

The Law Society of British Columbia
In the matter of the *Legal Profession Act*, SBC 1998, c.9
and an application pursuant to Rule 2-69 concerning

Marius Schuetz otherwise known as Marius Alexander

Applicant

**Decision of the Hearing Panel
on Application for Variation of Conditions**

Written submissions

Panel: David Mossop, QC, Chair, Patricia Bond, Stacy Kuiack

Counsel for the Law Society: Henry Wood, QC

Counsel for the Respondent: Ian Aikenhead, QC

introduction

[1] This is an application to vary conditions placed on the Applicant on his reinstatement to the practice of law. The original decision on the merits of the application is reported at 2011 LSBC 14.

[2] This Panel decided to reinstate the Applicant to the practice of law. Certain conditions were imposed on him regarding his practice, and reporting on his medical condition.

[3] The parties originally contacted the Hearing Panel seeking clarification about certain conditions imposed by this Panel on the Applicant's reinstatement. The Panel expressed concern that the proposed clarification to those conditions may amount to a substantial variation of those conditions. The Panel requested the parties to either make submissions on the doctrine of *functus* or make an application under Rule 2-69. The Applicant decided to make an application under Rule 2-69. Subsequently, the President of the Law Society referred the matter to this Hearing Panel.

RULE 2-69

[4] The Applicant relies on Rule 2-69, which reads as follows:

Variation or removal of conditions or limitations

2-69 (1) A lawyer or articled student on whom conditions or limitations have been imposed by a panel under this Division may apply to the President to have them varied or removed.

(2) The President must refer an application under subrule (1) to the same panel that conducted the hearing or to the Credentials Committee, as the President considers appropriate.

[5] This Rule has two pre-conditions. The first is the lawyer or the articling student must make the

application. It is noteworthy that the Law Society cannot make the application. However, once the application is made, there is nothing stopping counsel for the Law Society from making submissions on variation of conditions not contained in the original application of the lawyer or articling student. This has happened here.

[6] The second pre-condition is the President of the Law Society must refer the matter to the original hearing panel or the Credentials Committee. In this case the President has referred the matter to the original hearing panel.

[7] The final question is under what circumstances should a Panel vary any conditions or limitations. The first point is Rule 2-69 should not be used to re-hash the hearing or engage in a trial de novo. Good cause should exist for a variation. However, good cause should be given a broad and flexible meaning. Good cause may include:

- (a) inadvertent omissions from the original conditions;
- (b) clarification of the original conditions;
- (c) intervening change of circumstances; and
- (d) better wording or alternative conditions to better fulfill the underlying purpose of the conditions.

[8] The above list is not exhaustive. The position of the Law Society also plays a part in a variation application. If the Law Society consents, or does not object, a variation is more likely to succeed. However, a variation can happen notwithstanding the objections of the Law Society.

SUBMISSIONS OF THE APPLICANT

[9] The Applicant seeks two variations. The concerns of the Applicant are the underlined portions of two of the conditions imposed by the Panel, namely paragraphs [82] and [83]:

[82] The Applicant will not have a trust account or otherwise deal with clients' money.

[83] The Applicant's practice is restricted to legal consultant and advisor.

[10] The Panel will first deal with the practice restriction and then the trust account restriction.

PRACTICE RESTRICTION

[11] In the original hearing, the Applicant in his evidence stated he intended to be a legal consultant and advisor. It is for that reason that the Panel imposed paragraph [83].

[12] The Applicant's counsel now says his client never intended to restrict his practice to just a legal consultant and advisor. The Applicant intended primarily to practise as a legal consultant and advisor. However, at the same time, the Applicant intended to carry on some aspects of a normal practice. This position was never made clear at the time of the hearing to the Panel.

[13] It is important to remember the reason why the Panel imposed paragraph [83]. It is not just because the Applicant intended to restrict his practice to that area. The Panel had doubts about whether the Applicant's problem stemmed primarily or exclusively from his alcoholism. There may very well be a much deeper problem. That is the additional reason the Panel imposed the restriction.

[14] Now we have the Applicant indicating that he intended, at least in part, to engage in a normal practice of law. The Applicant has been a single practitioner for a number of years. The Panel has concerns about

him continuing as a single practitioner and not having the support of other lawyers.

[15] To his credit, counsel for the Applicant has proposed an alternative condition which reads as follows:

[83] The Applicant will practise only as an employee or associate of one or more other lawyers who are subject to the approval of the Practice Standards Committee, such condition to remain in effect until the condition of completing the CPD hours is concluded in three years, subject to the approval of the Practice Standards Committee at that time.

[16] It is noteworthy the change is acceptable to the Law Society. The Panel also agrees to the variation. The new condition will allow the Applicant to practise law generally, subject to the other conditions and limitations imposed. At the same time, it will give the public reassurance as he will be practising under the supervision of other lawyers. The Panel accepts this variation. However, the Panel feels the Practice Standards Committee should have the power to extend the three-year time period.

TRUST ACCOUNT VARIATION

[17] The next variation sought by counsel for the Applicant deals with paragraph [82], which reads as follows:

[82] The Applicant will not have a trust account or otherwise deal with clients' money.

[18] The Panel took that condition from a letter dated April 28, 2010 written by counsel for the Applicant to the Law Society. In that letter, he stated as follows:

I should remind the committee that Mr. Alexander has paid a significant price for his actions by not practicing law for the past 3 years and 8 months and that his proposal with respect to re-entering the practice of law should be done so on the basis that he not open a trust account or otherwise deal with a client's money until specific consent would be obtained from the Law Society.

[19] Counsel for the Applicant now states that the expression "or otherwise deal with the client's money" would severely restrict his client's ability to practise law. He has suggested that the expression "or otherwise deal with clients' money" be removed from the condition. Counsel for the Law Society has agreed to this.

[20] Counsel for the Applicant rightly points out that the audit of the books shows no missing monies, etc. However, the audit of the books that took place a few years ago also indicated they were not kept in proper order. For this reason the Panel had imposed that condition. The Panel feels that, if the Applicant practises in association with other lawyers described in the above condition, this provides adequate protection to the public and allows him to practise law. The Applicant would be able to use the other lawyers' trust accounts. Therefore, the Panel agrees to the new variation of paragraph [82], except that the Panel feels the Practice Standards Committee should be able to allow the Applicant to have a trust account in the future if it feels it is appropriate.

VARIATIONS SOUGHT BY THE LAW SOCIETY

[21] The Law Society seeks two variations.

[22] The first is an omission in the medical conditions, namely:

5. As a precondition to being formally reinstated and licensed to carry on the practice of law, Mr. Schuetz shall demonstrate complete compliance with the terms of his signed monitoring or relapse prevention agreement for four (4) consecutive weeks. A letter from the monitor of the Law Society confirming that compliance will satisfy this requirement. If this precondition is not met, the matter shall

be referred back to the Hearing Panel.

[23] This condition was originally agreed to by the parties and was inadvertently left out of the original decision. This condition is added to the original conditions.

[24] The final variation sought by counsel for the Law Society is the reporting requirements required in paragraphs [81] and [89] of the original decision. In the Panel's original decision, we did not designate a specific entity in the Law Society to whom the Applicant would report. Counsel for the Law Society has suggested the Credentials Committee. Counsel for the Applicant made no submissions on this matter.

[25] We accept this variation; however, we think the appropriate body is the Practice Standards Committee. The Panel feels the Applicant should only be reporting to one committee of the Law Society, instead of two. If the Practice Standards Committee wishes to refer any matter to the Credentials Committee, it should be allowed that discretion. We have therefore made the necessary changes to the conditions, including paragraph [80].

SUMMATION OF ORDERS

[26] In order to avoid any misunderstanding in the future, we are repeating the original conditions as amended by this decision. For ease of reference, the numbering of paragraphs following the medical conditions reflects that of the original decision.

Medical Conditions

1. To comply with all of the recommendations made by Dr. Paul Farnan in his report of February 17, 2011 (Exhibit 4 at this Hearing), which include a written commitment by the Applicant to abstain from all potentially addictive mood altering drugs, including alcohol and over-the-counter medications, unless prescribed by a physician knowledgeable about the Applicant's history of alcohol dependence.
2. To enrol at his expense in a formal medical monitoring process of at least 12 consecutive months duration that is overseen by a professional independent monitor who is not involved therapeutically with the Applicant. That monitoring process must include:
 - (a) the entry into a written monitoring or relapse prevention agreement in a form acceptable to the Practice Standards Committee;
 - (b) the determination of any required recovery activities and their oversight; and
 - (c) biological testing that involves at least 18 random tests during the 12 month monitoring period, and most, but not necessarily all of these tests should be for urinary Ethyl Glucuronide.
3. To continue to use one designated physician as his primary care physician, who will also be his main prescriber of any medications. That physician shall be provided with a copy of Dr. Farnan's report of February 17, 2011, and a copy of the signed monitoring or relapse prevention agreement.
4. To consult with his personal physician on a regular basis and to ensure that there are follow-up investigations of potentially abnormal liver enzyme levels, as discussed in Dr. Farnan's report. The outcomes of those investigations must be provided to the Applicant's monitor.
5. To attend regularly at mutual support group meetings such as his current AA meetings at a frequency of at least two meetings per week for the duration of the signed monitoring or relapse prevention agreement. One of those meeting groups shall be declared by the Applicant to be his home group, and he shall participate actively with that group.

6. To select and maintain regular meaningful contact with a same sex sponsor in relation to his AA involvement, both by way of face-to-face meetings and telephone contact.

7. To complete a written series of the 12 steps with his AA sponsor's guidance within six months hereafter. Copies shall then be provided to both his personal physician and his professional independent monitor.

[80] The monitoring or relapse prevention agreement may be extended beyond 12 months upon the recommendation of the monitor and/or at the direction of the Practice Standards Committee.

[81] The monitor must report promptly to the Law Society any non-compliance with the monitoring or relapse prevention agreement, and submit a report to the Law Society in any event at the 12 month point. A further report from the monitor will also be required at the end of the monitoring period, if it is extended beyond 12 months for any reason.

[81.1] As a precondition to being formally reinstated and licensed to carry on the practice of law, the Applicant shall demonstrate complete compliance with the terms of his signed monitoring or relapse prevention agreement for four (4) consecutive weeks. A letter from the monitor of the Law Society confirming that compliance will satisfy this requirement. If this precondition is not met, the matter shall be referred back to the Hearing Panel.

Other Conditions

[82] The Applicant will not have a trust account unless otherwise authorized by the Practice Standards Committee.

[83] The Applicant will practise only as an employee or associate of one or more other lawyers who are subject to the approval of the Practice Standards Committee, such condition to remain in effect until the condition or completing the CPD hours is concluded in 3 years. The Practice Standards Committee may extend this three year time limit.

[84] The Applicant must not advise any client on an ex-parte order or garnishing before judgment.

[85] The Applicant will not mix his business activity with his practice of law even if the client obtains independent advice.

[86] The Applicant must elect, within 30 days of the date of this decision, and so inform in writing the Credential Committee either:

(a) he will re-take and pass PLTC within one year of the date of this decision; or

(b) take double the CPD hours for the next three years. Such CPD hours must be pre-approved by the Practice Standards Committee.

[87] The Applicant will enter into a mentoring relationship with another lawyer on terms and conditions the Practice Standards Committee consider advisable. This mentoring arrangement must be in place within 3 months of his readmission into the practice of law.

[87.1] Any power given to the Practice Standards Committee under these conditions may be delegated by that Committee to another Committee of the Law Society.

[87.2] For the purposes of paragraph 81, any non-compliance or any problems should be reported to the Practice Standards Committee.

[87.3] Any questions about the interpretation of these conditions should be handled by the Practice Standards Committee.