

2015 : No. 04

Vivian Chiang

Vancouver, BC

Called to the bar: May 17, 1996

Bench Review: September 12, 2014

Benchers: David Mossop, QC, Chair, Haydn Acheson, Thomas Fellhauer, Dean Lawton, Sharon Matthews, QC, Herman Van Ommen, QC and Tony Wilson

Decision issued : November 10, 2014 (2014 LSBC 55)

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

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 One allegation was withdrawn, and the October 2008 hearing proceeded on three allegations of acting contrary to the duty of an officer of the court or misleading the court.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 dismissed the remaining three allegations (2009 LSBC 19; discipline digest: 2009 No. 3 Fall). One member of the panel dissented with respect of one of the allegations and would have found that Chiang had committed professional misconduct.

A Bench review panel agreed with the minority decision, found that one of the three allegations amounted to professional misconduct and referred the matter back to the hearing panel to consider appropriate sanctions (2010 LSBC 29; discipline digest: 2013 No. 2 Summer).

Chiang appealed to the Court of Appeal; the appeal was dismissed on January 15, 2013 (2013 BCCA 8).

Chiang applied to the Supreme Court of Canada for leave to appeal the decision of the Court of Appeal; the application was dismissed on June 13, 2013 (No. 35279).

A hearing panel issued a decision on disciplinary action on September 25, 2013 (2013 LSBC 28; discipline digest: 2013 No. 4 Winter). Chiang was ordered suspended for one month and assessed costs in the amount of \$10,000.

Chiang sought a review of the decision on disciplinary action. A stay of proceedings was issued on November 4, 2013 (2013 LSBC 30; discipline digest: 2013 No. 4 Winter).

On April 25, 2014, Chiang submitted an application that the record before the review panel must include the transcripts and submissions of every proceeding in prior hearings. Her application was denied (2014 LSBC 26). The facts that caused the finding of professional misconduct were no longer available for review as a higher court had already determined that issue. The transcript and submissions of the first review hearing were not relevant to the matter before the current review panel.

The review hearing on disciplinary action was set three times on March 31, July 21, and September 12, 2014. Prior to each review hearing, Chiang made an application for adjournment that was denied (2014 LSBC 10, 2014 LSBC 28 and 2014 LSBC 43). Subsequent to each decision and on the eve of each review hearing, Chiang renewed her application for an adjournment on the basis that she was seeking the assistance of counsel, she had recently retained counsel who needed more time to prepare for the hearing and, lastly, she had parted ways with her counsel and was without counsel to represent her at the review

hearing. Chiang was granted the adjournment on the first two occasions. The Benchers decided that the September 12 review hearing would proceed with or without Chiang having counsel. The lengthy history of adjournments and missed deadlines emphasized the need for this matter to be heard. Chiang was capable of representing herself as she had previously done so in all of the Law Society proceedings as well as in the Court of Appeal and in the Application for Leave to the Supreme Court of Canada.

Decision of the Benchers on review

The Benchers rejected Chiang's request to review all decisions relating to the citation. This review was limited to the decision of the hearing panel issued September 25, 2013.

The panel had ordered a suspension of one month plus costs of \$10,000. Chiang submitted that the disciplinary action was too harsh.

Chiang asserted that no one had been harmed by her actions. In the Benchers' view, the panel correctly found that the parties in the litigation were negatively affected. They faced additional unjustified costs due, in part, to Chiang's misleading behaviour.

Chiang took the position that she had suffered enough. She stated she was ordered to pay costs in the court proceeding, her company went into bankruptcy, and she was humiliated by publication of the reasons concerning this matter. The Benchers found nothing in the record verifying that Chiang was held personally liable for costs. Although publication by the Law Society that a lawyer has committed professional misconduct is painful and humiliating, it is a normal incident of the disciplinary process and not a basis for determining that the disciplinary action imposed was inappropriate.

Chiang claimed that other lawyers found to have committed similar acts had received less severe sanctions. She was found to have intentionally misled the Court while motivated by her financial interest. In the Benchers' view, when one considers the proper characterization of her misconduct, it was clear that she was not treated differently from other lawyers who have committed similar misconduct.

Chiang suggested that a less punitive approach ought to have been taken by the Law Society. She said that a conduct review would have been more helpful and more appropriate. The panel did not have the jurisdiction to consider such an approach nor do the Benchers on review.

In considering the appropriateness of the disciplinary action imposed in this case, the Benchers considered these primary factors:

- (a) the misleading conduct was intentional;
- (b) the conduct was motivated by financial interests;
- (c) Chiang still failed to recognize the extent of her misconduct.

The Benchers agreed that the disciplinary action imposed was appropriate and dismissed this application for review with costs.

Chiang has filed a Notice of Appeal in the BC Court of Appeal.