

**THE LAW SOCIETY OF MANITOBA
DISCIPLINE HEARING PANEL**

IN THE MATTER OF: *THE LEGAL PROFESSION ACT, C.S.S.M. c. L107*

BETWEEN: The Law Society of Manitoba

- and -

Wang, Junling, a lawyer of Winnipeg Manitoba

Before: Mr. John E. Neufeld, Q.C. (Chair)
Ms. Miriam Browne
Dr. Lorna Turnbull

Heard: November 30, 2015

Counsel: Rocky Kravetsky, for the Law Society of Manitoba
Sidney Green, Q.C., for the Member

Decision Delivered: December 27th, 2015

Reasons for Decision

1. Junling Wang (“Ms. Wang”) was called to the Bar in the Province of Manitoba and admitted as a solicitor on June 16, 2005 and her name was entered a lawyer on the Rolls of the Law Society of Manitoba (the “Law Society” or the “Society”) on that same date.

Citations

2. Ms. Wang’s conduct was the subject of two citations issued by the Law Society against her. The first citation was dated January 28, 2015 (the “January Citation”, Exhibit 1) and a second citation was dated the June 26, 2015 (the “June Citation”, Exhibit 2).
3. Pursuant to the January Citation Ms. Wang was charged that she did commit professional misconduct in that:

You failed to comply with the requirements of and did act contrary to Rules 5-64(3) and 5-64(4) of the *Rules of the Law Society of Manitoba* made by the Benchers of The Law Society of Manitoba, in that you failed to provide a written response to a letter dated November 5, 2014 sent to you by Noelia Bernardo, Legal Counsel, within 7 days of November 5, 2014, that being the date on which you received the said letter.

4. Pursuant to the June Citation Ms Wang was charged that she did commit professional misconduct in that:
 1. While representing your client L.V. with respect to the real estate transaction, you acted contrary to Rule 7.2-5 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba, in that you failed to conduct yourself in a courteous manner when you did not answer, with reasonable promptness, the professional letters and communications to you from the opposing counsel received by you during the period of September 15 to 29, 2014.

2. While representing your client L.V. with respect to a real estate transaction, you acted contrary to Rule 7.2-11 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba, in that you failed to comply with a trust condition imposed upon you by opposing counsel in a letter dated August 29, 2014.

Particulars

- a. You were retained by L.V. to act with respect to the sale of real property.
- b. By letter dated August 29, 2014, the purchaser's lawyer sent you an Offer to Purchase and a deposit of \$2,500.00 on the following trust condition which you accepted:

The enclosed offer and funds are sent to you in trust that, in the event an agreement to purchase this property cannot be reached between our clients, the enclosed funds are to be returned on demand.

- c. An accepted Offer to Purchase was concluded on September 4, 2014, with a purchase price of \$170,000.00, subject to certain conditions benefiting the purchaser including a condition that financing could be arranged by September 7, 2014.
- d. The Buyer's lawyer informed you that the Buyer could not obtain financing for the property.
- e. During the period of September 17, 2014, and September 29, 2014, the Buyer's lawyer made repeated demands that you return the \$2,500.00 deposit sent to you in trust on August 29th, 2014.
- f. You failed to return the \$2,500.00 to the Buyer's lawyer upon demand.

3. Contrary to Rule 5-79 of the *Rules of The Law Society of Manitoba* made by the Benchers of The Law Society of Manitoba and Rule 7.2-11 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba, you failed to comply with the following undertaking given by you in your *Undertaking to The Law Society of Manitoba* dated January 14, 2015:
 1. On or before 4:30 p.m. on January 28, 2015, I will provide to The Law Society of Manitoba a written response to the substance of the complaint of [EB], which response shall include, but not be limited to:
 - a. an explanation as to the location of the deposit funds;
 - b. an explanation as to why the deposit funds have not been returned to [SM], counsel for the purchaser, in breach of trust conditions imposed; and
 - c. an explanation as to why I failed to respond to communications from [SM] in relation to the trust conditions imposed and the allegation that I failed to comply with the trust conditions.
 4. You failed to appear before the Complaints Investigation Committee on February 18, 2015, at 10:00 a.m. as directed, without reasonable excuse, contrary to Rules 5-72(4) and 5-72(6) of the *Rules of The Law Society of Manitoba* made by the Benchers of the Law Society of Manitoba.
5. Ms. Wang did not contest a finding of professional misconduct based on the facts submitted to the Panel pursuant to the January Citation. Ms. Wang also did not contest a finding of professional misconduct in Charge No. 3 of the June Citation.
6. The Society did not proceed on Charges 1, 2, and 4 of the June Citation. The charges with which the Law Society chose not to proceed are as follows:

That you did commit professional misconduct in that:

- a. While representing your client L.V. with respect to a real estate transaction, you acted contrary to Rule 7.2-5 of the *Code of Professional*

Conduct adopted by the Benchers of The Law Society of Manitoba, in that you failed to conduct yourself in a courteous manner when you did not answer, with reasonable promptness, the professional letters and communications to you from the opposing counsel received by you during the period of September 15th to 29th, 2014;

b. While representing your client L.V. with respect to the real estate transaction, you acted contrary to Rule 721-11 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba, in that you failed to comply with a trust condition imposed upon you by opposing counsel in letter dated August 29th, 2014; and

c. You failed to appear before the Complaints Investigation Committee on February 18th, 2015, at 10:00 a.m. as directed, without reasonable excuse, contrary to Rules 5-72(4) and 5-72(6) of the *Rules of The Law Society of Manitoba* made by the Benchers of the Law Society of Manitoba.

7. The matter proceeded by way of an agreed Statement of Undisputed Facts (the "Statement of Undisputed Facts")
8. There was no agreement as to sanction and counsel on behalf of the Society and on behalf of Ms. Wang each made submissions to this Panel in respect of the sanction to be imposed.
9. Ms. Wang has advised the Panel that she is not a member of any other Law Society. At all material times to this proceeding Ms. Wang (with the exception of February 19, 2015 through February 24, 2015) carried on the practice of law as a sole practitioner through Junling Wang Law Corporation and continues to do so.

Issues

10. The issue before the Panel was what was the appropriate penalty to be imposed upon a member who had failed to provide a written response to a letter from the Society within the required 7 days required by Rule 5-64(3) and 5-64(4) of the *Rules of the Law Society of Manitoba* made by the Benchers of the Society, (the “Rules” or individually “Rule”) and failed to comply with an undertaking given by her to the Society contrary to Rule 5-79 of the Rules and article 7.2-11 of *The Code of Professional Conduct* adopted by the Benchers of the Law Society of Manitoba, (the “Code”) where the underlying complaint that led to the letter from the Law Society requiring a response was ultimately not proceeded with by the Society and where the matters that led to the providing of an undertaking by the member to the Society were also not proceeded with. The position of the Society was that in view of the seriousness of the matter and the previous discipline record of the member, Ms. Wang ought to be fined \$7,500.00 and be ordered to pay costs in the amount of \$2,500.00 and the current restriction on her practicing certificate be maintained. The position of Ms. Wang, advanced through her counsel, was that the submission of the Society was grossly unfair and the fine ought to be nearer to \$1,500.00 and the costs should be less than that advanced by the Society, and the current restriction on Ms. Wang’s practicing certificate should not be continued.

Prior Discipline History

11. On November 10, 2015 (a mere 20 days prior to this hearing), on an unrelated matter, Ms. Wang entered an admission to two charges of professional misconduct for failing to respond to letters sent to her by the Society in the course of investigations of 2 separate complaints, contrary to sub-Rules 5-64(3) and (4) and as a result the Discipline Committee of the Society in that case accepted the joint recommendations of counsel for Ms. Wang and counsel for the Society and ordered that:
 - a. Ms. Wang be reprimanded on the first charge;
 - b. She pay a fine to the Society of \$750.00 on the second charge; and

- c. She pay \$1,500.00 as a contribution to the Society's costs of the investigation and prosecution of those charges (Document 16)

It is noteworthy that the facts that were the basis of this prior finding of professional misconduct were actually for matters that occurred after the facts that are the subject matter of this decision.

Facts

12. Although it was not referred to in the statement of undisputed facts, counsel for Ms. Wang during his submission, drew the attention of the Panel to the fact that when the *current* matter was being dealt with by The Complaints Investigation Committee of the Law Society ('CIC') and she failed to appear before CIC on February 18, 2015, as directed by the Chief Executive Officer of the Society, contrary to Rules 5-72(4) and 5-72(6) of the Rules an interim suspension was ordered against Ms. Wang. These actions were the subject matter of Charge No. 4 in the June Citation which was ultimately not proceeded with by the Society. The matter was brought to the attention of the panel, by counsel for Ms. Wang, and he advised this panel that as he soon as he learned of the interim suspension he felt that it had been unfairly imposed upon her, by virtue of confusion on the part of Ms. Wang as to whether or not her attendance was actually required at that meeting notwithstanding the fact that she had been directed in writing to attend and he appealed to CIC to withdraw the suspension. Counsel for Ms. Wang was able to persuade CIC to withdraw the interim suspension at a specially called meeting of The Complaints Investigation Committee 3 days after the interim suspension was imposed on the basis of information that was provided to CIC at that time. It was the position of counsel for Ms. Wang that the significant burden imposed upon Ms. Wang by the 3-day suspension, was a mitigating factor that this panel ought to consider in imposing the penalty in this decision. In view of the fact that it is the view of this Panel that the actions of CIC in issuing charges was entirely reasonable on account of her own personal failure to respond to requests by it for information from Ms. Wang this Panel is not persuaded that this is a significant mitigating factor as her counsel has argued.

13. All of the charges in the January Citation and in the June Citation arose as a result of Ms. Wang's representation of a seller of a condominium unit to a buyer who was represented by Steven Meltzer and Kara Bjornson solicitors with a law firm in Winnipeg (the "Duboff Firm") . On August 29, 2014 Ms. Bjornson delivered to Ms. Wang a letter with which were enclosed:
 - a. Offer to Purchase signed by the Buyer; and
 - b. Her firm's trust cheques in the amount of \$2,500.00 said to represent "the deposit payable" under the Offer to Purchase.
14. The offer and funds were sent "in trust that, in the event an agreement to purchase this property cannot be reached between our clients, the enclosed funds are to be returned to our office on demand."
15. Ms. Wang's client, the Seller, subsequently counter-offered as to certain terms and the counter-offer was accepted by the Buyer on September 4, 2014. The agreed price was \$175,000.
16. The Offer to Purchase was subject to a condition precedent (the "Condition Precedent") that financing be arranged by September 7, 2014.
17. The Buyer's lender subsequently provided a letter indicating that it had approved financing "for a maximum purchase price of \$150,000.00" which was not enough for the Buyer to complete the proposed purchase.
18. By email dated September 11, 2014 Ms. Bjornson advised Ms. Wang of the limited financing approved and inquired whether the Seller would sell the property for \$150,000.00. This proposal was rejected. Ms. Wang's client questioned whether the Buyer had made sufficient efforts to obtain the required financing.

19. By email dated September 17, 2014 Ms. Bjornson asked for the return of the deposit.
20. Ms. Wang did not respond immediately to the request of Ms. Bjornson and as a result the lawyers with the Duboff Firm continued to pressure Ms. Wang to return the funds. On September 29, 2014 Ms. Wang wrote to Mr. Meltzer by email saying that she was waiting for her client's agreement to release the deposit. Mr. Meltzer responded insisting that the deposit funds be delivered to his firm that day.
21. On October 1, 2014, 2014 the Buyer complained to the Law Society about the conduct of Ms. Wang in failing to return the deposit. It is worth noting that this was very quick.
22. It was implicitly acknowledged at the hearing of this matter that the Buyer had an obligation to make reasonable efforts to obtain the financing contemplated by the condition precedent as to financing in the accepted offer to purchase, and if not, the contract between the Buyer and the Seller was still in effect, and the Buyer would not clearly have a right to the return of the deposit if such reasonable efforts had not been made. The lawyer representing the Seller would have been entitled to ascertain whether or not such reasonable efforts had been made and if there was evidence that such efforts had *not* been made, the Seller's lawyer might have no obligation to return the deposit until such time. In any event, eventually, the Law Society after it became aware of all the facts did not proceed with the charges relating to the failure of Ms. Wang to promptly return the deposit as demanded by the Seller's counsel.
23. Though CIC did originally authorize the charge of failing to comply with the trust conditions concerning the deposit funds, the Society ultimately chose not to pursue that charge relating to the failure to return the deposit in accordance with the trust condition imposed upon Ms. Wang by the Buyer's counsel, as the Society's legal counsel considered that on a full exposition of the facts, no breach of trust would be established.

24. Upon receiving the Buyer's complaint, Noelia Bernardo, sought to attempt to deal with the matter informally by telephone mediation. Messages were left for Ms. Wang on October 2 and October 3, 2014. Unfortunately, Ms. Wang did not return those calls. Had those calls been returned this entire matter *might* have been resolved informally at that time.
25. On October 6, 2014 Ms. Bernardo sent to Ms. Wang an email (Document 3 in the Statement of Undisputed Facts) followed by a letter (Document 4 in the Statement of Undisputed Facts). The letter required a response within 14 days.
26. On November 5, 2014, 4 weeks having passed since the letter of October 6, 2014, Ms. Bernardo sent a *second* letter to Ms. Wang, to which a response was stated to be required within 7 days (Document 5 in the Statement of Undisputed Facts).
27. Ms. Wang did not respond to the November 5, 2014 letter within 7 days, nor had she responded by December 30, 2014 after which the Chief Executive Officer of the Society ("CEO") authorized that Ms. Wang be charged with professional misconduct for failing to respond to the Law Society and directed that Ms. Wang appear personally before CIC at its next meeting unless a response was provided in writing before then.
28. By letters dated on December 31, 2014 and January 2, 2015 Ms. Bernardo advised Ms. Wang of the CEO's authorization and direction and requiring that Ms. Wang attend before CIC on January 14, 2015 (Documents 8 & 9 in the Statement of Undisputed Facts).
29. On January 9, 2015, more than 3 months after the first attempt by the Society to get information from Ms. Wang, Ms. Wang made her first response to the Society by an email to Ms. Bernardo advising the Society that "I will provided you with the written response to you on early Monday (Jan. 12) morning" (Sic) (Document 10 in the Statement of Undisputed Facts).

30. No written response was sent or received, but Ms. Wang did appear before CIC on January 14, 2015.
31. On January 14, 2015 Ms. Wang gave her written undertaking to the Society (Para. 3 of this decision) including that she provide a written response to the complaint no later than 4:30 p.m. on January 28, 2015 (Document 11 in the Statement of Undisputed Facts). She was directed by CIC to appear before them on February 18, 2015 at 10:00 a.m.
32. A copy of the undertaking (Document 11 in the Statement of Undisputed Facts) was sent to Ms. Wang by the Society by fax on January 14, 2015.
33. Ms. Wang complied with the *first* item in the Undertaking (Document 11 in the Statement of Undisputed Facts) by delivering to the Society by email (Documents 13 and 14 in the Statement of Undisputed Facts) a copy of the required trust ledger on January 15, 2015 (Document 15 in the Statement of Undisputed Facts).
34. Ms. Wang did *not* comply with the *second* item in the Undertaking (Document 11 in the Statement of Undisputed Facts) in that she did not provide any written response by 4:30 p.m. on January 28, 2015.
35. On February 19, 2015, by her counsel, Ms. Wang responded to the Law Society and advised it that the funds remained in her trust account and that she was then prepared to return them immediately.
36. The deposit funds were repaid to the Duboff firm on February 26, 2015.
37. It is very interesting that in this case the ultimate complaint of the Buyer could very *likely* have been dealt with on an “informal basis” as was requested by Noelia Bernardo, the Society’s Complaints Resolution Counsel, had Ms. Wang replied to Ms. Bernardo’s phone messages of October 2 and October 3, 2014.

38. Unfortunately, Ms. Wang did not respond to those telephone calls and did not take advantage of the opportunity to deal with this matter on an informal basis. Instead she allowed this matter to fester and kept the Law Society's Complaint's Resolution Counsel in the dark, rather than giving her the information that might have exculpated her or at the very least made it clear that the complaint of the Buyer was premature.
39. Since the accepted Offer to Purchase contained a condition precedent, which made performance conditional upon the Buyer obtaining financing, but it is an obligation of the Buyer to make reasonable efforts to obtain the required financing, Ms. Wang's client would have been entitled to take the position, had there been evidence to support it, that in the event the Buyer did *not* make reasonable efforts to obtain financing as contemplated by the Offer to Purchase, the agreement between the Seller and the Buyer would continue to be binding, and Ms. Wang would have no obligation to return the funds pursuant to the trust condition imposed upon her by the solicitors for the Buyer. Ms. Wang would have been entitled to a reasonable time to ascertain to her client's reasonable satisfaction that the Buyer had made such reasonable efforts to obtain financing and until such time Ms. Wang would not have been obligated to return the deposit to the Buyer's counsel, even though the Buyer or his counsel was demanding it.
40. That would not entitle the Seller to take the position indefinitely that the deposit need not be returned, but it would certainly have afforded the Seller's counsel, Ms. Wang, a reasonable time to investigate whether that was the position of her client, and whether or not there was any evidence to support it. Therefore it is likely that she was *not* in breach of the trust condition imposed upon her by the Buyer's lawyer until that investigation and seeking of instructions was complete. In any event the Law Society ultimately chose not to proceed with the charge that Ms. Wang was in breach of trust imposed on her by the Buyer's counsel.
41. Had this been explained by Ms. Wang to Ms. Bernardo, the Law Society's Complaint Resolution Counsel, Ms. Bernardo would have been in a position to explain to CIC that the Buyer's complaint against Ms. Wang was likely premature.

42. Unfortunately, as a result of Ms. Wang's failure to respond first to telephone voice mail messages, and later to letters from the Law Society, and later by failing to comply with her undertaking to provide the appropriate information to the Law Society, Ms. Wang's position was not put forward to the Law Society, nor its counsel. Ms. Wang likely had a defence to the original complaint by the Buyer, but neither CIC nor its Counsel, were in a position to know that. As a result of Ms. Wang's omissions, a matter that *could* have been dealt with on an informal basis, led to the matter being dealt with by way of a formal complaint procedure and by her being called to appear before a meeting of CIC. As a result of her own actions, or failures to act, Ms. Wang transformed a matter that likely could have been dealt with informally without a mark on her discipline record into a much more serious matter that now does result in a mark on her discipline record. In a very real sense, Ms. Wang was her own worst enemy in this entire unfortunate incident. Not only that, but she made matters even worse by her conduct thereafter. She was entirely the author of her own misfortune.

43. If undertakings given to the Society can be flaunted by its members with impunity, or if members refuse to cooperate with investigations by not responding to lawful inquiries, it is clear that the Society will be unable to govern its members and as a result the public will have to deal with members who are not being governed at all. That cannot be in the public interest. These are two closely related issues but must both must be considered by this panel.

Failure to Respond

44. Counsel for Ms. Wang argued that it was significant that her actions caused no damage whatsoever to any of her clients. With regard to her clients at least, her conduct was entirely blameless. Her counsel acknowledged that the conduct of Ms. Wang was not exemplary and that she was deserving of some punishment for her actions, but it ought to be much less than the amounts suggested by counsel for the Law Society.

45. Lawyers must realize however that there are real consequences to lawyers failing to respond to reasonable and lawful inquiries of the Law Society. It is not just the lawyer's own clients who might be adversely affected. The Law Society is charged with the responsibility of governing the legal profession on behalf of the public, and to do so it is absolutely necessary for members to cooperate with the Law Society in its investigation of complaints. If members fail to cooperate, the public suffers harm, or at the very least is put at risk of harm. Added to that, *other members* of the Society are obligated to pay the costs of the Society's investigations that become more costly as a result of the member's failure to cooperate with investigations. It is not sufficient to assert that the guilty lawyer's clients have not suffered harm. This is not like a criminal investigation where an accused or suspect is not required to co-operate and has the right to remain silent. Members of self-regulated professions are not entitled to such a privilege.

46. This issue was considered by the Ontario Court of Appeal in *Gore v. College of Physicians and Surgeons (Ontario)* (2009), 96 O.R. (3d) 242 (Ont. C.A.) ('*Gore*') commented as follows, at para. 19 and 20 as follows:

It is well recognized that to ensure the effective discharge of the responsibilities of professional regulators, every professional has an obligation to co-operate with the self-governing body...

47. The Court of Appeal in *Gore* at para. 21 noted that the Supreme Court of Canada in the case of *McCulloch Finney c. Barreau* (Quebec) (204), 240 D.L.R. (4th) 410 (S.P.P.) at para. 45, had recognized that the duty of the Law Societies and other professional colleges to protect the public interest was "important and onerous." (emphasis added) For that reason, the Court of Appeal said, in para. 22

Accordingly, self-regulating professions must have effective investigation powers to fulfill their obligations. (emphasis added)

48. The authorities clearly recognize that it important for professional societies to have the ability to investigate their members. Societies should not be required to go on fishing expeditions to find the facts. They should be entitled to expect the full co-operation of members so that the profession can be adequately governed by the professional society. Failure to do so clearly puts the public at risk. Otherwise the public cannot have confidence that the legal profession is being effectively governed by the Law Society.
49. This issue was specifically dealt with by an earlier Panel of the Law Society in the case of *Law Society of Manitoba v. Greenberg*, (2006) MBL 2 at lines 9-13, where the Panel stated:

The integrity of the profession's ability to properly supervise the conduct of its members is compromised when members don't respond to these letters. It makes it difficult for the for the profession to govern itself when members don't co-operate and of course it's against the rules and you end up in situations like you are here today...

50. In *Law Society of Upper Canada v. Ghobrial* (2014) ONLSHP 5 the Ontario tribunal stated as follows at para. 5:

The obligation to respond to communications from the Law Society is not a mere technical or bureaucratic requirement; it is an ethical duty as a member of a regulated profession. Being a legal professional is about more than having legal knowledge and skills. Lawyers and paralegals, who provide and charge for services that, by law, others cannot provide, commit to the public and their clients that they will act within the framework established by statute, by-laws and rules. That includes co-operating with investigations into complaints, so that members of the public have confidence that when they raise concerns about a lawyer or paralegal, those concerns can be investigated and appropriate action taken, if necessary. (emphasis added)

52 *In Pharmascience v. Binet (sub. Nom. Binet v. Pharmascience Inc.)* (2006) 353 N.R. 343 (S.C.C.) the Supreme Court again emphasized the heavy obligation placed on self-regulating bodies to protect the public. It made clear that those given this obligation have the duty to inquire into the conduct of members and must ensure that the Society, “will have sufficiently effective means at their disposal to gather all information relevant to determine whether a complaint should be lodged.” at para. 37. (emphasis added)

53. In the case of *Law Society of Manitoba v. John David Lawrence Soper*, a Panel of the Society stated as follows, at para. 15,

The Law Society of Manitoba’s mandate is to protect the public and to ensure that lawyers who are licensed to practice law will comply with the Society’s rules and *The Code of Professional Conduct*. Integral to such compliance is a demonstrated willingness by lawyers to be governed by their regulating body. In practical terms, it is expected and required that a member respond to correspondence sent by the Law Society within the time frame set out in the correspondence. The authorities are clear. (emphasis added)

The authorities could be multiplied, but we do not believe that would serve a useful purpose as, without exception, Panels of this Law Society and other Societies, have clearly held that members must co-operate with their Society when it demands written responses from members about complaints against them.

54. Therefore, this Panel unambiguously rejects any suggestion that it is not important for members such as Ms. Wang to reply to correspondence from the Society demanding a written response to questions.

Undertakings

55. Both courts and Law Societies have recognized the vital importance of members cooperating with investigations of their conduct and complying fully with undertakings made by members to their Societies. The importance of undertakings was expressed as follows in *Law Society of Upper Canada v. Walker*, (2010) ONLSHP 49 at para. 20,

...[G]iving an undertaking by a lawyer is a matter of honor and duty. It is a sacred promise to perform. It is intended to be relied upon, and is more likely accepted, because it is given by a lawyer as a member of an honorable profession. (*emphasis added*) (*‘Walker’*)

56. The Statement of Undisputed Facts makes it clear why the written undertaking that Ms. Wang gave to the Society was required. The clear undisputed facts are that on October 6, 2014, after receiving a complaint against Ms. Wang from a member of the public, the Law Society by email required a response to its request for information within 14 days. On November 5, 2014, four weeks later, without having received the response, the Society *again* wrote to Ms. Wang stating that it must have a response within 7 days. (Document 5 of The Statement of Undisputed Facts). Again, Ms. Wang did not respond. Ms. Wang still had not responded by December 30, 2014, almost 3 months after the initial response was required and as a result the Chief Executive Officer of the Society authorized that Ms. Wang be charged with professional misconduct for failing to respond and further, directed Ms. Wang to “personally appear” before a meeting of CIC at its next meeting unless a response was provided in writing before then. By letters faxed to her on December 31, 2014 (Document 6 of The Statement of Undisputed Facts) and January 2, 2015 (Document 7 of The Statement of Undisputed Facts) from the Society, Ms. Wang was informed that she was required to attend the CIC meeting on January 14, 2015. A further email and letter were delivered to her on January 8, 2015, (Document 8 of The Statement of Undisputed Facts) from the Society, once more directing her to appear personally before CIC on January 14, 2015 unless a written response was provided. During all of this time, no written responses were received from Ms. Wang. Finally, on January 9, 2015 (Document 10 of The Statement of Undisputed Facts) Ms. Wang

informed investigating counsel of the Society that she would provide her written response early on January 12, 2015. Unfortunately, that undertaking (for which she has not been charged in this citation) was not honored. After no written response was given by her, Ms. Wang did appear before CIC as required on January 14, 2015, but she still had not provided the information CIC was demanding.

57. Instead of giving the information CIC wanted, Ms. Wang requested that CIC adjourn the meeting, notwithstanding the fact that more than 4 months had passed since the initial requirement of CIC for a response, and even though CIC had not yet received the response. CIC nonetheless agreed to adjourn the meeting, but on the condition that Ms. Wang give her written undertaking to the Society to provide the required information. Then Ms. Wang was directed by CIC to appear before it at their February 18, 2015 meeting.

58. The written undertaking (Document 11 State of Undisputed Facts) given to the Society by Ms. Wang is as follows,

I, JUNGLIN WANG, hereby undertake to The Law Society of Manitoba that:

- i. On or before 4:30 p.m. on January 15, 2015, I will provide to the Law Society of Manitoba, a copy of the trust ledger for my client LV (named withheld) on the sale of 5-517 Beresford Avenue
- ii. On or before 4:30 p.m. on January 28, 2015, I will provide to the Law Society of Manitoba a written response to the substance of the complaint to EB (name withheld), which response shall include, but not be limited to:
 - (a) an explanation as to the location of the deposit funds;
 - (b) an explanation as to why the deposit funds have not been returned to Steve Meltzer, counsel for the Buyer, in breach of trust conditions imposed; and

(c) an explanation as to why I failed to respond to communications from Steve Meltzer in relation to the trust conditions imposed and the allegation that I failed to comply with the trust conditions.

Dated this 14th day of January, 2015

Clearly such an undertaking in these extraordinary circumstance was an eminently reasonable requirement of the Society in view of the repeated and continued failure of Ms. Wang to comply with its reasonable requests for information.

59. The deposit funds were not returned to the Buyer's counsel until February 26, 2015, almost 5 months after the complaint was filed by the Buyer with the Law Society.
60. Notwithstanding that, Ms. Wang finally complied with the first part of the undertaking by delivering to the Society by emails a copy of the required trust ledger on January 15th, 2015, one day after the deadline. However, much more important than the one day late compliance, was the fact that Ms. Wang did not comply with the second item in the undertaking, namely the written response that it had been demanding for more than 4 months.
61. It is clear from this narrative of the events that gave rise to the citations, that the Society bent over backwards to give Ms. Wang an opportunity to provide it with the information it was requesting, which, when it was finally provided, was largely exculpatory to her. Had she done so much earlier, all of this trouble, expense, and stress, could have been avoided.
62. Counsel for Ms. Wang has characterized this result as suggesting that her offense was in effect, a victimless offence. This is hardly the case at all. Admittedly it was implicitly acknowledged by the Society, that the complaint of the Buyer was premature, but the Buyer did suffer some harm as the deposit funds to which he was ultimately entitled were

not returned to his lawyer for nearly 5 months and then without any explanation for the delay. As a result, it is not true to say that the Buyer has suffered no harm. Similarly, Ms. Wang's failure to respond promptly to reasonable requests for the return of the deposit by the solicitors for the Buyer were partially complied with on September 29th, 2014, prior to the buyer's complaint to the Law Society. Her statement that she was "waiting for her client's agreement to release the deposit" may have been entirely reasonable if her client had reasonable grounds for believing that the buyer could have fulfilled the financing condition precedent but made no reasonable efforts to fulfill it. It is noteworthy that there is no evidence whatsoever before this Panel or ever produced to the Law Society, to the Panel's knowledge, that this was in fact the case. There was no explanation given as to why the Buyer was required to wait nearly 5 months for the return of the deposit. The Law Society did however withdraw the charges relating to the complaint of the buyer.

63. That does not remove the significance of the undertaking given by Ms. Wang to the Law Society. It may remove the significance of the undertaking given by Ms. Wang to the Buyer's solicitor. Charge No. 2 of the June Citation, was later withdrawn by the Law Society of its own accord when it became aware that it was likely that such a charge could not be proven. However, once again, had Ms. Wang complied with the reasonable and lawful requests of the Society for more information, it is likely that no charge would ever have issued in the first place. We find that the actions of the Law Society in this respect should not be criticized as a result. In view of Ms. Wang's failure to respond to the demands for information from CIC it is hardly surprising that CIC reached the conclusion that the complaint of the Buyer was valid. Without an explanation from her, the Society had every reason to believe that the complainant was correct and that Ms. Wang was in breach of trust conditions imposed upon her by the Buyer's solicitors.
64. It is the matter of the undertakings given to the Society (and failures to respond to inquiries) however that continues to be the subject of these disciplinary proceedings against Ms. Wang. Undertakings to the Society are important and failures to comply can not be fairly characterized as a victimless offence. The Law Society and the public were

clearly at serious risk of harm and the public confidence in the ability of the Law Society to govern its members on its behalf was at risk of being eroded.

65. The Code provides in Article 7.2-11 that, “a lawyer must not give an undertaking that cannot be fulfilled and must fulfill every undertaking given and honor every trust condition once accepted.” The expression “undertaking” clearly include undertakings to the Society itself.

66. The Rules also clearly provide for the importance of undertakings to the Society. Rule 5-79 provides as follows,

Where a member gives the committee a written undertaking to do or refrain from doing anything, the undertaking is deemed to be an undertaking given to the society.

The failure of a member, without reasonable excuse, to comply with an undertaking given under subsection (1) may constitute professional misconduct

67. *The Legal Profession Act* provides in s.3 (1) that, “the purpose of the society is to uphold and protect the public interest in the delivery of legal services with competence, integrity and independence.” What could be more fundamental to legal services being provided with “integrity” than that those services be provided by persons who take their own undertakings seriously and scrupulously follow them? Undertakings are not just important; they are fundamental to our legal system. Failures of members to honor them must be firmly dealt with. The public has the right to expect that lawyers will keep their promises. The Law Society is charged with the responsibility of ensuring that members of the legal profession do exactly that.

68. The importance of undertakings was commented upon by the Law Society of Upper Canada in the case of *Law Society of Upper Canada v. Heinz Peter Von Sengbusch* (2015) ONLSTH 47 at para. 12 (*Sengbusch*) where that Law Society stated that “the

importance of fulfilling undertakings that licensees give cannot be over-emphasized.”
(emphasis added)

69. The Law Society of Upper Canada clarified the matter of undertakings to the profession and to others in the case of *Law Society of Upper Canada v. Kimberly June Wilmot* (2011) ONLSAP 0018 (*‘Wilmot’*) where it said, at para. 12,

The failure to fulfill an undertaking is a serious and aggravating factor. It is part of the general responsibility of the profession to respond to the Law Society under the Code. In addition, the failure to respond to the Law Society breached a specific promise given by the lawyer... (relying on a transcript of oral reasons dated October 15, 2010 *Law Society of Upper Canada v. Kimberly June Wilmot*, at p.7):

As a matter of law, the Law Society has a mandate to govern the profession in the public interest and cannot do so without the co-operation of its members. Prompt response to Law Society communications is essential to the fulfilment of that mandate. Lack of cooperation undermines public confidence.

70. We think the breach of an undertaking is particularly important where it was given by a member in order to induce CIC to adjourn its meeting notwithstanding the fact that for more than 4 months it had still not received a response with information it was entirely justified in requiring from Ms. Wang. It is also of even *more* importance when the undertaking is given by a member who for months has refused to comply with a reasonable demand for information in relation to a complaint filed with the Law Society against her. One offence compounds the other in such circumstances.

Findings (January Citation)

71. Having reviewed the materials and counsel’s submissions with regard to the January Citation, this Panel of the Law Society resolves in accordance with Rule 5-96(5) and finds that that it has been proved to the satisfaction of this Discipline Panel that the

Member Junling Wang did commit professional misconduct in that she failed to comply with the requirements of and did act contrary to Rule 5-64(3) and 5-64(4) of the Rules of the Law Society of Manitoba made by the Benchers of the Law Society of Manitoba, in that, after having previously failed to respond to a fourteen day letter from the Law Society of Manitoba dated the 6th day of October, 2014, she failed to provide a written response to a subsequent letter dated November 5, 2014 sent to her by Noelia Bernardo, Legal Counsel for the Law Society of Manitoba within 7 days of November 5, 2014 that being the date on which she received said letter.

Failure to Respond and Undertaking (June Citation)

72. Having reviewed the materials and counsel's submissions, that with regard to the June Citation this Panel of the Law Society resolves in accordance with Rule 5-96(5) and finds in accordance with Section 72(1) of the Legal Profession Act that it has been proven to the Satisfaction of this Discipline Committee Panel that the Member Junling Wang did commit professional misconduct in that contrary to Rule 5-79 of the Rules of the Law Society of Manitoba made by the Benchers of the Law Society of Manitoba and Rule 7.2-11 of the Code of Professional Conduct adopted by the Benchers of the Law Society of Manitoba when she failed to comply with the following undertaking given by her in her Undertaking to the Law Society of Manitoba dated January 14, 2015:

2. On or before 4:30 p.m. on January 28, 2015 I will provide to the Law Society of Manitoba a written response to the substance of the complaint of [E.B.] which response shall include, but not be limited to:

- (a) an explanation as to the location of the deposit funds;
- (b) an explanation as to why the deposit funds have not been returned to [SM] counsel for the purchaser, in breach of trust conditions imposed; and
- (c) an explanation as to why I failed to respond to communications from [SM] in relation to the trust conditions imposed and the allegation that I failed to comply with the trust conditions.

Penalty

73. In view of the fact that the 2 uncontested charges are so similar and the reasons for the obligation to respond to inquiries and the obligation to fulfill an undertaking are also so similar and so inextricably intertwined with each other, and since the facts that gave rise to the two citations are so close to being contemporaneous we have decided to impose one penalty for both charges that have been proved, without an allocation between them.

74. Although each case is independent and not exactly like any previous case, it is important to consider what other decisions have been made by Law Societies for similar offences.

75. Counsel for the Law Society indicated, and this was not seriously challenged by counsel for Ms. Wang, that the disposition range in this matter would ordinarily be from a fine of \$1,500.00 to a suspension. That is a very wide range. In this case the Society did not request a suspension of the member.

76. In the previous matter for which Ms. Wang was disciplined, the Panel ordered that she be reprimanded, and pay a fine to the Society of \$750.00 and \$1,500.00 in costs.

77. It is interesting to note that the circumstances that led to the January Citation and the June Citation, both occurred earlier than the circumstances that led to the earlier disposition by the Panel after a finding of professional misconduct.

78. Counsel for Ms. Wang argued that the current matter ought, as a result, to be dealt with as a *first* offence rather than a second offence, notwithstanding the fact that the fine has already been imposed for that later offence. It was also admitted by counsel for the Law Society that as a result of these unusual circumstances Ms. Wang did not have the “benefit” of progressive discipline. In other words, had she been disciplined for the matters that are the subject matter of the January Citation and the June Citation, prior to

the matter that gave rise to the earlier fine levied against her, as ordinarily would have happened, perhaps the discipline that was levied against her in these two earlier matters, would have led to her learning a lesson from her mistakes, and changing her ways. This however is entirely speculative. On the other hand, had the Panel imposed a penalty in that previous case after these charges had been dealt the penalty in that previous case might have been much more onerous than a \$750 fine. Perhaps Ms. Wang has already “benefited” from a reduced penalty.

79. It is important for us to note that, it appears that no explanation was given to the Buyer as to why he had to wait nearly 5 months for the return of his deposit. Added to that, after looking at all of Ms. Wang’s actions, it appears to this Panel that she was entirely unaware of the consequences of her actions. No adequate reason was provided for why she failed to respond to the repeated correspondence from the Society when she clearly ought to have done so, and when it clearly would have been to her benefit to have done so. It remains an unfathomable mystery to this Panel why Ms. Wang acted as she did, substantially to her own detriment in addition to the detriment of the Buyer, other members of the profession, and to the public.
80. It is clear to this Panel that a serious fine must be levied in these circumstances, as a clear signal both to Ms. Wang, and to all other members of the Society, that a repeated failure to respond to reasonable and lawful demands for information from the Society and failures to fulfill undertakings to provide exactly that information will be treated seriously. This is particularly the case where, in circumstances like these, a member has repeatedly failed to respond and then gave an undertaking to the Society in order to have a meeting of CIC postponed at her request. It is clear to this Panel that the failure to fulfill a specific solemn undertaking made to the Society *compounds* the effect of the earlier failure to respond to a lawful and entirely justified demand for information. It must be brought home to the member and made clear to the profession and to the public that such conduct will not be tolerated.

81. This is particularly important, where the failure to respond and the failure to comply with an undertaking, is continued for many months during which time the costs of this Society have been run up enormously. It must be pressed upon members, that in such circumstances, the members will be expected to pay a substantial fine.
82. These additional incremental costs associated with the investigation by the Society were incurred primarily because Ms. Wang failed to respond to the Law Society in the first place.
83. It is important to remember that during such a lengthy period of a failure to respond, the costs of the Law Society will be run up. More importantly, during this period of time the public was at risk of losing confidence that the Law Society was effectively able to govern its members.
84. It is noteworthy in this respect, that no mitigating factors whatsoever were submitted to the Panel on Ms. Wang's behalf. Her counsel took the position on her behalf that the Law Society already had all the information it needed. That clearly was not the case since she never explained to it why she had withheld the return of the deposit. Her failure to respond and failure to comply with her undertaking to the Law Society were both inexplicable. In the absence of a satisfactory explanation, or mitigating circumstances, it is the decision of this Panel that the fine must be substantial in order to act as a specific deterrence to the member and a general deterrence to other members, as otherwise the public interest is not protected.
85. This issue was also considered by a discipline panel of the Law Society of Manitoba in the case of *The Law Society of Manitoba v. Richard Grant Poole* (2006) MBLS 7 (*Poole No. 1*) where at lines 19-11,

It is well known, or should be well-known by all members of the Law Society that any request for information from its governing body requires a timely reply. If members do not comply with the requirement, it can seriously affect the Law

Society's ability to enforce its mandate of protecting the public. Any breach of the rules therefore, related to reply to letters from the Law Society or Requests for Information from the Law Society should result in formal discipline being imposed.

There must be deterrents for both the member who has failed to reply to the Law Society and also other members of the Law Society and other members, of the profession must be reminded of their obligations. This particular case is exacerbated somewhat, or the seriousness of it is exacerbated somewhat, in that in this case Mr. Poole failed to reply to 3 requests for information and he did not reply to any of them. (emphasis added)

86. Mr. Poole again came before the Discipline Committee of the Society in a very similar case 3 years later in the case of *Law Society of Manitoba v. Poole* (2009) MBLS 5 (*Poole No 2*). As a result that Committee ruled as followed at lines 8-18,

Mr. Poole, the fourteen day letter rule is fundamental to the governance process of the Law Society of Manitoba, which has a mandate to protect the public. It's long been held that without reasonable excuse, failure to reply to the fourteen day letter is professional misconduct.

An aggravating factor is that three years ago, you were disciplined for the same rule breach at that time. And we looked at the decision of Mr. Abra, who chaired the committee back then, and he made the point that a sanction for breach of this rule is to be a deterrent for both the member who has failed to reply to the Law Society and for other members of the Law Society. And we were concerned, after hearing all of the facts, that in fact your appearance three years ago has not been a deterrent to you... You are building a record of non-compliance that will result in more serious sanctions in the future...

87. In a second case involving Harley Greenberg, *The Law Society of Manitoba v. Greenberg*, (2012) MBLS 9 a Panel of the Law Society considered the matter of the

proper fine in the case of a member being disciplined the second time for failing to respond to the Society's demand for information. Six years earlier, the member in that case was disciplined for failure to respond by imposing a fine of a \$1,000.00 in addition to the reprimand. Although that is much lower than the fine we are imposing in this case, we do note that in that second *Greenberg* case the Panel made the following comment,

The Panel wishes to add that they felt that this was at the low end of the range of penalties which might be expected in similar circumstances, but given that it is within the range of penalties we accept it.

It is noteworthy that in *Poole* there was no similar compounding factor, namely a failure to honor a specific undertaking to provide the information for which a demand had been made and not complied with by the member.

88. In *Wilmot*, The Law Society of Upper Canada had to consider the *compounding* factor of a failure to respond to provide information followed by a specific undertaking to provide exactly that information. In that case the Law Society had to deal with a lawyer who first failed to respond to 3 letters from Law Society later gave an undertaking to the Law Society by which she undertook to reply to all written communications from the Law Society within 2 weeks. Yet, the lawyer continued in her failure to respond to those 3 letters from the Law Society. As a result of this misfeasance the Law Society of Upper Canada imposed a 1- month *suspension* and the Appeal Panel refused to disturb the original decision. The appeal panel said, at para 12, "the failure to fulfill an undertaking is a serious and aggravating factor. It is part of the general responsibility of the profession to respond to the Law Society under the Code. In addition, the failure to respond to the Law Society breached a specific promise given by the Lawyer." In our case, the Law Society did not request a suspension. In lieu of a suspension however, surely a substantial fine is entirely justifiable.

89. In *Sengbusch* the Law Society of Upper Canada imposed a 2 month *suspension* requested by the Law Society of Upper Canada, to be followed by an indefinite *suspension* until the

lawyer fully co-operated in fulfilling his obligation to respond to a demand for information, even though he had responded by the date of the hearing, and had no prior discipline record. We do note however that this was an Ontario decision and that counsel of the Law Society of Manitoba, in this case, has *not* requested a suspension. However, counsel for the Law Society of Manitoba specifically submitted that a substantial fine ought to be imposed in *lieu* of a suspension. We agree with that submission.

90. It is noteworthy that in *Sengbusch*, the Law Society of Upper Canada imposed a two-month suspension followed by an indefinite suspension until the lawyer fully co-operates notwithstanding the fact that in *Sengbusch*, the lawyer had no discipline history with the Law Society of Upper Canada, admitted his misconduct, and acknowledged that he was wrong to react to the Society's request for a meeting as he did. In fact, it took careful note that the member in that case had a long career "without a discipline record". It is noteworthy that the Society in this case is not requesting suspension for Ms. Wang but is content to accept a monetary fine, though in the circumstances an unusually high one. In view of the Law Society not requesting a suspension, this Panel is not prepared to suspend Ms. Wang, but does find that a substantial fine is entirely appropriate in *lieu of a suspension*.

91. In *Sengbusch* the Law Society of Upper Canada considered the effect of a failure to respond to request for information *and* the failure to comply with an undertaking, as in the case before this Panel. The Law Society of Upper Canada held, in para. 16, that

the penalty, however, is typically higher when the licensee's non-co-operation is in breach of an undertaking, in addition to violation of the Rules requiring co-operation with the Law Society. In *Walker*, above, a licensee who had a prior discipline history, failed to co-operate and breached an undertaking, received a penalty of a three-month suspension, although he had responded by the date of the hearing. In *Law Society of Upper Canada v. Wilmot* [2011 ONLSHP 64 and 2011 ONLSAP 18], a licensee who had given an undertaking, had fully responded by the date of the hearing and had no prior discipline record, received a penalty of a one-month suspension, in

circumstances in which it appears that otherwise, there would have been a reprimand (emphasis added).

92. The obligation of members to reply to correspondence requiring co-operation from members is therefore clear. Unfortunately, it does not appear that Ms. Wang has demonstrated any appreciation of this obligation whatsoever. No mitigating explanation was provided to this Panel, other than a statement by her counsel that she believed the Committee already had some of the information. That is clearly not sufficient. Members are not entitled to expect that the Society should find the information on its own, when it has clearly and specifically requested the information and co-operation of its member, in accordance with the Rules and the Code. A cavalier attitude to this obligation, such as that demonstrated by Ms. Wang, is entirely unacceptable. We are not prepared to condone it.

93. It is particularly ironic, in this case, because had Ms. Wang responded as she had a clear obligation to do, it is very likely that she could have persuaded CIC and the investigating officers of the Society, that she was not actually in a breach of a trust condition imposed upon her by the Buyer's lawyer. In more than once sense, Ms. Wang was in fact her own worst enemy and the troubles she now faces, are entirely of her own making.

94. Looking at all of these authorities, it is the belief of this Panel that a fine of \$5,500.00, in *aggregate* for the two charges that have been proven, namely for the failure to respond and breach of undertaking, is reasonable and appropriate in the circumstances in addition to an award of costs in view of the seriousness of the 2 offences, particularly in view of the breach of undertaking that followed a failure to respond.

Restriction on Practicing Certificate

95. Though the existence of restriction on the practicing certificate of Ms. Wang imposed upon her by the Law Society, was not part of the statement of undisputed facts, the matter was brought to the attention of this Panel by counsel for the member.

96. This Panel was advised that the restriction on Ms. Wang's right to practice law is as follows:

(a) Ms. Wang must obtain a practicing member, acceptable to the Law Society, who will agree and sign an undertaking to the Law Society to accept copies of all written communications from the Law Society to Ms. Wang and to confirm with Ms. Wang that she has received and read each communication from the Law Society.

97. Ms. Wang's counsel, who has practiced law in Manitoba for more than 60 years, and has represented countless other lawyers in proceedings before the Law Society and is clearly a lawyer with wide experience in this area of the law, stated that in his opinion such a restriction has never been imposed in a 100 years. While we do not know if that is the case, we are not aware of any other similar restrictions, and none were brought to the attention of this Panel. The public is entitled to have trust and confidence in the profession, and that the public at all times should have trust and confidence in the profession and that it is being well served by honorable lawyers that serve with integrity. In order to do that, the Society and the public are entitled to require that the Law Society which is charged with the responsibility of governing members on behalf of the public, is entitled to obtain, and will obtain, from its members, all necessary information relevant to its investigation of complaints against such members and that undertakings of members of the profession are scrupulously fulfilled. If that confidence is not maintained, the public will have not have trust and confidence in the legal profession or its governance by the Law Society.

98. Ms. Wang has demonstrated repeated and continuing failures to comply with reasonable and lawful requests for information and at the same time, has failed to honor solemn undertakings given by her to a committee of the Law Society. Clearly the public has the right in such circumstances to mistrust Ms. Wang's ability or capacity to be governed, without the assistance of "a practicing member, acceptable to the Law Society".

99. This Panel is also cognizant of the fact that it has not received an adequate explanation for Ms. Wang's failure to comply with reasonable and lawful requests for information and breach of her own clear undertakings. Had an adequate explanation been given, when clearly the circumstances cried out for such an explanation, this Panel might have thought otherwise and lifted the restriction as she requested. This restriction might actually be *beneficial* to Ms. Wang.

100. When invited to consider what other actions might be taken by this Panel to better protect the public, both counsel for the Society and counsel for Ms. Wang were unable to provide this Panel with better suggestions. The Panel on its own has not been able to find a better solution. It seems clear to this Panel that at the very least, Ms. Wang is relatively junior in the practice and requires support and education to ensure that she understands her obligations, and the importance of them, for the sake of protecting the public. The assistance of such "a practicing member, acceptable to the Law Society" seems like a reasonable course of action in the circumstances, and it appears clearly to be in the public interest until Ms. Wang demonstrates that she fully understands her obligations.

101. As a result, after careful deliberation, this Panel has decided not to disturb or terminate the existing restriction on Ms. Wang's practising certificate, except with the provision that this restriction shall be limited to 2 years following the date of this decision. In the event that Ms. Wang is the subject of another future similar complaint and is found guilty of such a charge, the Panel of the Society at that time can choose to continue or supplement the restriction.

Costs

102. Admissions from both counsel acknowledge that the range for costs should be approximately between \$2,000.00 and \$3,000.00.

103. Counsel for the Law Society submitted to the Panel a document entitled "Calculation of Costs Junling Wang" (Exhibit 5). This document specified a total of

costs in the amount of \$13,718.93 on the assumption that there would be a half-day hearing. The hearing was approximately half-day, so we have no reason to believe that any of the costs are not attributable to the conduct and omissions of Ms. Wang relating to these matters. However, it was acknowledged that some of the costs relate both to the 3 charges that were withdrawn by the Law Society *and* the two charges that were not contested by Ms. Wang. While costs to be awarded, should of course represent *actual costs* it is acknowledged that it is not always a simple manner to determine actual costs in any situation, particularly where, as here, some charges were proceeded with and others were not. Costs must however have a rational basis.

104. It could be argued that *all* of the costs that were incurred by the Law Society were attributable to the actions and omissions of Ms. Wang, and therefore ought to be recoverable by the Society. This was not however proposed by counsel for the Law Society. However it ought to be remembered in this context, that had Ms. Wang provided the information to the Society promptly, as it demanded, and as she was legally obligated to do, a large portion of these costs would have been entirely avoidable. For the fact that she is expected to pay some of these costs, she has no one to blame other than herself.

105. It is noteworthy that counsel for the Law Society only requested \$2,500.00 as costs in addition to a fine of \$7,500.00, on the basis that this would be halfway between the “normal” costs in such a matter, between \$2,000.00 and \$3,000.00. Given that the total costs were actually \$13,718.93, it is the view of this Panel that that the Society’s suggestion is both fair and generous to the member. However, in view of the fact that it is difficult to allocate properly the costs between the matters proceeded with and those not proceeded with, and the absence of argument from the counsel for the Law Society that the member ought to pay all costs, this Panel has reached the conclusion that it ought to make an award of \$2,000.00 for costs against the member.

Order

106. As a result of these findings and these Resolutions, and after having heard arguments from both the Society and the member regarding the appropriate penalty for these convictions, this Panel orders that Ms. Wang should pay an amount of \$7,500.00 made up as follows:

- a. Fine: \$5,500.00;
- b. Costs: \$2,000.00
- c. The current restriction on Ms. Wang's right to practice be continued for 2 years following the date of this decision.
- d. That the matter be published in accordance with the mandatory requirements of *The Legal Profession Act*.
- e. In the event that Ms. Wang require time to pay this fine and these costs, that she pay them in accordance with an agreement to be reached between her counsel and counsel for the Society and if a time cannot be agreed upon, this Panel is prepared to hear submissions from counsel at a future time.



JOHN E. NEUFELD Q.C, Chair



Dr. LORNA TURNBULL



MIRIAM BROWNE