

No. 04/01

Henry Alexander (Sandy) McCandless

Langley, BC

Called to the Bar: May 17, 1971

Discipline hearing: December 2, 2003

Panel: Gordon Turriff, QC, as a one-Bencher panel by consent

Report issued: December 17, 2003, indexed as [2003] LSBC 44

Counsel: Geoffrey B. Gomery, for the Law Society and Christopher E. Hinkson, QC, for Mr. McCandless

Summary

Mr. McCandless was the sole director and officer of a company that owned a yacht, which was damaged when it ran aground. In contracting with a shipwright for repairs to the yacht, Mr. McCandless agreed to make a series of payments, including cash payments totalling \$99,710. In making these arrangements and making cash payments, he was wilfully blind to the purpose of the cash payments, which was the intended evasion of goods and services tax and income tax by the shipwright. Mr. McCandless admitted that his actions amounted to conduct unbecoming a lawyer.

After the ship repairs were completed, there was a dispute over the quality of the work. On behalf of his company, Mr. McCandless filed a writ of summons against the shipwright and then purported to serve the writ by fax. His faxed letter of transmission to the shipwright was misleading since he stated that the writ was "for delivery to and service upon you" and advised the shipwright of the consequences of failing to appear, but failed to inform him that fax delivery was not proper service. Mr. McCandless had previously told the shipwright that he was a lawyer. The shipwright obtained independent legal advice and did not suffer harm from Mr. McCandless' actions. Mr. McCandless apologized to the shipwright and ultimately abandoned the action. He admitted that his actions in this instance amounted to professional misconduct. The Discipline Committee and the discipline hearing panel accepted Mr. McCandless' admissions and his proposed disciplinary action. The panel ordered that Mr. McCandless be suspended for one month, effective January 4, 2004, and pay costs within six months.

Facts

Mr. McCandless was the sole director and officer of a company that owned a 68-foot yacht. In August, 1998 the yacht ran aground near an island at the northern end of Vancouver Island and was badly damaged.

The insurer of the yacht had a marine surveyor examine the vessel and seek a repair quotation from a shipwright. The marine surveyor commissioned some immediate repairs. After receiving a quotation of \$216,570 for hull repairs on the yacht, the insurer offered Mr. McCandless' company two options: to receive a \$250,000 insurance payout and abandon ownership of the ship or receive a \$230,000 payout and retain ownership. Mr. McCandless chose the latter option.

In September, 1998, on behalf of his company, Mr. McCandless contracted with the shipwright for the repairs. At a very early stage of their discussions, Mr. McCandless advised the shipwright that he was a lawyer.

Pursuant to the agreement for repairs, Mr. McCandless made a series of payments to the shipwright between September, 1998 and September, 2000. These included cash payments totalling \$99,710. The shipwright did not intend to remit goods and services tax or income tax with respect to those cash payments. In making arrangements with the shipwright, Mr. McCandless was wilfully blind to the intended evasion of GST and income tax by the shipwright.

In September, 2000 the yacht was floated and released. There was subsequently a dispute over the quality of the work. On November 15, 2000, Mr. McCandless filed a writ of summons on behalf of his company against the shipwright claiming, *inter alia*, judgment for \$150,000 and damages for misrepresentation, breach of contract, negligence, conversion and breaches of trust relating to the repairs. The next day he faxed a letter and copy of the writ to the shipwright stating that the writ was "for delivery to and service upon you." In that letter he advised the shipwright of the steps that would be taken if no appearance were filed. Although Mr. McCandless knew that fax transmission of the letter and writ did not constitute proper delivery or service of the writ, he did not inform the shipwright of that.

On receiving the faxed letter, the shipwright consulted counsel who advised him that the writ had not yet been properly served. The shipwright suffered no harm from Mr. McCandless' actions. Mr. McCandless later wrote a letter of apology to the shipwright respecting delivery of the writ and, after examinations for discovery in July, 2001, his company discontinued its action.

Admissions and penalty

Mr. McCandless admitted that, in making cash payments on behalf of his company for repairs to a yacht belonging to the company, he was wilfully blind to the purpose of the cash payments, which was to allow the shipwright to evade payment of the goods and services tax and income tax. He admitted that his wilful blindness constituted conduct unbecoming a lawyer.

Mr. McCandless further admitted that, in the course of a dispute between his company and the shipwright, his conduct in misleading the shipwright by purporting to serve him by fax constituted professional misconduct.

Pursuant to Law Society Rule 4-22, the Discipline Committee and the discipline hearing panel accepted these admissions and his proposed disciplinary action. The panel reviewed Mr. McCandless' discipline history and concluded that the penalty was reasonable, although at the low end of the scale of potential penalties.

The panel accordingly ordered that Mr. McCandless:

1. be suspended for one month, effective January 4, 2004; and
2. pay costs of the discipline proceedings within six months.