

Lawyer M

99/18

Golden, B.C.

Called to the Bar: September 13, 1983

Voluntarily ceased practice: January 1, 1999

Discipline hearing panel: February 2 and 3, 1998 and April 22, 1999

Warren Wilson, Q.C., Chair, Gerald Lecovin and William Sullivan (as to findings of fact and verdict) Gerald Lecovin, as a one-Bencher panel by consent (as to penalty)

Kathryn Neilson, Q.C. and Kathy Dunstan, for the Law Society

Richard Sugden, Q.C., for Mr. M

Hearing report indexed as [1999] LSBC 24

Summary

Mr. M misled conservation officers and taxidermists into believing that his friend had shot a grizzly bear when in fact Mr. M, who did not have a hunting permit for grizzlies, had unlawfully shot the bear. He was subsequently convicted under the *Wildlife Act* of killing an under-age bear and unlawfully using the species licence and hunting authorization of another person. In the Law Society discipline proceeding, Mr. M's conduct was found to constitute conduct unbecoming a lawyer. He was fined \$5,000 and ordered to pay \$7,000 towards the costs of the discipline proceedings.

Facts

In May, 1995 Mr. M was hunting bears with a friend (W). Both held valid B.C. hunting licences but only W had a permit that allowed him to shoot a grizzly bear under the *Wildlife Act*.

Mr. M and his friend came upon a grizzly bear, which turned and ran from them. Mr. M shot the bear. He acknowledged that the shooting was not in self-defence and not an accident, but was done in the heat of the moment.

After this incident, the hunters considered three options: first, to acknowledge the kill (at which point Mr. M would face the offence of wrongly shooting a grizzly bear); second, to hide the kill and continue hunting until W shot another grizzly or third, to acknowledge the kill but pretend that W had done it and that it was thereby legal.

Because of embarrassment he had suffered in previous hunting expeditions, Mr. M did not wish to acknowledge he had killed the bear. Because he was a conservationist, however, the option of hiding the kill and continuing the hunt was repugnant to him. He

and W agreed to follow the third option. Mr. M felt that, in making this choice, he and W would stay within quota. Both he and W realized, however, that they were breaking the law.

The hunters took the bear's hide to taxidermists for tanning and also the bear's penis to prove its sex, as required under the *Act*.

Mr. M called ahead to the taxidermists to report that W had shot a grizzly bear and would bring in the hide. Both men had agreed to cut W's tag and thus claim the grizzly kill for him. By his words and behaviour, both by commission and omission, Mr. M misled the taxidermists into believing that it was W who shot the bear.

The taxidermists took the hide to the conservation office for inspection. Mr. M had previously called the conservation office and left a message that W was out hunting grizzlies and had a bear to report. Mr. M misled the conservation officers into believing that W had shot the bear.

Mr. M did not take back the skull from the kill, as he believed this was unnecessary, In fact, this was required under the *Wildlife Act* regulations for the purpose of proving a bear's age, as it is illegal to kill grizzly bears under three years of age. At the request of the conservation officers, Mr. M and W returned to the site of the kill, but could not locate the skull. A conservation officer told Mr. M that he would get an expert opinion on the age of the bear and that it was possible charges would be laid against W.

A few days later, Mr. M told the conservation officer to state that he, not W, had shot the bear. He made a written statement to this effect.

In 1996 Mr. M pleaded guilty to the offence of killing a grizzly bear under three years of age and to the offence of unlawfully using the species licence and limited entry hunting authorization of another person.

Decision

Mr. M's conduct constitutes conduct unbecoming a lawyer.

The hearing panel noted that conduct unbecoming can be conduct occurring outside the practice of law and includes conduct that results in a conviction under statutes with penal consequences. The *Wildlife Act* is such a statute. Mr. M knowingly committed an offence under this statute and lied about it afterward. He did so in a small town where he was known to be a lawyer and the circumstances of the matter were reported publicly. He lowered the esteem of the legal profession in the eyes of the public, which has the effect of lowering public esteem in the judicial process and is consequently contrary to the best interest of the public and the legal profession.

Penalty

The hearing panel noted an aggravating factor in deciding penalty was that Mr. M encouraged a member of the public to commit an offence and to mislead others. Mr. M's actions were motivated by selfish reasons. He did, however, make a clean breast of the matter as soon as it appeared his co-conspirator might be charged with an offence, and he did so before any charge was laid.

The hearing panel took these factors into account as well as the fact that, following his conviction under the *Wildlife Act*, Mr. M paid a \$2,000 fine. The panel was also of the view that the *Wildlife Act* conviction was relatively minor compared with convictions under the *Criminal Code* and *Income Tax Act* that have been considered in other discipline cases, and that Mr. M's conduct was brought about more by an error in judgement than by an intention to commit an offence.

The panel ordered that Mr. M pay:

1. a \$5,000 fine; and
2. \$7,000 towards the costs of the discipline proceedings.

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