

2012 LSBC 28

Report issued: September 11, 2012

Citation issued: September 8, 2009

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

**Robert Collingwood Strother**

Respondent

**Decision of the Hearing Panel in Respect  
of the Application by the Law Society to Amend  
the Citation and, in the alternative, Adjourn the Hearing**

Written submissions: July 10, 2012, July 24, 2012, August 3, 2012

Panel: Gavin Hume, QC, Chair, Gregory Petrisor, Alan Ross

Counsel for the Law Society: Henry Wood, QC

Counsel for the Respondent: Peter Gall, QC and Robert Grant

**preliminary matters**

[1] On July 10, 2012, counsel for the Law Society filed an application to:

- (a) amend the citation; or, in the alternative
- (b) adjourn the hearing scheduled to begin on August 21, 2012.

[2] We reviewed the application and written submissions of the Law Society, response from counsel for the Respondent, and the reply of the Law Society. On August 10, 2012 the Hearing Panel decided to allow the amendment sought. As a consequence, the Hearing Panel felt that it was unnecessary to consider the Law Society's alternative application to adjourn the hearing. We advised we would provide written reasons to follow, and these are those reasons.

[3] Previously, in a decision dated May 3, 2012, indexed as 2012 LSBC 14, the Hearing Panel dismissed allegation 1 of the citation which read as follows:

1. In or about 1998, you breached Chapter 7, Rule 1(a) of the *Professional Conduct Handbook* and placed yourself in a conflict of interest with a client, M Corp. (now [number] Canada Inc. and referred to herein as "M Corp."), by taking a personal financial interest in a new client, S Corp., which was a potential commercial competitor for M Corp. in a business market involving tax shelters related to film production services;

[4] At that point, the remaining allegation in the citation read as follows:

You breached your duty of loyalty to M Corp. by failing to provide material disclosure to it of your financial interest in a potential commercial competitor, by failing to advise M Corp. that your previous negative legal opinion concerning an amendment to the *Income Tax Act* should be reconsidered, and/or by failing to advise M Corp. of a favourable advance tax ruling. In so doing,

you failed to zealously represent M Corp.'s interest, withheld proper, timely and candid legal advice, failed to provide even-handed representation, and/or preferred your personal interest in the success of S Corp. over the interests of M Corp.

[5] The Law Society proposes to amend the remaining allegation as follows:

1. {deleted}

In or about 1998, you took a personal financial interest in a new client, S Corp., which was a potential commercial competitor of another client, M Corp. (now [number] Canada Inc. and referred to herein as "M Corp.") in a business market involving tax shelters related to film production services. You breached your duty of loyalty to M Corp. by failing to do one or more of the following:

- (i) to provide material disclosure to M Corp. of your financial interest in a potential commercial competitor;
- (ii) to advise M Corp. that your previous negative legal opinion concerning an amendment to the Income Tax Act should be reconsidered;
- (iii) to advise M Corp. of a favourable advance tax ruling.

In so doing, you failed to zealously represent M Corp.'s interest, withheld proper, timely, and candid legal advice, failed to provide even-handed representation, and/or preferred your personal interests in the success of S Corp. over the interests of M Corp.

[6] The Law Society argues that the proposed amendment is necessary to import details that were included in allegation 1, but since allegation 1 has been struck, it is necessary to include them in allegation 2 to provide transactional context and to allow allegation 2 to be a meaningful stand-alone allegation. Counsel for the Law Society drew attention to the requirements of Rule 4-14(2), which states:

(2) Each allegation in a citation must

- (a) be clear and specific enough to give the respondent notice of the misconduct alleged, and
- (b) contain enough detail of the circumstances of the alleged misconduct to give the respondent reasonable information about the act or omission to be proved against the respondent and to identify the transaction referred to.

[7] Counsel for the Respondent argues that the amendment of the citation should not be allowed because:

- (a) the amendment in essence reintroduces an allegation that the Respondent "breached his professional obligations in taking a personal financial interest in S Corp."; and
- (b) the Law Society's application to amend does not come within the narrow jurisdiction to grant an amendment at this stage of the proceeding.

[8] The Respondent, through counsel, contends that, because of the importance of the subject matter of this proceeding, specifically the Respondent's ability to practise in his profession, the standard of fairness in proceedings such as this are high. The Respondent argues that amendments at this stage are generally limited to narrow circumstances including:

- (a) amendments of a technical or formal nature;
- (b) amendments where the Law Society seeks to withdraw an allegation of wrongdoing; or

(c) where new evidence arises during the course of the hearing.

[9] The Respondent argues that the facts are well known. The Respondent's submissions state (at paragraph 35) "there is no need to provide 'transactional context'. The facts are set out in the court decisions."

[10] Allegation 2, as it stands, without the proposed amendment, refers to the Respondent taking a personal financial interest in a potential commercial competitor of M Corp. The allegation alleges the Respondent breached his duty of loyalty to M Corp.:

(a) by failing to provide material disclosure to it of his financial interest in a potential commercial competitor;

(b) by failing to advise M Corp. that his previous negative legal opinion concerning an amendment to the *Income Tax Act* should be reconsidered; and/or

(c) by failing to advise M Corp. of a favourable tax ruling.

[11] The Respondent's taking an interest in S Corp., in or about 1998, is not an allegation of fact that can come as a surprise to the Respondent. The allegation that M Corp. and S Corp. each acted in a business market involving tax shelters related to film production services is not an allegation of fact that can come as a surprise to the Respondent.

[12] Counsel for the Law Society, in his reply, makes it clear that the Law Society is not, through the proposed amendment, creating an allegation that the Respondent per se committed wrongdoing by taking a financial interest in S Corp. That was the basis of allegation 1, which was dismissed.

[13] In our view, the amendment sought does clarify the allegation against the Respondent. The citation, as amended, does not contain any substantive additional allegation of new conduct, and contains no new allegations of fact. The allegation after the amendment continues to allege breaches of the Respondent's duty of loyalty to M Corp. by failing to provide material disclosure to M Corp. of his financial interest in a potential commercial competitor, failing to advise M Corp. that his previous negative legal opinion concerning an amendment to the *Income Tax Act* should be reconsidered, and failing to advise M Corp. of a favourable advance tax ruling. The citation, before and after the amendment sought, alleges that the Respondent failed to zealously represent M Corp.'s interest, withheld proper, timely, and candid legal advice, and failed to provide even-handed representation and/or preferred his personal interests in the success of S Corp., over the interests of M Corp. The actual allegations of wrongdoing are substantively the same in the citation before and after the amendment.

[14] In our view, there is no prejudice suffered by the Respondent as a result of the amendment. He is not facing new or substantially different allegations from those he was facing prior to the amendment of the citation.

[15] There is a useful purpose to amendment of the citation. In our view, the amendments better define the issues, and it is desirable to have the issues defined at this stage in the proceeding. The allegation has to be able to be read and understood on a stand-alone basis, regardless of how well the Law Society and the Respondent know the facts.

[16] Finally, the hearing of the citation has commenced, but only in a very technical sense. There have been pre-hearing applications brought and adjudicated upon by the Hearing Panel, but the Hearing Panel has not yet begun hearing evidence.

[17] Accordingly, we grant the Law Society's application to amend the citation as sought.

[18] In light of our decision regarding the application to amend the citation, there is no need for us to consider the Law Society's application to adjourn the hearing of the citation.