

2006: No. 01 February

## **Douglas Welder**

Kelowna, BC

Called to the bar: May 12, 1981

**Discipline hearing:** July 22, 2005

**Panel:** Ralston S. Alexander, QC, Chair, G. Glen Ridgway, QC and Gerald J. Lecovin, QC

**Application for stay of penalty :** November 16, 2006 before Bencher Bruce LeRose

**Reports issued:** November 16, 2005 (indexed as 2005 LSBC 49) and November 23, 2005 (indexed as 2005 LSBC 52)

**Counsel:** Brian McKinley for the Law Society and Mr. Welder on his own behalf

## **Facts**

In 2002 a discipline hearing panel found Mr. Welder guilty of professional misconduct for having failed to remit GST and PST that he had collected in his law practice. He was reprimanded, fined and ordered to pay costs. As a condition of practice, he was required to file with the Law Society quarterly statutory declarations setting out his total fee billings and his GST and PST remittances.

Between April 2002 and April 2004 Mr. Welder filed reports, which reflected that he had made no GST remittances and only some PST remittances.

As of March 1, 2004, Mr. Welder owed various branches of government a total debt of \$687,975. Of this amount, he owed \$94,048 for unpaid GST, \$28,423 for unpaid PST and \$60,937 for unpaid employee source deductions. He explained that he had used money from his law practice for a software business project, which proved unsuccessful. On July 15, 2004, following an assignment in bankruptcy, Mr. Welder began making tax remittances. His total debt at the time of bankruptcy was \$915,083 against assets of \$55,187.

## **Verdict**

The hearing panel found and Mr. Welder admitted that his conduct in failing to remit GST, PST and employee source deductions collected in his law practice constituted professional misconduct.

## **Penalty**

The hearing panel noted that it was the second time Mr. Welder had faced discipline for failure to remit tax. Moreover, although he was already in debt, Mr. Welder had incurred additional debt by voluntarily paying his wife \$1,000 a month in maintenance to allow her to buy a new condominium, by paying \$400 per month on a piece of property that he deposed to have no value, by permitting his wife to encumber her home, a prima facie family asset, (thereby decreasing its value) and by increasing his rental payments to his wife by 35% to cover her additional costs that followed the re-mortgaging. He in fact used money he had collected for tax and employee deductions for these other expenses.

The panel stressed that it is a serious breach of a fiduciary obligation for a lawyer to use for his own purposes money received for a specific purpose. Moreover, the panel found that, if Mr. Welder were

permitted to continue in practice, he was likely to continue to accumulate further debt, which should not be condoned.

The panel ordered that Mr. Welder:

1. be suspended for one year as of the date of publication of the hearing report;\* and
2. pay \$2,450 as costs.\*

**\*Stay of penalty pending review**

*Under Law Society Rule 5-13, Mr. Welder applied for a review of penalty by the Benchers. He also applied for a stay of penalty pending the outcome of that review. On November 23, 2005 the stay of penalty was granted. As a result, the suspension is not in effect at present .*

In considering a stay of penalty, the Benchers who heard the application concluded that Mr. Welder would suffer irreparable harm if he were suspended since he had already lost clients and had only his law practice as a source of income. The Benchers were satisfied that the balance of convenience favoured a stay and found the public was protected by Mr. Welder's undertaking to pay outstanding amounts of GST, PST and employee source deductions by November 29, 2005, to make the required tax remittances in subsequent months and to make various reports to the Law Society respecting required remittances and to provide proof of payment.