2003 LSBC 44
Report issued: December 17, 2003
Oral Reasons: December 2, 2003
Citation issued: June 16, 2003

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

H.A. (SANDY) MCCANDLESS

Respondent

Decision of the Hearing Panel

Hearing date: December 2, 2003

Panel: Gordon Turriff, Q.C., Single Bencher

Counsel for the Law Society: Geoffrey B. Gomery
Counsel for the Respondent: Christopher E. Hinkson, Q.C.

Background

[1] On June 16, 2003, a citation was issued against the Respondent directing an inquiry into misconduct alleged in the Schedule to the citation, namely:

1. Your conduct in dealings, personally and on behalf of your company, Bitter End Charter Corp. ("Bitter End") with Stevenson Shipwright Service Ltd. and Mark Ronald Stevenson (collectively "Stevenson") namely:

(a) in August or early September, 1998, you proposed to Stevenson or, alternatively, agreed with Stevenson to an arrangement whereby you would make cash payments for services rendered;

(b) you entered into this arrangement with Stevenson whereby you made cash payments for services rendered for the purpose of evading payment of Goods and Services Tax or being wilfully blind to the intended evasion of Goods and Services Tax and income tax by Stevenson;

(c) pursuant to your arrangement with Stevenson, between September 5, 1998, and October 24, 2000, you or Bitter End made cash payments to Stevenson of $99,710;

(d) in the circumstances, this was conduct unbecoming a lawyer.

2. Your conduct on behalf of Bitter End, having filed a writ of summons in the Supreme Court of British Columbia, Vancouver Registry No. S006102 against Stevenson, in sending to the defendants a letter by facsimile in which you enclosed the writ "for delivery to and service upon you" and advised that you would take steps in default if they failed to file an appearance within the time allowed:

a) you had previously advised Stevenson that you were a lawyer;

b) you had not served Stevenson and your letter was misleading;

c) in the circumstances, this was professional misconduct or, alternatively, conduct unbecoming a

lawyer.

[2] I am called upon under Law Society Rule 4-22 to consider the Respondent's conditional admission and proposed disciplinary action. This is a distressing case involving a member of long standing who, for the second time in his practice life, faces allegations of conduct unbecoming a member of the Law Society.

[3] The facts are agreed in a document which for the record has been marked as Exhibit 1.

[4] The salient facts are that the Respondent made an arrangement with a shipwright by which the Respondent would make cash payments for necessary repairs to a ship owned by the Respondent's company and which had run aground. Cash payments totalling about $99,000 were made. The Respondent admits that he was wilfully blind to the purpose of the arrangement, which was to enable the shipwright to evade the payment of Goods and Services Tax. Later, as I infer, a dispute arose between the member and the shipwright about the quality of the work done, and the Respondent caused his company to issue a Writ of Summons and the Respondent then purported to serve it by fax without informing the shipwright that fax delivery was not good service but nonetheless putting the shipwright on notice of the consequences of a failure to respond.

[5] Happily, the Respondent later wrote the shipwright with an apology about his conduct in connection with the delivery of the Writ, and as I understand it, the action did not proceed. Fortunately, the shipwright had obtained independent legal advice after receiving the Writ and the accompanying letter from the Respondent, and in the circumstances no harm was done to him.

[6] There are two counts in the Schedule to citation. The first, as described by counsel for the Law Society, is the more serious. This is the count involving the allegation and admission of wilful blindness. The second count involves the delivery of the Writ of Summons with the accompanying misleading letter.

[7] The Discipline Committee, so I am informed, has recommended the following penalty, and it has been presented to me by counsel for the Law Society:

1. a one month suspension to begin January 4, 2004;

2. an order that the Respondent pay the costs of this proceeding in an amount, I take it, that will be agreed between counsel and determined otherwise if not agreed, that amount to be payable within six months from the date of my order;

3. publication to the profession in the normal course.

[8] As counsel for the Law Society has indicated, the Respondent has a discipline history. In 1978, he was reprimanded and fined as a result of an allegation of conduct unbecoming in circumstances where he had, and I use counsel's word, persuaded the wife of a client to guarantee the Respondent's fees owed by the Respondent's client. I understand that these circumstances involved the Respondent not ensuring that the wife had obtained independent legal advice.

[9] There was in 1992, I am told, a Conduct Review arising out of a circumstance in which the Respondent had direct contact with an unrepresented party contrary to the Professional Conduct Handbook ruling, and in 1997 the Respondent's competence was criticized by a highly experienced trial Judge.

[10] I must say that I am not influenced at all by the matter of the Judge's criticism relating to competence. That matter I see as being unconnected with what we are dealing with today. However, I am moved by the other items of practice history.

[11] It was suggested by counsel for the Law Society that what I will describe as a lighter suspension is

appropriate in a case involving a sole practitioner. Other Benchers may be influenced by such a consideration. I hope they are not. In my view, we cannot have members thinking that they will be treated differently just because they happen to choose a particular practice arrangement. The overriding consideration must be protection of the public.

[12] In this case, as I see it, the only ameliorating factor is the circumstance which has led to this Hearing this morning, namely a consideration under Law Society Rule 4-22 rather than a full scale Hearing before a Panel with witnesses and all of the expense and (I was going to say trouble but that doesn't seem to me to be the right word) effort that would be required if that proceeding had to occur.

[13] Counsel for the Law Society has acknowledged that a suspension longer than the one month that has been recommended by the Discipline Committee might be justified in some circumstances, and I must say that I tend to agree with him. However, in this case I am influenced by the experience of the Discipline Committee and the fact that counsel have obviously considered the circumstances carefully and made a proposal which, while I consider it to be at the low end of the range of potential penalties, is nonetheless within the range that I consider to be reasonable, and in the circumstances I accept the proposed disciplinary action and instruct the Executive Director to record the Respondent's admission on the Respondent's Professional Conduct Record.

[14] I impose the disciplinary action which has been proposed, namely a one month suspension to begin January 4, 2004, and order that the Respondent pay the costs of this proceeding within six months of today, and as well, that these allegations and the outcome be published in due course.