

Misappropriation of Trust Funds

FRANK CHOI-KONG LAM

Vancouver, B.C.

Called to the Bar: September 11, 1984

Mr. Lam was a sole practitioner practising in Chinatown with a very busy solicitor's practice. The burden and strain of practising on his own motivated Mr. Lam to join in partnership with two other lawyers in March, 1987. Under the partnership agreement, all of the partners' liabilities and assets were to belong to the new firm, all active income of each partner was to be treated as income of the partnership, and firm profits were to be divided among the partners. Mr. Lam carried on a very busy solicitor's practice and the partners also agreed that the member should be encouraged to promote and obtain immigration work for the firm.

In December, 1987 Mr. Lam took a business trip, partly financed by the firm, to Hong Kong and Taiwan to seek out immigration work. On his return, the member announced that his trip had been a great success and that business was forthcoming.

The member made a second trip to Hong Kong and Taiwan in June, 1988 and once again indicated he had been successful.

In September, 1988 the member announced that he was leaving the partnership. On the firm's dissolution, he and his partners signed an agreement whereby all work-in-progress and accounts receivable originating during the partnership were to be divided in the same proportions as before dissolution.

Between March and April, 1989 Mr. Lam received \$48,000 and potentially could have received as much as \$72,000 from nine immigration clients who had retained his services while he was a member of the partnership. Although the funds belonged to the partnership, the member deposited the funds ultimately received to his own personal and general bank accounts. He made no disclosure of this money to his former partners.

On March 27, 1989 the member told the accountant who was preparing the partnership's Form 47 report that he did not hold any trust or other money on behalf of the partnership. On April 4, 1989, when confronted by his former partners about a file that had come to their attention, the member confessed to having received \$5,000 respecting that file. He agreed to pay this sum into the old partnership's trust account. He then wrote a letter to the partners, received on April 6, 1989, in which he disclosed money received on four more files. He enclosed cheques of \$5,307.70 and \$8,846.15, which represented those partners' shares.

Mr. Lam did not make full disclosure of money received or forthcoming from immigration clients of the partnership until April 20, 1989. He thereafter made restitution to the firm.

Mr. Lam was and is a very active member of the Chinese community and actively involved in the affairs of his church. At the time of the events in question Mr. Lam was under tremendous emotional strain as a result of his workload and the recent break-up of the partnership. He admitted, however, that he was guilty of professional misconduct and he asked permission to resign effective February 15, 1990.

On January 15, 1990, the Standing Discipline Committee accepted the member's admission of a discipline violation, on his undertaking to:

1. resign from membership in the Law Society and cease practising law on or before February 15, 1990;
2. provide to the Law Society all closing particulars relating to his practice on or before February 15, 1990;
3. not apply for reinstatement to the Law Society for two years;
4. not apply for membership in any other law society or bar association without first advising the Law Society of British Columbia in writing of his intention to do so;
5. not allow his name to appear on the letterhead of a lawyer or law firm without the consent of the Law Society;
6. not be employ by a lawyer or law firm in British Columbia without the consent of the Law Society;
7. pay the costs of the Law Society's spot audit of his practice on or before February 15, 1990.