

2013 : No. 02 Summer

Vivian Chiang

Vancouver, BC

Called to the bar: May 17, 1996

**Bench Review** : September 30, 2010

**Benchers**: Glen Ridgway, QC, Chair, Joost Blom, QC, Leon Getz, QC, Benjimen Meisner, Lee Ongman, Gregory Petrisor and Catherine Sas, QC

**Report issued** : December 20, 2010 (2010 LSBC 29)

**Counsel** : Henry Wood, QC for the Law Society; Vivian Chiang appearing on her own behalf

**BC Court of Appeal decision** : January 15, 2013 (2013 BCCA 8)

## Background

The Law Society issued a citation to Vivian Chiang alleging four counts of professional misconduct. One allegation was withdrawn, and the October 2008 hearing proceeded on three allegations of acting contrary to the duty of an officer of the court or misleading the court.

The hearing panel issued its decision, dismissing the remaining three allegations on June 17, 2009 (facts and verdict: [2009 LSBC 19](#); [discipline digest: 2009 No. 3 Fall](#)).

The Discipline Committee sought a review of the decision to determine if the panel was correct in dismissing the allegations and not finding that Chiang's conduct constituted professional misconduct.

## Decision of the Benchers on review

### Allegation 1

Allegation 1 asserted that Chiang failed to advise the court on March 11, 2005 that she was appearing as counsel or was a member of the Law Society.

The Benchers agreed with the conclusion of the panel that Chiang was under no obligation as an officer of the court to disclose her status as a member of the Law Society. There was no evidence that Chiang, by reason of her omission to disclose her status, could or did obtain any material advantage or that, if the judge was under a misapprehension about her status, that misapprehension was material to anything that transpired in court.

However, it seemed to the Benchers that the panel grounded its conclusion, at least in part, on the absence of any authority. When the question to be decided requires a fact-specific inquiry as to whether a given pattern of conduct constituted a "marked departure from the conduct the Law Society expects of its members," the absence of prior authority on the point cannot be determinative of anything.

### Allegation 2

Allegation 2 asserted that, while appearing in court on March 15, 2005, Chiang proceeded to seek relief in

respect of a portion of the Notice of Motion for which short leave had not been granted and while there was a specific order to the contrary.

A majority of the panel concluded that the evidence did not justify a finding of professional misconduct.

In the minority's view, however, Chiang allowed her personal financial interest in her client's business to overcome her professional judgment. As a result of that lapse, she attempted to obtain an order which she knew she did not have approval to seek. Misleading the court in this manner represented a marked departure from behaviour that the Law Society expects of its members, and, therefore, the minority would have found that Chiang had committed professional misconduct.

The Benchers agreed with the minority's analysis and conclusions. The Benchers determined that Chiang had committed professional misconduct and referred the matter back to the panel to consider appropriate sanctions.

## Allegation 4

Allegation 4 asserted that, when Chiang appeared in court on June 16, 2005 on behalf of her client, she advised the court that counsel for one of the defendants had consented to an adjournment when he had not, which may or did have the effect of misleading the court.

The Benchers agreed with the unanimous view of the panel that Chiang's conduct in allegation 4 did not amount to professional misconduct.

### **court of appeal**

On her appeal to the Court of Appeal, Chiang alleged that the review panel misapprehended the facts. In the court's view, the review panel had accepted the facts as found by the hearing panel, but determined, as they were entitled to do, that stress and inexperience did not excuse Chiang's deliberate and misleading conduct.

Chiang did not persuade the Court of Appeal that the decision of the -review panel was unreasonable and her appeal was dismissed.

*Vivian Chiang has applied to the Supreme Court of Canada for leave to -appeal the decision of the Court of Appeal.*