

In the Matter of the Social Workers Act

And

In the matter of a Hearing Concerning [REDACTED]

**REASONS FOR DECISION
of the Board of Registration for Social Workers
British Columbia**

Hearing date: February 15 & 16, 2008

Place of hearing: Vancouver, BC

Board Members: Jim Campbell, RSW Chair
Sharon Coates, public member
Bruce Hallsor, public member
Kathryn McCannell, RSW
Janice Murphy, RSW
Brigitte Wagner-Yates, RSW
Chi Ying Wong, RSW

Counsel for the Registration Committee: J. Ziskrout

Counsel for the Applicant: [REDACTED] was not represented by counsel

Decision Issued: March 12, 2008

1. This hearing was conducted by the Board of Registration for Social Workers (the Board) under Part 4 of the Rules of the Board (the Rules) on February 15 and 16, 2008. This decision concerns an application by [REDACTED] for registration. [REDACTED] appears to meet all of the academic qualifications for registration, but the issue before us is whether [REDACTED] meets the good character requirement. The concerns about his good character arise out of a number of instances over the course of his career that call this attribute into question.

The issues that gave rise to this hearing and were not in dispute are as follows:

- (1) [REDACTED] had three convictions for drinking and driving in the early 1990s that ultimately led to a driver's licence suspension.
- (2) [REDACTED] did not disclose these convictions to an employer, the [REDACTED] and drove clients around as part

of his employment despite having his licence suspended. [REDACTED] was fired from his position in [REDACTED] as a result of this behaviour.

- (3) [REDACTED] was disciplined by the [REDACTED] of Social Workers [REDACTED] in [REDACTED] for having engaged in an inappropriate relationship with a former client in [REDACTED] and [REDACTED]. This relationship involved sexual contact, the taking of money from the former client, and efforts to dissuade her from obtaining further counseling.
- (4) [REDACTED] lied to the [REDACTED] of Social Workers and hindered their investigation.
- (5) [REDACTED] has failed to fully disclose his prior disciplinary record to numerous employers.

2. Although [REDACTED] denied certain details of the [REDACTED] findings, and felt that there were some extenuating circumstances for some of the other past infractions, the essential elements of these facts were not in dispute at the hearing. The main issue therefore for the Board is the issue of redemption and whether the Board should find that [REDACTED] has redeemed his good character.

3. The requirements for registration are set out in section 35(1) of the Rules. Subsection (d) states that the Board must hear satisfactory evidence "*of the good character of the person consistent with the responsibilities of a registrant and the standards expected of a registrant.*" The onus is on the applicant to satisfy the Board, on the balance of probabilities, that he possesses good character.

4. Good character is not defined by the *Social Workers Act* or the Rules, but the Code of Ethics provides the following sections relating to good character:

1. *A social worker shall maintain the best interest of the client as the primary professional obligation.*
2. *A social worker shall respect the intrinsic worth of the persons served in professional relationships with them.*
3. *A social worker shall carry out professional duties and obligations with integrity and objectivity.*
4. *A social worker shall not exploit the relationship with a client for personal benefit, gain or gratification.*
- ...
8. *A social worker shall not provide social work services or otherwise behave in a manner that discredits the profession of social work or diminishes the public's trust in the profession.*

Furthermore, the Standards of Practice note that:

2.10 When a complaint investigation is underway or a matter has been referred for a hearing, social workers cooperate fully with all policies and procedures of the Board of Registration for Social Workers and conduct themselves in a manner

which demonstrates respect for both the complainant and the Board of Registration for Social Workers.

5. It is the position of this Board that all of the above references are of assistance in guiding what is considered good character. An essential element of good character is one's ability to be honest and forthright in one's dealings. In *Casson v. British Columbia College of Teachers [2000] BCJ Mp. 1038 (BCSC)*, the Court upheld the college's refusal to grant membership to an applicant who had deceived the College about her educational qualifications.

6. Past instances showing bad character do not mean that an applicant should be forestalled for all time from being registered as a social worker. The Board notes that in *Wakeford v. College of Physicians and Surgeons of British Columbia (1993), 84 BCLR (2d) 171 (CA)*, the Court of Appeal found that it is important to consider evidence of rehabilitation. In that decision, which considered a doctor who had been suspended for various incidents of sexual misconduct, the Court said:

I take this case to reflect the general proposition that a person should not be punished twice for the same offence and to stand for the principle an indeterminate sentence should not be continued beyond the point of demonstrated rehabilitation.

7. However, the mere passage of time is not sufficient to provide evidence of rehabilitation. The Board must be satisfied that there has been an actual change in the character of the applicant over time, and must be provided with evidence of that change. In *McOuat v. Law Society of British Columbia [2001] BCJ No. 256*, the Court of Appeal cited the following passage from the Law Society's decision:

In the end result, the evidence does not establish, on a balance of probabilities, that the present Mr. McOuat is any different from the man who yielded to temptation years ago. We are not convinced that the mere passage of time, even coupled with privation and criminal sanction, has transformed Mr. McOuat into a man who could not once again commit the acts which led to his disbarment.

After considering the submissions of the parties, the Court, at p.7 stated:

There can be no question that, having regard to the substantial thefts he committed over a long period of time and the devious and elaborate methods he used, Mr. McOuat had a difficult task in persuading any tribunal that he should be reinstated. He presented evidence to the panel that, for the most part, amounted to a reliance on the passage of time to make his case. The panel considered all the evidence and weighed it. In the end it exercised its discretion against granting the application. I am not persuaded that the panel misapprehended the evidence or applied any wrong principles. It did not consider extraneous matters. The panel members were simply not persuaded that

Mr. McOuat had rehabilitated himself as required and the evidence supported that conclusion.

8. Although [REDACTED] disputed some minor points related to his previous unethical behaviour, he accepted the findings of the [REDACTED] of Social Workers, and did not dispute the actions which impugned his good character prior to [REDACTED]. In his submissions to the Board, he concentrated on rehabilitation and made the argument that he had rehabilitated his character in the following ways:

- (1) not repeated the violations, including driving violations
- (2) accepted responsibility, and expressed remorse
- (3) spent 10 years reflecting upon the infraction, learning and developing strategies to ensure there is never a repeat
- (4) sought employment in the field, and done well
- (5) completed a course in ethics at [REDACTED], with a major paper on boundaries in social work
- (6) completed psychological counseling to develop new strategies to ensure against any repeats

9. The Board finds as a fact that [REDACTED] has not repeated the violations and apparently has a very good record in respect of his job performance in the field of Social Work in the positions he has held since [REDACTED]. The Board also agrees that [REDACTED] has undertaken some counseling and coursework that could be of assistance in rehabilitating his character. The Board is also prepared to accept [REDACTED] assertion that he has undoubtedly spent years reflecting on the impropriety of his infractions related to his driving record, and his personal relationship with a former client, and that he has some genuine remorse for these events.

10. The Board is not convinced however, on the balance of probabilities, that [REDACTED] has reflected or has shown true remorse in respect of his willful misleading of the [REDACTED] of Social Worker's investigation. More disturbingly, the Board finds that [REDACTED] has continued this pattern of dishonesty into recent years in failing to fully disclose his past infractions to other professional bodies or employers, and in making false statements to the [REDACTED] of Social Workers, and to this Board both in his written application materials and in his oral evidence provided at this hearing.

11. The Board finds specific instances of dishonest statements and conduct are as follows:

- (1) [REDACTED] engaged in a pattern of dishonesty and deception to cover up his relationship with a former client in [REDACTED].

[REDACTED] initial reaction to the complaint against him in [REDACTED] was to deny any knowledge of any circumstance of wrongdoing. Once he was informed of the identity of the client and the substance of the complaint, his reaction

was to fabricate a story that minimized the extent of the relationship and to discredit the reliability of the client's statement. He later participated in writing a letter to the former client's physician which denied the extent of the relationship again, in an attempt to derail the discipline action being taken against him.

cut short this investigation process by resigning from the in , only to re-commence it in by re-applying for membership. At this point, he obstructed the investigation further by lying to an investigator, failing to attend his hearing, and making misleading statements to the at a sanction hearing. Although he now says he accepts the substance of the findings made against him by the he refused, throughout that process, including at the sanction hearing, to admit he had a sexual relationship with his former client.

- (2) did not disclose his previous ethical breaches to his employers in .

Later in , found employment as a social worker with the . He failed to disclose his prior infraction with the , or the disciplinary finding made earlier that same year by the of Social Workers.

employment was terminated by the when they found out about the matter in .

- (3) submitted false or misleading information to the of Social Workers.

In , sought registration with the of Social Workers. In his letter of application on , he indicated that the relationship issue was the only breach of ethics he had ever made. He omitted any information about the driving issue, or the fact that he had lied to the and impeded their investigation.

As part of his application in , met with two psychologists. It appears from their reports, which were filed in Exhibit 3 herein, that he also withheld critical information from them, and failed to correct the record relayed in these reports when they were submitted to the in support of his application for registration. Specifically, his psychologists appeared to be unaware of his driving issue, his termination of employment that resulted, and his history of deceit to the .

- (4) submitted false or misleading information to this Board and its registrar.

Of greatest concern to this Board is that has provided our registrar and this Board with information that is false and misleading. When he first applied for registration, he did not disclose that he had a criminal record, had driving violations related to his employment, or had been dishonest with his employer in

██████████. Instead, he submitted a CV indicating that he had voluntarily left that position to accept full time employment elsewhere.

██████████ did disclose the findings of the ██████████ of Social Workers, but he did not disclose that he had lied to the ██████████ and impeded their investigation. In fact, in his October 2, 2006 letter to the registrar of the Board, he stated that, in respect of a letter he helped write for his former client's signature "*the co-authored letter written to Ms. X's physician was an attempt to express to the physician Ms. X's feelings and interpretation regarding the relationship at the time, in order to place the matter in a more accurate context*". This statement runs contrary to the findings of the ██████████ of Social Workers that the letter was untrue, and not authored, even in part, by the former client. It also runs contrary to ██████████ own admission, under cross-examination, that the letter contained a false and inaccurate statement and was designed to keep the truth from the ██████████ and to help him avoid appropriate discipline by that body.

In ██████████ evidence in chief to this Board, he stated that the aforementioned letter was true. He also stated that his ██████████ letter and his ██████████ letters to the ██████████ were true, even though he admitted under cross examination that both of these letters contained falsehoods and were designed to impede the proper investigation of him by the ██████████.

The ██████████ letter to the ██████████ states that "*it was my contention at the time and remains so, that the complaint allegations are not valid*". Under cross-examination, he stated that this letter contained a typographical error, and should have stated that not "*all the complaint allegations are valid.*" The Board finds this answer not credible, and considers it as further evidence of ██████████ demonstrated willingness to use deceit in order to bolster his argument.

Further issues of credibility in his evidence arise over a letter ██████████ wrote to his former client on ██████████. This very personal letter was provided by the former client to the ██████████ of Social Workers as evidence of ██████████ manipulative nature and of his attempts to ensure that her relationship with him remained hidden. Before the ██████████, ██████████ took the position that it was a forgery and was not written by him. This was despite the proffering of a handwriting expert who said that ██████████ had written it and that ██████████ had probably made efforts to disguise his handwriting sample in an effort to deceive the expert.

Before this ██████████, ██████████ did acknowledge writing the letter, although he disputed having tried to disguise his handwriting at any time. When asked about the several specifically damaging passages in the letter, he continued to advise that while he acknowledged writing the letter, he could not remember the parts of it that were damaging to him, and refused to offer any explanation as to the meaning of several passages. This testimony further damages ██████████ credibility with the ██████████.

██████████ also stated to this ██████████ on several occasions that he had always been "fully co-operative" with the ██████████, when in fact it is clear that he was not cooperative with them because he gave them false and misleading information designed to hinder their investigation.

12. Although it is not related to the above-referenced issue of serial dishonesty, the Board is also concerned that [REDACTED] has made no financial restitution to his former client, from whom he accepted either loans or gifts of \$2,300. His acceptance of this money is contrary to the ethics of the Social Work profession, and he has made no attempt at restitution in this instance. Further, [REDACTED] was ordered to pay \$12,500 to the [REDACTED] as partial costs of their discipline hearing and investigation. His reasons given for not making these payments are not accepted by this Board. Since most of the costs of this investigation and hearing were clearly required as a result of [REDACTED] failure to disclose truthful information to the [REDACTED], he should feel a moral obligation to pay these costs, and his failure to make any efforts to pay them is further evidence of his ethical failures and lack of good character.

13. In light of all this, [REDACTED] says that, since the discipline finding in [REDACTED] he has been granted conditional registration by the [REDACTED] and by the [REDACTED] of Social Workers. Mr. [REDACTED] states that these bodies had access to the information about his [REDACTED] discipline and found that he had sufficiently rehabilitated himself to deserve registration in those jurisdictions. He says that the BC Board should place at least equal weight to those findings as it does to the findings of the [REDACTED]

14. This Board is not convinced that the [REDACTED] or [REDACTED] registration bodies had the same information before them that we do. We do not have access to the [REDACTED] file and have not reviewed its legislation. We do note that [REDACTED] has provided correspondence indicating that he disclosed the [REDACTED] discipline to that body and received conditional registration, which was subject to him being supervised by another registrant for three years and disclosing his discipline record to all future employers.

15. The Board has been provided with the [REDACTED] registration file, and had already noted that there were misrepresentations in some of the material [REDACTED] submitted to the [REDACTED] body. In particular, he did not disclose the true reason why he left his employment in [REDACTED], and he did not disclose that he had been found to have misled the [REDACTED]. It does not appear that the [REDACTED] was aware of these misrepresentations when it granted conditional registration, subject to taking certain courses, and to being supervised for three years.

16. While the Board has considered these provisional registrations, it is certainly not bound to register [REDACTED] in BC merely because he managed to get registered in other jurisdictions. Our Board has conducted an independent inquiry into [REDACTED] good character, and for the reasons noted above, finds it wanting. This decision is not made in order to re-try or re-punish [REDACTED] for the serious violations he made in [REDACTED] in [REDACTED] and [REDACTED]. It is made because of his demonstrated lack of honesty about these and other disciplinary matters over a long period of time, starting in [REDACTED] and continuing to the present day. [REDACTED] has deliberately misled more than one regulatory body about his actions, has actively impeded an investigation in [REDACTED], and despite his declarations of remorse, has made no efforts to provide financial

restitution to his former client, or to pay the costs ordered against him by the [REDACTED] of Social Workers.

17. For the reasons set out above, the Board is not satisfied, on the balance of probabilities, that [REDACTED] satisfies the good character component of the requirements for registration. It is the duty of this board to therefore advise [REDACTED] that his application for registration is denied.

For the Board:



Jim Campbell RSW
Chair