

人物誌 Portrait



藍德業資深大律師 Mr Douglas LAM Tak-yip, SC

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Member of the Independent Police Complaints Council and Chairman of the Legal Committee
行政上訴委員會暫委主席
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監管局成員藍德業資深大律師 Mr Douglas LAM Tak-yip, SC Member of the EAA

本期《專業天地》專訪了監管局成員藍德業資深大律師，與各位持牌人分享他作為審理過不少研訊的紀律委員會成員，對地產代理的守法情況有何看法。

In this issue of *Horizons*, we interview Mr Douglas LAM Tak-yip, SC, member of the EAA, to share with licensees his views on the compliance of estate agents as a member of the Disciplinary Committee who has judged numerous inquiry hearing cases.

問：根據你在紀律研訊小組中的經驗，您認為地產代理應該糾正或改善的最常見問題是甚麼？

Q: Based on your experience in sitting on the inquiry hearing panel for disciplinary cases, what are the most common problem(s) you think that estate agents should correct or improve?

答：基於香港樓市快速發展的特質，香港的地產代理業務有可能是世界上最具挑戰性和競爭最激烈的。在一手物業市場中尤其如此，正如任何曾經歷過一個受歡迎新樓盤開售情況的人都可以證明這一點。而正因為生意競爭激烈，也意味着地產代理有時為了貪一時方便和加快速度（在大多數情況下都是這樣），便可能想到要鋌而走險。我認為地產代理（尤其是入行資歷較淺的）必須明白，這些經過多年來慎重考

A: Given the fast-moving nature of the property market in Hong Kong, the real estate agency business in Hong Kong is probably amongst the most challenging and competitive in the world. This is especially so in the first-hand property market, as anyone who has had the experience of going to the sales release of a popular new development will attest. The competitive nature of the business also means that there will sometimes be a temptation on the part of agents to cut corners, if only (in most cases) merely for purposes of perceived convenience or expedience. I think it is important for estate agents, especially those who are newer to the industry, to understand that the rules and code on conduct have been carefully thought out

慮和優化的規定和守則，其實是為了保護地產代理和客戶雙方、甚至是整個行業的利益而訂立的。

問：你對現時向地產代理施行的懲處水平有何看法？你認為對從業員違規情況有足夠的阻嚇作用嗎？

答：我認為重要的是要理解因為每宗個案的情況都有所不同，故對每宗個案所施行的懲處水平也存在着一定的靈活性。當然，為了保持一致性，紀律委員會會參考過去類似性質案件的判決。然而，紀律委員會同時也考慮多項因素來決定每宗個案的懲處水平，包括違規的嚴重程度、同一地產代理過去有否類近違規紀錄、業界的最新手法及求情因素等。總的來說我感到滿意，至今所施行的懲處水平已達到鼓勵業界守法循規的預期效果。

問：作為資深大律師和各種法律及紀律委員會的成員，你在審理個案並作出判決時，會考慮哪些最為重要的因素？

答：公正、客觀、對事實的全面理解、以及採取適用的原則，是審理任何個案的關鍵因素。以開放的心態去審理研訊也很重要。在閱讀個案文件後，很多時便會對個案產生一種看法。然而，有趣的是看到人們在與個案相關人士會面、並親自聽取他們的作證後，如何對個案的觀感產生變化。除了為每宗個案作出判決外，紀律委員會還有一項重要職能，就是為通常會成為監管局證人的地產代理客戶提供一個被聆聽的機會。雖然他們的申訴可能並不總是與監管局處理的投訴直接或完全有關，但重要的是紀律委員會聆聽他們的聲音，因為他們才是業界服務的最終使用者。

and refined over the years, and to appreciate that they are for the protection of both the estate agent and the client as well as to the benefit of the industry as a whole.

Q: What are your views on the current level of sanctions for estate agents? Do you think there is a sufficient deterrent effect on malpractice among practitioners?

A: I think it is important to understand that there is considerable flexibility to the level of sanctions applied in each case, as the circumstances of each case are different. Of course, to maintain consistency, the Disciplinary Committee is guided by past decisions on cases of a similar nature. However, the Disciplinary Committee takes into consideration a number of factors to tailor the level of sanctions to each case, including the seriousness of the breach, the existence of previous breaches of a similar nature by the same estate agent, recent trends in the industry and the existence of mitigating circumstances. On the whole, I am satisfied that the level of sanctions that have been applied has achieved the desired effect of encouraging compliance.

Q: As a practising Senior Counsel and member of various legal and disciplinary committees, what factors would you consider are the most important when you hear a case and decide its result?

A: Fairness, objectivity and a thorough understanding of the facts and the principles to be applied are critical factors for the hearing of any case. It is also important to approach the hearing with an open mind. There is often a temptation to form a view of a case merely from reading the papers. However, it is fascinating to see how one's impression of a case evolves after actually meeting the people involved in the case and hearing their evidence first hand. In addition to deciding the result of each case, the Disciplinary Committee also performs an important function of providing an opportunity for the clients of the agent in question, who will often be witnesses for the EAA, to be heard. Whilst their grievances may not always be directly or wholly relevant to the complaint by the EAA, it is nonetheless important for the Disciplinary Committee to lend a patient ear, as they are the ultimate users of the services provided by the industry.