



DISCIPLINE CASE *DIGEST*

Case 10-09 (AMENDED)

Member:	Eva Yee-Wah Luk
Jurisdiction:	Winnipeg, Manitoba
Called to the Bar:	June 24, 1993
Particulars of Charges:	<p>Professional Misconduct (6 counts)</p> <ul style="list-style-type: none">▪ Breach of Chapter 1 of the <i>Code of Professional Conduct</i> (“the Code”) [integrity – wrongful conversion of trust funds]▪ Breach of Chapter 2 of the Code [quality of service]▪ Breach of Chapter 3 of the Code [failure to notify the Director of Insurance of a potential claim]▪ Breach of Chapters 6 and 7 of the Code [conflict of interest]▪ Breach of Rule 5-43(1)(a) of The Law Society Accounting Rules [failure to deposit trust money into pooled trust account upon receipt]▪ Breach of Rule 5-52 of The Law Society Accounting Rules [appropriating funds received from a client as a retainer and applying the funds to fees payable by another client, without the express or implied authority of her client]
Plea:	Not Guilty
Date of Hearing:	December 4, 2009, June 10 & 11, 2010 and December 17, 2010
Panel:	<ul style="list-style-type: none">▪ Douglas G. Ward, Q.C. (Chair)▪ Lori Ferguson-Sain▪ Gordon J. Hoeschen
Counsel:	<ul style="list-style-type: none">▪ Rocky Kravetsky for The Law Society of Manitoba▪ Sidney Green, Q.C. for the Member
Disposition:	<p>Convicted on two counts:</p> <ul style="list-style-type: none">▪ failing to provide a quality of service in a conscientious, diligent and efficient manner; and▪ failing to notify the Director of Insurance of a potential claim (member has filed a Notice of Appeal) <p>Acquitted on all other counts</p> <ul style="list-style-type: none">▪ Fine of \$1,500.00▪ Costs of \$2,000.00
Appeal:	Appeal to the Manitoba Court of Appeal dismissed with costs on September 23, 2011.

Professional Misconduct

Facts

Between 2003 and 2004, Ms Luk was retained by her clients FC and CC to incorporate two companies, one a holding company which was to own real estate, the other an operating company. She failed to report the purchase of the property to the clients and did not communicate with the mortgage company until the mortgage company had sent her several reminders including a letter from their corporate counsel.

Title to the real property was registered by Ms Luk in error, in the operating company's name rather than that of the holding company. One of the clients discovered the error two years later. Ms Luk did not respond to repeated attempts by the clients to contact her and have her correct the mistake. In April 2007, after one of the clients attended her office and demanded to see her, she advised that she would correct the error.

A Transfer of Land was executed by the clients on June 11, 2007 in order to correct the error, however, Ms Luk took no further steps until the clients complained to the Law Society of the delay. The Transfer of Land was finally registered on January 30, 2008. Ms Luk personally paid the Land Transfer Tax of \$2,319.00 on the filing of the Transfer, but did not, report any potential claim to the Law Society insurer contrary to Rule 5-34 of the Law Society Rules. She explained that she did not do so as the amount owing was less than the \$5,000.00 deductible. There was no evidence of any other actual damage to the clients' interests.

Ms Luk was also involved in an enterprise, NC Inc., that was meant to facilitate prospective immigrants finding work and coming to Canada. The company was owned jointly by the member, another lawyer ("Lawyer A"), and a layperson. Each had a distinct role in the immigration facilitation process. Ms Luk's was to act as solicitor and to process applications for pre-approval under the Provincial Nominee Program and also individual applications for foreign workers, Lawyer A was to recruit workers in Spanish speaking countries, and the layperson was to provide offers of employment from employers.

Five potential immigrants entered into retainer agreements with Lawyer A's law firm. The clients agreed to pay to the firm \$15,000.00 US for professional services. Lawyer A commenced practising with Ms Luk in the spring of 2005 and brought with him the five retainer agreements. Lawyer A then parted ways with both NC Inc. and Ms Luk in June 2005, but left the retainer agreements. There was no evidence that the retainers had been assigned to Ms Luk, or that any money had been paid pursuant to the retainers.

There was evidence that NC Inc. was paid by a customer, B Inc. sums totalling \$19,557.32 on three separate occasions between February and June 2005 in relation to clients seeking employment. One of the payments related to a client who had originally entered into the retainer agreement with A's firm, the remaining payments related to other potential immigrants not under any agreement. Ms Luk was charged with failing to deposit the funds which were received as retainers for her services into her trust account. Ms Luk testified that she never did any work in respect of these payments or retainers, and that the payments were made to NC Inc. to obtain offers of employment.

In March 2006, B Inc. indicated to NC Inc. that the money already paid could remain with NC Inc. as deposits on behalf of new clients who would be substituted for the original five immigrants. This led to four new retainer agreements with four new clients none of which were signed by Ms Luk. The retainer agreement referenced Ms Luk as the clients' "legal representative" to assist in finding employment in Manitoba. The agreement provided that should no offer of employment be forthcoming, there would be a full refund of all money paid to NC Inc., save for \$500.00.

The offers of employment never materialized. Ms Luk did, however, bill NC Inc. for various services for legal work done for NC Inc. Ms Luk applied the funds paid by B Inc. as a retainer on

behalf of the prospective immigrants, to the fees that were owing to her by NC Inc. Between February and June 2007 Ms Luk paid \$7,500.00 back to B Inc. after B Inc. demanded a refund. There was no indication in respect of which clients the refunds were paid. Ms Luk was charged with breaching Rule 5-52 of the Law Society Rules by appropriating and wrongfully converting monies received by her as a retainer and applying them to the fees payable by her other client NC Inc.

Ms Luk was also charged with acting when her own interests conflicted with those of her clients in that she acted as a principal of NC Inc., provided services to NC Inc., provided legal services to the clients of NC Inc. and entered into retainer agreements with them when their interests conflicted.

Plea

Ms Luk entered a plea of not guilty on all counts.

Decision and Comments

The Panel found that, with respect to her dealings on the FC and CC file, Ms Luk committed professional misconduct by failing to discharge the duty she owed to clients in a conscientious, diligent and efficient manner. She had failed to carry out client instructions and communicate in a timely manner, and failed to report the title registration error to the insurer.

Though the damage to the clients' interests was restricted to the \$2,319.00 Land Transfer Tax, and Ms Luk had paid that out of her personal funds, Rule 5-34 required that a member give notice to the Director of Insurance in all circumstances that might have given rise to a claim, regardless of the actual cost relative to the insurance deductible. The member had not provided a reasonable excuse for her failure to comply with the Rule.

The Panel was unable to convict on the charges of failing to deposit trust money into a pooled trust account in a timely manner as it remained unclear as to what monies had come in to NC Inc., for what purpose and in relation to which clients. The Panel was not convinced that Ms Luk had wrongfully converted trust funds belonging to her clients by applying money received as retainers on behalf of clients to fees payable to her by another client, (i.e. NC Inc.), a corporation in which she had an interest. The Panel found that Ms Luk did not herself receive any cheques from clients as a retainer. The funds in question were paid to NC Inc. Additionally, it was not sufficiently clear how much of the funds were in respect of LS, who may or may not have been a client at all.

The Panel found that there was insufficient evidence to prove that the payments into NC Inc. were legal retainers that should have been deposited into a trust account, and, therefore, that by using some NC Inc. assets to pay for legal services allegedly rendered by the member on behalf of NC Inc., the member wrongfully appropriated or converted any funds received by a client as a retainer. This same lack of evidence left the Panel unable to convict on the conflict of interest charge, as it was not sufficiently clear who precisely was in a solicitor-client relationship with Ms Luk.

Penalty

Ms Luk was ordered to pay a fine of \$1,500.00 and costs of \$2,000.00 towards the investigation and prosecution of the counts on which she was convicted.

The member appealed her conviction for failing to give notice to the Director of Insurance of a potential claim. The appeal was dismissed with costs on September 23, 2011.