2007 LSBC 34
Report issued: June 19, 2007

NOTE: Pursuant to Rule 2-69.2(2) as the application was rejected the publication does not identify the Applicant.

The Law Society of British Columbia
In the matter of the *Legal Profession Act*, SBC 1998, c.9
and a hearing concerning

Re: Applicant 2

Decision of the Hearing Panel on Application for Call and Admission

Hearing date: February 26th to March 1st, 2007

Panel: Dirk Sigalet, Q.C., Chair, Robert Apps, Q.C., John Hogg, Q.C.

Counsel for the Law Society: Herman Van Ommen
Counsel for the Applicant: Christopher E. Hinkson, Q.C.

Background

[1] On November 16, 2005, the Applicant completed a Law Society of British Columbia form entitled " Application Transfer to British Columbia" . With the transfer application the Applicant was wanting to transfer from [Province] to British Columbia and be accepted as a member of the Law Society of British Columbia, fully qualified and able to practise in this Province. This completed form was sent to the Law Society of British Columbia, following which Law Society staff communicated with the Applicant by e-mail dated November 21, 2005, pointing out to the Applicant that he had omitted to answer certain questions on the form. Law Society staff said, in part, as follows:

> Before we can continue processing your application, we require answers to Part C, Questions 7 through 10.

[2] More specifically, later on November 21, 2005, the Law Society e-mailed the Applicant again, pointing out that it would require more information on his transfer application and said, in part:

> Part D, Question 1 you answered " Yes" . The question asks " Have you ever been charged in Canada or elsewhere with any crime, offence or delinquency under a Statute or ordinance, excluding parking or speeding tickets if you have received fewer than five such tickets in the last three years?
>
> Please provide full particulars.

[3] The Applicant responded with an e-mail dated November 24, 2005, answering the questions

the Law Society wanted answered. He disclosed what he called a completely fictitious complaint from a girlfriend to the [Province] Police that he had physically assaulted her in late 1998. He pointed out that the police charged him but the charge was ultimately stayed by the Crown Prosecutor. This was the Applicant's expanded and final answer to Part D, Question 1 of his transfer application.

[4] The Law Society followed up with some investigation on the Applicant's transfer application, which ended in the Law Society ordering a credentials hearing to determine whether or not the Applicant was a person of good character and repute and fit to become a barrister and solicitor of the Supreme Court, and thus enrolled or admitted as a member of the Law Society. Counsel for the Law Society, Mr. Van Ommen, wrote the Applicant on July 4, 2006, giving notice of the purpose of the hearing, the date, time and place of the hearing and the circumstances to be inquired into. The Law Society listed 14 circumstances that were going to be inquired into at the hearing.

[5] For admission and enrolment as a member of the Law Society of British Columbia, a person must meet the following requirements, set out in the *Legal Profession Act,* SBC 1998, c. 9:

> 19(1) No person may be enrolled as an articled student, called and admitted or reinstated as a member unless the benchers are satisfied that the person is of good character and repute and is fit to become a barrister and solicitor of the Supreme Court.

[6] Further, it should be noted that credentials hearings are governed by sections 2-61 through 2-69 of the Law Society Rules. Rule 2-67 deals with onus and burden of proof and reads as follows:

2-67(1) At a hearing under this Division, the onus is on the Applicant to satisfy the Panel on the balance of probabilities that the Applicant has met the requirements of s.19 (1) of the *Act* and this Division.

[7] The hearing occurred and below are the findings.

Evidence

[8] The Applicant testified on his own behalf, so the Panel had the benefit of hearing his evidence in both examination-in-chief and cross-examination.

[9] The Applicant presented evidence of good character, which was filed as Exhibits 3 and 4 at the hearing. Exhibit 3 comprised 13 identical documents, being the Law Society standard form, one page Certificate of Character by persons who had known the Applicant for stated periods of time, and certifying that, in their opinion, he was a person of good character and repute and fit to become a barrister and solicitor of the Supreme Court of British Columbia. Exhibit 4 comprised 15 letters of reference from various individuals, setting out facts touching upon the Applicant's character in a positive way. Exhibits 3 and 4 were considered, but particularly in relation to Exhibit 4, we can give little weight to those documents as none of the letters reflect that any of the writers had knowledge of any of the 14 circumstances being inquired into at the hearing.

[10] The Law Society Application - Transfer to British Columbia, Part D: Good Character, Question 1 reads as follows:

> Have you ever been charged in Canada or elsewhere, with a crime, offence or delinquency under a Statute or ordinance, excluding parking or speeding tickets if you have received fewer than five such tickets in the last three years? (following which the Applicant checks " yes" or " no").

[11] Early in his examination-in-chief, the Applicant dealt with the Law Society's concern about the way

he answered Part D, Question 1 of his application. The Applicant testified essentially that what he had answered in his e-mail of September 24, 2005 at 11:00 a.m., written to Corinne Nagra of the Law Society was that he was charged with common assault or so-called spousal assault in [Province] in 1998, in relation to a girlfriend when they broke up. He had indicated in writing that it was a fictitious complaint, and at the hearing the Applicant confirmed what he had already told the Law Society, that the charge was stayed on the day of trial.

[12] The Applicant also testified that he did not disclose in answer to Part D, Question 1 the fact that he had been charged in Canada [Province] with contraventions of the *Retail Sales Tax Act* or that he had pleaded guilty to the same in the Provincial Court of [Province] on August 4, 2005. He said he did not disclose this because he did not realize it was covered by Part D, Question 1 when it referred to " . . . ever been charged in Canada or elsewhere, with a crime, offence or delinquency under a Statute or ordinance . . ." . He said at the hearing that he now realized he should have disclosed it, but at the time he completed his transfer application and answered further written inquiries of the Law Society, he did not realize it was the kind of thing he should have disclosed or that was caught by the question.

[13] Exhibit 17, Tab (b) is a transcript from the Provincial Court of [Province] dated August 4, 2005. On that date the Applicant appeared on certain charges and entered pleas of guilty with respect to three of six counts contained in a certain Information. The remaining counts were stayed by the Crown. The allegations included the following:

> That between the 1st of July, 2004 and the 1st of May, 2005, in the Province of [Province], a vendor did unlawfully contravene section 5(1) of the *Retail Sales Tax Act* by selling tangible property or service in the province of a retail sale without being the holder of a valid and subsisting registration certificate issued by the Minister of Finance and did thereby commit an offence contrary to 24(1) of the *Retail Sales Tax Act*.

[14] A second count alleged that he contravened the *Retail Sales Tax Act* by failing to make or file a tax return before a certain date. A third count related to obstructing a duly authorized officer appointed by the Minister in performance of his duties by failing to produce business records.

[15] The Applicant apparently felt the legislation was wrong or unfair, and he was also advising some of his clients not to pay the tax. He was going to run a test case, but in the end he was charged and pled guilty. Ultimately, the Applicant had to pay the tax, which, along with a penalty, came to approximately $4,060.16. He told the Court that he acted on principle with a view that his clients were also in support of this position. Initially the Applicant thought he was helping his clients.

[16] Of note, on pages 6 and 7 of the transcript, the Court said:

> Beyond that, [the Applicant] has advised that it is his intention to and he has taken steps to wind up his practice in [Province] and move to British Columbia and practice. As a prerequisite to practice in British Columbia, he will require a call to the bar. The extent to which a finding of guilt or the recording of a conviction, more precisely the recording of a conviction, might have on his ability to obtain a call to the bar regardless of his quality as counsel, regardless of his legal skills, is unknown at this point in time. And he said, and I think he said it in plain language but quite fairly: " either the Law Society or, more precisely, various firms through which I make an approach might view me as a bit of a kook, as a bit of a strange person, for having undertaken this effort and that might operate as an impediment to my being able to practice in the province of my choice."

[17] The Court went on to grant the Applicant an absolute discharge.

[18] It is important to note that before us were other parts of a transcript from the Provincial Court of [Province] where, on these same charges, the Crown told the Court they were proceeding with three of the six charges and " seeking a minimum fine per count plus costs, victim fine surcharge, Justice Services surcharge." The Applicant, as already indicated, went on to waive the reading of the charges and pled guilty to three of the six counts on the Information. At one point before he was sentenced, the Court said to the Applicant:

> Do you have any idea whatsoever what a fine for an offence such as this here in [Province] might have on your chances of being accepted into British Columbia?

[19] The Applicant answered by saying " I do not know." He went on to say:

> I was going to submit here, at the end, that I would really like to move to B.C. to pursue my opportunities there with, as it were, a clean slate. And I think I would have to not only notify the Law Society but also prospective employers or firms if I had been convicted and fined under this *Act* for these breaches. And that does cause me some concern at this point in time, that that may negatively impact me. If not with the Law Society directly, then with just finding a satisfactory position out there.

[20] In any event, the Applicant pressed forward with the guilty plea and went on to submit his transfer application to the Law Society of B.C., and at that time, and after further submissions to the Law Society in writing upon specific questioning, failed to disclose that he had **been charged** with the summary conviction offences outlined above.

[21] The remainder of this section of the decision deals with the evidence arising from the clients of the Applicant's practice.

G.P.

[22] It is the Applicant's evidence that he met G.P in 1993. By the late spring of 1994, they began living together in the Applicant's home and blending their respective families. The Applicant has two daughters and G.P. a son. Within months, the parties added a new relationship to this common-law relationship, that of a solicitor-client relationship. Access litigation ensued and the Applicant acted as counsel for G.P. By December of 1994, the Court ruled on the Applicant's role. Based on his statement that: he is not going to be a witness; and that he will not be counsel at the trial of the action, Madam Justice Krindle did not allow the Respondent's (Mr. S.'s) motion to remove the Applicant as counsel for the Petitioner. Krindle, J. made these comments [Exhibit 14: Reasons for Decision, December 16, 1994]:

> I can advise that I really question the wisdom of [the Applicant] acting for his spouse in this matter. There may even be, in light of some of the recent suggestions from the Law Society [of Province] and some of the recent proposals and rules adopted by them, certain ethical considerations that are involved in counsel acting for one's spouse on matters like this, but from my reading of the law, there is no legal impediment to counsel acting for one's spouse.

[23] Her Ladyship went on to say:

> So while I may question the wisdom of it and why [sic] I may even think that there may be some ethical considerations, legally I find nothing that can prevent this.

[24] The Applicant sought the counsel of two colleagues. These colleagues were, he said in his cross-examination, " ...two sounding boards." He continued to act, and the litigation continued.

[25] On September 9, 1996, the Applicant had his common-law spouse and client swear a lengthy affidavit, [Exhibit 13] which he prepared. In paragraphs 13 and 14 of that affidavit, G.P. deposed opinion evidence, that Madam Justice Keyser was unprepared, not competent to conduct the hearing and, biased. The Applicant said in cross-examination that the affidavit was his " ... last contribution to the case..." .

[26] By December 1997, the Applicant and G.P., after some allegations and counter-allegations of assault, concluded that they could not be successful in, to use the Applicant's words, " ...blending our two families . . ." . Accordingly, they separated.

S.D.

[27] S.D., a CGA since 1998 and a mother of two daughters, testified before us that she retained the Applicant on July 31, 2004, to obtain a divorce and to direct her estranged spouse to pay her daughter's tuition. In addition, S.D. was persuaded by the Applicant to hold her spouse, P.S., accountable for other matters and that P.S.'s access to the younger daughter be suspended.

[28] However, S.D. was not persuaded by the Applicant that she and her daughters required counselling. The Applicant's persuasion techniques included: anger, yelling, ignoring S.D.'s instructions for him to cease making counselling requests, suggesting he would refuse to continue to act unless counselling was obtained, talking to S.D.'s friends and family, stating certain of S.D.'s friends deserved to be spanked for their alleged unresponsiveness, and late evening e-mails. In any event, the Applicant continued until December, 2004 with his case preparation for a possible trial as to the access issue.

[29] S.D. refused to pay the Applicant's December 8, 2004 bill and refused his request to pay him a further $5,000 retainer. Her stated reason was that she has been served with a Canada Revenue Agency " Requirement to Pay" regarding the Applicant's personal tax arrears. The Applicant's reaction was to repeat behaviour similar to the above. S.D. did not accept his legal advice that she was not required to pay CRA and the Applicant responded by resigning as her lawyer. On December 13, 2004, S.D. complained to the Law Society of [Province]. This complaint was resolved by the Applicant giving a September 21, 2006 [Exhibit 8] written apology to S.D., wherein he stated his involvement was inappropriate and conduct unbecoming a member of the legal profession. The Applicant said he had pleaded guilty to the Law Society of [Province] charge of professional misconduct and received a reprimand plus was ordered to pay a portion of costs.

[30] S.D. left private accounting practice to be employed by CRA.

C.H. and S.S.

[31] The *W. Free Press* newspaper, in about January or February, 2004 published an advertisement for two business persons, C.H. and S.S. This advertisement was for the purpose of finding lawyers who were interested in taking cases to overturn the legislative authority of the *Income Tax Act* to collect income taxes. The Applicant said that the advertisement stated: " No experience necessary."

[32] There is no evidence as to the nature and character of the Applicant's practice or his personal circumstances for the period of 1997 to the January or February, 2004 date of publication of this advertisement. We have the Applicant's evidence that he responded to this advertisement. It is his

response that triggers the evidence before us from four of his clients that provides us with a look at the Applicant's current law practice. With each of these four clients, there is the presence of C.H. and S.S. All four of these clients were referred to the Applicant by C.H. and S.S. and they maintained a role in the conduct of all four files. C.H. and S.S. had a four-point approach to their *Income Tax Act* challenge and a stack of supporting material. C.H. and S.S., variously described in the retainer agreements used by the Applicant as " independent tax consultants or legal consultants," were assisting the Applicant in the conduct of the files. The result of this conflict and divided loyalty in this situation became apparent as the evidence was introduced. The four files are reviewed below.

T.O.

[33] By March 26, 2004, the Applicant's association with C.H. and S.S. produced his first referral from them, a Ms. T.O. T.O. had paid $5,000 to C.H. and S.S. [Exhibit 1, Tab 6, page 8 of August 12, 2005 Transcript]. She then retained the Applicant to challenge CRA audits and to file a Notice of Objection by April 30, 2004. By April 28, 2004, the solicitor-client relationship had deteriorated to a point where both the solicitor and the client were claiming that each had terminated the relationship as against the other. We have in evidence transcripts from the Court of Queen's Bench, [Province], and the subsequent reasons for judgment.

[34] The first transcript is from August 12, 2005 [Exhibit 1, Tab 6]. The proceedings transcribed are the Applicant's Court action to enforce his account to T.O. of $2,227.38. These proceedings produced a later complaint by the Chief Justice to the Law Society of [Province]. The basis of the Chief Justice's October 6, 2005 complaint was that the Applicant, who was represented by counsel, responded to evidentiary rulings by the Court by saying the trial judge put the administration of justice into disrepute and that he did not receive a fair hearing. That complaint was resolved by the Law Society of [Province] issuing a reminder letter, telling the Applicant " ... that you may wish to be more circumspect in your comments to judges and tribunals."

[35] Exhibit 11, Tab 6(b) are the reasons for Madam Justice Simonsen's Judgment dated September 7, 2005. The Reasons have the below useful observations:

> [27] The parties agree that [the Applicant's] retainer was terminated two days before the April 30, 2004 deadline, and that he did not file a Notice of Objection. However, the parties differ as to why the retainer was terminated.
>
> [29] T.O. says that she terminated [the Applicant's] retainer. She testified that she terminated [the Applicant's] services because he had not done work of any value and he had acted contrary to her instructions in dealing with a potential claim against BDO Dunwoody and by retaining Mr. B. She also testified that he had made inappropriate remarks to her and Mr. S. throughout the retainer. Further, she had determined that he was not going to file the Notice of Objection.

[36] T.O.'s evidence on page 12 of the August 12, 2005 transcript is, in part:

> And [the Applicant] was yelling and pointing at me . . . then he continued with the comment, you've got to make up your mind and decide whose bed you're sleeping in. You're either with C.H. and me or you're with G. and the boys. I was quite upset after this meeting. The lack of professionalism, his integrity, just, just everything.

[31] I prefer T.O.'s evidence with respect to the circumstances of the termination of [the Applicant's] retainer. I agree . . .

[35] . . . it is clear that, in not filing the Notice of Objection, [the Applicant] did not complete the work for which he had been retained. He deserted T.O. at a critical state of the matter. In my view, this does not reflect the skill and competence on his part or on the part of any reasonable counsel.

R.M. and C.M.

[37] April 5, 2004 was the day R.M. and C.M. met with C.H. and the Applicant. By the next day, the Applicant had written to confirm his instructions: to hold CRA accountable for their actions; getting " stuff" back from CRA's search and seizure; and, to obtain answers to questions his clients had asked of CRA. The file began in a manner that would be expected of any commercial matter possibly involving litigation: obtaining full disclosure and defining the issues. This reflected a generally good solicitor-client working relationship.

[38] In a letter dated July 22, 2004, the Applicant suggested counselling for the entire M. family and, in particular, that Mr. and Mrs. M:

> . . . seriously consider the intervention of a qualified counsellor. The benefits include: (a) providing you with an opportunity to share your personal frustration and fears with an informed neutral third party; and (b) to assist both of you with working on your emotional coping skills.

[39] On August 2, 2004, Mr. and Mrs. M. met with the Applicant and C.H. to discuss the Ms' emotional and financial ability to carry on the case. R.M. confirmed his wish to proceed and added a new task for the Applicant, that of appealing a Small Claims Court decision won by the Plaintiffs, a Mr. and Mrs. S., against R.M. The Applicant's September 9, 2004 letter [Exhibit 15, Tab 19] confirmed this meeting and urged Mr. and Mrs. M. to " ... reach out to qualified counsellors." The six-page letter concluded with a request for a further retainer. On September 14, C.M.'s e-mail disagreed with the need for counselling and, on September 16, the Applicant's e-mailed response [Exhibit 15, Tab 20] stated that Mr. and Mrs. M. " . . . were not willing to embrace the game plan or strategy that C.H., S.S. and I have laboured diligently over the last several months." The Applicant went on in his e-mail to make these points:

> 1. C.M, <u>YOU HAVE TO STOP RUNNING FROM YOUR PROBLEMS. YOU HAVE TO STOP AVOIDING YOUR PROBLEMS</u> and, with the help of competent and qualified assistance - that DOES NOT include well-meaning church elders nor does it include medical doctors who can do little more than dispense advice and/or drugs - learn how to confront your fears and problems successfully.
>
> On August 2, 2004, we talked about your need to work on improving your coping skills. You have chosen not to heed this advice. Rather you have chosen to run from your problems, rather than learn how to face up to them. Unfortunately, our view is that if you do not heed this advice promptly, you and your family will very likely not realize any satisfactory outcome to your dispute with CRA. Furthermore, this dispute may be the catalyst that inflicts irreparable harm on you as well as your family.

2. C.M, THIS DISPUTE WITH CRA IS AS MUCH YOUR PROBLEM AND YOUR FIGHT as it is your husband's fight or problem. TAKE OWNERSHIP OF THIS VERY REAL REALITY IN YOUR FAMILY'S LIFE. At the moment, unfortunately, this CRA dispute has total control of you.

This CRA dispute is as much your fight and your " problem" because it was your personal rights that have been fundamentally violated by CRA - not only on March 31, 2004. You are involved because you are an integral part of the M. family in [City] and because CRA has chosen to involve you very directly in this dispute.

For your information, you are at the factual hub or the center of this dispute. Remember, the facts are always what makes or breaks any legal case. ONLY YOU, not R.M., are privy to the most critical factual scenario in these proceedings because YOU, NOT R.M., were at home when CRA arrived unannounced at your private residence on March 31, 2004. **Your affidavit or your evidence will ultimately form the factual foundation of our case against CRA**. CRA will need to discredit your evidence if they are to avoid reprimand and retribution from the "Bench'(Judge). In this sense, you are more involved in this case as well as more critical to our endeavor to hold CRA accountable than R.M. can ever hope to be (at this point in time).

3. As a result, if you are not willing to attend Court on Monday afternoon, I see my role in Court on Monday afternoon as limited to asking the Judge to permit me to withdraw as your "counsel of record'. This is a court hearing about YOUR LIVES, not just R.M.'s life. Why would you pay someone to attend court to advocate on your behalf when you're not willing to attend court yourself?

(emphasis in original)

[40] The Applicant concluded in his September 16 e-mail that, if Mr. and Mrs. M. wanted to have himself, C.H. and S.S. continue in their representation, then family and couple counselling must be obtained forthwith. As well, Mr. and Mrs. M. had to be prepared to " encroach up to one half of your savings forthwith to fund restoration of your mental, emotional and spiritual health pursuits as well as your legal costs."

[41] A September 20, 2004 Provincial Court hearing on a preliminary motion of the Crown for a further detention of the seized M. documents resulted in an adjournment. In the course of the proceedings [Exhibit 15, Tab 27, transcript page 16] the Applicant, without laying any factual basis, said this of Crown's material:

The Applicant: In over 15 years of lawyering, with all respect, Your Honour, I have never, never accounted - encountered a more dismal affidavit compilation than this. Look at all of this. It's not admissible. If you had the opportunity to read the respondent's brief you'd see exactly where we're coming from. This is all junk. It's legal flea market kind of stuff.

Mr. C.: I wish my learned friend would -

The Applicant: And if - please do not

Mr. C.: - would not use such disparaging -

The Applicant: - interrupt me, Mr. C.

Mr. C.: - disparaging remarks. That's unprofessional, in my respectful opinion.

[42] The result of the hearing was an adjournment. When the Applicant reported by letter to Mr. and Mrs. M. on this result, he noted the third party/building fund monies could be used to loan $3000 to Mr. and Mrs. M. for the Applicant's retainer and S.S. would discuss this.

[43] On September 21, R.M. abandoned a Small Claims appeal hearing on a matter unrelated to the CRA issues. The Plaintiffs in this action were a Mr. and Mrs. S., as was briefly mentioned earlier in these reasons. The hearing was set in [Province]. R.M. told the Applicant of his, R.M.'s, own abandonment decision by e-mail. Despite this, on September 22, the Applicant drove to [City]. While en route to [City], in a cell phone conversation (the Applicant/R.M.), R.M. affirmed his decision to abandon, yet the Applicant was, in R.M.'s words, " ...not listening and began yelling. He said to me that I was stupid and that the hearing was a good opportunity to see how I would react." The conversation ended in frustration when R.M. said: " Do what you gotta do, [Applicant]."

[44] The result of this trip, in the words of the Applicant's September 22, 2004 e-mail (sent at 8:02 p.m. - Exhibit 15, Tab 29]), was an unsuccessful attempt to " . . . obtain an audience with the Judge to explain that my client had a temporary lapse of judgment..." The Applicant went on to comment on the result of R.M.'s decision to abandon:

> The outcome is predictably disastrous, both short term, respecting the unjust result [Mr. and Mrs. S.] obtained in Small Claims Court earlier this summer, and also in the long term, the unilateral elimination of a grand opportunity for both of you to gain some desperately needed litigation training or exposure - e.g. taking the stand in a real case - to assist you in preparing for the much tougher legal battle you face with CRA. The fallout at the Court in [City] this morning was alarming. The Clerk of the Court called R.M.'s actions yesterday " bizarre" . Mr. and Mrs. S. took great pleasure in taunting and ridiculing me as your counsel. I can only imagine the impression R.M.'s action left on the Judge.

[45] In a September 30, 2004 [Exhibit 15, Tab 30] e-mail, R.M. comments on the Applicant's arrogance, and thereafter the Applicant continues acting on the CRA matters. In an October 6, 2004 hearing, the Crown almost immediately announced it would use a statutory authority for release of certified copies. Then, for some 60 pages of transcript, [Exhibit 15, Tab 33] the Applicant advanced various arguments for contesting the seizure, as well as arguments on other issues. These arguments were not successful and, in the Applicant's October 13, 2004 report letter [Exhibit 15, Tab 34], he said that C.H. and S.S. both agreed that the decision should be appealed.

[46] On March 23, 2005, Mr. and Mrs. M. terminated their retainer of the Applicant. The Applicant asked Mr. and Mrs. M. to reconsider. However, on April 18, 2005, R.M. said, amongst other things, the following:

> The papers sent by CRA to us concerning you, show us that you are in the same boat as we are and therefore should definitely want to pursue this case, for your own sake as well.

[47] And, in conclusion, the following:

> Now would be a good time for YOU to tell me what I can expect from you. You will either agree that you will work with me on a contingency basis or I will no longer have you acting as my lawyer. I see no other way in handling my case at this time.

P.R.

[48] On August 30, 2004, in circumstances similar to the Applicant's M. file, P.R. retained the Applicant. On that day, the Applicant, C.H. and P.R. met and discussed, amongst other topics " . . . whether or not P.R. had the spiritual, emotional and financial resources to hold CRA accountable." The Applicant's course of conduct on this file was similar and each client knew of the other's involvement.

[49] And, as in the M. situation, the matter concluded with a fee dispute, and, by March 22, 2005, P.R. terminated the Applicant's retainer.

L.S. (formerly L.D.)

[50] The events concerning the Applicant's November 27, 2004 retainer to defend L.S. from charges pursuant to the *Non-Smoker's Health Protection Act* arose at F.'s Restaurant in [Province]. L.S. was the proprietor of F.'s Restaurant. She slept in the back of the restaurant. L.S.'s evidence shows that C.H. presented the following material [Exhibit 1, Tab 7] at a meeting in [Province] with L.S. and five other business owners:

> (a) a one page copy of a pré cis of a case, *R. v. Chong* (1909), 11 W.L.R. 231, from a legal abridgement text;
>
> (b) a 14 page copy of various pages from an 1896 legal text " The Laws of England" , by Herbert Broom, L.L.D.;
>
> (c) C.H.'s opinion that since this was a summary conviction it was a criminal charge and a criminal charge requires an injured party; and
>
> (d) C.H.'s argument that the by-law used the incorrect word " person" . The correct legal word, according to three law books presented by C.H., was " human" .

[51] L.S. was charged and C.H. then referred her to the Applicant. In a meeting on November 27, 2004 between L.S., F.M. (L.S.'s occasionally estranged common-law husband), C.H. and the Applicant, L.S. gave the Applicant an initial $1,800 retainer.

[52] L.S., in her examination-in-chief, recalled receiving a December 20, 2004 letter [Exhibit 9, Tab 6] from the Applicant. L.S. also said that she received the Applicant's draft Retainer Agreement [Exhibit 9, Tab 11]. The Retainer Agreement referred to C.H. and S.S. as " legal consultants" . L.S. said she understood C.H. to be some kind of tax consultant. The Applicant, in his cross-examination, said that the reference, in three places in the Retainer Agreement, was a drafting error and he meant the Retainer Agreement to refer to them as independent tax consultants. The Applicant did not recall their education but did admit, in cross-examination, that they had no accounting training.

[53] L.S. testified that she was frustrated by the Applicant's request for more extensive detail about the offence. L.S. could not understand why the extensive detail was required because " ...we weren't fighting on the evidence or why I was charged. We were fighting the law."

[54] The Applicant appeared in [Province] Provincial Court on behalf of L.S. and F.M. for a hearing to speak to matters of trial management. The Applicant refused, on behalf of his clients, to enter a plea. The basis for refusal, as set out in the transcript of the hearing [Exhibit 1, Tab 7, also found at Exhibit 9, Tab 17] was established by the Applicant at page 3 of the transcript:

> ...this statutory Court does not acquire jurisdiction to adjudicate these proceedings. So L.D. [now called L.S.] and F.M. do not consent to being tried in this statutory Court because they feel that giving their consent by entering a plea would mean that they would voluntarily give up their common-law rights. Both L.D. and F.M. have instructed me that they are not prepared to materially prejudice their inalienable common-law rights by voluntarily entering pleas and therefore submitting to a Court comprised of only statutory powers.
>
> THE COURT: Have you got any authority you want to cite to me for that position?
>
> THE APPLICANT: Well since this is the first time the Crown is hearing of this, the question that I wanted to pose to the Court, this Court on the record is whether or not this Court is prepared, or able, or capable of protecting all of the common-law rights that, at this point, belong to L.D. and F.M. If the answer is no, then L.D. and F.M. don't see how this matter can proceed in this Court; we're not in the right Court.
>
> THE COURT: Well, you know, I find the whole suggestion that there's a distinction between their common-law rights and this being a statutory Court as being quite unusual, if not totally artificial. They're charged under a statute of the Province of [Province] with an offence.

[55] The matter ended in an adjournment for more Crown disclosure and a forewarning from the Court that if the refusal to enter a plea continues at the next hearing of this matter, then a not guilty plea will be directed.

[56] The Applicant's inability to cite an authority is not surprising, given his various answers in his cross-examination with regard to his evaluation of the C.H. and S.S. materials and to his work for L.S. The Applicant's various answers can fairly be summarized as follows: the Applicant had never, until this time, been involved in tax litigation. He did not consult any standard text on tax litigation. C.H. and S.S. told him that they had noteworthy arguments and they gave the Applicant a stack of materials. The Applicant never had a chance to review their material and had no opportunity to consider if this material was a valid legal position or not. The Applicant did not do any legal research. Law Society counsel asked the Applicant a question to this effect - so you were taking the clients down this road and you didn't know the validity? The Applicant answered that, in February, he did not know.

[57] Around January and February, 2005, L.S. had personal difficulties. The Applicant recommended counselling for L.S. In the Applicant's cross-examination, he admitted saying to L.S. that, if she wanted him to act for her, then she must get counselling. The Applicant was then asked in cross-examination if he considered himself competent to tell people to get counselling. The Applicant did not directly answer the question and, instead, said it was his assessment that she needed to get help and that he was concerned that she could not stand the stress of the litigation. L.S. put his request for her to get counselling as follows: " He starts yelling at me. Don't you know how important this is?"

[58] For reasons relating to fees and conduct of the file, the solicitor-client relationship between L.S. and the Applicant deteriorated. On June 1, 2005 [Exhibit 9, Tab 32] the Applicant wrote L.S. to say: " ...I am

withdrawing as your lawyer of record. As you know, this is due to the fact that Messer.s [sic] S.S. and C.H. have abandoned your case." The next appearance date was June 7, 2005.

[59] On July 12, 2005, L.S. complained to the Law Society of [Province]. By April 18, 2006 that Law Society, without a hearing, closed its file without taking further action and thanked the Applicant for his cooperation.

Decision

[60] In a credentials hearing, including a hearing on a transfer application, the Applicant has the onus to satisfy the Panel, on a balance of probabilities, that the requirements of section 19(1) have been met, in other words, that he or she is of good character and repute and is fit to become a barrister and solicitor of the Supreme Court of British Columbia.

[61] The Panel has a serious concern about the manner in which the Applicant filled out his transfer application (Exhibit 1, Tab 1) and answered in writing specific questions put to him by the Law Society thereafter. The question is whether or not the Applicant was truthful on his transfer application or deliberately chose to not disclose that he had been **charged with an offence** in [Province] in relation to the answers he gave, or ultimately gave, to Part D, Question 1. We have difficulty accepting the evidence of the Applicant that he did not make full and proper disclosure because he did not think it was the kind of fact that was required to be disclosed. We have to consider the Applicant's answer in light of what went on in the Provincial Court of [Province] on August 4, 2005. At that point, the Court specifically raised with him if he had any idea what impact being charged and convicted in [Province] might have upon his transfer from [Province] to B.C. The Applicant told the Court specifically that he would have to notify the Law Society of B.C. Just a little over three months later, in his transfer application, the Applicant failed to properly disclose the charge and conviction to the Law Society of B.C. Having addressed this very topic with the Court in [Province] and saying that he would **have** to notify the Law Society of B.C., how could he forget to do this or think that he did not have to disclose these facts in relation to a question which reads in terms of " Have you ever been charged in Canada . . ." ? Regrettably, we are drawn to the conclusion that the Applicant deliberately failed to disclose that he had previously been charged with offences in [Province] when he answered Part D, Question 1 on his application for the reasons outlined. The Applicant's counsel conceded that if the Panel found he was deliberately misleading on his application, or was untruthful, that the application should be rejected. The transfer application of the Applicant is rejected for this as well as other reasons. These other reasons follow below.

[62] We have considered the objective evidence of what others believed the Applicant's character to be, as evidenced by the judgment of Madam Justice Krindle as to the Applicant's questionable wisdom in acting for G.P.; the Law Society of [Province] reprimand for his conduct of the S.D. matter; and finally, Madam Justice Simonesen's comments that the Applicant's termination of the T.O. retainer did not reflect the skill and competence required on his part or on the part of any reasonable counsel. This evidence does not establish good character.

[63] Then there is the reputation evidence of his clients, which, understandably, is on a subjective basis. The clients, of course, do not have the overview and the personal separation that a Judge can bring to the evaluation of the Applicant's behaviour. The evidence of each of the Applicant's clients shows the level of regard that they hold for him and speaks to a reputation that reflects:

(a) a practice style with colleagues and with the Courts consisting of confrontation and disrespect as a substitute for legal preparation. The Applicant over-emphasized the factual particulars to the extent of failing to apply the facts to the relevant law. His arguments concerning the CRA client files

would likely have been legal arguments based on admitted facts. Despite having a number of clients with the same basic legal issue, he did not do the legal research necessary to advance his clients' cases;

(b) a client management style wherein we find that the evidence established for us a reputation of intolerance, impatience, badgering, harassment and intimidation. The particulars of the reputation are: inability or stubborn refusal to listen to client instructions and a strong preference, without any skill or qualification relating to assessing counselling needs, for directing clients to have counselling. The Applicant imposed his views and advice on his clients by yelling, threats to withdraw if no compliance, disrespectful comments and no tolerance of any other point of view from the client and by repeated fee demands.

[64] We find that the evidence does establish a reputation, but that reputation is one that is not of good character and good repute. Pursuant to the *Legal Profession Act*, s.22 (3)(c) we reject the application.

[65] Section 19 of the *Legal Profession Act* also refers to fitness. The Applicant's lack of fitness was evidenced by his lack of legal knowledge. Despite having a number of clients with the same basic issue, he did not do the legal research and legal argument preparation necessary to advance his clients' cases. Instead, the Applicant's knowledge was that of detailed particulars and of client counselling to the extent that the need for solid legal argument preparation never occurred. His reference to years of practice at the bar does not overcome his lack of preparation. This evidence did not and could not meet the onus of establishing fitness.

[66] It is the Applicant's lack of fitness that causes his failure to see the divided loyalties arising from the G.P. situation, his own *Retail Sales Tax Act* litigation and most importantly, his relationship with S.S. and C.H. His reason for terminating the M. retainer is an egregious violation of the *Professional Conduct Handbook*, Ch. 6, Rule 1, Ch. 7, Rule 1. The Rule exists for the purpose, amongst others, of preventing compromised advice such as that which the Applicant gave to S.D. when she was told by the Applicant to ignore CRA's order to pay arising out of the Applicant's own CRA tax arrears. The Applicant's behaviour does not demonstrate the honesty and resolve necessary to place the client's interests first and to never expose the client to risk of avoidable loss.

[67] The Applicant's lack of fitness to practise means he is not able to demonstrate the judgment necessary to assess the costs, both financial and reputational, with the expected benefits of a course of action. There was certainly no benefit from the Applicant's unsuccessful collection of the $2,000 T.O. account. Adequate foresight would readily suggest that costs from legal fees and time away from practice would not justify a Court action. There is a need for proportionality in such a situation, but the Applicant's lack of foresight in anticipating the difficulties in collecting his account caused three adverse consequences: no payment; a complaint from the Chief Justice; and a Law Society of [Province] letter of reprimand.

[68] In view of the above, we find the Applicant is not fit to become a barrister and solicitor of the Supreme Court of British Columbia. He has not, in any one of these matters, met the standard of fitness. Collectively, the effect is such that we do not have any confidence in the Applicant's character.

[69] If we are wrong on any of the above, then our above finding of fact on the evidence relating to his Part D Question, that the Applicant did not tell the truth, is determinative of the s. 19 test. The Applicant's application is rejected.