

THE LAW SOCIETY OF BRITISH COLUMBIA

In the matter of the *Legal Profession Act*, SBC 1998, c. 9

and a hearing concerning

JAMES PETER YOUNG

RESPONDENT

DECISION OF THE HEARING PANEL

Written materials:

October 12, 2018

Panel:

Craig A.B. Ferris, QC, Chair
Ralston S. Alexander, QC, Lawyer
Don Amos, Public Representative

Counsel for the Law Society:

Kathleen M. Bradley

Appearing on his own behalf:

James Peter Young

BACKGROUND

- [1] On September 12, 2017, a citation was issued against the Respondent (the “Citation”) pursuant to the *Legal Profession Act* and Rule 4-13 of the Law Society Rules pursuant to the direction of the Chair of the Discipline Committee.
- [2] The Citation directed that this Panel inquire into the Respondent’s conduct as follows:
1. Between approximately April 1, 2009 and June 30, 2010, you collected Goods and Services Tax (“GST”) from your clients but failed to remit funds and interest due to Canada Revenue Agency in payment of the GST in a timely way, contrary to Chapter 2, Rule 2 of the *Professional Conduct Handbook*, then in force.
 2. Between approximately July 1, 2010 and March 31, 2013, you collected Harmonized Sales Tax (“HST”) from your clients but failed to remit funds and interest due to Canada Revenue Agency in payment of the HST in a timely way, contrary to Chapter

- 2, Rule 2 of the *Professional Conduct Handbook*, then in force, and rule 7.1-2 of the *Code of Professional Conduct for British Columbia*.
3. Between approximately April 1, 2013 and December 31, 2015, you collected Goods and Services Tax (“GST”) from your clients but failed to remit funds and interest due to Canada Revenue Agency in payment of the GST in a timely way, contrary to rule 7.1-2 of the *Code of Professional Conduct for British Columbia*.
 4. Between approximately April 1, 2013 and December 31, 2014, you collected British Columbia Provincial Sales Tax (“PST”) from your clients but failed to remit funds due to the provincial government in payment of the PST in a timely way, contrary to rule 7.1-2 of the *Code of Professional Conduct for British Columbia*.
- [3] The conduct alleged in each paragraph was stated to constitute professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.
- [4] This matter came on for disposition under Rule 4-30, which is headed “Conditional admission and consent to disciplinary action.” The Panel received a joint application from the Respondent and the Law Society to conduct a hearing on the written record. The Panel considered the joint application and decided that this was an appropriate case to proceed on written materials only, without an oral hearing, in accordance with the Law Society’s new procedure for a “Hearing in Writing” pursuant to a Practice Direction issued on April 6, 2018. Under this new procedure, a “Hearing in Writing” is still a “hearing” within the meaning of Rule 4-30.
- [5] In reaching the conclusion that it was an appropriate circumstance to proceed without an oral hearing, the Panel considered whether it had questions about the facts of the matter that were not clearly answered in the Agreed Statement of Facts (the “ASOF”) provided by the parties. The Panel considered whether any credibility issues were presented by the ASOF and determined that the written record was complete and that no additional useful information would be provided by an oral hearing. On that basis, the Panel agreed to proceed to conduct the hearing pursuant to the April 6, 2018 Practice Direction, without the need for an oral hearing.
- [6] The Respondent made a conditional admission of professional misconduct and agreed to the proposed disciplinary action of a fine of \$2,000. Rule 4-30 requires that a hearing panel consider whether the disciplinary action agreed to is appropriate for the professional misconduct that has been conditionally admitted.

PROCEDURE

- [7] Pursuant to Rule 4-31 of the Law Society Rules, a conditional admission tendered under Rule 4-30 must not be used against a respondent unless the admission is accepted by the Discipline Committee and the admission of proposed disciplinary action is accepted by a hearing panel. If the panel rejects the respondent's proposed disciplinary action, it is the panel's responsibility to advise the Chair of the Discipline Committee of its decision. The panel may take no further action with respect to the hearing.
- [8] After considering the circumstances set out in the ASOF and reading the submissions of Law Society counsel and the Respondent, the Panel accepted the admissions of professional misconduct. The Respondent's conduct is culpable and it is a marked departure from the conduct that the Law Society expects of lawyers, which is the standard for professional misconduct set out in *Law Society of BC v. Martin*, 2005 LSBC 16.

FACTS

- [9] The factual basis for this Citation is not complicated. After being an employee of a firm for nearly 20 years, the Respondent became a partner of the firm in 2009 where the administration of the office was in the hands of his former employer.
- [10] The Respondent first became aware of the failure of the managing partner to make required first HST remittances and later PST and GST remittances in January of 2011.
- [11] An accumulation of unremitted taxes (HST, PST and GST) developed over a period of three to four years commencing in January 2010. In most instances, cheques for the required payments were written by the responsible bookkeeping staff, but the cheques were not forwarded to the appropriate government collection agency.
- [12] From time to time in 2011 and 2012, the Respondent confronted his partner with a requirement for compliance. It appeared throughout that the failure to remit GST was a consequence of a shortfall in available cash in the firm. This shortfall appeared to the Respondent to be a consequence of aggressive drawing by the partners, and for his part, the Respondent cut back his draws to bare minimums.
- [13] Beginning in 2013, the Respondent suffered a series of devastating personal circumstances including the death of his wife, his father and his sister, all within an 18-month period of illnesses leading to deaths. He was understandably distracted from his practice and its financial problems during this time period.
- [14] In the fall of 2014, the firm filed a voluntary disclosure with Canada Revenue Agency ("CRA") and was granted some relief from the penalties that would have exacerbated an

already extremely difficult situation. Regardless, the firm still owed in excess of \$300,000 in taxes and interest and was subjected to aggressive collection practices by both the Province and CRA.

- [15] By December 8, 2015 the firm was current in respect of its PST obligations, and by February 17, 2016, the firm was current with respect to its GST/HST obligations.
- [16] The Respondent acknowledges that he should have been more diligent in his efforts with his partner to ensure that the firm was compliant with its obligations to remit taxes collected from clients. He has apologized for his failure to do so.

ANALYSIS

- [17] It is the task of a hearing panel, after a determination that the facts supporting the admission of professional misconduct are made out, to ensure that the penalty proposed to be imposed is within the range of a “fair and reasonable disciplinary action in all of the circumstances” (*Law Society of BC v. Rai*, 2011 LSBC 02).
- [18] The Panel reviewed the authorities provided by counsel, including *Law Society of BC v. Ogilvie*, 1999 LSBC 17, which lists the factors that are generally taken into account in deciding on disciplinary sanction. In addition, the Panel considered *Law Society of BC v. Lessing*, 2013 LSBC 29, and *Law Society of BC v. Faminoff*, 2017 LSBC 04. Those cases provide guidance on the application of the *Ogilvie* factors to particular fact patterns.
- [19] The Panel also reviewed the cases provided by counsel dealing with failures to remit to governments taxes collected from clients on account of legal services provided and paid for. Specifically *Law Society of BC v. Purvin-Good*, 2004 LSBC 05, (a \$1,000 fine), *Law Society of BC v. Chipperfield*, 2003 LSBC 24 (a \$1,500 fine), *Law Society of BC v. Donaldson*, 2003 LSBC 27 (a \$1,500 fine), *Law Society of BC v. Worobec*, 2003 LSBC 22 (a \$1,500 fine), *Law Society of BC v. Hendery*, 2005 LSBC 25 (a \$2,000 fine), *Law Society of BC v. Wittmann*, 2008 LSBC 24 (a \$3,000 fine), *Law Society of BC v. Bonfield*, 2008 LSBC 23 (a \$5,000 fine), and *Law Society of BC v. Lowes*, 2007 LSBC 54 (a \$5,000 fine).
- [20] These cases suggest a range of fines for failures to remit taxes. There is, at best, a loose correlation between the amount of taxes not paid and the amount of the fines imposed. Precise analysis is not possible since several of the cases do not discuss the amount of taxes not remitted. It is also significant, perhaps, that the reported cases were all rendered between 2003 and 2008, with the most recent being ten years ago.
- [21] The Panel is of the view that there is a significant distinguishing characteristic from all of the decisions to which we were referred. The Respondent in this case was essentially the

victim of his partner's misconduct. Remembering that the Respondent was a long time (20-year) employee of this same partner suggests that he may have had a position of lesser influence over the managing partner than might otherwise have been the case.

[22] He did attempt to encourage the responsible partner to deal with the issues and though promises were made, results did not follow. The Respondent then fell victim to his own difficult personal circumstances described above.

[23] The Respondent has acknowledged responsibility for the misconduct and cooperated with Law Society staff throughout.

CONCLUSION

[24] Under the circumstances as outlined in the ASOF and as summarized above, the Panel has concluded that the proposed disciplinary action is a fair and reasonable disciplinary action in all of the circumstances and, accordingly, accepts the conditional admission and proposed penalty pursuant to Rule 4-30 and directs the Executive Director to record the Respondent's admission on his professional conduct record.

[25] The Law Society has asked for an order to protect confidential information and solicitor-client privilege in the event of a request for access to the exhibits received in this hearing. That appears to the Panel to be appropriate in the circumstances.

[26] The Law Society did not seek an order for costs and, accordingly, no order for costs is made.

[27] The Panel makes the following orders:

- a. An Order under section 38(5)(b) of the *Legal Profession Act* fining the Respondent \$2,000, to be paid on or before December 31, 2018; and
- b. An Order under Rule 5-8(2)(a) of the Law Society Rules that, if any person, other than a party, seeks to obtain a copy of any exhibit filed in these proceedings, that client names, identifying information, and any confidential information or information protected by solicitor-client privilege be redacted from the exhibit before it is disclosed to that person.