

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

WEN YEN (JAZZ) TAN

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

Date of Hearing: October 18, 2021

Panel: Grant Mitchell, Q.C. (Chair)
Helga Van Iderstine
Miriam Browne (Public Representative)

Appearances: Rocky Kravetsky, Counsel for the Law Society of Manitoba
J. Richard Wolson, Q.C., Counsel for the Member

REASONS FOR DECISION OF THE DISCIPLINE COMMITTEE

1. WEN YEN (JAZZ) TAN appeared before a panel of the Discipline Committee of the Benchers of The Law Society of Manitoba on Monday, October 18, 2021 pursuant to a Citation dated September 13, 2021. Members of the panel were Grant Mitchell, Q.C., Chair; Helga Van Iderstine; and Miriam Browne. Mr. Rocky Kravetsky appeared as counsel for The Law Society of Manitoba and J. Richard Wolson, Q.C. represented Ms. Tan. The hearing was conducted virtually using Zoom technology, and only the panel, Mr. Kravetsky, Mr. Wolson, Ms. Tan, the Court Reporter and one Law Society staff member attended for the entire hearing.
2. For the reasons set out below, the panel accepts the guilty plea of the Member, Ms. Tan and the joint submission of the parties as to penalty. Ms. Tan will be ineligible for admission to the Law Society until November 22, 2022, representing a period equivalent to a two year suspension.
3. A Statement of Agreed Facts was filed as Exhibit 1, and attached to it was the Citation.

4. The parties confirmed orally what was stated in the Statement of Agreed Facts, that they did not object to the appointment of any of the panel members, that Ms. Tan is on the Student Register of The Law Society of Manitoba and that she is not a Member of any other Law Society. Through counsel, Ms. Tan admitted service of the Citation and waived the formal reading of it and admitted to the allegations contained in it.
5. Ms. Tan admitted that the facts admitted concerning the charges in the Citation constitute professional misconduct.

Facts:

Ms. Tan's Background

6. Ms. Tan is 32 years old. She is from Malaysia, but of Chinese descent and is fluent in Mandarin. She has an LL.B from the University of London (2014), earned through the University's Distance Learning Program. She also has GDL (Graduate Diploma in Law) from University of Central Lancashire (2019), for which she studied on-line. She first moved to Winnipeg with her husband in 2016.
7. Ms. Tan worked at Fast Trippier as a legal assistant from January 2017 until January 2018, when, because of domestic difficulties, she returned to Malaysia. She came back to Winnipeg in March 2019 and again worked at Fast Trippier as a legal assistant while studying for the National Committee on Accreditation ("NCA") exams. She successfully completed her NCA exams and was issued a Certificate of Completion on January 14, 2020.

The Client's Immigration Issues

8. The client named in the Citation came to Canada as an International Student. She graduated from Brandon University on June 1, 2018 and on July 23, 2018 she was issued a Post-Graduate Employment Work Permit ("PGE Work Permit"). Such a permit is usually issued for three years, during which time the person is able to work toward qualifying for permanent residency. In the client's case, the PGE Work Permit required that she leave Canada by June 21, 2020 because, at the time it was issued, that was the date of the expiry of her passport. The client later renewed her passport.
9. The client wished to remain in Canada beyond June 21, 2020 and to apply for Canadian Residency. To that end, she had applied for and ultimately received a Certificate of Nomination under the Manitoba Provincial Nominee Program

("MPNP") dated April 16, 2020. It fixed a deadline of October 16, 2020 for her to complete her application for permanent residency.

10. In her MPNP application process the client disclosed, as was then the case, that she was employed by a Winnipeg travel agency. Early in the Covid 19 outbreak, the agency had demanded that the client repay some of her wages and would not release pay cheques to her until she agreed. Initially, these amounts were said to be in the nature of loans to keep the agency afloat because its business was affected by travel bans to and from China. The agency told the client that her immigration status would be affected if she did not have a job and so for two months, she made the "loan" payments to the agency in exchange for receiving her pay cheque, but then refused to go along with the agency's scheme and left her employment.
11. The client complained to the Employment Standards Branch about what had happened at the agency and by letter of March 31, 2020, she informed MPNP of the facts so that when MPNP issued the Certificate of Nomination on April 16, 2020, it was aware both that she was unemployed and of what had happened with the agency. In June 2020, the Director of Employment Standards ordered the agency to repay to the client amounts that had been taken from her in exchange for releasing her pay cheques.

The Retainer and Subsequent Ethical Lapses

12. The client was introduced to Ms. Tan in April 2020 and they became friends. The client sought advice from Ms. Tan as to her immigration matters - a required application to extend the PGE Work Permit and the application for permanent residency. Ms. Tan told the client that the client could handle the applications herself but recommended that she have a lawyer. The client asked Ms. Tan if she could handle those matters.
13. Up to that point, Ms. Tan's work at Fast Trippier did not involve Immigration matters. Her only experience in the area was dealing with her own immigration to Canada. Ms. Tan sought approval from the firm for her to take on the client and on May 7, 2020, with the firm's approval, Ms. Tan was retained to assist the client on the understanding that she would be supervised as to the matter by IV, a lawyer at Fast Trippier with some experience in immigration matters, rather than by Mr. Fast, who had none. A retainer agreement was signed.
14. It was clear at the time of the retainer that there were two deadline dates: June 21, 2020 for extension of the PGE Work Permit and October 16, 2020 for submission of the Permanent Residency Application based on the MPNP nomination. At the time that she took on this case, Ms. Tan was aware that the client was unemployed and

was involved in a dispute with the agency. In the Application she later prepared she set out, as part of the client's employment history, the start and end dates of her employment with the agency and the fact that the client was then unemployed.

15. Though she was provided with the client's documents and information in early May 2020, Ms. Tan did no work on the matter until June 3, 2020, when she first reviewed it. In the interim, Ms. Tan was required to be away from the office to attend for in person CPLED classes for the week of May 25 - 29, 2020 and she was required to complete other work prior that. Between May 13, 2020 and June 16, 2020, the client requested updates as to the status of her matter via messages sent using the WhatsApp messaging application. Ms. Tan did not respond to these messages.
16. Ms. Tan did, however, on June 3, 2020 tell the client that the application was "almost done," even though she knew that nothing had yet been done. Thereafter, she assured the client that all was in hand. On June 11, 2020, Ms. Tan sent to the client a list of questions for information required to complete Permanent Residency Application and the client responded immediately.
17. Ms. Tan also advised that the PGE Work Permit extension application forms were completed and that the client could come in the next day to sign the forms. The client requested an appointment for June 12, 2020 and they met that afternoon. Documents for both the Work Permit extension and Permanent Residency were signed at a meeting on June 12, 2020. These had not yet been reviewed by IV, nor had any advice been sought from her. Though IV was aware of the meeting of June 12, 2020, she understood it was just for the purpose of gathering information and did not attend.
18. The forms signed on June 12, 2020 designate IV as the client's representative and required IV's signature and Law Society registration information to be inserted before they could be submitted. In anticipation of the forms being completed the next day, on June 11, 2020 the client had made an electronic payment of the filing fees to Citizenship and Immigration Canada. She expected that her applications would be submitted following the next day's meeting. The applications were not, however, immediately submitted after the June 12, 2020 meeting. They had to be reviewed and signed by IV.
19. Ms. Tan did not thereafter respond to the client's requests for confirmation of the status of her matter until June 16, 2020. On that day, Ms. Tan told the client that her "boss" was reviewing the application. She referred to the boss as "he" and "him" and said that she had reminded him of the urgency of the matter. This was not true. Mr. Fast was never expected to review the documents. They were drawn expressly for IV's signature. IV had never been made aware of any urgency.

20. Ms. Tan put the applications and related forms on IV's desk on June 16, 2020 for IV to review. In an email that day, she told IV that the client's Social Insurance Number and that her "ID" would expire on June 21, 2020, but IV did not relate that to the Work Permit. Ms. Tan's email said only that the client "would like to have her application form mailed" before June 21, 2020.
21. The application to extend the Work Permit was not submitted before the deadline of June 21, 2020. It was still on IV's desk. In the meantime, the client's driver's licence was set to expire on that date, the same date as the expiry of her PGE Work Permit. On Thursday, June 17, 2020, Ms. Tan told the client that Ms. Tan would write a letter to Manitoba Public Insurance ("MPI") explaining that an application for extension of the Work Permit was pending. She said the letter would go the next day as soon as the Work Permit renewal application was put in the mail. The letter was given to the client to deliver to MPI on June 18, 2020 and she did so.
22. The letter that was prepared by Ms. Tan for, and delivered to, MPI was dated June 18, 2020 and said that the client's application to extend her Work Permit had been sent by mail on that day. This was not true and Ms. Tan knew that it was untrue. Copies of the application and the receipt for processing the fee (paid on June 11, 2020 directly by the client) were enclosed in the letter to MPI.
23. On the strength of the letter, MPI extended the client's licence for 180 days but told the client that for any further extension they would require a tracking number. This was conveyed by the client to Ms. Tan who responded by saying that she then had the tracking number and that the application had been picked up at 10 a.m. on June 18, 2020. Neither was a true statement. Though Ms. Tan did not tell her that was the case, as of June 21, 2020, the client was no longer permitted to work in Canada.
24. On June 22, 2020, Ms. Tan told IV that the client's Work Permit had expired. IV told Ms. Tan that the situation was salvageable and that there was a 90 day window to apply for its restoration. She instructed Ms. Tan to advise the client about what had happened and what would now have to be done. Ms. Tan wrote an email, ostensibly to the client, referring to a supposed earlier conversation about the missed June 21, 2020 deadline and setting out requirements for seeking restoration of her PGE Work Permit including the payment of a further \$200 fee. A copy of the email was sent to IV. The email was, however, addressed to an email address that was not the client's. When she received the copy, IV would no way of knowing this. The email address shown for the client was Ms. Tan's own invention.
25. Ms. Tan never did tell the client that her PGE Work Permit renewal application had not been submitted. When IV suggested that an appointment be made for the client to attend at Fast Trippier to review and sign the application for renewal of her PGE

Work Permit, Ms. Tan told IV that because the client's driver's licence had expired, it would be more convenient for her to meet with the client outside the office than to have her attend at the firm's premises. These statements were not true.

26. Toward the end of June 2020, Ms. Tan and the client exchanged text messages concerning the Permanent Residency Application. In this exchange, Ms. Tan raised a concern about the client's dealings with the agency. In response to the client's suggestion that she attach to the Permanent Residency Application a copy of the letter she had sent to the MPNP on March 31, 2020, Ms. Tan responded that writing the letter to MPNP and involving Employment Standards were "serious mistakes" and "the worst thing you have ever done."
27. Around this time, Ms. Tan prepared revised documents for the restoration of the PGE Work Permit. These were dated June 30, 2020 and Ms. Tan provided them to IV to review. After review, IV approved them and Ms. Tan prepared a cover letter to go with them dated July 2, 2020 that was signed by IV. Before submitting the documents, Ms. Tan told IV that the client's information concerning her work history as set out in the applications forms was fraudulent. She said that the client had paid the agency to employ her. Based on that, IV instructed that they could not submit the forms and could not continue to act. In her own responses to the Society, IV maintained that it would have been unethical to submit the application because of the fraudulent information about the client's employment history. This, however, was based upon Ms. Tan having said that the job at the agency was not genuine and that the client had told her that she had paid the agency to employ her. In fact, the client had not said that but had repeated to Ms. Tan some hearsay that after she had left her employment, the agency had offered to sell her job to someone. The client also said that she was not prepared to make use of that information, or report it, because she did not have direct knowledge of the supposed fact.
28. Based on what she had been told, IV directed that Fast Trippier cease to act for the client and that her retainer be refunded. After that, the client contacted IV directly and explained how the matter had unfolded from her perspective. Ms. Tan was then suspended by Mr. Fast for one week with pay and, after Mr. Fast reviewed the WhatsApp chats between Ms. Tan and the client, for a further week without pay, thereby delaying Ms. Tan's completion of her articling period by two weeks in total.
29. When IV became aware of the June 18, 2020 letter addressed to MPI, Ms. Tan told IV that she had advised the client not to provide the letter to MPI, knowing that was untrue.

30. In responses to the Society, Ms. Tan made a number of statements that are demonstrably false. She blamed the initial delays in completing the PGE Work Permit renewal application on the client, saying that she regularly changed instructions and failed to provide information when requested, when, in fact, the client always responded immediately, consistently and fully when information was requested.
31. Ms. Tan told the Society that the client had told her that she had made payments to the agency so that they would hire her and that the client had asked her to keep that information from the firm, when it is clear that this was not true.
32. Ms. Tan said that she had repeatedly advised IV of the PGE Work Permit's expiry date when she had not. Ms. Tan told the Society that she had advised the client that the initial deadline for the PGE Work Permit renewal application had been missed, when, in fact, the client was never made aware of the missed deadline or the need of a new application or that there ever was a new application being prepared.

Jurisdiction Over Students

33. Section 17(1) of *The Legal Profession Act* establishes that persons, such as Ms. Tan, registered in the student register are defined as members of The Society and are therefore subject to the requirements in that Act. S. 17(5) of that Act provides that:

“The benchers may make rules that

(a) establish categories of membership and prescribe the rights, privileges, restrictions and obligations that apply to them;

(b) establish requirements, including educational and moral requirements, and procedures for admitting persons as members, which may be different for different categories of membership;

(c) govern the admission program for articling students.”

34. *The Legal Profession Act* goes on in s. 72(1) to give a discipline panel jurisdiction to impose sanctions on a student for improper conduct:

“72(1) If a panel finds a member guilty of professional misconduct or conduct unbecoming a lawyer or student, it may do one or more of the following:

...

(b) if the member is a student,

(i) expel the student and order his or her name to be struck off the student register,

(ii) deny the student the opportunity to write the required examinations,

(iii) defer the student's admission as a lawyer,

(iv) attach conditions to the student's admission as a lawyer.

...

(e) order the member to pay all or any part of the costs incurred by the society in connection with any investigation or proceedings relating to the matter in respect of which the member was found guilty;

...

(k) make any other order or take any other action the panel thinks is appropriate in the circumstances.”

35. Under *Law Society Rule 5-28.1(2)*, where a person has been refused a call to the bar because of being unable to meet the good moral character requirement “may not apply for admission, call or resumption for a period of two years after the later of: the date the chief executive officer refused his or her application, or the date a panel of the appeals sub-committee dismissed his or her appeal of the chief executive officer's decision to refuse the application.” This 2 year waiting period was a consideration of counsel in formulating the joint recommendation on disposition of the charges against Ms. Tan.

Integrity and Good Moral Character

36. In its *Code of Professional Conduct*, the Society sets out in the Preface the foundational principle of protecting the public in its dealings with lawyers and students:

“In order to satisfy this need for legal services adequately, lawyers and the quality of service they provide must command the confidence and respect of the public. This can only be achieved if lawyers establish and maintain a reputation for both integrity and high standards of legal skill and care.”

The Preface to the *Code* later states:

"In order to satisfy this need for legal services adequately, lawyers and the quality of service they provide must command the confidence and respect of the public. This can only be achieved if lawyers establish and maintain a reputation for both integrity and high standards of legal skill and care."

37. In the first substantive chapter of the *Code*, the issue of integrity is addressed:

"2.1-1 A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity.

Commentary

[1] Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. If a client has any doubt about his or her lawyer's trustworthiness, the essential element in the true lawyer-client relationship will be missing. If integrity is lacking, the lawyer's usefulness to the client and reputation within the profession will be destroyed regardless of how competent the lawyer may be."

38. In other words, the first principle of the *Code of Professional Conduct* is that lawyers and those training to become lawyers, must act with integrity. Deliberately misleading clients, colleagues, public entities and ultimately, the Society, is the antithesis of integrity.
39. The *Rules Law Society of Manitoba* relating to admissions require in s. 5(4) that an articling student "must provide proof that she is of good moral character and a fit and proper person to be admitted." As a consequence, where, as here, the articling student admits that in course of handling a client matter, she has deliberately lied to her firm, to her client, to MPI and to the Society discipline is appropriate and the articling student must demonstrate that she has been rehabilitated before she will be able to meet this requirement. Under s. 5-12(1) of the *Rules*, to be eligible for call to the bar, the articling student must demonstrate that she "continues to be of good moral character and a fit and proper person to be called to the bar."
40. Chapter 3 of the *Code* addresses competence and speaks to timely service and client communication, not taking on matters beyond the competence of the lawyer or student and ensuring that the practice is efficiently managed, and that the quality of service to the client is adequate. All of these provisions were also breached in Ms. Tan's case. Counsel for the Society acknowledged that violations of competence without any the other ethical factors which arose here, would usually be addressed through the articling process and would not have prompted the prosecution of a

student. It is the combination of competency issues and ethical lapses which lead to this prosecution.

Principles on Disposition

41. In *Lawyers & Ethics: Professional Responsibility and Discipline*, Gavin MacKenzie, Carswell 2012, Release 3, the author comments on the purposes of discipline proceedings, at p. 26-1:

“The purposes of law society discipline proceedings are not to punish offenders and exact retribution, but rather to protect the public, maintain high professional standards, and preserve public confidence in the legal profession. In cases in which professional misconduct is either admitted or proven, the penalty shall be determined by reference to these purposes.”

42. MacKenzie emphasizes the need to determine the seriousness of a lawyer's conduct and highlights a variety of factors which must be assessed in determining an appropriate penalty, at page 26-44:

“Factors frequently weighed in assessing the seriousness of a lawyer's misconduct include the extent of injury, the lawyer's blameworthiness and the penalties that have been imposed previously for similar misconduct. In assessing each of the factors the discipline hearing panel focuses on the offence rather than on the offender and considers a desirability of parity and proportionality in sanctions and the need for deterrence. The panel also considers an array of aggravating and mitigating factors, many of which are relevant to the likelihood of recurrence. These aggravating and mitigating factors include the lawyer's prior discipline record, the lawyer's reaction to the discipline process, the restitution (if any) made by the lawyer, the length of time the lawyer has been in practice, the lawyer's general character and the lawyer's mental state.”

43. In *“The Regulations of Professions in Canada”* by James T. Casey, Carswell 2013, Release 1, Volume 2, the author refers to mitigating factors which may be considered in determining an appropriate penalty, at pages 14-6 and 14-7:

“1. Attitude since the offence was committed. A less severe punishment may be imposed on an individual who genuinely recognizes that his or her conduct was wrong.

2. The age and inexperience of the offender.

3. Whether the misconduct is the individual's first offence. It has been suggested that the penalty of revocation should be reserved for repeat offenders and the most serious cases.

4. Whether the individual has pleaded guilty to the charge of professional misconduct which has been taken as showing the acceptance of responsibility for his or her actions. However, a refusal to admit guilt is not to be taken as justifying a higher penalty. Hence a person charged with an offence of professional misconduct is entitled to have the case against him or her proven and to make full answer in defence without fear of the threat of increased penalty.

5. Whether restitution has been made by the offender.

6. The good character of the offender.

7. A long unblemished record of professional service."

44. In *The Law Society of British Columbia v. Ogilvy* [1999] L.S.D.D. No. 45, [1999] LSBC 17, Discipline Case Digest 99/25, a discipline panel of the Law Society of British Columbia laid down some of the appropriate factors which might be taken into account in disciplinary dispositions, at page 10:

"(a) the nature and gravity of the conduct proven;

(b) the age and experience of the respondent;

(c) the previous character of the respondent, including details of prior disciplines;

(d) the impact upon the victim;

(e) the advantage gained or to be gained, by the respondent;

(f) the number of times the offending conduct occurred;

(g) whether the respondent had acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;

(h) the possibility of remediating or rehabilitating the respondent;

- (i) the impact on the respondent of criminal or other sanctions or penalties;
- (j) the 2013 MBLs 4 (CanLII) 5 impact of the proposed penalty on the respondent;
- (k) the need for specific and general deterrence;
- (l) the need to ensure the public's confidence in the integrity of the profession;
and
- (m) the range of penalties imposed in similar cases."

45. The panel was also referred to Law Society Rule 5-28.1(2)

Waiting period

5-28.1(2) Subject to subsection (3), a person referred to in subsection (1) may not apply for admission, call or resumption for a period of two years after the later of:

- (a) the date the chief executive officer refused his or her application, or
- (b) the date a panel of the appeals sub-committee dismissed his or her appeal of the chief executive officer's decision to refuse the application.

(ENACTED 04/10) (AM. 05/12)

Joint Recommendation:

46. In this case, the panel received a joint recommendation on disposition from counsel, agreed to by Ms. Tan, as follows:

"The parties jointly submit and request that the Discipline Committee Panel dispose of the matter by making a finding that the conduct of Ms. Tan as set out in this Statement of Agreed Facts constitutes professional misconduct as alleged in The Citation and order that:

1. Ms. Tan's admission as a lawyer be deferred until no earlier than November 17, 2022;
2. Prior to her admission Ms. Tan shall have submitted a fresh Application for Admission and will thereafter comply with such conditions, if any, as may be imposed by the Director of Admissions arising from her absence from active

practice and any other information not presently known to the Society (subject always to her rights of appeal from any decision of the Director);

3. Ms. Tan shall, within the three months before or three months after she begins to practise, successfully complete, at her own expense, a course of study in the area of professional ethics and responsibility acceptable to the Society, which course may consist of participation in one or more programs;

4. Ms. Tan shall, for a minimum period of one year from the start of practising, work in a firm or other employment situation acceptable to the Society and under the supervision of a lawyer within the firm or entity acceptable to the Society who shall undertake to the Society that they will review and approve all of Ms. Tan's work and report to the Society any breaches by Ms. Tan of *The Legal Profession Act*, the *Rules of The Law Society of Manitoba* or the *Code of Professional Conduct*;

5. Ms. Tan shall not, for a minimum period of one year, personally receive or disburse trust funds or otherwise operate a trust account;

6. Until admitted as a lawyer, Ms. Tan shall not work as a legal assistant or in any other capacity for any lawyer, law firm or in-house or other legal service provider unless the employer is approved by the Society and unless the lawyer or a lawyer within the law firm or other provider has provided an Undertaking and Acknowledgment by which the lawyer:

a. acknowledges that they are aware of the charge and conviction in this matter, including having read the Citation and Statement of Agreed Facts;

b. undertakes that Ms. Tan will not be held out as a lawyer, law student or articling student or otherwise identified in any way that suggests that she is qualified to act as a lawyer, including by any reference to any law degree or legal training;

c. undertakes that they will directly supervise Ms. Tan as required by Rule 6.1-1 of the *Code of Professional Conduct*;

7. Where a minimum period is expressed, that condition may thereafter be removed or varied by the Chief Executive Officer of the Society if it appears appropriate to do and is recommended by Ms. Tan's supervisor.

8. Ms. Tan shall pay \$5,000 to the Society as a contribution to the costs of the investigation and prosecution of these charges.

Submission on Behalf of the Law Society:

47. Mr. Kravetsky reminded the panel that in the case of a joint submission on penalty, as long as the proposed disposition passes the public interest test, the panel is obliged to accept the recommendation (*R. v. Anthony-Cook*, 2016 SCC 43; *The Law Society of Manitoba v Sullivan*, 2018 MBL 9). He submitted that unless accepting the joint recommendation would bring the administration of the discipline process into disrepute, or would otherwise be contrary to the public interest, we were bound to accept it. He then presented the Society's rationale for the joint recommendation.
48. Mr. Kravetsky pointed to the cooperation of Ms. Tan in agreeing to plead guilty and avoiding unnecessary costs for witnesses and the Society, factors which the cases have recognized. He said that the purpose of discipline was not to punish the Member but to protect the public and to maintain confidence in the profession. He explained that with the two (2) weeks of suspension Ms. Tan experienced from her law firm, and the time that has elapsed between then and the time of this hearing, the provision of the joint recommendation making her ineligible to apply for membership until November 2022 she will have a total two years of ineligibility, consistent with the provisions of *Law Society Rule 5-28.1(2)*.
49. He further submitted that given the various mitigating factors applicable in this case, including this being a first offence, that Ms. Tan is a relatively recent immigrant to Canada, that she was having to meet CPLED obligations and a heavy workload during the relevant time period, and experienced a series of adverse medical incidents at the same time, and that the client had not ultimately suffered any permanent adverse consequences from Ms. Tan's misconduct, the two year period of "suspension" is sufficient and appropriate, especially in conjunction with the other provisions in the joint recommendation.
50. Mr. Kravetsky referred to the facts of these cases as unusual in that the subject of the proceedings is an articling student rather than a lawyer, but argued that the same principles of integrity apply to students as they do to lawyers. In response to Mr. Wolson's submission that students misleading their principals and/or clients as to the progress of the matters on which they are working is a common occurrence and usually handled internally within the law office, Mr. Kravetsky argued that this just underscores the importance of general deterrence in this rare and very serious case where the student has come before the Discipline Committee, but maintained that the serious consequences set out in the joint recommendation meet that need for general deterrence.

Submission on Behalf of Ms. Tan:

51. Mr. Wolson agreed that his role, like that of Mr. Kravetsky, was to convince the panel that the joint recommendation, if adopted by the panel, would not bring the administration of discipline or the Society into disrepute. He pointed out that the recommendation was negotiated between two very experienced counsel, with a combined total of 86 years of practice. By way of additional mitigation, Mr. Wolson noted that Ms. Tan was 32 years old, had exhausted her savings in pursuing her education and in defending these charges. She had passed the NAC requirements for accreditation of her University of London law degree and had obtained an additional degree. During the pertinent period in 2020 when the misconduct occurred, Ms. Tan was stressed by work, CPLED and a medical issue that involved unforeseen complications, making her less able to meet deadlines. In addition, she was having marital problems through this period that ultimately led to her divorce. Like Mr. Kravetsky, Mr. Wolson applied the mitigating factors from Casey and *Ogilvy* and pointed to many that applied to Ms. Tan, while acknowledging that the repetition of the lies to many people was an aggravating factor that warranted this unusual prosecution of an articling student. He urged the panel to accept the joint recommendation, consistent with the principles in *Anthony-Cook*.

Decision:

52. This panel is obliged, pursuant to *Law Society Rule 5-96(5)*, to make and record a resolution stating which, if any, of the acts or omissions stated in the charge have been proven to the satisfaction of the panel and further, whether or not, by the acts or omissions so proved, the member is guilty of professional misconduct. In this case, upon review of the evidence before it, the panel is of the view that all of the acts or omissions stated in the Citation have been proved and constitute professional misconduct.
53. As to disposition, the panel is prepared to accept the joint submission as contained in the Agreed Statement of Facts and set out above. The panel feels itself bound by the principles in the *Anthony-Cook* case cited above that oblige a panel to follow a joint recommendation except in the most exceptional circumstances. The panel feels that the proposed disposition is well within the parameters of what is fair and reasonable, and certainly not excessive, and will not bring the profession into disrepute or otherwise be contrary to the public interest.
54. Accordingly, this panel hereby orders that:
1. Ms. Tan's admission as a lawyer be deferred until no earlier than November 17, 2022;

2. Prior to her admission, Ms. Tan shall have submitted a fresh Application for Admission and will thereafter comply with such conditions, if any, as may be imposed by the Director of Admissions arising from her absence from active practice and any other information not presently known to the Society (subject always to her rights of appeal from any decision of the Director);
3. Ms. Tan shall, within the three months before or three months after she begins to practise, successfully complete, at her own expense, a course of study in the area of professional ethics and responsibility acceptable to the Society, which course may consist of participation in one or more programs;
4. Ms. Tan shall, for a minimum period of one year from the start of practising, work in a firm or other employment situation acceptable to the Society and under the supervision of a lawyer within the firm or entity acceptable to the Society who shall undertake to the Society that they will review and approve all of Ms. Tan's work and report to the Society any breaches by Ms. Tan of *The Legal Profession Act*, the *Rules of The Law Society of Manitoba* or the *Code of Professional Conduct*;
5. Ms. Tan shall not, for a minimum period of one year, personally receive or disburse trust funds or otherwise operate a trust account;
6. Until admitted as a lawyer, Ms. Tan shall not work as a legal assistant or in any other capacity for any lawyer, law firm or in-house or other legal service provider unless the employer is approved by the Society and unless the lawyer or a lawyer within the law firm or other provider has provided an Undertaking and Acknowledgment by which the lawyer:
 - a. acknowledges that they are aware of the charge and conviction in this matter, including having read the Citation and Statement of Agreed Facts;
 - b. undertakes that Ms. Tan will not be held out as a lawyer, law student or articling student or otherwise identified in any way that suggests that she is qualified to act as a lawyer, including by any reference to any law degree or legal training;
 - c. undertakes that they will directly supervise Ms. Tan as required by Rule 6.1-1 of the *Code of Professional Conduct*;
7. Where a minimum period is expressed, that condition may thereafter be removed or varied by the Chief Executive Officer of the Society if it appears appropriate to do and is recommended by Ms. Tan's supervisor; and

8. Ms. Tan shall pay \$5,000 to the Society as a contribution to the costs of the investigation and prosecution of these charges.
55. The panel commends counsel for the expeditious resolution of this matter and for the excellence of their submissions.

DATED this 5th day of November, 2021.


Grant Mitchell, Q.C. (Chair)


Helga Van Iderstine


Miriam Browne