

2007 : No. 1 March

## **Dale Bruce Harder**

Kelowna, BC

Called to the bar: June 29, 1972

Undertook not to practise law: November 16, 2001

Ceased membership: January 1, 2003

Disbarred: December 7, 2006

**Discipline hearing** : August 2 to 5, 2005 and July 13, 2006

**Panel** : Ralston S. Alexander, QC, Chair, G. Ronald Toews, QC and Ross Tunnicliffe

**Report issued** : November 10 2005 (indexed as 2005 LSBC 48) and December 7, 2006 (indexed as 2006 LSBC 48)

**Counsel** : Maureen E. Baird and Jude Samson for the Law Society and Christopher E. Hinkson, QC, S.L. Kovacs and Una Radoja (articled student) for Mr. Harder

## **Facts**

Following client complaints and deficiencies in Mr. Harder's 2000 Accountant's Report (Form 47), the Law Society ordered an audit of his practice pursuant to Law Society Rule 3-79. The audit commenced in April 2001. In July 2001 he failed to pay the second instalment of his insurance fees and practised without insurance until September 25 when he made the payment. In November the Law Society ordered a practice review and Mr. Harder agreed to provide an undertaking not to practise law until the audit was completed. He also consented to the appointment of a custodian. On December 21, 2001 Mr. Harder filed for bankruptcy.

In October 2002, shortly before the audit completed, Mr. Harder provided the Law Society with another undertaking not to practise law. Two months later, he was discharged from bankruptcy. Mr. Harder ceased membership on January 1, 2003 for non-payment of fees.

As a result of the complaints and the audit, the Law Society cited Mr. Harder for:

1. failing to service his clients properly;
2. failing to hold and remit PST;
3. failing to hold and remit GST;
4. breaching Law Society accounting rules;
5. failing to provided a reasonably descriptive statement of services in his accounts contrary to s. 69 of the *Legal Profession Act*;
6. failing to adequately supervise an employee contrary to Chapter 12 of the Professional Conduct Handbook ;
7. misappropriating client funds;
8. withdrawing trust funds without preparing accounts contrary to Rule 3-57(2);
9. failing to file a Form 47 for the period ending January 31, 2001 contrary Rule 3-72; and

10. practising without insurance from July to September 2001 contrary to s. 30(7) of the Legal Profession Act .

Mr. Harder admitted all counts except count 7 and that his conduct in respect of those counts constituted professional misconduct.

On count 7, Mr. Harder argued that his health problems at the time, including diabetes and depression, were so severe that his mental functions were grossly impaired such that he was not aware of his financial dealings. He further argued that, because of his mental state, the shortages in his trust account could not be characterized as misappropriation.

Other evidence, however, demonstrated that Mr. Harder was at all times, even while suffering from his mental health problems, preoccupied with the balance of his trust account, that he delayed paying employee wages to avoid overdrawing the account and that he transferred money into his trust account to ensure cheques would clear.

## **Verdict**

The hearing panel concluded that Mr. Harder was aware that he was using client funds to meet personal and practice financial obligations and that his conduct amounted to misappropriation. The panel also accepted Mr. Harders' admissions on the remaining counts and found that they also constituted professional misconduct.

## **Penalty**

The hearing panel ruled that Mr. Harder be disbarred. This was necessary, the panel said, to protect the public and to deter other lawyers who might think that deteriorating health is a defence to misappropriation.

The panel also said Mr. Harder's impecuniosity was not a valid reason to waive costs and ordered that he pay \$149,053.