

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

Robert Bruce MacAdam

Applicant

**Decision of the Hearing Panel
on Application for Reinstatement**

Hearing date: August 4, 2005

Panel: John J.L. Hunter, Q.C., Single Bencher Panel

Counsel for the Law Society: Herman Van Ommen

Counsel for the Respondent: Robin N. McFee, Q.C.

Background

[1] The Applicant, Robert Bruce MacAdam seeks reinstatement as a member of the Law Society.

[2] The Applicant articulated in Whitehorse and was called in 1983. He opened his own general practice in Esquimalt in 1984 and subsequently took a position as an associate for a firm in Golden. In October 1992, Mr. MacAdam opened his own practice in Golden where he practiced primarily family law.

[3] In August 1995 he left Golden to work as a staff legal aid lawyer for a legal aid society in Terrace. His employment was terminated in 1998 and Mr. MacAdam decided to cease practicing law in order to consider alternative career options. He voluntarily ceased membership in the Law Society in November 1998.

[4] In April of 2005 the Applicant applied for reinstatement pursuant to section 19(1) of the *Legal Profession Act*. Under section 19(1), the benchers must be satisfied that the applicant is of good character and repute and is fit to become a barrister and solicitor of the Supreme Court before he can be reinstated.

[5] Mr. MacAdam's application for reinstatement was referred to the Credentials Committee for consideration. The Credentials Committee ordered a hearing in accordance with section 19(2)(c). Under section 22 of the Act, at this hearing, the application may be granted outright, granted subject to conditions, or rejected.

[6] By agreement between the Applicant and the Law Society, the hearing was heard by a panel consisting of a single bencher. The matter came on for hearing relatively quickly after the Credentials Committee's direction as Mr. MacAdam has an offer of immediate employment if he is reinstated.

Matters at Issue

[7] The issues that arose at this hearing centred around three problem areas. First, during his time as a sole practitioner in Golden, Mr. MacAdam was the subject of four conduct reviews, each of which led to a citation to the Discipline Committee. Three of the citations were for discourteous conduct towards other lawyers,

clients and court personnel. The fourth was for releasing confidential client information.

[8] The second area of concern was a citation for conduct unbecoming in relation to a *Wildlife Act* offence which Mr. MacAdam committed and for which he attempted to avoid responsibility.

[9] The third area of concern was in relation to Mr. MacAdam's medical status, although the Law Society seems satisfied, as am I, that so long as Mr. MacAdam continues to follow the course of medical treatment he has been receiving, that issue should not pose an impediment to his reinstatement.

[10] The real issues are the matters that led to his citations and whether they reveal a defect in character that should bar him from resuming practice.

[11] Under Rule 2-67 of the *Law Society Rules*, the onus is on the Applicant to satisfy me on a balance of probabilities that he is of good character and repute and is fit to be reinstated as a barrister and solicitor of the Supreme Court.

[12] The position taken by the Law Society is that if I conclude that Mr. MacAdam today has the same character as he did in 1995 when these incidents arose, I should reject his application for reinstatement. Mr. Van Ommen appeared to accept that if I concluded that the incidents of 1993-1995 were anomalies arising from a particular set of circumstances not likely to be repeated, as Mr. McFee urged, it would be appropriate to reinstate him with conditions.

The Professional Misconduct Citations

[13] The four professional misconduct citations all arose while the Applicant was conducting a family law practice on his own in Golden. After reviewing the conduct review reports, I came to the conclusion that these incidents all arose from a somewhat arrogant and insensitive approach to other people. None involved financial matters or provided Mr. MacAdam with any benefit. They seemed to result from a lack of awareness of the effect of what he was saying on other people.

[14] In these cases, the conduct review process seems to have helped considerably. Mr. MacAdam told me that he realized after speaking to the conduct review panel that he had spoken and in some case acted inappropriately. At the hearing of the citations, he accepted responsibility for his actions. He received a reprimand and was ordered to pay costs, which he did.

[15] During the hearing before me Mr. MacAdam made no attempt to justify or excuse the actions that led to these conduct reviews and citations. He accepted that they were not appropriate and assured me that incidents of this nature would not recur.

[16] Mr. McFee points out that all these incidents took place while Mr. MacAdam was engaged in a sole family law practice during the years 1993-1995 and that there were no reported recurrences after Mr. MacAdam moved to Terrace to practice in a supervised environment.

The Conduct Unbecoming Citation

[17] The Applicant is an ardent hunter. In May of 1995, he went hunting for bear with a friend. Both had licences to hunt for black bear, but only the friend had the licence required to shoot a grizzly bear. During the hunting trip, Mr. MacAdam shot a grizzly bear and then misled the conservation officer into believing that it was his friend who had shot the bear. Within a week Mr. MacAdam voluntarily admitted that it was he who had shot the bear. He was charged and convicted of an offence under the *Wildlife Act* and was also cited by the Law Society for conduct unbecoming. The disciplinary panel found that the misleading of the

conservation officer was conduct unbecoming and imposed a fine and costs on Mr. MacAdam.

[18] Before me Mr. MacAdam was quite frank is accepting that both the shooting of the bear and his response to it were wrong.

[19] On behalf of the Law Society, Mr. Van Ommen suggests that this event is consistent with a pattern found in the professional misconduct citations in that Mr. MacAdam made an initial mistake and then sought to avoid responsibility for his actions, a character trait which cannot be accepted in a lawyer.

[20] There can be no doubt that this conduct was conduct unbecoming a barrister and solicitor. I note however that Mr. MacAdam appears to have paid a fairly heavy price for his actions. In addition to the *Wildlife Act* conviction and the finding of conduct unbecoming by a disciplinary panel of the Law Society with their associated penalties, Mr. MacAdam advised me that he was ostracized by the hunting community in Golden when the facts came out. This was a significant factor in his relocation to Terrace later that year.

Recent Events

[21] After his termination from employment in 1998, Mr. MacAdam found himself broke and burned out. He told me he felt he was not in a suitable mental state to continue practicing law. He had had both family and financial difficulties and concluded that he was not at that time capable of practicing law. He decided to take some time off and consider his future.

[22] During the last six years, he has tried a number of jobs but has not been successful in reinvigorating his career. Two years ago he began thinking about applying for reinstatement but was not satisfied he was ready to resume practice. Last year he took a computer course which he felt would help him in practice. He is now working at a computer call centre.

[23] The other element that is relevant to Mr. MacAdam's fitness to practice is his medical state. He has suffered chronic low grade depression for many years and has been taking medication of it since 1991. When he decided in 2003 that he wanted get back into the practice of law, he undertook two psychotherapy programs to assist him in developing proactive ways of dealing with problems. Both his family physician and the registered psychologist who supervised the psychotherapy have provided letters in support of the reinstatement application in which they have separately stated that they see no contraindicators to Mr. MacAdam's resumption of his practice.

[24] Mr. MacAdam advised me through his counsel that he had no objection to a condition being imposed that he continue to receive ongoing medical assistance for his depression and that he continue to be compliant in taking the recommended medication. I agree that this would be an appropriate condition for reinstatement.

[25] Earlier this year Mr. MacAdam applied for a position as a staff lawyer in the constitutional section of the Nunavut Department of Justice. He has been offered a one year position in Nunavut, which may be extended following the one year probationary period, all conditional upon his reinstatement to the bar in British Columbia.

Discussion

[26] The requirement that a person be of good character and repute and be fit to become a barrister and solicitor is of critical importance in maintaining the standards of our profession and the continued confidence of the public. It is also a statutory requirement. Our Court of Appeal has endorsed the following rationale given by a Law Society panel for this requirement:

The demands placed upon a lawyer by the calling of barrister and solicitor are numerous and weighty and “ fitness” implies possession of those qualities of character to deal with the demands properly. The qualities cannot be exhaustively listed but among them must be found a commitment to speak the truth no matter what the personal cost, resolve to place the client’ s interest first and never expose the client to risk of avoidable loss and trustworthiness in handling the money of a client.

McOuat v. Law Society of British Columbia , [1993] B.C.J. No. 807 (B.C.C.A.), para. 6

[27] During this hearing I had the opportunity to observe Mr. MacAdam closely as he explained his understanding of the mistakes he had made in responding to problems that arose during the 1993-1995 period. He was frank in acknowledging the errors he had made and made no excuses for them, although he did point out that 1993-1995 was a particularly difficult time for him in his personal life. He assured me that the experiences in that period and his subsequent efforts to gain better awareness of how to deal with problems would ensure that this type of problem would not recur. I believe he was sincere in these assurances.

[28] The issue for me is whether notwithstanding these sincere assurances, Mr. MacAdam’ s history shows a defect of character that indicates he will seek to avoid responsibility when he comes under pressure despite his best intentions. I do not think that is the case, for two reasons.

[29] First the conduct in the 1993-1995 period arose in the context of particular objective circumstances, including the difficulties of starting and running a sole practice, which can in part be controlled with practice conditions.

[30] Second, these events occurred ten years ago and Mr. MacAdam has taken responsible steps to address his subjective reaction to pressure since that time. He took the prudent step of ceasing practice in 1998 when he could no longer cope, and since that time, there has been no further evidence of issues which could be regarded as character issues. He seems to have much better insight into the factors that led to his citations and I think it would be unreasonably harsh to prohibit Mr. MacAdam from attempting a fresh start in the circumstances of this case.

[31] Accordingly, I have concluded that I am satisfied that Mr. MacAdam is of good character and repute and that with one additional practice condition he is fit to practice as a barrister and solicitor. The one additional condition I would place on his reinstatement is that he practice in a supervised environment and not as a sole practitioner.

[32] The problems Mr. MacAdam encountered all arose during a short period of time when he was practicing as a sole practitioner. He indicated that the pressures of establishing a practice contributed to his poor reactions to interpersonal issues. The position Mr. MacAdam has been offered is as an employed lawyer in a public practice. He is very enthusiastic about the position and it is to be hoped that it will be a successful career opportunity. In my view this type of supervised practice is the ideal environment for Mr. MacAdam.

[33] I was urged to put a time limit on any condition requiring Mr. MacAdam to practice in a supervised setting. I have concluded that I should not do so. If circumstances change and Mr. MacAdam wishes to be relieved of this practice restriction, it is open to him to apply under Rule 2-69 for such variation. In my view this is the preferable way to deal with this matter.

Conclusion

[34] For these reasons, I am satisfied that Mr. MacAdam is of good character and repute and is fit to

become a barrister and solicitor of the Supreme Court of British Columbia and I approve his application for reinstatement on the following conditions:

- (i) that he practice only in a supervised setting and not as a sole practitioner; and
- (ii) that he continue to receive medical assistance and continue to be compliant in taking his recommended medication.

[35] At the outset of this hearing I was advised that security for costs in the amount specified by the Credentials Committee had been posted. No submissions were made to me on the question of costs and I will leave that question to the parties. If they cannot agree, either party may apply to me for the appropriate order.