

Malcolm Grant McMicken

Victoria, BC

Called to the Bar: September 16, 1975

Discipline hearing: April 5, 2004

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

Report issued: May 26, 2004; indexed as 2004 LSBC 16

Counsel: Luisa Hlus, for the Law Society and Mr. McMicken, on his own behalf

Summary

In the course of his practice, Mr. McMicken failed to hold and remit to the federal government funds collected in payment of GST, contrary to the *Excise Tax Act* and failed to hold and remit to the federal government funds deducted from employee wages as source deductions, contrary to the *Income Tax Act*. Pursuant to Law Society Rule 4-22, Mr. McMicken admitted that his conduct constituted professional misconduct. The Discipline Committee and the discipline hearing panel accepted Mr. McMicken's admission and his proposed disciplinary penalty. The panel accordingly ordered that he be reprimanded, pay a \$1,500 fine, pay \$2,000 as costs and report to the Law Society quarterly on the currency of his remittances of GST and employee source deductions.

Facts

Mr. McMicken advised the Law Society in March, 1999 that he was making a proposal under the *Bankruptcy and Insolvency Act*. As part of his proposal, Mr. McMicken listed his unsecured creditors, which included Revenue Canada Taxation to which he owed \$20,570.57 for unremitted GST and \$31,914.19 for unremitted employee deductions.

In December, 1999 Mr. McMicken's proposal was accepted by court order. Under this proposal he was to pay \$15,000 to the trustee for the benefit of his creditors by minimum monthly payments of \$500 for 30 months.

In August, 2001 Canada Customs and Revenue Agency (CCRA) wrote to advise Mr. McMicken's trustee that Mr. McMicken had accumulated GST debts of \$10,250.37 and source deduction debts of \$12,877.47 since the date the court had approved his proposal. On that basis, the CCRA requested a default be entered against him. Mr. McMicken advised the Law Society of the CCRA's position.

In April, 2003 Mr. McMicken advised the Law Society that he had been granted a conditional discharge from bankruptcy pending his payment to the trustee of the total receivables collected. On June 25, 2003 the court granted Mr. McMicken an absolute order of discharge from bankruptcy.

In July Mr. McMicken provided the Law Society with an explanation of his GST and source deduction remittances, including a schedule summarizing his payments to the Receiver General. He provided follow-up details in September, 2003.

A citation was issued against Mr. McMicken on January 13, 2004.

Admission and disciplinary action

Pursuant to Law Society Rule 4-22, Mr. McMicken admitted that his failure to hold and remit funds collected in payment of GST, contrary to the *Excise Tax Act*, and his failure to hold and remit funds collected as employee source deductions, contrary to the *Social Service Tax Act*, constituted professional misconduct.

The Discipline Committee and the discipline hearing panel accepted Mr. McMicken's admission and proposed penalty.

In considering the appropriateness of the proposed penalty, the panel noted that Mr. McMicken had been very forthcoming with the Law Society throughout this matter, unlike certain other lawyers in other cases.

The panel accordingly ordered that Mr. McMicken:

be reprimanded;

pay a fine of \$1,500 by November 30, 2004;

pay \$2,000 as costs of the discipline proceedings by November 30, 2004; and

from June, 2004 through June, 2005, file with the Law Society quarterly statutory declarations to report on the currency of his remittances of GST and employee source deductions.