

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

JUNLING WANG

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

REASONS FOR DECISION

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REASONS FOR DECISION

1. This matter was heard in the offices of The Law Society of Manitoba (the “Society”), 200 – 260 St. Mary Avenue, Winnipeg, Manitoba on Monday, November 23, 2020 commencing at 9:30 a.m. The hearing was a “virtual” hearing, the panel members and parties attending from remote locations.
2. The panel consisted of Douglas Bedford, Chairperson and Mr. Gerrit Theule, both members of the Society, and Ms. Sandra Oakley, a public representative appointed by the Society.
3. The Society was represented by Mr. Rocky Kravetsky.
4. The member, Ms. Junling Wang, was present and was represented by Mr. Gavin Wood.
5. Ms. Wang admitted to 23 charges of acts of professional misconduct and one charge of failing to provide services to the standard required of a competent lawyer.
6. The parties jointly recommended that Ms. Wang be entitled to resign her membership in the Society and that, upon doing so, her name be struck from the Roles. She is to be allowed 14 days to tender her resignation and, if she does not, the joint recommendation stipulates that she is to be disbarred. Further, the parties jointly recommended that she pay costs of \$40,000.00. After considering the submissions of

counsel and their respective responses to questions, we accept the joint recommendation for the reasons which follow.

Relevant Facts

7. The 24 charges for which Ms. Wang accepts responsibility are based on multiple instances of breaches of the Society's Rules and the *Code of Professional Conduct*. They are set out in two citations attached to the Agreed Statement of Facts presented to the panel, the first dated April 16, 2017 which sets out a single charge of failing to respond within 14 days to a communication from the Society and the second dated November 19, 2020 which sets out the remaining 23 charges. The second citation reflects the product of discussions between counsel which resulted in the submission of the Agreed Statement of Facts and the joint recommendation. The Citation dated November 19, 2020 replaced an earlier Citation dated November 5, 2018 which was withdrawn.

8. The 24 charges in question can be grouped into subcategories. Ten charges consist of violations of a number of the Rules governing the management of trust and general accounts. In total, the 10 charges are based on 208 separate breaches of the accounting Rules in the years 2016 to 2018, ranging from repeated failures to reconcile the trust account monthly to failing to record cash received from clients. As counsel for the Society observed, Ms. Wang "breached virtually every rule" governing a lawyer's responsibility with respect to trust and general accounts.

9. Three of the charges of professional misconduct and the single charge of a failure to meet the standard of competence required of a competent lawyer arise out of the incorporation, in 2014, by Ms. Wang of a business known as "Keylink Network Corporation." Ms. Wang entered into this business with Ms. Y.D. who was not a lawyer. The spouse of Ms. Y.D. was also involved in the business. "Keylink Network Corporation" purported to provide immigration services to persons intending to immigrate to Canada, some of whom were already in Canada. Ms. Wang admits that she did not have experience in the field of immigration law. Ms. Y.D. was not a registered immigration consultant and was not in any way authorized to provide immigration services. Notwithstanding the foregoing, "Keylink Network Corporation" solicited retainers from "clients" who signed a form of "retainer agreement" prepared by Ms. Wang and work on behalf of such clients was frequently done by Ms. Y.D. without any oversight or supervision by Ms. Wang. Ms. Wang admits with respect to monies paid by clients to "Keylink Network Corporation", that she failed to act prudently with respect to the preservation of such money, that the incorporation of the company was part of a "scheme" to share legal fees with Ms. Y.D. who was not a lawyer and that she failed to adequately supervise Ms. Y.D. who was performing work, in effect providing legal services, on client immigration matters.

10 With respect to Ms. F.F., a client seeking Permanent Resident Status, Ms. Wang facilitated the preparation of documents whereby Ms. F.F. submitted that she was an employee of a business in Winnipeg which she in fact owned. One of the forms submitted

with respect to Ms. F.F. included a signature purporting to be that of Ms. F.F. which was a forgery. When, in the spring of 2016, Citizenship and Immigration Canada rejected Ms. F.F.'s application due to the false information regarding her employment, Ms. Wang misled her client by telling her the rejection was due to a change in government "policy". Ms. Wang compounded this deceit by telling Ms. F.F. that she had reapplied on her behalf when she had not. It seems that Ms. Y.D. played a role in the preparation of the documents and the advice given to Ms. F.F. and the admission made by Ms. Wang therefore amounts to an acknowledgement that she did not exercise any judgement of her own in advising Ms. F.F. and, instead, relied on Ms. Y.D. who was not qualified to give such advice.

11. In the period September 2017 to March 2018, Ms. Wang acted for the purchaser of a residential lot upon which her client had contracted to have a new home built. Her conduct of this file forms the basis of four more of the charges to which she pleads guilty. She received, in September 2017, documents in trust that she was required to register within five days of receipt. Ultimately, the documents were not properly registered until late February 2018. She breached the trust condition. Had they been registered in accordance with the trust condition, the land transfer tax payable by Ms. Wang's client would have been less as her client's new home was not yet constructed. She thereby failed to provide her client with timely, conscientious and efficient service. Ms. Wang failed repeatedly to respond to enquiries from counsel for the vendor regarding the registration of the foregoing documents which failure formed the basis of a third charge. And, Ms. Wang failed to respond promptly and completely to enquiries from the Society after the latter received a complaint from counsel for the vendor.

12. In the period December 2014 to April 2015, Ms. Wang acted for the vendor, purchaser and mortgagee of an apartment block. The mortgagee was the CIBC. Ms. Wang learned during the course of the transaction that the vendor was to retain an interest in the apartment block but she did not inform the CIBC of this fact and hence preferred the interests of her vendor and purchaser clients over those of her client the CIBC.

13. Ms. Wang failed, repeatedly, to meet her obligations as a member of the Society in responding to enquiries from the Society. In February 2017 on one occasion, as set out in the Citation dated April 16, 2017, and on nine separate occasions in the period March 2017 through February 2018, as set out in the Citation dated November 19, 2020, she did not respond in time, sometimes not even at all, and often not completely, to enquiries from the Society regarding complaints against her. She admits to two charges of failing to respond promptly and completely to the substance of communications from the Society. On April 16, 2017, the Complaints Investigation Committee of the Society imposed restrictions on Ms. Wang's practice, particularly a requirement that she was to practice only under the supervision of a member of the Society. Ms. Wang failed to adhere to the restrictions in a number of ways and admits that in so doing she failed in her duty to act with integrity in accordance with the Rules of the Society and the *Code of Professional Conduct*. Almost a year later, on March 15, 2018, the Society suspended Ms. Wang from the practice of law. However, in the following month she continued to act for a client and she did not take steps to disconnect her office phone or to modify her automatic voice

mail or remove signage from her office in order to alert the public and her clients to the fact that she was no longer able to practice law. Ms. Wang admits that as a result, she failed to act honourably and with integrity in the discharge of her responsibilities to the public, her clients and the tribunal which ordered her suspension pending disposition of the charges that came before this panel.

14. Ms. Wang practiced using the medium of a law corporation. She did not file tax returns for the law corporation. The Canada Revenue Agency caused that bank account of the law corporation to be frozen. In response, Ms. Wang issued, on five occasions, trust cheques to herself personally for the payment of accounts and not to the law corporation and she made false entries in her accounting records to hide the transactions from being discovered in any investigation or audit. Ms. Wang admits that these actions constitute professional misconduct in that they amount to a failure to act with honour and integrity.

The Member's Record

15. Ms. Wang became a member of the Society on June 16, 2005. She was admitted to the State bar of Minnesota in March 2003 but her entitlement to practice in that State lapsed in the autumn of 2005 due to non-payment of fees.

16. From June 2005 to April 30, 2013 Ms. Wang practiced without complaints to the Society at the Winnipeg firm of Duboff Edwards Haight & Schacter.

17. Ms. Wang set up a sole practice after leaving the foregoing firm in April 2013. As noted above, on April 16, 2017, the Complaints Investigation Committee of the Society restricted her practice and on March 15, 2018 she was suspended from the practice of law by the Society. Therefore, after some eight years practicing as a member of a firm without complaint, she practiced for five years alone during which she committed multiple acts of professional misconduct.

18. On November 10, 2015 Ms. Wang pleaded guilty to two charges of failing to respond in 14 days to letters from the Society in July and August of 2015. The panel hearing the matter accepted a joint recommendation for a reprimand on the first charge, a fine of \$750.00 on the second charge and an order of costs of \$1,500.00.

19. On November 30, 2015 Ms. Wang pleaded guilty to a charge of failing to respond in November 2014 within a stipulated deadline to an enquiry from the Society. The Society had written to Ms. Wang in November 2014 upon receiving a complaint from the purchaser of a condominium whose deposit had been sent in September 2014 to her in trust. The condominium purchase had not closed. Ms. Wang, with respect to the same file, also pleaded guilty to a charge of failing to comply with an undertaking she gave to the Society to provide by January 28, 2015, in writing, a substantive response to the foregoing complaint, including disclosure of where the deposit was located and an explanation as to why it had not been returned to the complainant's counsel. The panel that heard these matters imposed a fine of \$5,500.0 and costs of \$2,000.00 and, in

addition, directed that for two years copies of all correspondence from the Society to Ms. Wang were to be sent to a member acceptable to the Society who was to confirm that Ms. Wang had received the correspondence. In lengthy reasons the panel observed that it had not received an adequate explanation for Ms. Wang's failure to respond to communications from the Society and that her failures to respond had ultimately transformed a simple matter that could have been resolved into a contentious matter that resulted in charges and a significant increase in the Society's costs.

The Parties' Submissions on Penalty

20. As noted, the parties joined in a recommendation that Ms. Wang be permitted to resign from membership in the Society (failing which they agreed that after 14 days she be disbarred) and that costs be fixed in the amount of \$40,000.00.

21. The parties advised the panel that there was an agreement between them that was not a part of the joint recommendation and not a matter that the panel was expected to comment upon. All that was disclosed is that after two years Ms. Wang can reapply for admission to the Society, subject to a number of conditions (which were not detailed) and the Society will not oppose her application provided the conditions are met.

22. The parties submitted that there are compelling precedents that direct that panels should not depart from joint recommendations unless the recommendation brings the administration of justice into disrepute or is so "unhinged" from the facts of the offences and the offender as to suggest that the justice system is broken. The public interest requires as much as possible that there be certainty in proceedings and resolutions resulting in joint recommendations ought to be encouraged. See *R. v. Anthony-Cook*, 2016 SCC 43.

23. Further, it is the primary obligation of panels of the Discipline Committee of the Society to consider whether the public interest in ensuring that legal services are being delivered with competence, integrity and independence has been taken into account in recommending a penalty. Here, it was observed that Ms. Wang will no longer be practicing law, a penalty which fully addresses concerns that over the course of five years in a sole practice she has been found guilty of 26 charges of professional misconduct and one charge of failing to provide legal services to a competent standard, and, accordingly, is not currently someone who can be relied upon to practice either competently or with integrity.

24. Counsel for the Society noted that the joint recommendation reflects the fact that a lengthy hearing was avoided. He revealed that certain witnesses were not going to be available for the hearing. Of relevance to the Society were the facts that there is no evidence of misappropriation and, notwithstanding Ms. Wang's evident lack of knowledge of immigration law, only one client complaint with respect to that aspect of her practice. Most significantly, counsel for the Society advised the panel that notwithstanding Ms. Wang's numerous admissions to failures to meet her obligations as a member of the Society in replying to enquiries and investigations, it was not certain, or

inevitable, in the absence of the joint recommendation on penalty that she would be disbarred as opposed to suspended from practice for a lengthy period.

25. No meaningful explanation was offered by counsel as to why Ms. Wang's practice unraveled so quickly after she commenced working on her own in 2013. Both counsel offered some broad speculations, such as: "some lawyers are not able to cope with the demands of sole practice"; some decisions Ms. Wang made suggest she was "reacting" in the moment to unpleasant situations; and Ms. Wang's grasp of some elements of commercial transactions was poor. Counsel acknowledged that there were no grounds to conclude that Ms. Wang was suffering from any underlying medical problems.

26. Ms. Wang herself is an immigrant, having been born in China, emigrated to the United States and then to Canada. She is fluent in Mandarin. Many of her clients spoke that language and it was stated that she had filled a needed role in Manitoba in providing services to members of the Chinese community. Without any supporting detail, there was an implication that the demands made upon her in terms of the volume of work and expectations of her clients contributed to the problems in her practice.

Analysis

27. The option for lawyers facing serious charges of misconduct to resign from membership in the Society has existed for some 20 years now. A panel of this Committee, in *The Law Society of Manitoba v. MacIver*, 2003 MBL 4 explained the rationale for permitting a resignation as an alternative to disbarment by citing Gavin MacKenzie, *Lawyers and Ethics: Responsibility and Discipline* (Carswell 1993) at 26-49:

Cases in which lawyers have been permitted to resign are usually those in which the misconduct is sufficiently serious to justify disbarment, but in which mitigating circumstances persuade the benchers that the stigma of disbarment in addition to the withdrawal of the lawyer's right to practice law would be unfair. The practical result of the penalty is the same, except to the extent that an admission committee may give more favourable consideration to an application for readmission brought by a former lawyer who has been given permission to resign.

28. The panel in *MacIver* rejected the lawyer's request that he be allowed to resign. Indeed, *MacIver* is a rare example of a panel of this Committee rejecting a joint recommendation. The panel grounded its decision on the fact that no explanation was given as to why serious misconduct had taken place and no remorse was offered by the member. Mr. MacIver was 71 years of age and at the time of the hearing was in jail serving a sentence for income tax evasion, making false statements, perjury and fabricating evidence. The panel concluded that a resignation did not adequately set an example of general deterrence nor did it adequately address the public confidence in the

legal profession in light of Mr. MacIver's very serious breaches of his duties of honesty and integrity. The case was not one where some "compassion" was warranted in sentencing. Disbarment was neither "harsh" nor "excessive" in the circumstances.

29. Two other decisions of the Society dealing with the issue of resignation versus disbarment were provided to us. In *The Law Society of Manitoba v. Petryshyn*, 2017 MBL 15, a member who had practiced for over 40 years admitted to 28 charges of professional misconduct including misappropriation of retainers, abusive treatment of clients, meeting with clients while intoxicated and incompetence in the handling of certain files. On a joint recommendation, the panel permitted the member to resign. In particular, counsel for the Society conceded that disbarment was not inevitable given the mitigating circumstances presented to the panel including the member's addiction to alcohol. In effect, disbarment in the circumstances could be seen by some as "harsh" and "excessive". Accordingly, the panel distinguished the *MacIver* case and accepted the joint recommendation, concluding, presumably, that resignation where disbarment was not a certain alternative would not raise overriding concerns about general deterrence and public confidence. Some "compassion" was warranted.

30. In *The Law Society of Manitoba v. Persad*, 2018 MBL 2, the panel reviewed over 30 charges against a member affecting 13 clients. The charges included failures to prepare documents, misleading clients, double booking court appearances, breaching trust account rules and misappropriating retainers. The lawyer asked to be permitted to withdraw from practice. The Society sought disbarment. The panel concluded that disbarment was appropriate and grounded its decision on the absence of "powerful" evidence in mitigation. A one page medical report touching upon anxiety and depression and revelations regarding unhappy personal circumstances of the member were not considered sufficient mitigation. Accordingly, disbarment was not "harsh" nor "excessive" in the circumstances and the exercise of "compassion" was not warranted.

31. Mr. MacIver offered no explanation for his conduct nor did he show remorse. He was disbarred. Mr. Persad offered very little in the way of mitigation or explanation for his misconduct. He was disbarred. Mr. Petryshyn did offer a significant explanation for his conduct and, as well, the Society conceded in his case that disbarment was not otherwise certain in the absence of a joint recommendation. He was permitted to resign. We are concerned that Ms. Wang offered no meaningful explanation for her conduct nor did she express remorse. Accordingly, we find it impossible to determine if "compassion" is warranted in her case. But we are able to acknowledge, given counsel for the Society's concession, that disbarment would otherwise not be certain in her case and, consequently, disbarment as an alternative penalty could be considered by some to be "harsh" and "excessive".

32. We recognize that joint recommendations are always the product of confidential and privileged negotiations between counsel. The parties choose, on a joint recommendation, what evidence and explanations will be provided to a panel and it is not appropriate for panel members to speculate regarding details that are not in the evidence. We accept that in Ms. Wang's case, the parties know more than they chose, with the

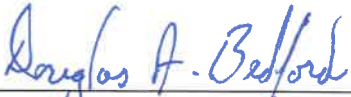
assistance of very able counsel, to place before the panel. Ms. Wang is not obligated to explain to us more than what we heard and she is not obliged to address the panel at all when she is represented. No doubt there is an explanation for her conduct known to her. No doubt she either has, or has not, learned important lessons from what occurred in her practice, but we cannot determine that based on what was presented to us. Her case is distinguishable from earlier precedents, mainly, as counsel for the Society submitted, because this is a joint recommendation and because disbarment was not certain here. It is worthwhile to note, again, that there are no assertions that Ms. Wang misappropriated money and while some of the charges which she admits are breaches of her duties of integrity and honour, they are less serious than Mr. MacIver's convictions for perjury and income tax evasion. It is not fatal to Ms. Wang's request to resign that she offers no meaningful explanation for her conduct by way of mitigation.

33. Our primary concern must be the public interest. The proposed penalty quite clearly protects the public as Ms. Wang will no longer be permitted to practice law. Further, in accepting the joint recommendation we believe that we are respecting the public's interest, generally, in recognizing the importance of accepting joint recommendations unless they manifestly tarnish the administration of justice, which this recommendation does not.


Conclusion

34. Accordingly, for the foregoing reasons we conclude that Ms. Wang is permitted to resign her membership in the Society and upon so resigning her name is to be struck from the rolls. If she fails to submit her resignation, in writing, within 14 days of receiving these reasons, she is to be disbarred. Ms. Wang is to pay to the Society a contribution to the costs of the investigations, inspections and prosecution of the charges before us in the amount of \$40,000.00.


These written reasons signed the 22nd day of December 2020.



Douglas A. Bedford, Chairperson



Gerrit Theule, Panel Member



Sandra Oakley, Panel Member