

CANADA / JUDGMENT

Ho and Chow v. Ming Pao Newspapers

2000 BCSC 8

COURT

Supreme Court of British Columbia

DECIDED

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2000 BCSC 8

Citation:

Ho and Chow v. Ming Pao
Date: 20000105
2000 BCSC 8
Docket: C972398
Registry: Vancouver
IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

JOHN HO and QUON CHOW
PLAINTIFFS

AND:

MING PAO NEWSPAPERS (WESTERN CANADA) LIMITED,
TSUNG TSIN ASSOCIATION, and K. WOO YAU also known as
JOHN CHENG YAU and KUO-HUN CHIU
DEFENDANTS

AND:

TSUNG TSIN ASSOCIATION
THIRD PARTY

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE THACKRAY

Counsel for the Plaintiffs:

J. Lew

Counsel for the Defendants,

Tsung Tsin Association and

K. Woo Yau and for the Third Party:

K. Specht and

E. Sahmet

Counsel for the Defendant,

Ming Pao Newspapers (Western Canada) Limited:

P. Koh

Place and Date of Hearing:

Vancouver, B.C.

October 18, 20 - 22,

25 - 28;

November 1 - 4,

10, 12, December 13 - 17, 1999

[1] The plaintiffs say that the defendant Association was being run by a group of "rogues". The defendants (other than the Ming Pao Newspaper) say they were doing nothing more than defending themselves against two "neurotics". Those submissions set the tone for this lawsuit in which the plaintiffs claim that they were defamed by a notice that appeared in the Ming Pao newspaper on March 9, 1997. The defendant Association counter-claims that it was defamed by a letter written to the Registrar of Companies by the plaintiffs, by statements made to Canada Trust and by notices published in the Sing Tao Daily newspaper.

[2] The notice placed in the Ming Pao newspaper reads:

TSUN TSIN ASSOCIATION

NOTICE OF DISCHARGING MEMBERS FROM THE SOCIETY (1) The members of this Society, John Ho (HO, Ho-Wei) and Q Chow (CHOW Chun) were discharged from this society on March 2 at an emergency meeting of this Society. (2) Regarding their and related people's various illegal activities which have caused great damage to the reputation of this Society, now in accordance with the Law, a legal action against them is in process. Issued by CHIU, Kuo-Hun Guest Chairman of Vancouver Tsun Tsin Association March 7, 1997

[3] The defendant Mr. John Cheng Yau admits that he is also known as K. Woo Yau and that the translation of the signature as "Chiu, Kuo-Hun" is appropriate.

[4] The plaintiffs say that the statements in the notice are "false and malicious". The plaintiffs also contend that they did not commit illegal activities. The plaintiffs submit that their reputations have been damaged, that they have been put to embarrassment and that business interests have been dislodged. The defendants plead the truth of the notice.

- [5] The plaintiffs concede that a meeting was held on March 2, 1997 but say that it "fell far short" of expelling them from the Society. The "emergency meeting" was attended by 34 members. The plaintiffs were not in attendance. Minutes of the meeting were kept by Mr. Kam Loong Law, who was called as a witness in the trial under the name Kum Lung Lo. The minutes were written in Chinese and translated into English. Two English versions were entered as exhibits. The preamble records that certain incidents and rumours had seriously affected the reputation of the Association.
- [6] The minutes further record discussion about advertisements in the Sing Tao Daily containing false assertions about the Association. Other matters of discussion were the changing of locks at the Association premises by the plaintiff Chow, fraudulent use of the Association seal by the plaintiff Ho, and the threatening of Mr. Lo by the plaintiffs.
- [7] There is then a minute of a resolution expelling the plaintiffs from membership in the Association, appointing an auditor, cancelling voting by mail and calling a general meeting. One difference in the drafts is in regard to the mail-in vote resolution. Mr. Lo testified that the amended version should be read as a resolution to not use mail voting "from now on".
- [8] The launching pad in the fray is the plaintiffs' letter dated November 25, 1996 addressed to the Registrar of Companies. The version that appears in the pleadings is as follows:

November 25, 1996

Mr. John Power Registrar of Company 2nd Fl. 940 Blanshard St. Victoria, B.C. V8w 3E6 Dear Mr. Power: RE: Complaint against the existing Board of Directors of Tsung Tsin Association (542 Keefer St. Vancouver) We are a group of Tsung Tsin Association members. We have the following complaints against the existing Board of Directors of the Association. To protect the interest of the public, we hope that you will investigate the matter and help us to remove them and re-elect another board of directors. 1. The election of the Board of Directors is illegitimate. They sent ballots to members by mail so has allowed room for dishonesty. All the members should vote in person at the venue of the Association. The right for voting should have given to those who present in the annual general meeting. (Annex 1) 2. Since 1986, brothers Peter and Stephen Chong have been holding onto the seat of President of the Association for ten years. However, in the upcoming election for Board of Directors 1997, Peter Chong will still be the presidential candidate. On the other hand, in the election in 1990, Peter Chong did steal 250 ballots in order to help his elder brother Stephen getting the votes and take the position of President. Stephen was then a new member; few people knew him. Without the stolen ballots he could not win the election. (Annex 1) 3. Right after Stephen Chong has taken the office, he starts to buy and sell cemeteries to members, and makes big profit. But he has never filed any income tax return to Revenue Canada which is also unlawful. 4. According to the information provided by a member Chau En Tsen, Stephen Chong, act in collusion with Chau Chee Yung, embezzling the money for cemeteries to dabble stocks. (Annex 2) 5. According to the letter from a member Dinh Lein Lee, he has paid for seven cemeteries for several months but has never received the deeds. Another lady Kwei Sim Ho also has been to the Association several times asking for the deeds of the

cemeteries which she has already paid in full some time ago. (Annex 4) 6. A member Hung Guo Lin bought a cemetery for \$1,000 in 1995, but the Association's accounting staff Chau En Tsen said that, complying to the instruction of Chau Chee Yung, only \$400 had been put into the Association's account. (Annex 4) 7. In 1992, the applications for membership of 157 new members were rejected by Stephen Chong and the membership fee has never been refunded. (Annex 5a & 5b) 8. In 1991, Stephen Chong used the Association's money putting advertisement on newspapers celebrating his Dad's birthday. It cost \$137.39 and \$107 for Sing Tao Newspaper and Ming Pao respectively. (Annex 6a - 6e) 9. Without getting the consent from the Board of Directors nor calling an annual general meeting, Stephen Chong registered the Association in 1992 on his own. However, it is indicated in the Certificate of Incorporation that the Annual General Meeting was held on January 28, 1992 which is not true. Also he has included his relative John F.K. Yang's name in the list of directors of the Association while he was not. (Annex 7) 10. In 1992, while our Election Committee had decided that Stephen Chong should not hold onto the seat of President anymore, but Chong did use some unlawful means getting the position of President again. 11. Stephen Chong sold the title of Honorable President to Tokan Tsang, a criminal offender who had been sentenced to deportation by Canadian Government in 1995 without the consent of Honorable Presidents, Honorable Advisors and members. This has disgraced the reputation of our Association. 12. The financial reports of February, April, June, August and October, 1992 are forge. They show that the expenses for traveling and social activities are \$200 and \$125 respectively and the telephone fee are at least \$167 for each month which are not true. On the other hand, Stephen Chong had not never endorsed any monthly financial reports so as to get away from responsibility. (Annex 8) 13. Stephen Chong changed the Association's constitutions on his own. On the other hand, it is also against our constitution for his not inviting a certain number of Honorable Presidents and Honorable Advisors to Board meetings. 14. The Election of Board of Directors will be held on December 15, 1996. A number of members are nominated. On November 21, 1996, Stephen Chong called a secret meeting involving only eleven members cancelling the name of one of the nominee Lin Fat Leung and replaced with the name of one of his complices. Mr. Leung had advised him not to make profit from selling cemeteries since it is breaching the contract with the memorial society from which we buy the cemeteries. Signature of members [9] The signatures are then appended, written in Chinese. These include the signatures of the plaintiffs. This letter to Mr. Power was accompanied by a further 55 pages of material. It included the annexes referred to in the letter, the Chinese language version of the letter and other material that purportedly supported the substance of the letter.

[10] The defendants plead that the letter sent to the Registrar of Companies was an "illegal act" by the plaintiffs, was defamatory and "seriously affected the reputation of the association and the Board of Directors." The first indication to the Court that the version quoted herein was not acceptable to all parties occurred during the direct examination of the plaintiff Quon Chow. When he was asked to read paragraph 14 of the version set out above, it came out entirely dissimilar. Mr. Chow's translation is as follows:

14. The Chong brothers have been alternating as presidents for ten years. They have been controlling and using the Association for some time. At important meetings they have used people on their side to pass motions. They would not notify people who would not listen to them to attend the meetings. The bad deeds of the Chong brothers are known to everyone. Many members were afraid of revenge from the Chong brothers - they were angry but did not say anything. Outspoken and righteous members and directors were illegally discharged by the Chong brothers. The premises are completely under the control of the Chongs. They do whatever they want and they strive for private gains and conducted illegal activities.

[11] Mr. Chow testified that immediately thereafter is the following:

We hope that the Association can have a fair and legal election. An election that will be participated in by all Hakka members so that no corruption can occur. To elect directors and a president who are truly working for members, who truly serve the Association and benefit society. This will put an end to the situation where the Association is illegally controlled by a few members with the Chongs who do whatever they want for private gain. [12] The Registrar of Companies wrote to the directors of the Association, with a copy to Mr. Ho, on December 10, 1996 and said:

I have received a list of complaints, regarding the manner in which the directors have been managing the affairs of the society. The complainants allege that the directors have repeatedly and knowingly contravened the society's constitution and bylaws and the Society Act (the Act). In addition, they also allege society funds have been embezzled by directors. One of the specific complaints deals with the manner in which the directors are elected. It appears from reading your society's bylaws 26 through 37, inclusive, that the President and the Supervisor are elected by secret ballot at the Annual General Meeting but all other directors are elected by "mailed in" ballots. If the society is using a voting by mail system it will be required to apply for an order from the Registrar under section 7(3)(a) of the Act. I am considering ordering your society to be a reporting society. If a society is ordered to be a reporting society, it is required to file with my office audited financial statements. For my review, I would appreciate receiving the following information:

is the society currently in receipt of any government funding and if so, the name of the funding agency; the number of members in the society; a brief statement as to the manner in which the society is pursuing its purposes; an up-to-date list of members of the society; a brief summary of the current operations of the society; a statement as to whether the society has incurred or will incur a debt obligation within the meaning of the Act; a copy of the latest financial statement; a statement as to whether this society has control of a subsidiary and, if so, particulars must be given; a brief statement as to any limitation placed on the access of records of the society to its members; a concise statement of the circumstances which, in the opinion of the society, justifies or does not justify the making of the order; and, any further information which, in the opinion of the directors, would be pertinent for my review. I would appreciate receiving your reply by no later than January 15, 1997. If I do not receive a reply I will issue the order.

[13] On January 26, 1997 Mr. Peng-Kwan Chiew replied to the Registrar. On February 17 the Registrar informed the Society that considering the large membership "and number of complaints" he was ordering the Association to be a "reporting society". He explained that this meant that the Association must have a professional auditor and an annual audit of its finances. He further informed the Association that it could not use a mail voting system without an order under section 7 of the Society Act.

[14] The Registrar issued an order on February 17, 1997 in the following terms:

I Hereby Order That, pursuant to section 38(1) of the Society Act, TSUNG TSIN ASSOCIATION is a reporting society for the purposes of the Society Act.

[15] Mr. Ho thereby authored a letter to Canada Trust dated February 20, 1997. He and Mr. Chow delivered it personally to Canada Trust. That letter states:

Prior to their election at the end of last year, the Tsung Tsin (Hakka) Association of Vancouver has received correspondence from the Registrar of Companies indicating that the election cannot be conducted by mail. However, the Board of Directors contravened regulations under the Societies Act, and sent out ballot papers by mail. Therefore, the Board of Directors so elected is illegal, and cannot conduct any legal operations. Enclosed herewith is a copy of the correspondence from the Registrar of Companies. I hope your bank will, pursuant to the instruction in the said correspondence, cease the operations of Tsung Tsin Association's bank account and temporarily freeze its operations until you are notified of the formation of a new legal Board of Directors.

Account number: 00044-511176, A/C 522324, A/C 857975, Tsy? 2525659, Tsy? 2641985. Thank you for your co-operation. Tsung Tsin (Hakka) Association Honorary Life President John Ho February 20, 1997 [16] The following notice, authored by several persons including the plaintiffs, was published in the February 21, 1997 edition of the Sing Tao Daily:

IMPORTANT NOTICE Some administrative personnel of Vancouver Tsung Tsin Association recently violated the Provincial Government's Regulations regarding registration of non-profit organization and elected the Board of Directors by mailing election votes. Now we have received a letter from the Provincial Government's Registrar for non-profit organization. The Letter points out that it is an illegal conduct and the election is invalid and it also orders a re-election to be undertaken in compliance with the Non-Profit Organization Act. This is to notify all the members of this Association of this matter. The method and date for re-election will be notified separately. Election Committee of Vancouver Tsung Tsin Association [17] This is the version as translated pre-trial on behalf of the plaintiffs and contained in the pleadings. However, Mr. Ho testified that the notice should read as follows:

Some officers of the Vancouver Hakka Tsung Tsin Association have recently violated the rules of the Registrar of Companies of the Provincial Government. The election of directors was conducted by way of ballot by mail. A letter from the Registrar of Companies of the Provincial Government is now received pointing out that the election is illegal. And indeed voids and orders a re-election to be held in accord with the Societies Act. Notice is hereby given to members of the Association to that effect. A notice in respect to re-election approach and date will be given in due

course. Election Preparation Committee of Vancouver Tsung Tsin Association The addition of the word "Preparation" in the signature caused particular concern and objections from counsel for the defendants.

[18] Another notice was published on February 28, 1997 in the Sing Tao Daily newspaper. It reads:

IMPORTANT NOTICE According to the order issued on February 17 by the Provincial Government's Registrar for non-profit organization, Vancouver Tsung Tsin Association must comply with the Regulation under the Article 38-1 of Non-Profit Organization Act and must hold a new election. This is to notify of this matter as follows: 1. From this day to March 31, registration of all the members and the work of recruiting new members should be undertaken. (1) All new members of this Association must come to the Association to register their names within the time indicated above; Those who have not paid their membership fees should pay for their membership fee at the same time. (2) As for recruiting new members, those, who are overseas Chinese, male or female, over 18 years old, if willing to comply with the Chapter of the Association, can all apply for the membership. An election will be held in accordance with the Election Act of the Provincial Government and the date of the election will be notified later separately. 2. The Association's financial statements in the past years must be reviewed, particularly regarding the cemetery operation. All those who once bought grave spots from the Association, (including Mountain View, Ocean View, keshilan [According to the pronunciation], Surrey, Huali Cemetery) should immediately provide us with detailed information about who bought the grave at what time, where, for how much, receipt number, who was the agent and whether or not a land title was issued in order to do the review work smoothly. 3. Since we received the Provincial Government's Order of S-9441 issued on February 17, all the administrative operations of the Association have become invalid. They will become valid until a new board of directors have been elected and approved by the Provincial Government. By Tsung Tsin Election Committee Mr. Ho's translation of the signatory reads "By the Election Preparation Committee of Tsung Tsin Association".

[19] These notices, the defendants submit, were not authorized by the Association and are false, malicious and defamatory. The defendants also assert that the plaintiffs "directly interfered with the economic interests of the defendant Society" through the letter that they sent to Canada Trust.

EVIDENCE CALLED ON BEHALF OF THE PLAINTIFFS

The plaintiff John Ho

[20] Mr. Ho testified that he was not discharged from the Association and that he was not involved in illegal activities. He said "illegal means very serious matters." He said that if he had been guilty of illegal activities he would have been arrested.

- [21] Mr. Ho testified that the posting of the notice at the Association premises along with pictures of the plaintiff made them look like "prisoners, escaped prisoners, murderers, criminals." Mr. Ho said that his friends laughed at him and that he was told at the Chinese consulate that he would have problems if he applied for a visa. He said that he was in the door business but the allegations caused him to lose all of his credibility. He agreed that the notice did not have any effect on the door business as such but "it affects my reputation, I can't go to China to work."
- [22] Mr. Ho testified that all of the statements contained in the letter to the Registrar are true.
- [23] Mr. Ho testified that he went with Mr. Chow to Canada Trust in February of 1997. They met with a manager and showed her the letter from the Registrar of Companies. They also delivered the letter quoted earlier that was on Association letterhead and imprinted with the Association's seal.
- [24] Mr. Ho acknowledged that the letter from the Registrar said nothing about freezing the Association's bank accounts.
- [25] Mr. Ho testified that the notice of February 21 was written by Mr. Sit Lu Seow but that a large number of people including himself were involved in the drafting. It was signed by the Elections Preparation Committee, which was a committee of about thirty persons. He acknowledged that this committee was not formed pursuant to the constitution or under the by-laws of the Association.
- [26] Mr. Ho said that the allegation that personnel of the Association violated the Government's Regulations is true in that the Association used a mail ballot.
- [27] Mr. Ho defended all of the information in the notice on the basis of truth. He asserted that as a member of the Association he had a duty to the members and to the public to publish the notice to protect the members and the public.
- [28] In cross-examination it was pointed out to him that the notice alleges "illegal conduct" by the Association and that as a result the election is invalid. Mr. Ho said that illegal in that sentence means "to have done something wrong, out of order, not according to rule, not according to procedure." He said that voting by mail was not according to the rules and "similar to illegal."
- [29] The notice of February 28 was also written and signed by the Election Preparation Committee. Mr. Ho said that the motive for its publication was that the Association had held an election by mail that was not in accordance with the rules. Therefore, in order to protect the members and the public the Committee felt it had a duty to publish the notice. Mr. Ho is of the opinion that everything said in the notice is true.

- [30] Mr. Ho was cross-examined on the directive in the February 28 notice that all members must "register their names within the time indicated." He was asked if the Election Preparation Committee was going to accept registrations and accept the registration fees. After repeatedly being asked these questions and as to the authority of the Election Preparation Committee to accept registration money, he answered that "the Association was not acting properly."

The plaintiff Quon Chow

- [31] Mr. Chow testified that he was not expelled and did nothing illegal. He said that "illegal" means "doing things that are wrong." As an example he said that his expulsion from the Association was illegal. In the letter to the Registrar he charged that the Chongs had committed "unlawful" acts and that the election of the Board of Directors was "illegitimate." Mr. Chow said that those words are "quite similar" and "have similarities" to the meaning of "illegal."
- [32] With respect to the allegation that Mr. Chong used Association money to place an advertisement in a newspaper with congratulations to his father on his eightieth birthday, Mr. Chow said that he did no investigation but concluded that because "so many members said it was wrong that I agreed it was wrong."
- [33] It was pointed out to him that he was at a Board meeting at which Mr. Chong thanked the Board for publishing a newspaper advertisement about his father's birthday. Mr. Chow's response was that there was no motion to fund the advertisement and "if it had been properly done the members would not have complained."

Mr. Yee Sooi Wong

- [34] Mr. Wong joined the Association in 1974 and was a director in 1995 and 1996. He said that he asked the Association for details regarding the accounting for the cemetery plots but they were not provided. A similar result occurred when he asked Mr. Stephen Chong for the records.
- [35] Mr. Wong wrote to the Registrar on August 5, 1997 on behalf of a group that called itself the Special Tsung Tsin Association Task Force. Therein it asserts "irregular activities" by the Association and "accounting irregularities". In testimony he said that he was denied access to records to match income with expenditures.
- [36] Mr. Wong further charged in his testimony that a "lot of rich immigrants" made donations to the Association and that he "saw them being made to Stephen Chong." However, according to Mr. Wong, there were no records of these donations.

- [37] Mr. Wong levelled yet another charge against the Association during his testimony. He said that some minutes of the Board were "fabricated". He said that at the Annual General Meeting on December 22, 1996 he made two motions. He asserted that in that some Election Committee members were also the nominees, there was a conflict of interest. The second motion was to compel the Association to produce financial documents. Neither of these motions are in the minutes.
- [38] In a letter dated November 30, 1997 Mr. Chow asked Stephen Chong to produce Association financial records for the "cemetery fund". Mr. Wong testified that there was no response.

Mr. Siew Hong Wong

- [39] Mr. Wong joined the Association in 1994 and was elected a director in 1995. He became the treasurer with a responsibility for the Canada Trust accounts. He testified that there were three accounts. These were for the Association, for the Chinese language school and for the Valley View cemetery. There were three signatories for each account and a transaction required the signatures of two.
- [40] Mr. Wong said that the Valley View records were kept in a book that was stored on a shelf at the Association premises. However, the bankbooks were locked up and not available.
- [41] According to Mr. Wong, the proceeds of cemetery plot sales were deposited into the Valley View account and paid out to the cemetery company within four weeks. The individual deeds would then become available.
- [42] Mr. Wong agreed that the financial statements were approved at Board meetings. Further, that he had not personally seen any misuse of funds from the Canada Trust accounts and that he had no personal knowledge of misappropriation of money.

Mr. Sit Lu Seow

- [43] Mr. Seow joined the Association in 1982, was a director for several years and was the secretary for 1991. He drafted the letter to the Registrar with the assistance of about ten members of the Association. Mr. Seow signed the letter. He explained that the reason for the letter was to address complaints from many members.
- [44] With respect to the allegation that Mr. Peter Chong stole ballots, he accepted this from what had been written by a previous secretary. As to the assertion that Mr. Stephen Chong made a huge profit, his acceptance of this was because Mr. Chong had been involved in sales for about ten years and never disclosed the accounts.
- [45] Mr. Seow placed the advertisement in the newspaper regarding Mr. Chong's father's birthday. He said that this was on the instructions of Mr. Chong but he does not recall any Board approval for the advertisement.

- [46] Mr. Seow's credibility was damaged when he testified that he had first-hand knowledge of the illegal discharge of members. This, he said, came about because he had been expelled in 1991. In cross-examination it was put to him that his "expulsion" was actually a termination of his position as secretary. He conceded the point. Mr. Seow also testified that it was Mr. Stephen Chong, personally, who made the "huge profit". Then there was an adjournment following which Mr. Seow said that it was the Association that made the huge profit.

EVIDENCE CALLED ON BEHALF OF THE DEFENDANTS

Mr. Chau En Tsen

- [47] Mr. Tsen joined the Association in about 1990 and became its "bookkeeper". He still holds that position. He is the alleged author of the letter that charged that "Stephen Chong has embezzled the cemetery money". Mr. Tsen testified that the signature on the letter is not his. He said he did not sign the letter and that the signature is a "forgery".
- [48] Mr. Tsen testified that the Association was not required to file income tax returns.
- [49] He was referred to some of the annual financial statements of the Association. It was pointed out to him that there was nothing in them with reference to Valley View Cemetery or income from mah jong. Mr. Tsen said that the Valley View account was opened only in late 1996, which he thought accounted for it not showing in any statements up to and including 1996. As for the mah jong income, he said that it was included in the Chinese language school account.

Mr. Kum Lung Lo

- [50] Mr. Lo joined the Association in 1991, became an Honorary Secretary in 1992 and a director in 1993. In 1997 he was the Chinese secretary for six months.
- [51] In Mr. Lo's opinion the notices published by the plaintiffs are not true, particularly those portions suggesting that all activities of the Association are void and that a new election is necessary. He said that he was shocked by the notices and by them being published by the Election Preparation Committee which, in his opinion, did not exist.
- [52] Mr. Lo gained the impression that the plaintiffs were behind the notices from talking to members who informed him that the plaintiffs were alleging that the activities of the Association were invalid.
- [53] Mr. Lo authored an "Emergency Notice" dated February 24, 1997. It says that incidents and rumours seriously affected the reputation of the Association and that a special emergency meeting would be held on March 2, 1997. Mr. Lo addressed envelopes, with the enclosure being the Emergency Notice, to all Honorary Presidents and to others and gave them to Mr. Wah Yuen Wong, the ordinary secretary, to mail.

- [54] Mr. Lo testified that at the Annual General Meeting of December 22, 1996 the procedure for expulsion was approved. The minutes of that meeting confirm that there was a discussion regarding "certain individuals" who wrote to the "proper department in the provincial government" about corruption in the executive and supervisory committee of the Association. Further, that the "attack" damaged the unity of the Association. It was "suggested" that the executive and supervisory committee "study and follow up this serious issue." This motion was unanimously approved.
- [55] The significance of this to the plaintiffs is that the by-laws provide that expulsion of members shall be decided upon at a Joint Meeting and then go to the Annual General Meeting. Mr. Lo agreed that the matter of the conduct of the plaintiffs was first discussed at the Annual General Meeting and subsequently at the Joint Meeting.
- [56] Mr. Lo testified that on about February 24, 1997 the Association received notice from a restaurant that one of the Association's cheques had bounced. The suggestion from Mr. Lo was that this was because of the freeze that Canada Trust had put on the Association's account in response to the letter and visitation from the plaintiffs.

Ms. Mabel Chak

- [57] Ms. Chak was and still is a Customer Service Manager for Canada Trust. Mr. Chow and Mr. Ho attended upon her on February 20, 1997 and presented her with a letter of the same date. The letter asked the trust company to freeze the Association's accounts. They told her that the president and others were doing "monkey business".
- [58] When the cheque to the restaurant in the amount of \$10,150 was dishonoured by Canada Trust, some executives of the Association attended at the trust company. Ms. Chak telephoned the Registrar of Companies. As a result of what she was told by the president of the Association and by the Registrar she released the Association's accounts in early March.
- [59] Conversations between the staff of Canada Trust and the executives of the Association ensued and on July 10, 1997 Ms. Chak wrote to the Association. Ms. Chak testified that Canada Trust was satisfied that the Association was doing nothing improper.

Mr. Peter Chong

- [60] Mr. Chong was the secretary of the Association in 1973, the president from 1987 to 1990, a vice president in the early 1980's, and a supervisor in 1983. He testified that the allegations contained in the letter to the Registrar of November 25, 1996 are all false.

- [61] The letter to the Association from the Registrar arrived at a time when the election, planned to be by mail, was already underway. The ballots and the notice of the Annual General Meeting had been mailed out on December 1, 1996, about two weeks before receipt of the letter. The plaintiffs' letter to the Registrar was not sent to the Association but the fact that the Registrar's letter to the Association was copied to Mr. Ho alerted the Association to the identity of the complainant.
- [62] Mr. Chong realized that an election by mail could not be undertaken in the future but thought that the Association could obtain an order approving the election that was underway. The Association consulted a lawyer in this respect. On January 26, 1997 Mr. Chong wrote to the Registrar and said that the Association would be "pleased to comply" if the Registrar required an application for an order.
- [63] Mr. Chong said that he and the executives of the Association thought that the motion passed at the Annual General Meeting of December 22, 1996 plus the expulsion resolution of the Joint Meeting of March 2, 1997 made the discharge of the plaintiffs conform to the by-laws.
- [64] Mr. Chong testified that the financial statements were not designed to show all income and expenditures. They reported only the "general" funds. That is, they did not include such items as the schools accounts or other than the "excess" from the cemetery business. Mr. Chong testified that "this was the method we used before becoming a reporting society." He said that there was no design to mislead.
- [65] Mr. Chong was challenged as to why there was no notice of the meeting of January 1, 1992 at which there were amendments to the constitution and by-laws. (The significance of this being that the plaintiff's allege that there was no notice and that Mr. Stephen Chong amended the by-laws on his own.) Mr. Chong said that there was a notice and that it had been received by him, his relatives and friends. During an adjournment he procured a copy of the notice. (Mr. Seow was then recalled. He testified that the notice produced by Mr. Chong is not the one that he authored. However, he agreed that he took some of the minutes of the meeting and they confirm that the by-laws and constitution were amended by consent.)

Mr. Thomas Tong

- [66] Mr. Tong is a certified general accountant. He was appointed by the Association in 1997. He testified that for non-profit organizations the accounting guidelines are "quite loose." He agreed that the accounting was not done at a level comparable with professional standards.
- [67] The Association owned property on Keefer Street in Vancouver that was "footnoted" in the audited accounts. Mr. Tong said that this was because the Association had owned the property for a long time and did not have records of its value at the time of purchase. He testified that the accounting guidelines approve using a foot-note if the accountant cannot get proper valuation documentation.

REBUTTAL BY THE PLAINTIFFS

Mr. Calvin Tompkins

- [68] Mr. Tompkins is a chartered accountant. He testified that if non-profit organizations have dividends, royalties, rents or interest in excess of \$10,000 in any year they must file an "information return." In that the statements for the Association show that these items exceed that amount, it was required to file a return.
- [69] Mr. Tompkins said that using a cash system for reporting its financial situation was not acceptable for the Association. This, according to Mr. Tompkins, is not in accordance with General Accepted Accounting Principles. (These principles are apparently published in the Canadian Institute of Chartered Accountants' Handbook.) Mr. Tompkins said that all financial statements should show the general account and all "restricted accounts". He said that restricted accounts would include cemetery and scholarship accounts.
- [70] With respect to the Keefer Street property, Mr. Tompkins stated that it is proper accounting practice to use a foot-note if adequate information cannot be obtained. Mr. Tompkins made no investigation of the Association or its finances.

EVIDENCE CALLED BY MING PAO NEWSPAPERS

Ms. Candy S.H. Luk

- [71] Ms. Luk is the advertising manager at the Ming Pao newspaper. She formerly worked for the Sing Tao newspaper. She testified that the market for both papers is the Chinese community and that many read both papers.
- [72] Ms. Luk said that there is a policy of checking the accuracy of the contents of material submitted for publication. As well, efforts are made to satisfy the paper that there is authority in the person who submits the material to publish the contents.
- [73] Mr. Yau attended the offices of Ming Pao on March 7, 1997 and spoke with Ms. Luk. He said that he was the president of the Association and produced his business card. Ms. Luk wanted further documentation and Mr. Yau produced a list of members of the Association on which his name appeared as president. He also provided a Chinese translation of a Provincial Government notice. (The contents make it appear that this was a translation of the February 17, 1997 letter from the Registrar of Companies to the Association.)
- [74] Mr. Yau said that he wanted to have published a notice about two members who had been discharged from the Association who had been carrying out illegal activities. He said that the plaintiffs had interfered with a lock and that they went to the bank to freeze the Association accounts. The bank had done this and cheques had bounced. He further informed Ms. Luk that the illegal actions had affected the reputation of the Association.

- [75] Ms. Luk "felt" that there was a dispute between members and concluded that the plaintiffs had not followed the bylaws. She thought that this amounted to an "illegal" act. Ms. Luk had read the notices in the Sing Tao newspaper wherein the word "unlawful" was used. To her the actions of the plaintiffs were serious and consequently the use of the word "illegal" in the notice seemed appropriate.
- [76] Mr. Yau said there had been an emergency meeting to expel them. The notice that he produced was on Association stationery with an embossed stamp. To Ms. Luk it looked "official". Ms. Luk "believed" Mr. Yau and "trusted him". She showed the notice to her superior who said the contents appeared to be genuine and could be published. Mr. Yau entered into a contract with the newspaper that included an indemnity to the newspaper for any damages assessed as a result of the notice.

DISCUSSION AND CONCLUSIONS REGARDING THE PLAINTIFFS' CLAIM

- [77] I will discuss the plaintiffs claim and the counterclaim under separate headings. However, what is said in each section must be taken into account in both sections.
- [78] The plaintiffs submit that the statements in the Notice of Discharge published in the Ming Pao newspaper are not true. They say that their "discharge" on March 2, 1997 "fell far short" of expelling them as members of the Association. This submission is based upon the Board of Directors having not been legally elected because the election was contrary to the directions of the Registrar of Companies and that the expulsion was not in accordance with the Association's constitution and by-laws.
- [79] The plaintiff's had no difficulty in determining that the election was illegal on the basis of what was said by the Registrar in his letter of December 10, 1996. In that letter he said, in relation to this issue, that "If the society is using a voting by mail system it will be required to apply for an order from the Registrar under section 7(3)(a) of the Act." The plaintiffs published notices in the Sing Tao Daily newspaper in February, 1997 stating that the election was "unlawful" and that the Association "must hold a new election."
- [80] The Association did not consider the Registrar's words as being a prohibition to carrying out the election that was scheduled for December 22, 1996. It continued with the election plans and carried it out using a mail ballot system. This was the system that it had been using for 25 years.
- [81] Mr. Peter Chong testified that he was of the opinion that the Association could complete the election that was underway when the Registrar's letter arrived and subsequently apply for an approving order. Mr. Chong said that he telephoned the Registrar immediately upon receipt of the Registrar's letter of February 17. He testified that "From my discussion with the Registrar, I --- its clear to me that election is okay, but not [in the] future. That was very clear to me."

- [82] Furthermore, counsel for the plaintiffs read examination for discovery evidence of Mr. Chong into the trial. That evidence is compatible with Mr. Chong's oral evidence at the trial on this issue. In his examination for discovery he said that "all" that the Registrar said was that "if you use the [mail] system, you have to get an order from the Registrar ... And then subsequently he said we shouldn't do it in the future."
- [83] Also read in to the record was Mr. Chong's discovery evidence that "its not contrary to the regulations" to use a mail ballot system of voting. Further, that the plaintiffs' statement that the election of the board of directors was illegal is "completely wrong".
- [84] Mr. Chong's discovery evidence that the Association sought an order from the Registrar was also read in to the record. This evidence was corroborated by a letter dated January 26, 1997 written by the Association to the Registrar. It said that if the Registrar "felt" that an application to use a mail ballot was required, the Association "would be most pleased to comply."
- [85] Mr. K. Woo Yau's evidence from discovery was also read into the record by counsel for the plaintiffs. In it he testified that it was not his understanding that the way the election was conducted was wrong.
- [86] On February 17, 1997 the Registrar wrote to the Association and informed it that "the Society cannot use this method until it has applied for and received an Order." He said that he would not issue such an order "given the number of complaints received from your members." He also issued an order that the Association was a "reporting society." Counsel for the Association submitted that the Registrar "was stampeded" into an incorrect decision on the basis that while the Registrar spoke of the "large number of complaints from members", all he actually had was a letter from the plaintiffs. The Association did not have a copy of that letter until an order was issued by this Court on November 5, 1997.
- [87] The plaintiffs also rely on a number of documents including the constitution and the by-laws to substantiate their position that the election was "invalid or illegal". While the plaintiffs had no difficulty in determining that the election was invalid, I do not share their facility. Even after five weeks of trial the evidence does not satisfy me that the election was illegal, unlawful, illegitimate or void.
- [88] The plaintiffs complain that the Association failed to meet standards of natural justice in the manner in which it held the meeting of March 2, 1997. Mr. Ho testified that he was not discharged from the Association. His basis for saying this is that he did not receive any notice thereof. Indeed, according to Mr. Ho, he did not know of the March 2, 1977 meeting. Mr. Chow similarly testified that he was not expelled. He said, "I don't believe it" and that they had expelled him without letting him know or telling him what he had done wrong.
- [89] Mr. Tsen testified that on February 27 or 28, 1997 the plaintiffs came to see the secretary of the Association, Mr. Lo. Mr. Ho accused him of not being eligible to be the secretary and told him to leave the premises. He said that Mr. Ho and Mr. Lo "nearly fought."

- [90] According to Mr. Lo, the plaintiffs came to the Association on February 27, 1997. They had a heated exchange with Mr. Lo during which Mr. Lo informed them that the president wanted them at a meeting on March 2. Mr. Lo said that the altercation was broken up by Mr. Tsen.
- [91] Furthermore, counsel for the plaintiff read into the record the discovery evidence of Mr. K. Woo Yau. Mr. Yau testified that Mr. Lo personally informed Mr. Ho and Mr. Chow of the proposed meeting of March 2, 1997.
- [92] Mr. Peter Chong testified that the Association thought they were discharging the plaintiffs in accordance with the by-laws. I found his evidence credible. I accept that when the Association published the notice in the Ming Pao newspaper it was of the opinion that the plaintiffs had been "discharged" at the meeting of March 2, 1997.
- [93] Furthermore, the actions of the Association cannot be considered in isolation from the precipitating actions of the plaintiffs to which the Association was reacting. The plaintiffs were no doubt motivated by good faith but their actions and words were excessive. Those actions had caused a stir known to the plaintiffs. They knew that there was going to be a meeting arising out of their actions and they chose not to attend.
- [94] Counsel for the plaintiffs submitted that the Court should hold the defendants to a higher standard than it should of the plaintiffs. She asserted that the plaintiffs are but unsophisticated people. The evidence does not reveal to me that the mental capacities of any one party relative to any other party requires a different standard to be applied.
- [95] The plaintiffs now allege that certain acts were "illegal and void" that at an earlier date they found quite acceptable. For instance, Mr. Chow was elected by a mail-in ballot. Further, the plaintiffs do not allege that the actions of earlier directors, who were elected by a mail ballot, are void, illegal, unlawful or illegitimate.
- [96] The plaintiffs further allege defamation in the second paragraph of the notice published in the Ming Pao newspaper. The Association used the word "illegal" to describe activities of the plaintiffs. The plaintiffs submit that this implies criminal conduct.
- [97] In my opinion the meaning of the word must be put into the context of the case at bar. The following is from K.E. Brown, *The Law of Defamation in Canada*, Vol.142, 2d. ed. at 5.3(5):
- Context is crucial in determining the defamatory sense of words. The defamatory communications must be viewed in context. An alleged defamatory statement cannot be considered apart from the context in which it was made. "Words, like people, are judged by the company they keep."
- [98] The community within which the allegedly offending words were published is Chinese speaking. Within that community the plaintiffs alleged in letters and notices that the defendants committed illegal, unlawful and illegitimate acts. While some of the alleged acts, for instance embezzlement and forgery, denote criminal activity, the plaintiffs also used the word "illegal" in relation to breaches of the constitution and by-laws of the Association.

- [99] Mr. Ho was asked why he objected to the use of the word "illegal". He said that it is because he had never done anything illegal, such as rob or kill anybody. It was pointed out to him that he had used this word in some of his publications. His response was that the word "illegal" is but a translation whereas the Chongs "did things that are wrong."
- [100] Mr. Chow was asked if he would agree that it was an illegal activity if it was found that his changing of locks in the Association premises was found to be for the purpose of stopping the Association from doing business. He repeatedly answered that the purpose was not to stop the Association from doing business. In his examination for discovery he said, "My purpose to make sure nobody could enter and carry on any business there."
- [101] The majority of the witnesses, including the interpreter Ms. Lee who was called as a witness by the plaintiffs, testified that in Chinese the words "illegal" and "unlawful" are used interchangeably.
- [102] I am satisfied that in the Chinese speaking community a charge of breach of by-laws is considered to be an illegal or unlawful act. It may leave open an inference of criminal activity but the evidence established to my satisfaction that the word "illegal" is commonly used in the Chinese speaking community to describe non-criminal activities.
- [103] I find the substance of the notice to be true. The Law of Defamation in Canada at 10.2:
- Justification or the truth of the matter asserted is a complete defence to an action for defamation. The published material must be false. What is true cannot be defamatory. A plaintiff has no right to have his or her character or reputation free of an imputation that is true.
- [104] The defendants raise the defence of qualified privilege, defined as an occasion wherein a statement is made for the purpose of pursuing or protecting some private interest and made to persons who have a corresponding interest in receiving it. The interest may be legal, social or moral.
- [105] The plaintiffs had gone public with the notices in the Sing Tao Daily. Mr. Chong testified that the notice published in the Ming Pao newspaper was in response to the notices published by the plaintiffs in the Sing Tao Daily. He said that those notices were "dangerous" and put the Association into "contempt". In my opinion the Ming Pao notice was a response to the actions and notices published by the plaintiffs. To respond to those notices was an occasion of qualified privilege.
- [106] Where qualified privilege exists the defence is lost if the publication is actuated by malice. Malice is not to be presumed against a defendant when the occasion is privileged. The malice must be proved either by direct evidence or by inference from the excess of the published words. In my opinion no malice has been proved by either route.

[107] The plaintiffs' action is dismissed. Even if I had found liability upon the defendants other than the newspaper, I would have dismissed the action against Ming Pao Newspapers on the basis of submissions made by counsel for the newspaper. Furthermore, any award made against the defendants other than Ming Pao would have, by consent, been subject to indemnification by the other defendants.

DISCUSSION AND CONCLUSIONS REGARDING THE COUNTERCLAIM

[108] The plaintiffs submit that the contents of the letter to the Registrar are true. However, Mr. Ho's basis for this came down to little more than his philosophy that "everything must be true because there were so many complaints from members." For the most part these members were unidentified and often their alleged complaints came to Mr. Ho third hand from other unidentified sources. Mr. Chow similarly relied upon alleged complaints to defend the truth of the contents of the letter to the Registrar.

[109] In support of the truth of the allegations that Peter Chong stole 250 ballots to help his brother Stephen Chong get elected and that Stephen Chong used "unlawful" means of gaining the position of president, Mr. Ho said that a secretary told him that he had been asked to put ballots in the box when nobody would see it being done. Mr. Ho said that the secretary is deceased.

[110] Mr. Ho submitted that the following entry in the Minute Book is direct support for the allegation of theft:

11/10/90 The ballots have been mailed out. 280 ballots were kept in the association, 250 of which have been taken away by the chairperson of the board of directors, and the remaining 30 ballots are left with the association as spare ballots. That minute, in my opinion, gives no basis for an allegation of theft.

[111] In the "Chinese version" of the letter to the Registrar the word "illegal" is used to describe the discharge of members and the activities of the Chongs. Mr. Seow testified that he had heard and seen some of these "illegal" acts. The one he had "seen" was the "theft" of 250 ballots by Mr. Peter Chong. His explanation of what he had "seen" was that it was written in the minutes. However, the minutes record only that "250 are taken away by the President". According to Mr. Seow, "that means that he stole them".

[112] Mr. Peter Chong denied that he stole 250 ballots. He said that he took them away as they were "useless" ballots that could not be used. They were unsigned and in order to be used they had to be signed by three executives.

- [113] It was conceded by counsel for the plaintiffs that there is no evidence that the ballots were stolen nor that they were used by Peter Chong to assist in the election of his brother. However, she contended that "there is no evidence of their [the plaintiffs'] knowledge" that the ballots were unsigned. That is true but the plaintiffs said that the ballots were used to support Mr. Stephen Chong's election. That was, at the very least, based on an assumption that the ballots were operative. If they assumed otherwise then their dishonesty is manifest.
- [114] Plaintiffs' counsel also submitted that the allegation that "Peter Chong did steal 250 ballots" is protected by qualified privilege. She cited *Hill v. Church of Scientology of Toronto* (1995), 25 C.C.L.T. (2d) 89 (S.C.C.) wherein at 141 Cory J. said:

Where the occasion is shown to be privileged, the bona fides of the defendant is presumed and the defendant is free to publish, with impunity, remarks which may be defamatory and untrue about the plaintiff. [115] That remark is, in my opinion, subject to some interpretation. I do not think that Cory J. meant to say that publication of a fictional allegation of a crime qualifies for a defence of qualified privilege. I am of the opinion that what Mr. Justice Cory was saying was that when the occasion is one of qualified privileged there will not be liability if the words happen to be untrue. They were not meant to give a licence to lie.

- [116] The letter to the Registrar also charged that by way of "information supplied by a member Chau En Tsen", Stephen Chong embezzled cemetery plot money "to dabble stocks". A copy of Mr. Tsen's letter was annexed. It says that "Stephen Chong has embezzled the cemetery money dabbling stocks in collusion with Chau Chee Yung."
- [117] Mr. Ho testified that to embezzle means that the money was not put in the bank but that he "doesn't really understand the meaning of the word." That being the case he should not have endorsed the suggestion in the letter to the Registrar.
- [118] Mr. Chow's belief in the allegation of embezzling by Mr. Chong was similarly based upon the letter from Mr. Tsen. Mr. Chow admitted that he did not talk to Mr. Tsen after he received his letter. Mr. Ho testified that he phoned Mr. Tsen upon receipt of the letter and thanked him.
- [119] Mr. Peter Chong testified that the signature on the letter is not that of Mr. Tsen. Mr. Tsen testified that his signature on the letter is a forgery. He was not cross-examined on that testimony. I must find that the letter contains a forged signature.
- [120] Mr. Chow could not give any substantiation for the allegation made to the Registrar of "big profit" being made by Mr. Stephen Chong on the cemetery plots. Within the same paragraph the letter states that "he" has never filed any income tax return to Revenue Canada which is "also unlawful." In spite of the fact that the pronoun "he" is used and the only person identified in the paragraph is Stephen Chong, the plaintiffs testified that they meant that the Association had never filed a tax return.

- [121] It would be, in my opinion, most difficult to manoeuvre your way through that paragraph and avoid all minefields. This no doubt explains why Mr. Ho was evasive with respect to this paragraph. He testified that if an organization "makes money" then it is required to file a tax return. I can find no justification in the evidence for the allegation that either the Association or Mr. Chong committed an "unlawful" act with respect to Revenue Canada.
- [122] Another allegation in the letter to the Registrar was that a person paid \$1,000 for a cemetery plot but that only "\$400 had been put into the Association's account." Produced in support of that allegation were two receipts, one for \$600 and one for \$400. However, the receipt for \$600 has on it the word "hold". This escaped the notice of the plaintiffs until it was brought to their attention during submissions. Furthermore, Mr. Siew Hong Wong testified that the purchaser, Ms. Yung, had in some manner taken the \$600.
- [123] Mr. Chow testified that he believed that election by mail was illegal. It was pointed out to him that he was elected by mail to a directorship. His response was "I didn't know about it [the by-law]".
- [124] Even in examination in chief Mr. Chow's evidence suffered from his practice of revising evidence after adjournments. I found Mr. Chow's evidence suspect on the matter of why he changed some locks in the Association premises. He gave four widely diverse and incompatible answers. Then in re-examination he blurted out a fifth reason why he had changed the locks.
- [125] Under cross-examination I found Mr. Chow to be evasive. As an example, when repeatedly asked if the Registrar's Order said that the Association's actions were void, he answered that the Association had not complied with the Registrar's requests. When asked why his group did not follow the by-laws by obtaining ten percent of the members to call a special meeting, he gave a variety of answers as to his awareness of the by-laws and his understanding of the specific by-law. He said that "maybe" he made a mistake and that he has a poor memory (presumably for the substance of the by-law).
- [126] Mr. Chow's credibility was not enhanced in re-examination that took place after an overnight adjournment. He asserted that "earlier" he did not fully understand the meaning of the word "illegal." He then said that "maybe" it has different meanings in English and Chinese. (I am not suggesting any complicity on the part of counsel in Mr. Chow's changes in testimony during re-examination.)
- [127] The truth of allegations of false accounting records for the cemetery plots was defended by Mr. Chow on the basis that he was asked by Mr. Tsen to "look into the accounting records." Mr. Tong, accountant for the Association, said that the accounting methods used by the Association before he was retained in 1997 were not up to professional standards. However, according to Mr. Tong, the standard was within the guidelines published by the Chartered Accountants Association for non-professionals. Mr. Tompkins evidence was of little value. From the evidence I cannot draw conclusions of improper financial conduct, to say nothing of unlawfulness, illegality or embezzlement.

- [128] Mr. Ho's version of the February 28 notice says "following the Directive Order" a new election must be held. Mr. Ho conceded that this is not so stated in the order. Similarly, the statement in the notice that all the administrative actions of the Association are "invalid" or, as in Mr. Ho's version, "void", is not contained in the order. Mr. Ho's defence of this was that it must be so because "the election was invalid." He said "it was obvious that the activities were invalid because there were so many complaints."
- [129] Mr. Seow conceded that the by-laws, with which he was familiar, provided for election by mail. However, he testified that the election was made "illegal" by the order and letter from the Registrar. When asked how these gave the plaintiffs authority to recruit members and collect dues, Mr. Seow testified that the Registrar had ordered the Association "to redo everything".
- [130] What the plaintiffs and others of the same frame of mind did was escalate the Registrar's order and letter to accord with their desire. There were unwarranted statements fuelled by the motive of the plaintiffs to clean house. Unfortunately, they went too far too fast.
- [131] Many of the statements in the letter to the Registrar and in the Notices published by the plaintiffs have been shown to be untrue and not capable of being thought to be true. Mr. Peter Chong's explanations of some of the events outlined by the plaintiffs in their letter to the Registrar came across as reliable.
- [132] I am unable to hold that the Sing Tao notices were published on an occasion of qualified privilege. The chronology of events must be kept in mind. The Sing Tao notices were published in February 1997. This was before the Ming Pao notice. The Association had not gone "public" at that time. For the plaintiffs to publish in a newspaper read well beyond Association membership was excessive. (See *Whittaker v. Huntington* (1980), 15 C.C.L.T. 19 (S.C.B.C.).
- [133] The letter to the Registrar probably qualifies for the defence of qualified privilege but in both the letter and the Sing Tao notices the excesses were such that the limits of the duty were exceeded. Furthermore, the plaintiffs could not have held an honest belief in the truth of their assertions. They must have been motivated by malice. Because of both the excesses and the malice any privilege that attached was lost.
- [134] The counterclaim is by the Association, not by its officers, directors, or any specific individuals. Counsel for the plaintiffs submits that only if the words relate to the Association can the counterclaim succeed. She cited *Church of Scientology of Toronto v. Globe and Mail Ltd.* (1978), 84 D.L.R. (3d) 239 (Ont. High Ct. of Just.) at 242 in support. Mr. Justice Cory said that a corporation cannot maintain an action for libel if the words do not reflect upon the corporation but solely upon its officers or members.

- [135] There cannot be any quarrel with that proposition which has been adopted in many legal judgments. However, as was found in *Sykes v. Southam Inc.* (1991) 78 Alta. L.R. (2d) 259 (Q.B.), if the officials are "referred to as factual examples" then an action is maintainable by the forum to which the officials belonged. The Court noted that the words did not refer "explicitly" to that forum but nevertheless referred to it.
- [136] In the case at bar the allegations made against the individuals are inextricably bound up with those made against the Association. Such as the illegality of the election, the improper accounting methods, the failure to account for cemetery plot revenue, etc. In other words, even where the words were directed at individuals, they were not explicitly so limited.
- [137] In *Prince George v. B.C. Television* (1979), 9 C.P.C. 49 (B.C.C.A.) it was said, although not necessarily applicable to the plaintiff that was a municipal body, that "a corporation clearly has a right to sue for libel if it be defamed as a corporation." In my opinion the allegations made against the executive members reflected upon the Association and the Association has the right to bring action.

DAMAGES

- [138] The Association claims general, aggravated and punitive damages. While the prayer for relief does not specify, I assume that these claims are for the defamation. The defamation extends to the letter to the Registrar, the notices in the *Sing Pao Daily* and the information given to Canada Trust.
- [139] The Association also claims damages for trespass with respect to the changing of locks and damages for "unlawful interference with the economic interest of the Defendant Society by causing the bank accounts ... to be frozen."
- [140] Counsel for the Association submitted that an award of "\$100,000 would demonstrate the Courts resolve under all heads of damages." Counsel for the plaintiffs contended that an award of \$100 would be appropriate. This submission is based upon the words of Anderson J. in *Bennett v. Sun Publishing Company Limited*, [1972] 4 W.W.R. 643 at 662. He held that the corporate plaintiff had to establish a loss of income or profits to be entitled to more than nominal damages. The award was \$100 as compared to the award to the personal plaintiffs of \$8,000.
- [141] I am guided by that judgment and by the dissertation of Wood J.A. in *Westbank Indian Band v. Tomat* (1992), 63 B.C.L.R. (2d) 273 commencing at page 288. The guidelines suggest to me that in the case at bar there should be "restraint" in setting the quantum of general damages and that the result should be modest. I am further guided to conclude that there is no need for either punitive or aggravated damages.

[142] If the counterclaim had been brought by the defamed individuals the result on damages might well be different. However, such is not the case. Furthermore, as I have been telling the parties for the past year, this case is not about money. It is about "loss of face." I am not in any way demeaning that motivation to pursue a lawsuit but a generous money award is unnecessary.

[143] I award \$1,000 to the Association assessed jointly and severally against the plaintiffs.

[144] Costs will follow the event but may be spoken to if necessary.

"Thackray J."

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