

Vancouver, B.C.

Called to the Bar: May 10, 1977

Discipline hearing panel: February 22, 1993 and September 28, 1993
C.O.D. Branson, Q.C., chair, R.S. Tretiak and A. Howard

Benchers: December 20, 1993

A.G. Henderson, Q.C., for the Law Society
Mr. Elias, on his own behalf

Summary

The Benchers found that the member was guilty of professional misconduct by offering to introduce a client to persons in the Philippines who had \$10 million U.S. in cash that they wished to transfer out of the country, without the member first satisfying himself that the transaction was legitimate. In the circumstances, he should have been reasonably suspicious that illegal activities were involved under either Canadian or Philippine law. The Benchers, in making the finding of professional misconduct, overturned a citation dismissal by a discipline hearing panel.

Facts

In 1991 a London banker contacted the member to tell him of people in Manila who had U.S. funds they wished to transfer out of the Philippines. The banker asked whether the member had clients who would be interested in acquiring the funds.

The member wrote to a Taiwanese trade-business client, stating:

We have today been contacted by London bankers regarding a client in Manila wishing to transfer \$10 million U.S. in cash from Manila. Apparently, all of the cash is in small denominations of \$50 and less and is currently created [*sic - crated*] for shipment. We were assured that the money was not acquired in either drug or arms dealings but was in fact accumulated over time in the brothel business. We thought your fishing clients might be the appropriate party to acquire this amount of cash for their operations ...

The member wrote this letter on the basis of a single telephone call with the London banker, and he had the intention of making further inquiries later. At some point, the member anticipated that he would be involved in transferring the money from the Philippines to Hong Kong for the fishing clients who would receive the funds at a discount. Though the member had further conversations with the London banker, the transaction never came to fruition because the persons in Manila backed out.

The Law Society issued a discipline citation against the member in May, 1992.

The discipline hearing panel found that the member knew when he wrote his letter that the \$10 million was accumulated over time in the brothel business. The panel could not find, however, that the member was aware prostitution was a crime in the Philippines, though he should have been on notice of some unlawful activity under Philippine law.

The panel could not find that the member's involvement in the transaction amounted to an attempt on his part to assist another person to transfer money that he knew or ought to have known was obtained as a result of a commission of an enterprise crime, contrary to the laundering provisions of the *Criminal Code*. Nor was the panel able to find that the member offered to assist in the transfer of the money where he knew or ought to have known that the money was obtained or derived directly or indirectly through the commission of criminal offences in the Philippines.

Decision and Appeal

The discipline hearing panel found that the member was not guilty of professional misconduct. The Discipline Committee appealed that verdict to the Benchers, pursuant to section 48 of the *Legal Profession Act*.

The Benchers found that, where the circumstances of a proposed transaction are such that a member should be reasonably suspicious that there are illegal activities involved under Canadian law or laws of other jurisdictions, it is professional misconduct to become involved until such time as the member has made enquiries to satisfy himself or herself on an objective test that the transaction is legitimate. In this case, had the member enquired, he would have learned that the funds were the proceeds of crime in the Philippines. It is not sufficient that he intended to enquire before proceeding further; he should have enquired before offering to assist in the transaction by introducing the parties.

The Benchers concluded that the member's conduct constitutes professional misconduct and conduct unbecoming a member of the Society.

Penalty

The Benchers found that, though the member intended to check on the legitimacy of the transaction, he failed to do so before he took the initial step of offering to introduce the parties (as minimal as that step was).

Law Society counsel noted that, as the member had no disciplinary record and this was the first case of its kind before the Benchers, a reprimand would be an appropriate penalty.

The Benchers ordered that the member be reprimanded.

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