

2005 LSBC 52

Report issued: November 23, 2005

Citation issued: February 9, 2005

The Law Society of British Columbia  
In the matter of the *Legal Profession Act*, SBC 1998, c.9  
and a hearing concerning

**Douglas Welder**

Applicant

**Decision**

Application date: November 22, 2005

Bencher: Bruce LeRose

Counsel for the Law Society: Brian McKinley

Appearing on his own behalf: Douglas Welder

[1] The Applicant brought an application for a stay of proceedings pending the hearing of a Review with respect to the penalty of a suspension for one year from the date of the publication of the Hearing Panel's reasons. The date of the publication of the reasons was November 16, 2005. The onus is on the Applicant to establish that he is entitled to a stay. To do this, he must satisfy me of the following:

1. The appeal must raise a serious issue.
2. The appellant must suffer irreparable harm if the stay is not granted.
3. The balance of convenience must favour the imposition of a stay.

[2] This test setting out the three aforementioned thresholds was established in the case of *RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1. S.C.R. 311. The Law Society of Upper Canada has also adopted this test in their fairly recent decision of *Law Society of Upper Canada v. Hicks*, [2005] L.S.D.D. No. 10.

[3] The Law Society of British Columbia has not taken a position on this application although I requested that Mr. Brian McKinley, Counsel for the Law Society, be available for the hearing of this application. Mr. McKinley confirmed that the Law Society's position at the hearing was a significant fine or a short suspension of 30 to 90 days. He also drew my attention to paragraph 27 of the Hearing Panel's decision which states:

"This Panel believes that if permitted to continue practicing law, the Respondent's past and present behavior indicates that he will continue to accumulate further indebtedness while increasing the value of his supposedly valueless assets. The condoning of such behavior by the Law Society would reflect badly on that institution."

[4] The only significance of this paragraph for the purposes of this application is that I must be satisfied that in granting the stay, it will not perpetuate Mr. Welder's failure to meet his continuous obligations of remitting GST, PST and his staff's statutory remittances.

[5] Mr. Welder was present by phone for the hearing of this application. He has filed his Notice of Review and did so within three days of the publication of the Hearing Panel's reasons. He has therefore met the requirements of Rule 5-13 "Initiating a Review" and Rule 5-14 "Stay of Order Pending Review" . He also provided Affidavit materials for the purposes of establishing that the appeal (Review) raises a serious issue and that he will suffer irreparable harm if the application is not granted. This decision of the Hearing Panel is admittedly the first time a Panel has had to decide on a penalty for a second offender for professional misconduct of this nature. Also, the Hearing Panel's penalty is much more severe than the position taken at the hearing by either the Applicant or the Law Society. Based on these findings, I have no difficulty in concluding that the Review raises a serious issue.

[6] Concerning the issue of establishing irreparable harm, I am satisfied that by not granting the stay, Mr. Welder will suffer irreparable harm. His Affidavit sets out that he has already lost clients. There is no evidence to suggest that the Review of this decision will be forthwith or in a timely fashion. The practice of law appears to be his only real means of income. I have no doubt that he will experience irreparable harm if he is not entitled to practice pending the Review.

[7] Finally, with respect to the issue of "the balance of convenience must favour the imposition of a stay" ; here I must weigh whether the granting of the stay will put the public at risk again. To that end, Mr. Welder has given the Law Society of British Columbia his written undertaking attached as Schedule 1 to these reasons. His undertaking should provide the public and the Law Society with adequate safeguards pending the hearing of the Review. Essentially, this undertaking is consistent with the conditions imposed by the Hearing Panel at paragraph [29] of their reasons.

[8] Accordingly, the application for a stay of proceedings is granted.

## **SCHEDULE 1**

**IN THE MATTER OF THE LEGAL PROFESSION ACT**

**AND**

**IN THE MATTER OF A HEARING CONCERNING**

**DOUGLAS WARREN WELDER**

**UNDERTAKING**

I undertake, until relieved of this undertaking by the Discipline Committee or the review of this matter is concluded:

1. To pay by no later than November 29 th, 2005 and to forthwith provide proof of payment to the Law Society of B.C. the outstanding amounts owed by me for PST and employee source deductions up to October 31 st, 2005 and for GST up to September 30 th, 2005;
2. To make monthly remittances for PST and employee source deductions as due, on the 15 th day of the month following;
3. To provide to the Law Society of B.C. monthly reports commencing December 15 th, 2005. Such reports will disclose the amounts of the remittances required to be paid for PST and employee source deductions for the previous month and will provide proof of payment;

4. To remit the required amounts for GST on a quarterly basis as those remittances are due;
5. To continue to provide quarterly declarations as required to the Law Society; and
6. To provide proof of payment of GST remittances to the satisfaction of the Law Society on a quarterly basis commencing January 31 st, 2006.