

2010 : No. 2 Summer

## **Henry Alexander (Sandy) McCandless**

Langley, BC

Called to the bar: May 17, 1971

Ceased membership: January 25, 2008

Disbarred: April 30, 2010

**Discipline hearing** : November 16 to 19, 2009 and January 14, 2010 (facts and verdict); April 21, 2010 (penalty)

**Panel** : Bruce LeRose, QC, Chair, Haydn Acheson and William Jackson, QC

**Report issued** : February 1 (2010 LSBC 03) and April 30, 2010 (2010 LSBC 09)

**Counsel** : Jaia Rai for the Law Society; H.A. (Sandy) McCandless on his own behalf (facts and verdict) and no one on behalf of H.A. (Sandy) McCandless (penalty)

### **Facts**

From November 2005 to July 2007, Henry Alexander (Sandy) McCandless was involved in an investment scheme. He represented a client who participated in the scheme and engaged in conduct intended to give shareholders the impression that their investment was secure and continuing to generate earnings.

After being specifically advised that two government securities regulators were investigating the investment as a fraudulent scheme, McCandless failed to warn investors of the risk. He allowed his position as a lawyer to give credibility to the suspect scheme.

He further facilitated the continuation of the scheme by investing his own money while in a clear conflict of interest. He also accepted funds into his trust account in circumstances that required him to decline to accept or return such funds.

McCandless, and the investors who relied on his status as a lawyer, lost thousands of dollars.

### **Verdict**

McCandless firmly held the position that the scheme was not fraudulent until well after being confronted with the investigation of the Law Society. He failed to adhere to warnings that the investment scheme may be fraudulent and continued to believe in the legitimacy of the scheme in circumstances that any prudent lawyer would not.

The panel found McCandless guilty of professional misconduct for engaging in conduct that gave shareholders the impression that their investments were secure, for placing himself in a conflict of interest, for acting in a manner that had the potential of perpetuating a fraud and for not giving full and proper legal advice.

### **Penalty**

McCandless did not appear at the scheduled penalty hearing; however, the panel decided to proceed in his absence.

The proven misconduct in this case was extremely serious, exposed the public to considerable harm, and tainted the reputation of the legal profession. In order to maintain the public's confidence in the legal profession, a significant disciplinary response was warranted.

The panel found that McCandless had an almost "blind faith" in the investment scheme and its principals at the expense of his client and members of the public without even an acknowledgment that he should have

known better.

His professional conduct record revealed an inability to learn from Law Society intervention and prior discipline. There were five incidents of discipline from 1979 to 2005, which demonstrated a pattern of misconduct resulting from his lack of objectivity and professional judgment and his failure to recognize classic conflicts of interest.

In determining costs, the panel considered the seriousness of McCandless' misconduct, the indication that he was in dire financial straits, his ability to generate income and his right to have his case heard.

The panel ordered that McCandless:

1. be disbarred; and
2. pay costs of \$47,000.