clients ML and C Ltd. in a loan transaction in which their interests were adverse, you acted in a conflict of interest contrary to Chapter 6 of the *Professional Conduct Handbook*, and in particular you:

(a) failed to explain to each of your clients the principle of undivided loyalty;

(b) failed to advise each client that no information received from one of them as part of the joint representation could be treated as confidential as between them; and failed to obtain the fully informed consent of both clients to the course of action to be followed in the event you received from one client information relevant to the joint representation;

(c) failed to obtain the informed consent of each client to your continued representation;

(d) failed to disclose to your client ML that C Ltd. was owned in whole or in part by your husband; and

(e) failed to recommend your client ML obtain independent legal advice.

2. Further, or in the alternative, in or about 2007 you acted for your client ML in a loan transaction with C Ltd., when you were in a conflict of interest contrary to Chapter 7 of the *Professional Conduct Handbook*, by reason of the direct or indirect interest of your husband in C Ltd., which interest would

reasonably be expected to affect your professional judgment, and which interest you did not disclose to your client ML.

3. Further, or in the alternative, in or about January 2008, you improperly disclosed confidential information concerning the business or affairs of your client ML, contrary to Chapter 5 of the *Professional Conduct Handbook*, by providing to C Ltd. and/or your husband a copy of a letter received by you on or about August 2, 2007 in your capacity as solicitor for your client ML.

4. Further, or in the alternative, on or about May 6, 2008, with your husband and another person employed by your firm who together intended to serve on your client ML a Writ of Summons and other legal documents in an action commenced by C Ltd. against ML, you attended at the residence of your client ML, and together you entered her residence without invitation where your husband served or attempted to serve ML.

[2] The requirements for service of this citation upon the Respondent, pursuant to Rule 4-15, were admitted by the Respondent.

[3] The Respondent has made a conditional admission that the conduct described in the first three paragraphs of the Schedule to the citation constitutes professional misconduct and that the conduct described in paragraph 4 constitutes conduct unbecoming a lawyer. She has also conditionally consented to disciplinary action in the form of a six week suspension and to payment of \$2,500 towards the costs incurred by the Law Society in connection with its investigation of the complaint against her.

[4] The Respondent's admission and the proposed disciplinary action come before us for approval pursuant to the provisions of Rule 4-22 of the Law Society Rules. The Discipline Committee has accepted the admission and proposed sanction, and counsel for the Law Society has recommended acceptance to us.

### **Agreed Statement of Facts**

[5] An Agreed Statement of Facts was filed in these proceedings. It provided as follows:

1. Kheng-Lee Ooi (the " Respondent" ) was admitted to the bar of the Province of British Columbia on February 15, 1991.

2. The Respondent has practised primarily as a sole practitioner under the name of Kheng-Lee Ooi Law Corporation since December 1, 1992. The Respondent articulated with Bull Housser & Tupper and then worked at Clark Wilson until November 21, 1991. Between November 1991 and December 1992, the Respondent practised with Hwang, Pollock & Ooi.

3. The Respondent was also called to the bar in England and Wales in 1982 and to the bar in Malaysia in 1983, where she practised for approximately four years.

4. The Respondent speaks Mandarin, Cantonese, Taiwanese and Malay.

C Ltd.

5. On or about June 29, 2007, the Respondent registered in British Columbia a company under the name of C Ltd. (the " Company" ). FC, the Respondent's husband, was the president, secretary and treasurer of the Company. The Respondent was listed as the only director of the Company from the date of incorporation until January 1, 2008, when a Notice of Change of Directors was filed, with an effective date of change of directors of June 29, 2007.

ML

6. In or about September 1996, the Respondent was retained by ML and her husband to represent them in the purchase of a property located at [address] (the " Property" ). In or about July 2003, the Respondent provided legal services to ML to transfer the Property into the sole ownership of ML. In 2007, two mortgages (the " Mortgages" ) were registered on title to the Property, both in favour of a Chartered Bank (the " Bank" ) as mortgagee: the first mortgage was granted in July 1999 in the principal amount of \$500,000 with per annum interest at prime plus 5% and the second mortgage was granted in June 2005 in the principal amount of \$350,000 with per annum interest at prime plus 5%.

7. The Respondent provided other legal services to ML in the years between 1996 and 2007, including, in or about June 2007, meeting with representatives of the Surrey School District regarding one of ML's children.

8. At all material times, ML did not read or speak English. ML communicated with the Respondent in Mandarin.

#### Arrangement of the Loan

9. On or about July 30, 2007, ML was in arrears of approximately \$61,155 on the monthly payments on the Mortgages and also owed approximately \$21,000 to the Bank in respect of credit card debt. In addition, ML owed unpaid taxes on the Property in the approximate amount of \$16,668. On or about June 27, 2007, the Bank's solicitor filed a Petition against ML and her husband in the Vancouver Registry of the Supreme Court of British Columbia seeking to foreclose on the Mortgages (the " Petition" ). On July 5, 2007, the Bank's solicitor filed a Writ and Statement of Claim against ML and her husband in the New Westminster Registry of the Supreme Court of British Columbia seeking judgment on a credit card debt in the principal amount of \$4,337.83, plus interest (the " Bank Action" ).

10. On or about July 30, 2007, ML contacted the Respondent by telephone and asked the Respondent to contact Larry Koo, the solicitor for the Bank, on her behalf.

11. The Respondent contacted Mr. Koo and on or about July 31, 2007 she wrote to Mr. Koo to obtain the amount required to be paid to reinstate in good standing ML's accounts with the Bank.

12. On or about August 2, 2007, Mr. Koo wrote to the Respondent advising that the Bank was prepared to allow the reinstatement of the Mortgages provided the sum of \$60,999.84 plus a further amount for a second VISA account and per diem interest of \$5.18 (together, the " Debt" ) was paid in full by certified trust cheque or bank draft within one week.

13. On or about August 8, 2007, the Respondent wrote to Mr. Koo to request forbearance to extend the payment date to August 31, 2007. By letter dated August 9, 2007, Mr. Koo advised the Respondent the Bank was agreeable to extending the payment date to August 31, 2007, on the condition that the Respondent accept service on behalf of both ML and her husband, and file appearances on their behalf in the Petition and the Bank Action within one week.

14. On or about August 16, 2007, the Respondent filed an appearance on behalf of ML and her husband in the Petition and the Bank Action.

15. In late August 2007, ML contacted AC, a mobile mortgage specialist (the " Mortgage Specialist" ) employed by a trust company, to seek a loan to pay the Debt. The Mortgage Specialist told ML that she did not qualify for a loan from the trust company, but offered to try to find a private investor to loan funds

to her. The Mortgage Specialist did locate a private investor, who was prepared to lend to ML the sum of \$350,000, on the following terms: interest at 10% per annum, an administration fee of \$10,000, and the loan to be secured by a third mortgage registered against the Property.

16. On or about August 27, 2007, the Respondent spoke by telephone with ML and inquired whether ML had obtained funds to pay the Debt owed to the Bank. ML told her that the Mortgage Specialist had found a private lender to lend her \$350,000, with a \$10,000 administration fee, to be secured by a third mortgage registered against the Property. ML then asked the Respondent if she knew of anyone else through whom a loan could be arranged.

17. On or about August 27, 2007, the Respondent telephoned ML and advised her that she was able to locate a loan of \$150,000, with a \$10,000 administration fee and 10% interest per annum. The Respondent told ML that the lender was one of her clients. In particular, the Respondent did not tell ML that the Company was the lender, or that her husband FC was the principal of the Company. The Respondent told ML that if she needed more money, she should go with the loan proposed by the Mortgage Specialist. ML told the Respondent she did not want a third mortgage registered against the Property, and in the ensuing discussion the Respondent suggested that ML could secure the loan by leaving jewelry with her.

18. Sometime between August 27 and August 30, 2007, the Respondent and ML spoke by phone and ML accepted the Respondent's offer to arrange the private loan of \$150,000 (the " Loan" ).

#### The Loan Transaction

19. On or about August 30, 2007, ML met with the Respondent at her office to sign the necessary documentation for the Loan, which was:

- (a) a letter dated August 30, 2007 from ML to the Company (the " Loan Letter" );
- (b) a promissory note dated August 30, 2007 from ML to the Company (the " Promissory Note" );  
and
- (c) a Direction to Pay dated August 30, 2007 from ML to the Respondent (together, the " Loan Documents" ).

The Respondent prepared the Loan Documents in English and met with ML for execution. No one else was present during this meeting. The Respondent did not provide any written explanation to ML in Mandarin of the nature or effect of the Loan Documents. The Respondent provided some explanation of the Loan Documents to ML in Mandarin. ML says she believed that the term of the Loan was for one year.

20. The Loan Letter set out the terms of the Loan, as follows:

I confirm that at my request, you have agreed to lend to me a loan of \$150,000 with interest at the rate of 10% per annum repayable within 3 months. Accordingly, I am pleased to acknowledge my debt to you by issuing to you the Promissory Note. You are authorized to pay the said \$150,000 less your administration fee of \$10,000 to my lawyer, Kheng-Lee Ooi Law Corp. in Trust. As collateral for the loan, I have pledged with my lawyer my personal jewellery for an amount which if I am in default, you will be authorized to dispose of to pay for your loan. [ sic]

21. Also on August 30, 2007, ML brought to the Respondent a number of pieces of jewelry (the "Jewelry" ) to hold as security for the Loan, which both the Respondent and ML believed to have a value of at least \$150,000. The Respondent prepared a list and description of the Jewelry that she received as security, and signed and dated it. The Respondent told ML that if she defaulted on the Loan, the Jewelry would be sold and the proceeds used to pay back the Loan. The Respondent held the Jewelry in a safety deposit box from August 30, 2007 until on or about October 23, 2008, when, in accordance with directions from each of the lawyers then acting for the Company and ML, she transferred the Jewelry to Edmund Caissie, who was then acting for ML.

22. During the meeting between the Respondent and ML on August 30, 2007, the Respondent did not advise ML to obtain independent legal advice, nor did the Respondent do so at any other material time. Further, the Respondent did not tell ML during the meeting on August 30, 2007 or at any time prior to the end of 2007 that her husband FC was a principal of the Company. The Respondent also did not explain to ML the principle of undivided loyalty nor that an effect of the joint representation was that information received from one client as part of the joint representation could not be treated as confidential as between them.

23. On August 31, 2007, the Respondent couriered a certified cheque in the total amount of \$61,155.24 to Mr. Koo, the solicitor for the Bank, to reinstate ML's accounts with the Bank. Also on August 31, 2007, the Respondent arranged for the payment of the outstanding tax owing on the Property, in the amount of \$16,668.05.

24. On September 4, 2007, CS, a paralegal employed by Harper Grey, responded by fax to the Respondent, asking for payment of a further \$4,857.42 to the Bank in order to reinstate the Mortgages, as well as proof of payment of the taxes owing on the Property.

25. On September 5, 2007, the Respondent couriered a trust cheque payable to the Bank in the amount of \$4,857.42 to Mr. Koo.

26. On September 6, 2007, the Respondent issued a statement of account to ML in respect of her services, in the total amount of \$531.18, comprised of \$350 in legal fees, disbursements of \$128 and applicable taxes. The Respondent transferred \$531.18 from trust to general on September 7, 2007 in payment of this account.

27. On September 6, 2007, the Respondent issued a cheque from trust payable to ML in the amount of \$16,390.84, which amount was equal to the balance of the Loan, after payment of the Debt, and holdback amounts for three months of payments on the Mortgages and a further holdback of \$3,750 for three months of interest payments on the Loan.

28. On or about September 18, 2007, the solicitor for the Bank filed a Notice of Discontinuance of the Petition.

#### Commencement of Action by Company against ML

29. Pursuant to the written terms of the Promissory Note, the Loan was due and payable in the full amount of \$150,000 on November 30, 2007. ML did not repay any part of the principal of the Loan.

30. On or about December 12, 2007, Phyllis Liew, an associate of the Respondent, filed an action as solicitor for the Company as plaintiff in the British Columbia Supreme Court, New Westminster Registry, under Action [action number] (the " Action" ). Ms. Liew was instructed to commence the

Action by FC.

31. The Respondent's explanation by letter dated September 29, 2009 says that she was in Malaysia from November 28 to December 19, 2007 and that:

While in Malaysia, my husband called me and informed me that ML had defaulted on the loan I had arranged. He indicated that he wanted to start an action against ML.

Unbeknownst to me and against my instructions, my husband attended my office and instructed my associate, Phyllis Liew, to commence an action against ML.

32. The Respondent referred the Company to another lawyer, Kenneth Jang. On January 4, 2008, Mr. Jang filed a Notice of Change of Solicitor in the Action on behalf of the Company. Also on January 4, 2008, Mr. Jang filed an Amended Statement of Claim in the Action. Also on January 4, 2008, Mr. Jang registered a Certificate of Pending Litigation against the Property.

33. On or about January 3, 2008, the Respondent sent to Mr. Jang by fax a copy of a letter dated August 2, 2007 from Mr. Koo to her, which letter (the " August 2 Letter" ) the Respondent received as solicitor for ML. This August 2 Letter related to ML's debt to the Bank and pre-dated the Respondent's representation of both ML and C Ltd. The Respondent acknowledges that she received the August 2 Letter on behalf of ML in a different matter than the Loan and it contained confidential information.

34. On or about January 21, 2008, Mr. Jang retained an agent to serve on ML the Writ, Statement of Claim, Amended Statement of Claim and Notice of Change of Solicitor. The process server was not able to serve these documents on ML. On March 28, 2008, an affidavit of attempted service, sworn by Scott Wheeler on February 5, 2008, was filed in the Action.

#### Attempted Service of Documents on ML - May 6, 2008

35. On May 6, 2008, at approximately 4:40 p.m., FC, along with the Respondent and FP, employed as the receptionist in the Respondent's practice, attended at the Property. FC intended to serve on ML some or all of the Writ, Statement of Claim, Amended Statement of Claim and Notice of Change of Solicitor. FC knocked on the door to ML's home, but no-one answered. FC, the Respondent, and the other woman then entered ML's home through the garage, where a confrontation ensued with ML and the police were called. It was during this confrontation that ML learned that the source of the Loan funds was the Respondent's husband.

#### The Action and its Resolution

36. On May 14, 2008, ML filed an Appearance in the Action.

37. On May 27, 2008, Edmund Caissie filed a Notice of Appointment of Solicitor in the Action.

38. On October 20, 2008, a Consent Order was filed in the Action, by which judgment in the amount of \$145,000 was given to the Company. A Consent Order was also entered dismissing ML's counterclaim without costs to either party.

#### The Complaint and Law Society Investigation

39. On May 26, 2008, the Respondent spoke by telephone with Jack Olsen, a Practice Advisor employed by the Law Society.

40. On June 10, 2008, Mr. Caissie made a complaint to the Law Society regarding the Respondent.

41. On July 25, 2008, Mr. Caissie wrote to the Respondent requesting a copy of her entire file, including all notes to file and communications with the Company during the time she represented both ML and the Company. On August 1, 2008, the Respondent replied to Mr. Caissie, as follows:

Further to your letter of July 25, 2008, please be advised that the pertinent documents relating to the loan by C Ltd. to ML were given to your client, and you may obtain same from your client.

You have to be specific with your request or obtain a court order.

42. On August 26, 2008, Mr. Caissie wrote to the Respondent to request that she provide " all documents or information which would disclose the source of the funds [the Company] paid into your trust account" and asked " Did you or your husband provide all or part of the funds that were advanced to ML in the form of a loan from [the Company]?" On September 11, 2008, the Respondent replied by letter to Mr. Caissie, in which letter she wrote:

In your follow up letter of August 26, 2008, you requested materials from my files relating to [the Company]. Please advise as to exactly what you are seeking and provide any authority for the proposition that I could disclose to you materials from another client's file.

The Respondent did not answer Mr. Caissie's inquiry regarding the relationship of the Respondent and/or her husband to the Company.

43. During the course of the Law Society's investigation, the Respondent provided three written responses, either directly or through her solicitor, as follows:

(a) a letter dated August 4, 2008;

(b) a letter dated September 29, 2008 from her counsel and an attached " Statement" signed by the Respondent on September 29, 2008; and

(c) a letter dated March 11, 2009 from her counsel.

#### Admission

44. The Respondent admits that in 2007, in the course of acting for her clients ML and C Ltd., in a loan transaction in which their interests were adverse, she was acting in a conflict of interest between her clients contrary to Rule 4 of Chapter 6 of the *Professional Conduct Handbook* and in particular she:

(a) failed to explain to each of her clients the principle of undivided loyalty;

(b) failed to advise each client that no information received from one of them as a part of the joint representation could be treated as confidential as between them and failed to obtain the fully informed consent of both clients to the course of action to be followed in the event she received from one client information relevant to the joint representation;

- (c) failed to obtain the informed consent of each client to her continued representation of each of them;
- (d) failed to disclose to her client ML that C Ltd. was owned in whole or in part by the Respondent's husband; and
- (e) failed to recommend her client ML obtain independent legal advice.

The Respondent admits that her conduct in acting in a conflict of interest constitutes professional misconduct.

45. The Respondent further admits that in 2007 she acted for her client ML in a loan transaction with C Ltd., when she was in a conflict of interest contrary to Rule 1 of Chapter 7 of the *Professional Conduct Handbook*, by reason of the direct or indirect interest of her husband in C Ltd., which interest would reasonably be expected to affect her professional judgment. The Respondent further admits that she did not disclose this interest to her client ML. The Respondent admits that her conduct in so acting constitutes professional misconduct.

46. The Respondent admits that in or about January 2008, she improperly disclosed confidential information concerning the business or affairs of her client ML, contrary to Chapter 5 of the *Professional Conduct Handbook*, by providing to C Ltd. and her husband a copy of a letter received by her on or about August 2, 2007 in her capacity as solicitor for her client ML. The Respondent admits that this conduct constitutes professional misconduct.

47. The Respondent admits that on May 6, 2008, with her husband and another woman employed by her firm, who together intended to serve on her client ML a Writ of Summons and other legal documents in an action commenced by C Ltd. against ML, she attended at the residence of ML, and together entered her residence without invitation, where her husband served or attempted to serve ML. The Respondent admits that her conduct constitutes conduct unbecoming.

[6] After considering the circumstances set out in the Agreed Statement of Facts and having heard the submissions of counsel, the Panel accepts the admission and finds the Respondent has committed professional misconduct and conduct unbecoming a lawyer, respectively, in the respects indicated in the Schedule to the citation.

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

[8] It is accordingly ordered that the Respondent:

1. is suspended for six weeks, effective April 1, 2010; and
2. pay costs in the amount of \$2,500, payable by July 31, 2010.