

2014 : No. 01 Spring

Re: Applicant 6

Vancouver, BC

Called to the bar: January 9, 1986

Ceased membership: December 31, 1998

**Hearing** : July 8 to 10, 2013

**Panel** : Maria Morellato, QC, Chair, Lois Serwa and Donald Silversides, QC

**Decision issued** : December 11, 2013 (2013 LSBC 34)

**Counsel** : Jean Whittow, QC for the Law Society; The Applicant on his own behalf

## Facts

In 1999, former lawyer [the Applicant] emigrated from Canada to Europe in an attempt to conceal his whereabouts from his creditors and avoid his financial obligations to a bank and a client.

The Applicant returned to Canada in October 2010. He worked as a realtor in BC until he ceased to be licensed in March 2012. In July 2012, the Applicant became employed as a taxi driver.

In January 2012, the Applicant applied to be reinstated as a lawyer. The Credentials Committee ordered that a hearing be held to determine whether the Applicant meets the criteria for admission. A hearing panel considered three key issues in assessing his application.

### **Departure from practice and from Canada**

The panel considered the circumstances around the Applicant's departure from practice and from Canada.

The Applicant did not disclose to his clients or the Law Society that he intended to leave Canada permanently. He failed to comply with Law Society requirements with respect to his withdrawal from practice.

The Applicant felt that he dealt with his clients and their records in a proper and responsible manner when he ceased practising. He ensured that all of his continuing clients were represented by new counsel and that their files and records were transferred to new counsel before he left Canada.

### **History with the Law Society**

The panel considered the Applicant's history with the Law Society, including past complaints and reports/claims to the Lawyers Insurance Fund.

During his 13 years of practice, there were two situations that the Applicant failed to deal with properly. He had very large bills to two clients for whom he obtained large settlements, both on a contingent fee basis. After paying a refund to one client in 1997, it became clear in early 1998 that the Applicant would likely be required to pay a substantial refund to a second client. This would have been a financial disaster for the Applicant.

The Applicant stated that, if he were in the same circumstances today, he would attempt to negotiate a mutually acceptable amount for his fee with the client and refund the amount that exceeded the agreed amount.

Before he left practice, there were eight complaints about the Applicant that either did not contain serious allegations or did not involve any improper conduct. After the Applicant left Canada, two complaints were received that related to the unacceptable manner in which he wound up his practice, and a third complaint showed no evidence that the Applicant acted improperly.

One claim to the Lawyers Insurance Fund was related to the cost of appointing a substitute trustee in the place of the Applicant when he left Canada. Other potential or actual claims to the Lawyers Insurance Fund concerning the Applicant did not raise issues regarding his character or reputation or his fitness to be a practising lawyer.

## **Financial difficulties**

The panel considered the Applicant's financial difficulties, including his handling of his indebtedness to the bank at the time of his departure and later.

Instead of taking steps to deal with his obligations to the bank and his client, the Applicant decided to quit practising law, abandon his condominium and leave the country with \$300,000. His actions revealed flaws in his character.

However, the panel determined that these were a series of related but isolated actions and were not consistent with the rest of the Applicant's practice history or his conduct after settling in Europe and returning to Canada.

Except for the manner in which he dealt with his two major creditors, there was no evidence that the Applicant acted for his clients or dealt with counsel in any manner other than a competent, honest and trustworthy manner.

## **Conclusion**

The Applicant repeatedly stated that leaving Canada as he did in 1999 was a terrible mistake, and he was genuinely remorseful. The panel was satisfied that the Applicant would act differently today if faced with the same circumstances and that he was currently of good character.

Since the Applicant left the practice of law, he worked as a real estate agent and as a taxi driver. The consequences of his actions ultimately wreaked havoc on his personal life and finances. The Applicant nonetheless moved forward and did what he needed to do to support himself.

Strong letters of reference were received from his employers in the real estate industry, attesting to his professional ethics and honesty, and his taxi business employers attesting to his respectfulness and his banks, from before and after his bankruptcy, submitted letters relating to the time period after his return to Canada. They stated that he was "extremely reliable" fiscally. Further, the Applicant recognized and admitted he made serious mistakes that he would not repeat again. He understood the gravity of his wrongdoings. The Applicant worked hard to overcome his failings, and has demonstrated a marked change from the time just before he left his practice and Canada.

At the time of the hearing, the Applicant was 62 years old and still employed as a taxi driver. The panel was mindful of the fact that the Applicant had not practised law for 15 years and that, before he is reinstated, the Credentials Committee will undoubtedly require him to take steps to ensure that he is still qualified to practise law in BC. In view of his previous contingent fee billing difficulties, the panel also recommended that the committee consider imposing conditions or limitations on the Applicant's practice.

The panel found that the Applicant was a person of good character and repute and was fit to become a barrister and a solicitor of the Supreme Court, subject to the following conditions that he:

1. comply with, and fulfill, all requirements of the Law Society with respect to his qualification to practise law; and
2. practise only in a supervised setting as directed and approved by the Law Society, for the period of time to be set by the Law Society.