

Hong Kong

Called to the Bar: July 10, 1980

Voluntarily ceased membership: January 1, 2000

Discipline hearing panel: July 21 and August 8, 1997, October 27, 1999 and February 3, 2000

Majority reasons: G. Ronald Toews, Chair and Peter J. Keighley

Dissent (*findings of fact*): Russell S. Tretiak, Q.C.

Mark L. Skwarok for the Law Society

Robert D. Gibbens, for Mr. L

Hearing report indexed as [1999] LSBC 43

Summary

Mr. L filed two incorrect proofs of claim on behalf of his sister in a bankruptcy proceeding when he ought to have known that these claims were incorrect; he did this recklessly and without caring whether the claims were correct or not. He further claimed interest on them without turning his mind to whether interest could in fact be charged. In subsequent litigation involving the bankrupt company, Mr. L filed affidavits that contained incorrect information in support of one of his sister's claims. Mr. L's conduct arose in relation to his business activities and he was not practising as a lawyer during this period. The panel found that his conduct amounted to conduct unbecoming a member of the legal profession and ordered that he pay a \$10,000 fine and costs of the hearing.

Facts

In 1982 Mr. L became President, CEO and a director of WV Ltd., a B.C. company which produced multicultural television programming. As the company was experiencing financial difficulties in 1983, Mr. L asked his sister (also a director at that time) to assist in locating additional funding. His sister approached a wealthy Hong Kong businessman who did not wish to invest, but did provide a \$30,000 donation to WV Ltd.

In 1984 a dispute arose within WV Ltd. which resulted in Mr. L losing effective control of the company and also resulted in litigation. In August, 1984 the company went into receivership and in November went into bankruptcy.

Mr. L filed two incorrect proofs of claim in the bankruptcy proceedings on behalf of his sister. In the original claim filed in 1984, Mr. L asserted that WV Ltd. owed a debt of \$30,000 to his sister on the basis that the \$30,000 was an indirect loan she had obtained

from the Hong Kong businessman for the company. Mr. L did so without caring whether he had correctly characterized the situation. In fact, the \$30,000 was a donation to WV Ltd., and was not a loan.

In the second (amended) proof of claim in 1985, Mr. L asserted that WV Ltd. owed his sister \$15,000 as a 50% finder's fee for having solicited the \$30,000 donation for WV Ltd. In fact, while there had been some discussion of a finder's fee among those involved in WV Ltd., there was no specific agreement that would justify making a claim under the *Bankruptcy Act*. Mr. L asserted this claim as a fall-back position should the full \$30,000 not be construed as a loan.

A majority of the hearing panel found that Mr. L filed these incorrect proofs of claim in the bankruptcy proceedings when he ought to have known that they were incorrect. He did this recklessly and without caring whether the claims were correct or not in the hope of salvaging something from the bankruptcy. By describing the claims as he did, he ignored the warnings on the bankruptcy claim form and the duties of truthfulness and candour the Law Society expects of its members. Mr. L further claimed interest on the two claims without turning his mind to whether interest could be charged.

(Mr. Tretiak dissented from the majority of the panel by stating he was satisfied that Mr. L knowingly filed the false proofs of claim.)

In the subsequent litigation relating to WV Ltd., Mr. L swore two affidavits containing incorrect information in support of his sister's claim for a finder's fee.

Mr. L's conduct arose in relation to his business activities and he was not during that period practising as a lawyer. Mr. L voluntarily withdrew from membership in the Law Society in January, 2000.

Decision

The panel found that Mr. L's conduct did not amount to professional misconduct in these circumstances. There was, however, a clear public and professional interest in discouraging conduct of this nature just as clearly as there was a substantial likelihood that public knowledge of such conduct would harm the integrity, standing and public perception of the profession as a whole. Accordingly, the panel found that Mr. L conducted himself in a manner unbecoming a member of the legal profession.

Penalty

The hearing panel noted that both counsel and Mr. L were in agreement with respect to the appropriate penalty range. The panel ordered that Mr. L pay:

1. a \$10,000 fine; and
2. costs of the discipline proceedings.

Discipline Case Digest — 2000: No. 8 April (L)