

No. 04/08

Philip Richard Derksen

Abbotsford, BC

Called to the Bar: May 20, 1988

Discipline hearing: April 14, 2004

Panel: Grant C. Taylor, as a single-Bencher panel, by consent

Reports issued: April 26, 2004; indexed as 2004 LSBC 08

Counsel: Luisa Hlus, for the Law Society and G. Jack Harris, QC, for Mr. Derksen

Summary

Mr. Derksen failed to hold and remit funds collected in payment of GST, in breach of the *Excise Tax Act*, and failed to hold and remit funds collected in payment of PST, in breach of the *Social Service Tax Act*. He also practised law between July 1 and September 24, 2003 without having paid his professional liability insurance fee, contrary to s. 30(7) of the *Legal Profession Act*. Mr. Derksen admitted and the hearing panel found that his conduct constituted professional misconduct. The panel ordered that Mr. Derksen be reprimanded, pay a \$4,000 fine and \$1,410.50 as costs, make quarterly reports to the Law Society on his PST and GST remittances and any practice debts he has incurred and report to the Society on his treatment for procrastination and anxiety, including a final reporting letter from his psychiatrist or psychologist.

Facts

Failing to remit GST and PST

In April, 2003 the Canada Customs and Revenue Agency (CCRA) advised the Law Society of three requirements to pay respecting Mr. Derksen's practice.

In response to enquiries from the Law Society, Mr. Derksen stated that he had failed to file GST for a number of months and that his payments were in arrears for a number of months before that. He noted that the CCRA had garnished all of his Legal Services Society billings since April and that he had made a proposal to the CCRA.

The Law Society followed up with Mr. Derksen to seek particulars of unpaid debts for GST and PST. Mr. Derksen reported in October that his GST remittances had been paid in full and that the amount he owed in PST remittances, then estimated at \$11,000, would be repaid by mid-2004. Mr. Derksen noted that he had hired a bookkeeper and continued in treatment for depression, which manifested itself in procrastination, avoidance and delay.

A citation was issued against Mr. Derksen on January 12, 2004.

Practising law while uninsured

On May 29, 2003 the Law Society advised Mr. Derksen that his second instalment for 2003 professional

liability insurance and a late filing fee on his accountant's report (Form 47) were due on June 30, 2003. When Mr. Derksen did not make his payment, Law Society staff followed up with him on July 11 and July 18. Mr. Derksen told the Law Society that he was experiencing cash flow problems because the CCRA was garnishing his billings. On July 31 the Law Society reminded Mr. Derksen that he was uninsured and must immediately cease the practice of law. The Law Society followed up on August 27 and September 11, at which time the Society ascertained from Mr. Derksen's office staff that he continued to meet with clients.

On September 17 the Law Society received from Mr. Derksen a cheque dated August 31 in payment of his fees, but the cheque did not clear. Mr. Derksen did not pay his insurance until September 26, 2003 when he provided a bank draft to the Law Society.

Verdict

Mr. Derksen admitted and the hearing panel found that he was guilty of professional misconduct in:

- failing to hold funds collected in payment of GST and to remit such funds as required by the *Excise Tax Act*;
- failing to remit funds collected in payment of PST as required by the *Social Service Tax Act*; and
- practising law while uninsured between July 1 and September 24, 2003, contrary to s. 30(7) of the *Legal Profession Act*.

Penalty

The hearing panel noted that Mr. Derksen had undergone several Law Society practice reviews since his call to the bar. The panel noted that Mr. Derksen required counselling for avoidance, procrastination and delay.

In consideration of all the circumstances, including the need for general and specific deterrence, the hearing panel ordered that Mr. Derksen:

1. be reprimanded;
2. pay a \$4,000 fine (\$2000 with respect to his failure to remit GST and PST and \$2,000 with respect to practising without insurance);
3. pay \$1,410.50 as costs of the discipline proceedings; and
4. make quarterly statutory declarations to the Law Society, beginning in June, 2004, to report on:
 - a) his PST and GST remittances;
 - b) any practice debts he has incurred; and
 - c) the progress of his ongoing treatment for procrastination and anxiety, including a final reporting letter from his psychiatrist or psychologist.

The panel further recommended that Mr. Derksen seek assistance from the Lawyers Assistance Program when any concerns arise respecting his ability to remain focused on his practice.