

2009 LSBC 03

Report issued: February 03, 2009

Oral Reasons: January 22, 2009

Citation issued: October 24, 2008

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

John Christopher Karlsson

Respondent

Decision of the Hearing Panel

Hearing date: January 22, 2009

Panel: James Vilvang, QC, Chair, Robert Brun, QC, Peter Lloyd

Counsel for the Law Society: Maureen Boyd

Counsel for the Respondent: Jerome Ziskrout

Background

[1] On October 24, 2008 a citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rule 4-13 of the Law Society Rules by the Executive Director of the Law Society on a direction from the Chair of the Discipline Committee. The citation directed that this Panel inquire into the Respondent's conduct as follows:

1. Your conduct in or about May 2000 in completing and submitting to the Law Society an Application for Enrolment in Temporary Articles in which:

(a) you answered " no" to the question, " Have you ever been charged, in Canada or elsewhere, with any crime, offence or delinquency under a statute or ordinance?" , when that answer was not true; and

(b) further, you solemnly declared on or about May 18, 2000 that the information contained in that Application was true and accurate, when it was not.

2. Your conduct in or about February 2001 in completing and submitting to the Law Society an Application for Enrolment in Temporary Articles in which:

(a) you answered " no" to the question, " Have you ever been charged, in Canada or elsewhere, with any crime, offence or delinquency under a statute or ordinance?" , when that answer was not true; and

(b) further, you solemnly declared on or about February 6, 2001 that the information contained in that Application was true and accurate, when it was not.

3. Your conduct in or about April 2002 in completing and submitting to the Law Society an Application for Enrolment in the Law Society Admission Program in which:

(a) you answered " no" to the question, " Have you ever been charged, in Canada or elsewhere, with any crime, offence or delinquency under a statute or ordinance?" , when that answer was not true; and

(b) further, you solemnly declared on or about April 18, 2002 that the information contained in that Application was true and accurate, when it was not.

[2] The Respondent admits service of the citation in accordance with Rule 4-15 of the Law Society Rules.

[3] This citation came before this Panel as a conditional admission of a disciplinary violation and consent to a specific disciplinary action pursuant to Rule 4-22 of the Law Society Rules. The Respondent admitted that he had engaged in conduct unbecoming by committing the disciplinary violation set out in the Schedule to the citation and consented to the following disciplinary action:

1. a suspension of six weeks, to commence on February 1, 2009; and
2. pay costs in the amount of \$2,500.

Statement of Agreed Facts

[4] An Agreed Statement of Facts was filed in these proceedings. It provided as follows:

1. The Respondent was admitted to the bar of the Province of British Columbia on May 23, 2003.
2. From his call, the Respondent has practised law as a sole practitioner primarily in the area of securities law, initially in Vancouver and then in Youbou. He currently practises on a part-time basis.

3. In 1991, the Respondent was charged with three offences (the " Charges") resulting from his conduct on August 11, 1991, when he was 18:

(a) having care or control of a motor vehicle when his ability to operate it was impaired by alcohol or a drug, contrary to section 253(a) of the *Criminal Code*,

(b) having care or control of a motor vehicle when he had consumed alcohol in such a quantity that the concentration of alcohol in his blood exceeded 80 milligrams of alcohol in 100 millilitres of blood, contrary to section 253(b) of the *Criminal Code*, and

(c) possession of a prohibited weapon contrary to section 90(1) of the *Criminal Code*.

4. On January 10, 1992, a trial was held with respect to the Charges before the Honourable Judge Green. The Crown and the defence each called two witnesses and the Respondent did not testify.

5. The Respondent pleaded guilty to the Charge of possession of a prohibited weapon and was acquitted of the two other Charges. He was given a conditional discharge and placed on non-reporting probation for four months, ordered to keep the peace and for the four-month period ordered not to possess any weapon, knife or other thing capable of being used as a weapon in circumstances that give rise to a reasonable inference that the thing has been used or is or was intended to be used as a

weapon.

Allegation #1

6. In September 1999, the Respondent enrolled in the Faculty of Law at the University of Manitoba. He completed first year of law school in April 2000. He obtained employment for the summer with McVea, Shook, Wickham & Bishop and was required to apply for temporary articles.

7. On May 18, 2000, the Respondent completed an Application for Enrolment in Temporary Articles (the " 2000 Application") and solemnly declared that the information in it was " true, accurate and complete" and that he made this declaration " conscientiously believing it to be true and knowing that it has the same legal force and effect as if made under oath."

8. In the 2000 Application, the Respondent responded " No" to the following question:

Have you ever been charged, in Canada or elsewhere, with any crime, offence or delinquency under a statute or ordinance? If yes, please provide full particulars on a separate sheet, including applicable dates, places, nature of acts or offences, penalties and pardons.

This answer was not true as the Respondent had been charged with the Charges in 1991. Further, when the Respondent solemnly declared on May 18, 2000 that the information in the 2000 Application was " true, accurate and complete" , he knew that the answer was not true and he made this declaration knowing it to be false.

9. On May 30, 2000, the Law Society wrote to the Respondent requesting that he provide a full account of his employment history.

10. On June 6, 2000, the Respondent responded by letter. In this letter he provided additional information regarding his employment history and wrote " [i]f you require any additional information, please do not hesitate to contact me." He did not disclose the fact of the Charges or that the answer he had given was untrue.

11. On June 6, 2000, the Law Society approved the Respondent's 2000 Application for the period between May 23, 2000 and September 1, 2000.

Allegation #2

12. After completion of his second year of law school, the Respondent obtained summer employment with Guild Yule & Co. and was required to apply for temporary articles.

13. On February 6, 2001, the Respondent completed an Application for Enrolment in Temporary Articles (the " 2001 Application") and solemnly declared that the information in it was " true, accurate and complete" and that he made this declaration " conscientiously believing it to be true and knowing that it has the same legal force and effect as if made under oath."

14. In the 2001 Application, the Respondent responded " No" to the following question:

Have you ever been charged, in Canada or elsewhere, with any crime, offence or delinquency under a statute or ordinance? If yes, please provide full particulars on a separate sheet, including applicable dates, places, nature of acts or offences, penalties and pardons.

This answer was not true as the Respondent had been charged with the Charges in 1991. Further, when the Respondent solemnly declared on February 6, 2001 that the information in the 2001 Application was " true, accurate and complete" , he knew that the answer was not true and he made this declaration knowing it to be false.

15. On or about February 15, 2001, the Law Society approved the Respondent's 2001 Application for the period between May 1, 2001 and August 31, 2001.

Allegation #3

16. On April 18, 2002, the Respondent completed an Application for Enrolment in the Law Society Admission Program (the " 2002 Application") and solemnly declared that the information in it was " true, accurate and complete" and that he made this declaration " conscientiously believing it to be true and knowing that it has the same legal force and effect as if made under oath."

17. In the 2002 Application, the Respondent responded " No" to the following question:

Have you ever been charged, in Canada or elsewhere, with any crime, offence or delinquency under a statute or ordinance? If yes, please provide full particulars on a separate sheet, including applicable dates, places, nature of acts or offences, penalties and pardons.

This answer was not true as the Respondent had been charged with the Charges in 1991. Further, when the Respondent solemnly declared on April 18, 2002 that the information in the 2001 Application was " true, accurate and complete" , he knew that the answer was not true and he made this declaration knowing it to be false.

18. On April 24, 2002, the Law Society wrote to the Respondent regarding " discrepancies between the employment history provided in [his] Application for Temporary Articles and [his] current application" and he was asked to re-submit a complete and accurate employment history, ensuring that the full 10-year period was accounted for.

19. On May 6, 2002, the Respondent responded by letter. In this letter he set out his " exhaustive" employment history for the prior ten years and concluded by writing:

If there is anything else I may do to assist you in processing my application, please do not hesitate to call me at any time ...

He did not disclose the fact of the Charges or that the answer he had given was untrue.

20. On May 8, 2002, the Law Society approved the 2002 Application and his acceptance as an articulated student, subject to receipt of his transcript for his LL.B.

21. On October 7, 2002, the Law Society wrote to the Respondent to advise that it had received his transcript from the University of Manitoba, but the transcript did not show his LL.B. On October 10, 2002, the University of Manitoba faxed the Law Society to confirm that the Respondent had satisfactorily completed the LL.B. programme.

22. On March 10, 2003, the Law Society wrote to the Respondent to advise that it had not received his official law school transcript indicating the granting of an LL.B. and asked that he make the necessary arrangements to have the transcript forwarded to the Law Society immediately. On April 17, 2003, the Law Society sent the Respondent a follow-up letter. The Law Society subsequently received the required transcript from the University of Manitoba.

23. At no time during this communication regarding the university transcript did the Respondent disclose to the Law Society the fact of the Charges or that the answer he had given was untrue.

24. On May 23, 2003, the Respondent was admitted as a member of the Law Society.

Disclosure of the Charges to the Law Society

25. On or about June 5, 2007, in the course of investigating another matter related to the Respondent, the Law Society became aware that he had been granted a conditional discharge on the Charge of possession of a prohibited weapon.

26. On June 5, 2007, Howie Caldwell, a staff lawyer in the Professional Conduct Department, spoke with the Respondent by telephone. Mr. Caldwell told the Respondent that he had seen a reference to a conviction for possession of a prohibited weapon and that there was no mention of this conviction in any of his three Applications. The Respondent responded that he had been given a conditional discharge and because of that he didn't think he had to report it.

27. On June 6, 2007, Mr. Caldwell wrote to the Respondent to seek his written response regarding his negative responses on his three Applications in respect of the question of whether he had ever been charged with a criminal offence.

28. On July 4, 2008, the Respondent provided a written response dated July 2, 2008. In this letter he stated that he was and remains "embarrassed and humiliated about being charged with the offences" and that:

I now recognize that I foolishly and inaccurately rationalized to myself that having not been convicted of the charges it was a matter of such minor moment that I was not doing anything seriously wrong in failing to disclose.

Effect of Disclosure in the Application Process

29. Lesley Small is employed by the Law Society as the Manager, Member Services and Credentials. In this position she supervises the review of applications for temporary articles, admission and transfer and determines whether such an application should be considered by the Credentials Committee.

30. In Ms. Small's view, if the Respondent has responded " yes" on the 2000 Application to the question of whether he had ever been charged with a criminal offence, he would have been required to provide further information and his application would have been considered by the Credentials Committee. If the Respondent had responded " yes" on the 2001 Application or 2002 Application, his application would have been considered by the Credentials Committee. If the fact of the Charges had only been disclosed on the 2001 or 2002 Application, the Credentials Committee may have ordered a hearing pursuant to section 19(2)(c) of the *Legal Profession Act*.

31. The Respondent admits, in respect of each of the applications to the Law Society made in 2000, 2001 and 2002, that he:

(a) answered " no" to the question, " Have you ever been charged, in Canada or elsewhere, with any crime, offence or delinquency under a status or ordinance?," and this answer was not true; and

(b) solemnly declared in respect of each such application that the information contained in it was true, accurate and complete, when he knew that it was not.

32. The Respondent further admits that this conduct in giving untrue answers and declaring them to be true when he knew they were not constitutes conduct unbecoming.

[5] Based on the facts as set out in the Statement of Agreed Facts, and upon the submissions of counsel and having reviewed the authorities presented, the Panel accepts the admission and finds the Respondent guilty of conduct unbecoming and concludes that the agreed upon penalty is appropriate.

[6] It is accordingly ordered that the Respondent:

1. be suspended for a period of six weeks, beginning February 1, 2009; and
2. pay costs of the proceedings in the amount of \$2,500, those costs to be paid within 30 days of the date of the invoice.

[7] The practice of law is based on honesty. The profession could not function at all if judges, other lawyers, and members of the public could not rely on the honesty of lawyers. Anything that undermines the trust that society places on lawyers is a serious blow to the entire profession. This Panel regards dishonesty as one of the most serious forms of conduct unbecoming or professional misconduct. The agreed upon suspension is, therefore, warranted.

[8] The Executive Director is instructed to record the Respondent's admission on the Respondent's Professional Conduct Record.