

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

William John Macintosh

Applicant

**CORRECTED DECISION: PARAGRAPH [19] OF THE DECISION WAS AMENDED ON
JANUARY 30, 2013**

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

Hearing date: December 14, 2012

Panel: Phil Riddell, Chair, Stacy Kuiack, Public Representative, Brian J. Wallace, QC, Lawyer

Counsel for the Law Society: Jean P. Whittow, QC

Counsel for the Respondent: Henry C. Wood, QC

introduction

[1] The Applicant is a former member of the Law Society who, by application dated June 5, 2012, seeks reinstatement. On September 6, 2012, the Credentials Committee ordered, pursuant to section 19(2)(c) of the *Legal Profession Act* (the Act), that the matter proceed to a hearing.

[2] The options available to the Panel on an application for reinstatement are set out in section 22(3) of the Act:

22(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.

[3] The Panel considered the following:

- (a) the Applicant's history with the Law Society, including complaints, claims against the Lawyers Insurance Fund (LIF) and accounting filings;
- (b) the complaint made by the Applicant's former client that he:
 - i) failed to perform the services for which he was retained,
 - ii) misled his client as to the work he had performed, and

- iii) rendered bills when he had not performed the work;
- (c) the Applicant's medical fitness to practise law; and
- (d) the imposition of conditions on the Applicant's practice, in the event the Panel found the Applicant to be fit.

Facts

[4] The Applicant was admitted to the Law Society and called to the bar in December 1985. He practised in several small firms and as a sole practitioner. He became an inactive member as of November 29, 2006, and upon failure to pay fees, ceased to be a member of the Law Society as of January 1, 2008.

[5] The Applicant was the subject of several complaints to the Law Society, all but one of which were closed without disciplinary action. A more serious complaint was made against the Applicant in June 2006 by RO (the complainant). As to that complaint, the Applicant admitted in this hearing that:

- (a) in 2004, he did not file the requisite documents to perfect an application to the Federal Court for leave and judicial review of a decision of the Minister of Immigration;
- (b) in August 2004, the leave application was dismissed for want of prosecution;
- (c) in December 2004, he misrepresented to the complainant, that he had not received the Federal Court decision dismissing the leave application; and
- (d) he advised his client that an application could be made to the Immigration Minister, but he procrastinated and did not make the application to the Minister.

[6] The Applicant admitted his conduct at the time of the complaint. He explains, but does not seek to justify, that conduct as having resulted from his being overwhelmed by anxiety and depression. The Applicant says that, at the time, he was being treated for depression but not for anxiety.

[7] The Applicant rendered bills to the complainant totaling \$1,925, although he had not completed the work for which he had been retained. The complainant claimed and LIF repaid the amount the complainant had paid to the Applicant. Despite difficult financial circumstances, the Applicant has since repaid the LIF.

[8] The Discipline Committee considered the complaint on October 2, 2008, and decided, because the Applicant was no longer a member, to record the matter on the Applicant's member file to be considered by the Credentials Committee should the Applicant apply for reinstatement.

[9] The Law Society submits that, had the Applicant retained his membership, the complaint would have given rise to a citation, and that a finding of failing to perform the work and misleading the client would have resulted in a suspension. Counsel cited *Re Simon*, 2012 LSBC 23 and *Re Smiley*, 2006 LSBC 31 as authority for that submission. The Panel agrees that, had the Applicant remained a member, his conduct would have been likely to give rise to a citation and a suspension.

STANDARDS FOR REINSTATEMENT

[10] The test for reinstatement is set out in section 19(1) of the *Legal Profession Act*:

No person may be ... reinstated as a member unless the benchers are satisfied that the person is of good character and repute and is fit to become a barrister and a solicitor of the Supreme Court.

[11] Rule 2-67(1) of the Law Society Rules expressly sets out that the Applicant bears the onus of establishing his good character, repute and fitness:

At a hearing under this Division, the onus is on the applicant to satisfy the panel on the balance of probabilities that the applicant has met the requirements of section 19(1) of the Act and this Division.

CHARACTER AND REPUTE

[12] The Applicant filed extensive documentation in support of his application for reinstatement and gave evidence at the hearing. In both the written and oral evidence he took responsibility for his conduct, while offering a persuasive explanation for it. The material the Applicant filed also demonstrates his ability to perform professionally at a high level of competence and his appreciation of the ethical standards required. The application was accompanied by six thoughtful letters of support from lawyers who know the Applicant and are aware of the circumstances of his leaving the profession and of this application.

MEDICAL FITNESS

[13] Dr. Enright, the Applicant's treating psychiatrist, is of the opinion that the Applicant suffers from "chronic, recurring and relapsing general anxiety disorder with concurrent depressive symptoms." Dr. Enright says that the Applicant had previously been "primarily diagnosed as suffering from depression or dysthymia" and that the anxiety had not been addressed. Dr. Enright concludes that the anxiety disorder has been stabilized by medication and that, if the Applicant "maintains his current treatment, there is no reasonable likelihood that ... he would repeat the problematic behaviours disclosed to the Law Society."

[14] Dr. Kline, the Law Society's medical consultant, reviewed the documents provided in support of the application for reinstatement and spoke with Dr. Enright. Dr. Kline is of the opinion that the Applicant is fit to practise with the following conditions:

- (a) he be followed by a psychiatrist indefinitely and that he continue to take all anxiety-related medication recommended by his treating physician;
- (b) for a period of two years following reinstatement, the treating physician advise the Law Society immediately if the Applicant is not following the medication recommendations and deliver annual reports to the Law Society otherwise confirming compliance; and
- (c) the first condition be removed only if recommended by the treating physician after the first two years of reinstatement and after subsequent approval of the Law Society medical consultant.

[15] Counsel for the Law Society submits that reinstatement would be appropriate with the conditions recommended by Dr. Kline, plus conditions that the Applicant practise only immigration law and that he practise under the supervision of a lawyer approved by the Practice Standards Committee.

[16] Counsel for the Law Society notes that Rule 2-69 of the Law Society Rules permits a lawyer to apply to the President to have a condition varied or removed. The President may refer the application to the panel that imposed the condition or to the Credentials Committee.

CONCLUSION

[17] In consideration of the foregoing, we are satisfied that the Applicant is of good character and repute and that, with the conditions below, he is fit to practise as a barrister and a solicitor of the Supreme Court.

[18] The application is granted, subject to the following conditions:

- (a) A psychiatrist must monitor the Applicant's mental health, and the Applicant must continue to take all anxiety-related medication recommended by his treating physician. These requirements will continue for at least two years after reinstatement and until the treating physician recommends discontinuing them and the Credentials Committee, having taken whatever medical advice it finds appropriate, approves;
- (b) For a period of two years following reinstatement, the Applicant must direct his treating physician to advise the Law Society immediately if he is not following the medication recommendations, and deliver annual reports to the Law Society otherwise confirming compliance;
- (c) The Applicant must practise only immigration law, and
- (d) The Applicant must practise under the supervision of a lawyer approved by the Practice Standards Committee.

[19] The Applicant asks that certain personal and privileged information disclosed at the hearing not be disclosed to the public. The Respondent consents to the non-disclosure sought. In our decision we have summarized some of the personal information in order to make the reasoning for our decision understandable. The personal information is highly personal and sensitive and, beyond the references in this decision, its disclosure is not required. The privileged information cannot be disclosed. Pursuant to Rule 5-6(2)(a) except for the use made in our reasons, the information contained in Exhibit 1, Agreed Statement of Facts, paragraph 16; Exhibit 2, Tab A1, pages 6 to 9 inclusive and 69 to 75 inclusive, and Exhibit 2, Tab B.1, pages 1 and 2 inclusive, must not be disclosed or published. We find that Exhibit 2, Tab A.1, pages 26, 48 and 49, Tab B.17, Tab B 12 and Tab C.2 contain privileged information and must not be disclosed or published. References in the transcript of the hearing to the information described in this paragraph must also not be disclosed or published.

[20] If either party wishes to make submissions concerning costs of the hearing, they may do so in writing addressed to the Hearing Administrator within 30 days of the date of this decision.