



# DISCIPLINE CASE *DIGEST*

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Case 12-07

<b>Member:</b>	Eva Yee-Wah Luk
<b>Jurisdiction:</b>	Winnipeg, Manitoba
<b>Called to the Bar:</b>	June 24, 1993
<b>Particulars of Charges:</b>	Professional Misconduct (5 Counts): <ul style="list-style-type: none"><li>▪ Breach of Chapter 16 of the <i>Code of Professional Conduct</i> [duty to comply with trust conditions] [x2]</li><li>▪ Breach of Rules 5-64(3) and (4) of the <i>Rules of the Law Society of Manitoba</i> [duty to respond to the Society] [x2]</li><li>▪ Breach of Chapter 2 of the <i>Code of Professional Conduct</i> [quality of service]</li></ul>
<b>Plea:</b>	Uncontested
<b>Date of Hearing:</b>	July 17, 2012
<b>Panel:</b>	<ul style="list-style-type: none"><li>▪ Brian Pauls (Chair)</li><li>▪ William Haight</li><li>▪ Miriam Browne (Public Representative)</li></ul>
<b>Counsel:</b>	<ul style="list-style-type: none"><li>▪ Darcia A.C. Senft for The Law Society of Manitoba</li><li>▪ Sidney Green, Q.C. for the Member</li></ul>
<b>Disposition:</b>	<ul style="list-style-type: none"><li>▪ Fine of \$3,500.00</li><li>▪ Costs of \$2,500.00</li></ul>

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## Professional Misconduct

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### Facts

In January 2009, Ms Luk was retained to represent the vendor's interests in the sale of the assets of its business with an ultimate closing date of June 1, 2009. The purchaser's solicitor delivered a letter dated June 1, 2009 to Ms Luk, enclosing closing documents and a trust cheque for \$92,539.44, representing the balance to close. The letter set out that the enclosed funds and closing documents were sent in trust upon certain conditions including that Ms Luk would "forthwith" attend to the discharge of three financing statements which were registered in the Personal Properties Security Registry as against the vendor, that she would provide proof of the said discharge "forthwith" to the purchaser's solicitor and that she would provide the purchaser's solicitor with three Clearance Certificates "forthwith" and in any event "within 30 days of the Closing Date."

The next day, Ms Luk deposited the trust cheque received from the purchaser's solicitor and then issued trust cheques from her own trust bank account, paying out the majority of the money to the vendor and a representative of the vendor. Ms Luk did not retain or possess sufficient funds to

pay the vendor's debts as required in order to secure the discharges and Clearance Certificates which she was to provide pursuant to the referenced trust conditions.

The purchaser's solicitor sent Ms Luk a letter dated June 10, 2009 advising her that trust conditions remained outstanding. Having received no reply, the purchaser's solicitor sent follow up emails to Ms Luk on June 17, 2009 and July 9, 2009 requesting a response to his letter. The first communication from Ms Luk's office in response was a letter sent from her assistant dated August 24, 2009 which stated "we will be notifying the Law Society of a potential insurance claim regarding the above-noted matter."

Prior to October 20, 2009, the Society's Insurer paid the money owing to one of the three secured creditors of the vendor in order to secure the discharge of its Personal Property Security Registry financing statement.

By letter dated November 6, 2009, Ms Luk wrote to the purchaser's solicitor and enclosed one of the required Clearance Certificates.

On June 22, 2010, during the course of the Society's investigation into her conduct, Ms Luk verbally advised staff of the Society that:

- (i) she had not communicated with the purchaser's solicitor since November 6, 2009;
- (ii) she had not taken any further steps to obtain the two outstanding Clearance Certificates;
- (iii) she had not taken any further steps to obtain the discharges of the two outstanding Personal Property Security Registry financing statements; and
- (iv) she did not know how much money was owing and to be paid in order to obtain the outstanding discharges and Clearance Certificates.

In another matter, in 2009 Ms Luk was retained by two clients to represent their interests regarding their purchase of a condominium unit with a possession date of October 21, 2009.

While acting for her clients with respect to the transaction, by letter dated September 29, 2009 the solicitor for the vendor forwarded a form of Transfer of Land to Ms Luk in trust that, among other things, prior to the Possession Date, she would provide his office with her clients' descriptions for title purposes or, alternatively, that she would insert in Box 5 of the Transfer of Land, her clients' descriptions for title purposes and she would provide his office with a photocopy of the completed Transfer of Land within seven days of the Possession Date. In completing Box 5 of the said Transfer of Land, Mr Luk incorrectly spelled the name of one of her clients.

Ms Luk became aware of the spelling mistake and she prepared a letter of correction, which she caused to be filed with the Winnipeg Land Titles Office. Ms Luk incorrectly claimed in the said letter of correction that: she acted on behalf of the vendor as well as the purchasers; she had authorization from the vendor as well as the purchasers to amend the originally filed Transfer of Land; and the amendment to the original Transfer of Land was to correct a typographical error only which did not effect a change in the land conveyed. Ms Luk also requested a change in the description of the land to be transferred in Box 2 of the original Transfer of Land, which caused the wrong condominium unit to be transferred into the name of her clients and, ultimately, caused a mortgage to be registered on the wrong property.

The letter from opposing counsel to Ms Luk dated September 29, 2009 referenced documents that were sent to Ms Luk in trust and upon specific conditions. Ms Luk chose to insert her clients' description for title purposes in Box 5 of the Transfer of Land. However, she failed to send a photocopy of the completed Transfer of Land to opposing counsel within seven days of possession, as required.

In the course of the investigation into Ms Luk's conduct, Ms Luk also failed to provide a written response to the substance of two letters sent to her by Discipline Counsel for the Society.

During the course of the investigation of a complaint against Ms Luk arising from her representation of another client, she failed to provide a written response to the substance of two letters sent to her by Discipline Counsel for the Society.

## **Plea**

Uncontested

Note: For the record, the “no contest” plea was treated as a plea of not guilty. However, there were extensive agreed facts and counsel for Ms Luk and for the Society agreed to request a specific penalty.

## **Decision and Comments**

Noting that the Manitoba Court of Appeal has directed that sentencing judges and, by extension, sentencing tribunals should normally not deviate from a joint submission in the absence of clear and cogent reasons for doing so, the panel found no reasons for deviating from the proposed sanction. The panel found that the proposed disposition fell within an appropriate range of penalties and determined that it satisfied the mandate of the Law Society both to protect the public and to ensure the integrity of the legal profession.

## **Penalty**

Ms Luk was ordered to pay a fine of \$3,500.00 and costs of \$2,500.00 towards the investigation and prosecution of the matters.