

2012 : No. 2 Summer

John Skapski

Richmond, BC

Called to the bar: September 10, 1981

Discipline hearing : September 14, 2011

Panel : David Renwick, QC, Chair, Rita Andreone and Jan Lindsay, QC

Report issued : February 16, 2012 (2012 LSBC 08)

Counsel : Carolyn Gulabsingh for the Law Society and Richard Fernyhough for John Skapski

Facts

John Skapski acted for a client who was the owner of a commercial fishing licence. Such licences are vessel-based, and the client had agreed to “lease” the licence to two people for the 2001 season. The Department of Fisheries and Oceans does not permit temporary transfers of vessel-based licences; therefore, a complex scheme of transfers and agreements was entered into. Skapski’s client transferred the fishing licence to the other parties and received one of the shares of title to their vessel.

The fishing licence was never intended to be owned by the other parties, nor was the share in their vessel intended to be owned by the client. As security for the return of the respective licence and vessel, transfer back documents were executed. These documents were not dated or filed, but instead were held in trust by Skapski.

In 2004, one of the other parties declared bankruptcy and did not list the fishing licence as an asset in the bankruptcy. In 2009 the vessel was seized along with the licence. Skapski advised the bailiffs that his client continued to own the licence. Skapski located a replacement vessel for the licence and then dated and filed with the Department of Fisheries and Oceans the transfer of the licence, which had been executed (but not dated) in 2001.

Skapski said that this complicated series of transactions was the only way to effect a lease of a commercial fishing licence that he was aware of at the time. He had not considered and did not appreciate that he was in breach of the Professional Conduct Handbook.

admissions and DISCIPLINARY ACTION

Skapski admitted that his conduct in dating and affixing his signature in 2009, to a document solemnly declared before him in 2001, constituted professional misconduct.

The panel stated that lawyers have a duty to scrupulously adhere to the formalities of swearing affidavits, because to do otherwise would have grave repercussions. Allowing this conduct to go uncensured would harm the standing of the legal profession. Documentary evidence sworn before lawyers would lose its value if scrupulous adherence to rules of swearing such documents was not practised.

In this case, general deterrence is a factor, although specific deterrence is not, as Skapski has already developed a new protocol to deal with this type of scenario that does not offend Law Society rules and does satisfy the Ships Registry.

The panel took into consideration that Skapski had been called to the bar 30 years ago and did not have a

professional conduct record. He had corrected his practice and, while the consequences of his conduct are not insignificant in that all documents sworn before lawyers need to be accurate and reliable, no harm resulted from his misconduct in this case.

The panel accepted Skapski's admission and ordered that he:

1. be reprimanded; and
2. pay \$2,000 in costs.