



DISCIPLINE CASE *DIGEST*

Case 08-02

Member:	Ingrid Yin-Yu Chen
Jurisdiction:	Winnipeg, Manitoba
Called to the Bar:	June 26, 1996
Particulars of Charges:	Professional Misconduct (12 counts) <ul style="list-style-type: none">▪ Breach of Chapter 1 of the <i>Code of Professional Conduct</i> [failure to discharge duties with integrity] by:<ul style="list-style-type: none">• Discussing with an individual prices for intimidating a client and discouraging him from making a complaint against her• Misleading the Law Society [x3]• Alleging that a client had lied about serving her with a notice of a Small Claim, when the Small Claim had in fact been served upon her• Attempting to intimidate and discourage a client from pursuing legal proceedings and a Law Society complaint• Attempting to collect a debt owed by a client, using intimidation or other means• Misleading a client• Misappropriation▪ Breach of Chapter 1 of the <i>Code</i> [failure to discharge duties with integrity] and Chapter 19 of the <i>Code</i> [questionable conduct] [x2] [criminal conviction; breach of a Conditional Sentence Order]▪ Breach of Chapter 6 of the <i>Code</i> [entered into a business transaction with client]
Date of Hearing:	May 8, 9, 10, 15, 16 and 17, 2006 December 19, 2006 (Sentencing)
Decisions Issued:	October 25, 2006 and March 14, 2007 (Sentencing); Appeal to Manitoba Court of Appeal dismissed on January 18, 2008
Panel:	<ul style="list-style-type: none">▪ Douglas G. Ward, Q.C. (Chair)▪ Christopher W. Martin▪ James W. Hedley (Dissent on Penalty)
Disposition:	Acquitted of: <ul style="list-style-type: none">▪ One charge of misleading the Law Society▪ One charge of breaching Chapter 1 by attempting to collect a debt owed by a client, using intimidation or other means; and▪ Misappropriation

Convicted of:

- Remainder of the charges

Counsel:

- Michael A. Thomson for The Law Society of Manitoba
- Gene Zazelenchuk for the Member

Breach of Integrity

Facts

Ms Chen had a discussion with an individual who held himself out as related to the Los Bravos motorcycle gang and discussed the price he would charge for intimidating or discouraging a former elderly client from proceeding with a complaint against Ms Chen to the Law Society over a fee dispute. With respect to a former client, Ms Chen hired the same individual with the view to dissuading that former client from pursuing his small claim against Ms Chen and to resolve a fee dispute.

Another client sued Ms Chen and claimed to have served her with a small claim. No defence was filed and Ms Chen did not show up at the hearing on February 22, 1999. A Judgment was obtained against Ms Chen. In a letter dated December 23, 1999, Ms Chen wrote to the Law Society and advised that the client had not served her with the claim and that the client had lied about serving her on his Affidavit of Service. However, the client had served Ms Chen with the small claim.

With respect to two other clients, Ms Chen wrote a letter to the Law Society dated December 2, 1999 wherein she advised that they were not clients of hers when she had previously provided legal advice to them.

With respect to another client, Ms Chen advised the client that she would obtain an offer of employment for her from an employment agency. In subsequent correspondence she advised her client that there would be an additional fee of \$2,500.00 that would be payable to the employment agency. The sum of \$2,500.00 was received from the client by Ms Chen. Ms Chen then issued a Statement of Account and applied the monies held in trust to her outstanding account. No funds were ever paid by Ms Chen to an employment agency on behalf of the client. Ms Chen also misled the Law Society by advising in correspondence to the Society that she had neither charged her client for having procured an offer for employment for her, nor had she received payment for such service.

On or about March 8, 2004, Ms Chen was convicted of conspiring to bring a person unlawfully into the United States of America contrary to certain provisions of the *Criminal Code*. As well, on or about November 21, 2005, Ms Chen was convicted of breaching a condition of the conditional sentence order that had issued following her conspiracy conviction.

Plea

Ms Chen entered a plea of not guilty to each of the charges and a contested hearing was conducted.

Decision and Comments

The Panel determined that Ms Chen in fact had a discussion with a known thug, a person described to Ms Chen as a tough guy enforcer and that they discussed the price he would charge for intimidating or discouraging an elderly client from pursuing his complaint against Ms Chen. The Panel noted that lawyers are to set standards for courtesy and respect for due process in dealing with clients or former clients and that there was nothing the enforcer could do on Ms Chen's behalf that was not designed but to thwart such a process by coercing or menacing the client from pursuing his legal rights against Ms Chen.

With respect to one charge that Ms Chen had misled the Law Society (the Director of Insurance), the Panel considered all of the evidence that it had received and concluded that Ms Chen could likely have believed what she told the Director of Insurance to be true. By virtue of all of the evidence it received, the Panel was unable to conclude that Ms Chen misled the Director and found that the particulars of the charge were not proven.

With respect to another charge that Ms Chen misled the Law Society of Manitoba, the Panel found it was clear that Ms Chen had lied about the fact that she had been served with the small claim. The Panel found that her deception was deliberate and plainly evident from some wiretap evidence and from an entry in her diary which set out the specifics of the small claim hearing.

With respect to the charge that the known thug was employed by Ms Chen to intimidate another client, the Panel found there was no question that Ms Chen wished the thug to exert an influence on the client. While the enforcer apparently did not attempt to intimidate this particular client, the Panel found as a fact that Ms Chen retained him for that very purpose. They found it was abundantly evident that the enforcer could not be relied upon not to exceed reasonable limits of persuasiveness.

With respect to the charge that Ms Chen had misled the Law Society by indicating that she had not formally advised individuals as clients, the Panel received evidence with respect to Ms Chen's involvement with the individuals and concluded that they were clients of Ms Chen as evidenced by a Statement of Account that had been rendered that stipulated a sum on account of fees.

With respect to the loan transaction with a particular client, the Panel noted that whenever a lawyer lends money to a client, there is a significant risk that the interests of the lawyer and the interests of the client will differ. They found that Ms Chen failed to advise the client, in writing, to obtain independent legal advice in breach of the provisions of the *Code* that relate to conflicts between lawyers and clients.

With respect to the allegations that Ms Chen used intimidation or other means in order to collect a debt owing from a client, the Panel noted that while Ms Chen had conversations with other people about the collection, it could not be satisfied on the evidence that she gave or intended to give express or implicit instructions to the individual to intimidate the client. They found further that there was no intimidation of the client by the individual in question. The Panel was not satisfied that they ought to infer based on similar facts regarding other similar counts that intimidation was the expected nature of the individual's job on this particular fact situation. There was no direct evidence in the wiretap from Ms Chen. Accordingly, the Panel was not satisfied that the particulars of the charge had been established to the requisite standard and acquitted Ms Chen of this charge.

With respect to the charge that Ms Chen misled a client and the Law Society with respect to obtaining an offer of employment, the Panel determined that Ms Chen misled the client when she advised her that she would obtain an offer of employment from an employment agency and then

misled the Law Society by telling it that the client had not been charged for Ms Chen's services and that the client had not paid her for those services. She was not convicted of the alternate charge of misappropriation.

With respect to the fact that Ms Chen had been convicted for conspiracy and for breaching a conditional sentence, the Panel noted that Ms Chen did not plead guilty in these proceedings to the charges, nor did she defend those charges. There was no question that she had been found guilty of conspiracy and of breaching a conditional sentence relating to the sentence for the conspiracy conviction. Accordingly, the Panel found that Ms Chen did commit conduct unbecoming a barrister and solicitor and professional misconduct as alleged.

The Panel noted that Ms Chen had been found guilty of a number of serious charges which demonstrated a gross violation of some very basic tenets of expected conduct of lawyers. The Panel noted that the offences were ones of opportunity involving personal financial gain or to further a cover-up. The common characteristics of the numerous charges were noted by the Panel to include: forethought, deliberation and a conscious decision to embark on a course of conduct while clearly understanding the potential consequences if caught. The Panel described the matters as striking at the very heart of the reputation of the profession. The evidence clearly established that Ms Chen suffered from either a very serious lack of judgment and/or a basic misunderstanding of the fundamental tenets of legal practise or that she operated under a system of values and standards that are contrary to those expected minimum thresholds for lawyers. If it appeared that Ms Chen had any remorse, the Panel noted that it was remorse over being caught, not remorse for damage that she had done to herself, her clients, her community and the profession. She failed to demonstrate any insight that would give the Panel comfort that she would not re-offend.

Penalty

Following the sentencing hearing, the Panel ordered that Ms Chen be disbarred and that she pay \$15,000.00 in costs to the Law Society.

One Panel member dissented as he was not convinced that Ms Chen could not be rehabilitated. Taking into consideration the fact that Ms Chen had been interim suspended for a period of seven years, he would have accepted a "time served" disposition and insisted upon strict conditions being imposed upon her readmission into the practice of law.

The member filed an appeal to the Manitoba Court of Appeal from the Panel's decision with respect to conviction and sentence. The appeal was dismissed on January 18, 2008 with costs.