

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

Gordon Douglas Hoffman

Applicant

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

Hearing dates: June 22, August 28 and September 15, 2009

Panel: David Zacks, QC, Chair, Leon Getz, QC, Jan Lindsay

Counsel for the Law Society: Henry Wood, QC

Counsel for the Applicant: Ravi Hira, QC

[1] The Applicant, Gordon D. Hoffman seeks reinstatement as a member of the Law Society. He was a member from 1984 to 2000 and again in 2006 and 2007.

[2] The Applicant carries the burden of demonstrating that he meets the requirements set out in Section 19(1) of the *Legal Profession Act*, which says:

No person may be enrolled as an articulated 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 a solicitor of the Supreme Court.

Preliminary Matter

[3] At the commencement of this hearing, counsel for the Applicant suggested that the Law Society was estopped from leading further evidence on an issue. The issue was Mr. Hoffman's conduct in 1999-2000 that resulted in a complaint. At that time the Discipline Committee decided to send Mr. Hoffman a letter from the Chair. This hearing was ordered by the Credentials Committee to determine the Applicant's fitness to return to the profession. This is not the same issue as was dealt with by the Discipline Committee. Further, the Discipline complaint did not go to a hearing, and there was no adjudication made or reasons given. The decision to send a letter from the Chair and to take no further action was not an adjudication on the fitness of Mr. Hoffman to return to the practice of law. We denied the application and heard evidence on the conduct that was the subject of the earlier complaint.

Background

[4] The Applicant was born in 1957 and graduated from UBC Law in 1983. He articulated with Webber and Company in Kamloops and then practised with Gillespie Renkema Barnett Broadway and as a partner in that firm from 1989.

[5] His practice was largely in litigation including ad hoc prosecutions for the Federal Crown.

[6] In the mid 1990s the Applicant started to experience symptoms of depression. With medical support he was placed on anti-depressant medication. He tried a number of different medications but found many of them caused side effects that he described as "unpleasant". He developed a pattern of taking his medications in the winter and not in the summer. In the winter of 1999 the Applicant decided to try to cope with his depression symptoms without medication.

[7] At that time, he began working with a young associate in the office, YA. The Applicant was attracted to YA. He felt that the attraction was mutual and that they had developed a "close personal relationship".

[8] We heard from YA, who described her working relationship with the Applicant in the fall of 1999 in very different terms. YA was a young associate working on criminal prosecution files with the Applicant. She and her husband had relocated to the Kamloops area when she secured an articling position with the firm. YA worked hard for the firm and worked very closely with the Applicant.

[9] In the fall and early winter of 1999 YA described the Applicant as increasingly attracted to her. She did her best to rebuff that attraction and to maintain a professional working relationship with a senior partner. She described many instances of inappropriate comments and email correspondence (copies of which were in evidence) from the Applicant. Ultimately she lodged a complaint with the Law Society and commenced a civil action against the Applicant and the firm. The civil action was settled and the Law Society complaint resulted in a letter from the Chair of the Discipline Committee.

[10] YA was a strong witness. She clearly endured a difficult working environment. Her evidence regarding the "relationship" with the Applicant was very different from his evidence on the point. She was focused on maintaining a professional relationship; he was focused on a personal relationship and did not understand her stated concerns.

[11] The Applicant suffered worsening symptoms of depression following the complaint to the Law Society and the commencement of civil proceedings. He ultimately left the practice and surrendered his practising certificate.

[12] In 2003 the Applicant had recovered his health and applied for reinstatement of his practising status. At the request of the Law Society, he wrote qualification exams and was reinstated to practising status in 2006 (without a hearing).

[13] After some difficulty in locating a job near his home, the Applicant secured employment with the Provincial Crown in St. Paul, Alberta commencing January 2006. The Applicant found the practice and procedures in that office to be different from his own experience. In addition, there were some personality conflicts within that office. Ultimately he was dismissed from that employment in April 2006. We heard from the Applicant and from Senior Crown with Alberta Justice about these matters.

[14] We do not consider his termination from that employment and the circumstances that were described to us to reflect upon the Applicant's "fitness" to be reinstated.

[15] On losing his job, he returned his status to non-practising and remained non-practising through 2007. In November 2007 he attended a potential legal employment opportunity in Nunavut that he did not find satisfactory. He allowed his membership to lapse again.

[16] Also in 2007 the Applicant commenced employment (not as a lawyer) with a company called Convergys. During a training session he had a confrontation with another trainee and his employment was terminated. We heard the Applicant's description of that event. The Applicant's behaviour was ill-advised, and he exhibited poor personal judgment.

Application for Reinstatement

[17] In the fall of 2008, the Applicant met with a practitioner in Kelowna, Mr. Levin, who offered him the opportunity for employment as a lawyer. The Applicant again had to apply for reinstatement, and his application now disclosed his termination from the Alberta Crown and his termination from the position with Convergys. There were also some discrepancies in the reports concerning these events and his correspondence with the Law Society (which will be discussed in further detail), all of which resulted in an order for this hearing.

[18] In support of the most recent application for reinstatement, the Applicant had conversations and communications with Law Society staff. He provided a medical report prepared by his then treating psychiatrist that addressed his depressive illness, his treatment and recovery. That medical report contained some misinformation about his employment history. Law Society staff attributed that misinformation to the Applicant. Then the Applicant was not able to readily identify some of his co-workers at Convergys or the surname of his supervisor at the Alberta Crown Office. Law Society staff interpreted this as illustrating a disposition to be less than forthright.

[19] Counsel for the Law Society impressed upon this Panel that none of the single events concerning this application for reinstatement was sufficient to prevent the Applicant from returning to practice but that " taken as a whole" , his conduct, lack of candour, errors of judgment and basic personality and self-control issues were cumulatively enough to cause this Panel to question his " essential honesty and integrity" .

[20] Counsel suggested that the Applicant was not candid with the Law Society regarding his termination from the job with the Alberta Crown, that he was not able to immediately identify his immediate supervisor's surname, and that the circumstances of his termination were not properly described to his treating psychiatrist. In written correspondence the Applicant provided an explanation for his termination that may have been less than totally accurate. This Panel accepts and is satisfied with the explanation given by the Applicant with respect to these concerns and does not find that, in this respect, he was " less than candid" in his dealings with the Law Society.

[21] The Applicant's conduct in 1999-2000 toward his young associate YA was totally inappropriate. He exhibited extremely poor judgment in his dealings with her, and he has continued to exhibit poor judgment and poor insight in many of his personal relations since that time. For example, he described a practice of " testing" co-workers that included essentially overburdening them and setting them up for failure. He suggested this was a sort of " rite of passage" . In our view the practice is valueless as a training exercise. None of this however, reflects on the Applicant's character or otherwise suggests that he should not be reinstated.

[22] Counsel for the Law Society suggested that the Applicant displays a remarkable lack of insight into the inappropriateness of his conduct towards YA and others. This Panel agrees that the Applicant does indeed show poor insight into his personal characteristics that have resulted in many instances of personal relationship difficulties for him. Intentionally setting up co-workers for failure is not an example of good mentoring or positive instruction. This Panel sees a pattern of controlling behaviour by the Applicant that is not part of good professional practice by lawyers. While we do not think that this makes him unfit to return to being a lawyer, we do think that the Applicant should consider seriously the desirability of taking professional advice about it.

[23] This Panel heard evidence from a number of witnesses as to the Applicant's general reputation, both as a practitioner and as a citizen, and we are satisfied that he has been and will continue to be a competent practitioner. Character flaws mean that he is not perfect but, as is conceded by counsel for the Law Society,

perfection is not the relevant test or standard.

[24] The Applicant has Major Depressive Disorder with Anxiety that is in good remission, and has been for some years. He continues to take medication and is in regular contact with his treating physicians. There was evidence that, if he discontinues medication, the chances of recurrence are in the range of about 90 per cent. The Applicant says that he will continue to take medication as his current medications do not cause unpleasant side effects and he does not want a relapse of symptoms, as occurred in 1999-2000.

Decision

[25] This Panel believes that the Applicant has shown exceedingly poor judgment in his "relationship" with YA and in some instances of his personal relations with other co-workers. However, this Panel is not satisfied that these errors of judgment and personality issues indicate an inherent lack of honesty or integrity on the part of the Applicant. Having weighed all of the evidence, we have concluded that the Applicant has discharged his burden and that he "is of good character and repute and is fit to become (again) a barrister and solicitor of the Supreme Court."

[26] During this application for reinstatement, the Applicant offered to agree to conditions to his return to practice. We believe that those conditions, as discussed at the hearing of this matter, are appropriate.

[27] This Panel is satisfied that the Applicant should be reinstated on the following conditions:

- (a) The Applicant will continue taking all depression-related medication as may be recommended by his family physician or by a treating psychiatrist;
- (b) For a period of three years following reinstatement, the Applicant's family physician will advise the Law Society immediately if he is not following medication recommendations, and will deliver annual reports to the Law Society otherwise, confirming compliance;
- (c) For a period of one year following reinstatement, the Applicant will practise in association with and under the supervision of Robert Levin, or another lawyer approved by the Credentials Committee;
- (d) For a period of one year following reinstatement, Mr. Levin, or another lawyer approved by the Credentials Committee, will file quarterly reports commenting upon the performance and condition of the Applicant;
- (e) One year following reinstatement, if the reports described in condition (d) have all been satisfactory to the Credentials Committee, condition (c) will be removed; and
- (f) condition (a) may only be removed if recommended by the Applicant's family physician or treating psychiatrist at some point after the first three years of his reinstatement and after subsequent approval by a medical examiner appointed by the Credentials Committee.