

## Brian William Medd

Calgary (formerly of Burnaby, BC)

Called to the BC Bar: August 30, 1996

Voluntarily ceased membership: January 1, 2002

**Discipline hearing:** April 6, 2004

**Panel:** Gordon Turriff, QC, as a one-Bencher panel, by consent

**Report issued:** May 12, 2004; indexed as 2004 LSBC 15

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

## Summary

Mr. Medd breached Law Society Rule 3-72 in filing an accountant's report (Form 47) that was deficient and in failing to file a final accountant's report that was due following the termination of his law practice. In the course of his practice, Mr. Medd failed to remit the PST and GST that he had collected, which was a breach of a statutory trust. Mr. Medd admitted that his conduct amounted to professional misconduct. Pursuant to Rule 4-22 the Discipline Committee and the discipline hearing panel accepted Mr. Medd's admissions and proposed disciplinary action, and the panel ordered that he be reprimanded, pay a \$2,000 fine and pay \$1,000 as costs. The panel further required Mr. Medd to acknowledge that he can only practise law in BC as an employee of another lawyer, unless relieved of the condition by the Law Society.

## Facts

Filing a deficient accountant's report and failing to file a final report

On June 12, 2001 the Law Society wrote to Mr. Medd to request information about a number of exceptions that Mr. Medd's accountant had identified in his accountant's report (Form 47) for 2000. These exceptions included:

- a debit balance on three client files;
- use of the firm's trust account to manage the firm's accounts receivable;
- two unresolved bank errors from the previous fiscal period;
- failure to properly record certain trust deposits made by an associate on behalf of clients;
- failure to provide the Form 47 accountant with deposit books, non-trust books and actual client files for review.

The Law Society followed up with Mr. Medd by letter on July 9 and August 9, 2001. In responding to these enquiries on September 5, 2001, Mr. Medd advised the Law Society that he intended to become a non-practising member and offered his undertaking not to engage in the practice of law.

After Mr. Medd submitted his application for non-practising membership in October, 2001, the Law Society

advised him that his request for a change of membership status triggered a requirement under Rule 3-72 to complete and deliver a final accountant's report. He was granted until November 30, 2001 to report, but did not do so.

On December 4, 2001 the Law Society followed up on its request for a final accountant's report. On February 28, 2002 the Society requested Mr. Medd's final accountant's report by March 31, 2002, along with confirmation that he had provided his accountant with all of his books and records for review for the previous reporting period and confirmation that he had closed his trust accounts. The Society later extended the deadline for this information to April 30, 2002.

Mr. Medd confirmed to the Law Society that he had closed his trust accounts, but he failed to confirm that he had provided the necessary material to his accountant or to file his final accountant's report.

### **Failing to remit GST and PST**

Mr. Medd did not register under the *Social Service Tax Act* and made no remittances to the provincial government for the PST that he had collected on his accounts for legal services. Mr. Medd also failed to remit GST collected on his accounts, contrary to the federal *Excise Tax Act*.

On June 13, 2003 Mr. Medd wrote to the Law Society to respond to various outstanding matters. The Society advised that these matters would be referred to the Discipline Committee for consideration. A citation was issued against Mr. Medd in October, 2003. There were no client complaints respecting these matters.

### **Admission and penalty**

Mr. Medd admitted that he breached Rule 3-72 in filing an accountant's report (Form 47) that was deficient and in failing to file a final accountant's report following the termination of his practice, which amounted to professional misconduct.

Mr. Medd further admitted that his failure to remit PST and GST collected in the course of his practice was in breach of a statutory trust and amounted to professional misconduct.

Pursuant to Law Society Rule 4-22, the Discipline Committee and the discipline hearing panel accepted Mr. Medd's admissions and his proposed disciplinary action. The panel accordingly ordered that he:

be reprimanded;

pay a fine of \$2,000 and costs of \$1,000, both payable by the earlier of November 30, 2004 or the date on which the Law Society receives a reinstatement application from him; and

acknowledge that he can only practise law in BC as an employee of another lawyer, unless relieved of that condition by the Law Society.

The hearing panel noted that the proposed penalty was appropriate, given that it fell within the range of penalties for similar misconduct and given that Mr. Medd's discipline history consisted of a single conduct review that resulted in no further action.

The panel noted that a lawyer's obligation to remit collected GST and PST is a trust obligation that cannot be avoided in any circumstance. Without speaking for or limiting future panels, the hearing panel expressed concern about such failures and noted that lawyers who breach this obligation in future should not necessarily expect penalties as light as those imposed to date.

