

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

Wuqiang (Anthony) Zhou

Applicant

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

Hearing date: October 28, 2011

Panel: David Mossop, QC, Chair, Rita Andreone, Leon Getz, QC

Counsel for the Law Society: Henry C. Wood, QC

Counsel for the Respondent: Maureen E. Baird

introduction

[1] The question before us is whether the Applicant meets the criteria for reinstatement as, in the words of section 19(1) of the *Legal Profession Act*, a “person [who is] of good character and repute and is fit to become a barrister and a solicitor of the Supreme Court.” Law Society Rule 2-67 places the onus on the Applicant “to satisfy the panel on the balance of probabilities” that he meets the requirements of that section.

[2] A Compliance Audit was conducted of the Applicant’s practice between June 23 and 27, 2008 and noted a number of deficiencies evidencing an unacceptable level of compliance with the Division 7 (Trust Accounting) Law Society Rules. Specifically:

- (a) The Applicant failed to deposit retainers into his trust account and instead, placed the funds directly into his general account;
- (b) The Applicant had pre-taken fees, without issuing an account, on a specific client matter;
- (c) The Applicant provided information on his Trust Report for the period ended December 31, 2007 that is contrary to the findings of the Compliance Audit; and
- (d) The Applicant failed to remit GST and PST on at least one client matter, despite having obtained a retainer from the client that specifically included these taxes.

[3] We understand that the deficiencies identified above overlap and are related to one another. We received a Book of Documents that was entered into evidence as an Exhibit and heard evidence about some of these matters from the Applicant. We begin by reviewing the principal parts of that evidence.

THE APPLICANT

[4] The Applicant is now 55 years of age, married and the father of two school-age daughters, one of whom is attending graduate school in the United States. He was born in the Shanxi Province of China and received his initial university education, including Law School, in that country. After having worked as a tour guide, he initially came to Canada in 1990, to attend a Master of Laws program at Queen's University in Ontario on a full scholarship. Upon completion of his LLM in 1991, he applied for and was accepted into the Queen's LLB program, which he completed in 1993.

[5] The Applicant's wife and first daughter joined him in Canada in December 1991 while he attended the LLB program, and when he exhausted his earnings from the previous summer as a tree planter, the family was financially supported by his spouse. The Applicant received a summer student position at a national law firm, following his first of two years in the LLB program, and eventually articulated at that firm.

[6] After his call to the Bar in British Columbia on May 20, 1994, the Applicant practised as an associate at Devlin, Jensen for approximately 3 ½ years, primarily offering counsel, David Lunny, litigation support. He left that firm at the end of 1997 and, in early 2008, established himself as a sole practitioner at Anthony Zhou & Company.

[7] The Applicant testified that, when he set out to practise on his own, he only occasionally had secretarial assistance and had to learn basic law firm accounting, relying primarily on his spouse for bookkeeping services. She had had little bookkeeper training and performed these unpaid services, in addition to having primary responsibility for managing the household and raising their two daughters. Up until 2006, when the Law Society Rules removed the annual trust account audit requirement, the Applicant's trust accounts were audited annually, in accordance with the Law Society Rules, and he testified that the Auditors noted no exceptions, except in the first year of his sole practice.

[8] The Applicant testified that he did not hire and pay for a more experienced law firm bookkeeper, but he felt increasingly sorry for the burden he placed on his spouse in this regard.

THE COMPLIANCE AUDIT, PROFESSIONAL CONDUCT INVESTIGATION AND CEASING PRACTICE

[9] A detailed report upon the results of the Law Society Compliance Audit, written by Brenda L. Hersh, CMA – Auditor, Trust Assurance Department, dated August 12, 2008, a summary report signed by the Applicant on June 27, 2008 and a final reporting letter sent to the Applicant on July 15, 2008 were in evidence before us. An investigation was subsequently commenced by the Professional Conduct division of the Law Society. The Applicant cooperated fully and provided detailed explanations and responses, including an outline of changes he made immediately in response, among them retaining a bookkeeper experienced in law firm accounting to address the noted accounting process and system deficiencies. The Applicant admitted several of the noted breaches of the Division 7 accounting rules, including failure to deposit retainers into his trust account and to issue an account to a client prior to taking fees.

[10] However, before the matter was considered by the Discipline Committee of the Law Society, the Applicant ceased to practise as of December 31, 2008. When the matter came before the Discipline Committee in 2009, it was resolved that the matter be placed on the Applicant's member file, to be considered by the Credentials Committee should he apply for reinstatement. The Applicant's Professional Conduct Record was otherwise clean. The Law Society confirmed that there is no allegation of dishonesty or harm to clients or the public in this case.

[11] After ceasing practice, the Applicant returned to China to work with a brother in a business venture that proved unsuccessful, then returned to British Columbia and has provided consulting services to a friend

who has sought to develop a market for his health food business in China.

[12] The Applicant applied for reinstatement on April 15, 2011, with the considerable support of David Lunny, his former colleague at Devlin Jensen, now at the firm Lunny MacInnes. The Credentials Committee ordered a hearing under Rule 2-52(8).

“GOOD CHARACTER AND REPUTE” AND “FIT TO BECOME A BARRISTER AND A SOLICITOR OF THE SUPREME COURT”

[13] We adopt the recognition in prior hearing panel decisions such as *Law Society of BC v. Buttar*, 2009 LSBC 14 and *Law Society of BC v. McOuat*, June 12, 1992 Panel Decision at p. 11 (affirmed by the Court of Appeal in *McOuat v. Law Society of BC* (1993), 78 BCLR (2d) 106), that the meaning and scope of the expression “good character and repute” is well-summarized in an article by Mary F. Southin, QC (as she then was) published in *The Advocate*, “What is ‘Good Character’” (1977), 35 *The Advocate* 129. Miss Southin wrote at 129-130:

I think in the context “good character” means those qualities which might reasonably be considered in the eyes of reasonable men and women to be relevant to the practice of law in British Columbia at the time of application.

Character within the Act comprises in my opinion at least these qualities:

1. An appreciation of the difference between right and wrong;
2. The moral fibre to do that which is right, no matter how uncomfortable the doing may be and not to do that which is wrong no matter what the consequences may be to oneself;
3. A belief that the law at least so far as it forbids things which are malum in se must be upheld and the courage to see that it is upheld.

What exactly “good repute” is I am not sure. However, the Shorter Oxford Dictionary defines “repute” as “the reputation of a particular person” and defines “reputation” as:

1. The common or general estimate of a person with respect to character or other qualities; the relative estimation or esteem in which a person is held.
2. The condition, quality or fact of being highly regarded or esteemed; also respectability, good report.

In the context of s. 41 I think the question of good repute is to be answered thus: would a right-thinking member of the community consider the applicant to be of good repute?

These views have been cited with approval in a number of decisions both in this province and elsewhere.

[14] The test of good character and repute has both subjective and objective aspects. This was explained by the hearing panel in *McOuat*, (supra), at p. 12:

The word “character” in the expression “good character and repute” has been treated in many decided cases, especially the older ones, as importing the character or “characterization” given the applicant by other persons, what may be called a subjective sense. An example is *Leader v. Yell* (1864), 16 CB (NS) 584; 143 ER 1256 where Erle CJ said:

Good or bad character does not depend on what a man knows of himself; it means his general reputation in the estimation of his neighbours.

In the same case Byles J said:

... character does not mean a man's real conduct and mode of life, but it means his reputation among his neighbours.

In more recent cases the words "good character" seem to be applied in the context of "strength of character" or "character defect". Used in that way the expression "good character" refers to what a man's personality, principles and beliefs actually are as opposed to the way the community regards him, whether or not he has earned the good or bad regard in which he is held. This sense may be considered objective.

One tends to naturally consider it more important that a lawyer be a good person and have and act upon correct principles as opposed to being regarded, rightly or wrongly, by others as seeming to be good or bad. But we think we are required to consider the regard in which the candidate is held by others as well as the qualities of character Mr. McOuat possesses, that is both the subjective and objective senses of "good character":

[15] In this same case, the panel explained the fitness test at pp. 17-18:

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 the personal cost, resolve to place the client's interest first and to never expose the client to risk of avoidable loss and trustworthiness in handling the money of a client.

The canons [sic] of legal ethics [*Professional Conduct Handbook*, chapter 1] adopted by the Law Society provide assistance, when they assert:

A lawyer is a minister of justice, an officer of the Courts, a client's advocate, and a member of an ancient, honourable and learned profession.

In these several capacities it is a lawyer's duty to promote the interests of the State, serve the cause of justice, maintain the authority and dignity of the Courts, be faithful to clients, be candid and courteous in relations with other lawyers and demonstrate personal integrity.

[16] There is overlap between the character test and the fitness test. If this applicant fails the character test, he will automatically fail the fitness test (*McOuat*, supra).

[17] *Law Society of BC v. Schuetz*, 2011 LSBC 14, confirmed much of the foregoing and at para. 19 summarized that the expectations of both the public and the profession ought to be reflected in assessing fitness, character and reputation, with reference to the hearing panel decision in *Law Society of BC v. DM*, June 14, 1994, Panel Decision at pp.4-5:

... fitness in this context depends on good character and reputation and must reflect to some extent the expectations of both the public generally and other lawyers specifically in what both groups desire, need or otherwise seek in a member of this profession. Like it or not, lawyers are held out to represent themselves as a community to the larger public community and as a group which, because of its honesty and integrity, enjoys an especial place. Accordingly, the status of barrister and solicitor requires that a special standard of honesty, integrity, and trustworthiness be imposed, met and kept at all times so that public confidence is maintained and properly nurtured. To prove that this standard is met and will be met thus requires more than a reflection on a person's past honest conduct. The burden is high so that same public can see that as a

profession having earned and been granted their trust, will continue to work toward doing everything necessary to keep it. To this end a lawyer must not only show that he or she has all the attributes of good character - honesty being one of them the lawyer must also show that he or she has other attributes from which a forecast of future integrity can be made. In summary, the profession at large and also the general public require lawyers to adhere to impeccable standards of behaviour and it is only through the adherence to such standards that we may achieve and keep the high regard for which we as a profession clamour and which, inter alia, gives to lawyers both status and economic advantage.

The Applicant must establish that he is of good character at the time of the hearing. However, the standard is not one of perfection. The hearing panel in *Law Society of BC v. Lee*, 2009 LSBC 22 at para. [79] stated this principle by quoting *Law Society of Upper Canada v. Schuchert*, [2001] LSDD No. 63, at para. 18:

The relevant test is not whether there is too great a risk of future abuse by the applicant of the public trust, but whether the applicant has established his good character at the time of the hearing on a balance of probabilities. The test does not require perfection or certainty.

[18] Mr. Lunny has written to the Law Society by letter in evidence dated June 6, 2011, to attest to the Applicant's good character, "moral integrity" and "keen awareness of and scrupulous adherence to the standards of professional conduct." Mr. Lunny offered in that letter to have the Applicant join his firm as an associate to work under Mr. Lunny's supervision. He will not handle trust funds or have administrative responsibilities.

[19] The Applicant regrets and admits the deficiencies in the Compliance Audit Summary Report. As to the failure to deposit the retainer in trust and the issue of pre-taking [paragraph 2 (a) and (b)], he explained that this was the first payment towards a three-tranche retainer. Although he ultimately deposited the client's cheque in his general account, he had waited one month before doing so to complete the work contemplated for that first tranche and then paid himself. He often hand-delivered to clients accounts that were prepared on the spot, without filed copies.

[20] Subject to our remarks concerning conditions and limitations below, our view is that no material issues concerning the Applicant's good character and repute and his fitness to be reinstated as a barrister and a solicitor of the Supreme Court are raised by the Division 7 accounting issues disclosed by the 2008 Compliance Audit and the subsequent Professional Conduct investigation. This is largely as a result of the Applicant's responses to the deficiencies identified and his taking, where he could, of immediate steps to address the deficiencies in processes and systems, admissions and actions..

[21] The undisputed evidence is that the Applicant was blind to the strict Division 7 accounting requirements and the reasons for their existence. After 2006, he took on a "relaxed" attitude to his practice's compliance with them, he stated, to relieve his spouse's bookkeeping burden. At some point in his practice, he even stopped asking for retainers and billed as work on files was completed. While the audit disclosed an overall unacceptable level of accounting rule compliance, the Panel is satisfied that he understands the importance of meticulous compliance with the accounting rules. In addition, the Panel is impressed that the Applicant understands and acknowledges that it is best that he practises at a firm that can handle all the administrative duties, rather than attempting to do so on his own as a sole practitioner.

[22] We have reached the conclusion, on a consideration of all of the evidence, that the Applicant has satisfied the burden resting on him to show that he is a "person of good character and repute and is fit to become a barrister and a solicitor of the Supreme Court" and is entitled, therefore, to be reinstated. Subject to the discussion below, his application for reinstatement as a member of the Law Society of British Columbia is granted.

CONDITIONS OR LIMITATIONS UPON THE APPLICANT'S CALL AND ADMISSION

[23] Section 22 of the Legal Profession Act deals with hearings such as this. Section 22(3) says:

(3) Following a hearing, the panel must do one of the following:

- (a) grant the application;
- (b) grant the application subject to conditions or limitations that the panel considers appropriate;
- (c) reject the application.

[24] We have concluded that we should impose conditions or limitations on the Applicant's reinstatement as a member of the Law Society of British Columbia.

[25] The competency of the Applicant in matters other than the accounting and administration of a law practice has not been questioned at this hearing. However, the Applicant has shown that he can be blind to or inappropriately casual in respect of the specific Law Society requirements in this regard.

[26] Mr. Lunny observed the hearing, and we were advised by counsel that his offer to have the Applicant join his firm as an associate, to work under Mr. Lunny's supervision remains. The Applicant will not handle trust funds or have administrative responsibilities.

[27] The Applicant has consented to the following conditions of reinstatement:

- (a) That he practise only in the capacity of an employee at a firm and under the supervision of a lawyer to be approved by the Credentials Committee of the Law Society;
- (b) That he not handle any trust transactions, trust money, or be in any way responsible for documenting trust transactions;
- (c) That he not assume responsibility for any bookkeeping or the creation or maintaining of financial records normally handled by a law firm bookkeeper; and
- (d) That he report to the Credentials Committee any change in his employment situation that goes to the nature of these conditions.

[28] In our opinion these conditions are in the public interest. They will also advance the interests of the Applicant.

COSTS

[29] Neither the Applicant nor the Law Society made any submissions on costs, but agreed to settle them amongst counsel. If any of the parties wish to make a submission on costs, they can do so within 30 days of the date of this decision. The other party will have 14 days to make any response.