

Re: Lawyer 6

Discipline hearing : July 27, 2005

Panel : Gordon Turriff, Q.C., Chair, Gavin H.G. Hume, Q.C. and Warren T. Wilson, Q.C.

Report issued : September 29, 2005 (indexed as 2005 LSBC 33)

Facts

In 2003, the respondent lawyer advised the Law Society of a proposal he was making under the *Bankruptcy Act*. The proposal was later accepted by his creditors. In 2004 the respondent provided the Society a copy of a certificate of full performance of the proposal.

The Law Society asked the respondent about his GST remittances in the course of practice. The respondent admitted that, in 2002, he had collected from clients a total of \$7,690.69 for payment of GST, as required by section 228(2) of the *Excise Tax Act*, but that he had not remitted the tax. He was cited for failing to remit.

Verdict

The hearing panel dismissed the citation. The panel found, and Law Society counsel conceded, that since there was no statutory trust created by the *Excise Tax Act* for GST collected in the case of someone who becomes bankrupt, there was no reason to treat the Receiver General differently from any other practice creditor. Bankruptcy laws are intended to redeem insolvent people and are in the public interest. The panel also noted it was not the Law Society's usual practice to cite lawyers for practice debts.

In these circumstances, there was no breach of Chapter 2, Rule 2 of the *Professional Conduct Handbook*, which requires lawyers to pay their practice debts. The panel said it did not suggest that failure to pay GST will never result in a finding of misconduct. A patently dishonest failure will attract a penalty, but there was no suggestion that the respondent had acted dishonestly. The panel specifically refrained from commenting on remittance of PST, an issue that was not raised in the case.