

2005: No. 03 September - October

Kevin Patrick Doyle

Victoria, BC

Called to the bar: August 1, 1985

Discipline hearing: February 3, 2005

Panel: James D. Vilvang, QC, as a one-Bencher panel

Report issued: February 14, 2005 (indexed as 2005 LSBC 06)

Counsel: James Doyle, for the Law Society and Albert Roos, for Kevin Doyle

S. 47 Bencher review: May 26, 2005

Benchers: Anna K. Fung, QC, Chair, Patricia L. Schmit, QC, Michael J. Falkins, Dirk J. Sigalet, QC, Dr. Maelor Vallance, Margaret Ostrowski, QC, Carol W. Hickman and Bruce A. LeRose

Report issued: July 25, 2005 (indexed as 2005 LSBC 24)

Counsel: James Doyle, for the Law Society and Albert Roos, for Kevin Doyle

Facts

Mr. Doyle, a lawyer in private practice, failed to register with the provincial Consumer Taxation Branch of the Ministry of Finance for the collection and remittance of provincial sales tax (PST) until approximately May 2003. From 1991 and 2003 he in fact collected PST on his accounts for legal services, but did not remit the tax as required under the *Social Services Tax Act*.

From 1991 to 2003 Mr. Doyle also failed to remit to the Government of Canada goods and services tax (GST) that he had collected on his accounts as required by the *Excise Tax Act*.

These matters came to light in the course of Mr. Doyle's assignment in bankruptcy. The combined amount of unremitted tax was over \$35,000.

Admission

Pursuant to Rule 4-22, Mr. Doyle admitted that his conduct in failing to register as a vendor for purposes of collecting PST, and in failing to remit both PST and GST that he had collected on his accounts, constituted professional misconduct.

Penalty

The Discipline Committee and discipline hearing panel accepted Mr. Doyle's admission and his proposed disciplinary action and ordered that he:

1. pay a \$2,000 fine; and
2. pay \$3,000 as costs.

Mr. Doyle was allowed 18 months to pay both the fine and costs.

The hearing panel rejected Mr. Doyle's application for the discipline decision to be published without naming

him. The panel was sympathetic to Mr. Doyle and took note of his history of pro bono legal work and community service, but did not find anonymous publication appropriate. The public had a strong interest in knowing that the profession was properly governed and the individual lawyers who had misconducted themselves. This was particularly so in a case in which public money was involved and in which there was an element of personal gain. Mr. Doyle had not met the test for anonymous publication under Rule 4-38.1 in that he had not shown that publication of his name would result in sufficient grievous harm to himself or another person so as to outweigh the public interest in publication.

Bencher review

Mr. Doyle applied for a review by the Benchers of the hearing panel's decision on anonymous publication. The Benchers noted that the Law Society's discipline process is intended to be open and transparent and this includes publication of cases and identification of the members affected. Rule 4-38.1 permits an order for anonymous publication of a decision only if there is no suspension or disbarment (as here) and if publication will cause grievous harm to the lawyer or another individual that outweighs the interest of the public and the Law Society as a disciplinary body in full disclosure.

The Benchers found that grievous harm must be exceptional, unusual, onerous and injurious to the lawyer or cause catastrophic loss personally and professionally. The harm must involve significantly more than damage to a lawyer's reputation or embarrassment that normally flows from a finding of professional misconduct.

In this case, the Benchers accepted that Mr. Doyle was a lawyer who had devoted most of his career to worthy causes for minimal or no pay and that he had served the public well. However, they could not find that he would suffer grievous harm by being named in this discipline case or that any such harm, if it had been found, would outweigh the interest of the public and the Law Society in full publication.