

Douglas Warren Welder

Kelowna, B.C.

Called to the Bar: May 12, 1981

Discipline hearing: February 14, 2002

Panel: William J. Sullivan, QC, Chair, Ralston S. Alexander, QC and Anne K. Wallace

Report issued: March 8, 2002; indexed as [2002] LSBC 04

Counsel: Mark Skwarok, for the Law Society; Mr. Welder, on his own behalf

Summary

Mr. Welder failed to hold funds collected in payment of GST and PST, as required by statute, and failed to remit these funds as required by the federal and provincial governments. In August, 1999 a judgment for \$14,952.40 was filed against Mr. Welder for PST owed under the *Social Services Tax Act*. Mr. Welder did not satisfy this judgment within seven days, and then failed to notify the Executive Director of the Law Society of the circumstances of the judgment and his proposal to satisfy it, in breach of Rule 3-44. He admitted, and the hearing panel found, that his conduct constituted professional misconduct. The panel ordered that Mr. Welder be fined \$2,500 and be reprimanded. Because of uncertainty over Mr. Welder's total indebtedness, the panel further ordered that he consult with, and present his financial position to, a licensed trustee in bankruptcy, who must then report to the Law Society within 60 days. Further, the panel ordered that Mr. Welder provide the Law Society with quarterly statutory declarations setting out his total fee billings and total GST and PST remittances for each quarter, until relieved of the condition by the Discipline Committee.

Facts

Mr. Welder failed to hold funds collected in payment of GST and PST with respect to accounts for legal services, as required by the *Excise Tax Act* and the *Social Services Tax Act*, and failed to remit those funds as required by the federal and provincial governments respectively.

In August, 1999 a judgment for \$14,952.40 was filed against Mr. Welder for PST owed under the *Social Services Tax Act*. He did not satisfy this judgment within seven days, and then failed to notify the Executive Director of the Law Society of the circumstances of the judgment and his proposal to satisfy it, in breach of Rule 3-44.

In a letter to the Law Society in late 1999 Mr. Welder said he was unaware of his responsibility to report the judgment; in the same letter he advised that Revenue Canada had also taken garnishment action against him in September, 1999.

A citation was authorized against Mr. Welder in September, 2001.

Decision

Mr. Welder admitted, and the hearing panel found, that his conduct constituted professional misconduct.

Penalty

The panel noted some confusion in Mr. Welder's recollection of the total owed for GST and for his personal income tax. He noted the PST owed was approximately \$15,000, \$5,000 of which he planned to pay off shortly, and he estimated that \$55,000 was owed for GST.

He owed a further \$172,000 to \$200,000 for personal income tax and gave the panel information on his income and net assets after money owed for tax. He advised the panel that he had not considered bankruptcy as he wished to pay the monies owed.

In determining penalty, the panel reviewed the authorities and noted the fines levied in those decisions. The panel also noted the cooperation of Mr. Welder in reaching an agreed statement of facts and in advising the Law Society of an additional judgment as soon as he became aware of the need to make such a report.

The panel ordered that Mr. Welder:

1. pay a fine of \$2,500 by February 13, 2005;
2. be reprimanded;
3. consult with, and present his financial position to, a licensed trustee in bankruptcy who must then report to the Law Society within 60 days; and
4. provide the Law Society with quarterly statutory declarations setting out his total fee billings and total GST and PST remittances for each quarter, until relieved of the condition by the Discipline Committee.