

2007 LSBC 54

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

John Keith Lowes

Respondent

**Decision of the Hearing Panel
on Penalty**

Hearing date: November 15, 2007

Panel: James D. Vilvang, Q.C., Chair, June Preston, David Renwick, Q.C.

Counsel for the Law Society: Jaia Rai

Counsel for the Respondent: Jerome D. Ziskrout

Background

[1] On February 27, 2007, this Panel accepted the Respondent's admission of professional misconduct in that, between 1993 and 2005 he:

- (a) failed to register for PST contrary to the provisions of the *Social Services Tax Act*;
- (b) collected PST from his clients but failed to remit funds due to the government contrary to the *Social Services Tax Act*; and
- (c) misled his clients by collecting PST and failing to remit the funds due to the government.

[2] The total amount owing to the Provincial Government for PST and interest prior to any payment being made was approximately \$181,000.

[3] At the hearing on penalty, counsel for the Law Society took the position that the appropriate penalty would be a suspension of one to two months and an order pursuant to s. 38(5)(c) of the *Legal Profession Act* that:

The Respondent provide the Executive Director of the Law Society with a statutory declaration by the 15th day of each month following each quarter of the year, commencing with the quarter ending December 31, 2007, setting out the total fees billed for the previous quarter and the total remittances made for PST during the previous quarter. This shall continue until the Respondent is relieved of the condition by the Discipline Committee.

[4] Counsel for the Law Society also submitted that the fact that the Respondent had never

registered to pay PST was an aggravating factor, in that if the Respondent had registered, it might be assumed that he at least had some intention to pay the tax, whereas if the Respondent never even registered, clearly, there was no intention to pay.

[5] Counsel for the Law Society further submitted that the failure to remit entails an element of misleading the client and cites this as another aggravating factor.

[6] Counsel for the Law Society also referred the Panel to the following cases, all involving failure to remit both PST and GST: *Law Society of BC v. Hendery*, 2005 LSBC 25; *Law Society of BC v. Chipperfield*, [2002] LSBC 24; *Law Society of BC v. Medd*, 2004 LSBC 15; and *Law Society of BC v. Doyle*, 2005 LSBC 24. It should be noted that, in this case, the Respondent always paid the GST.

[7] Another case that was cited to us was the case of *Law Society of BC v. Welder*, 2005 LSBC 49. That was the only case of failure to remit PST and GST referred to in which a suspension was ordered. The key factor in that case was that it was the second time that Mr. Welder had been cited for failing to remit PST. Clearly, the fine imposed on Mr. Welder the first time had had no deterrent effect.

[8] The Panel has carefully considered the submissions made by counsel for the Respondent and takes particular note of the fact that:

- (a) the Respondent has practised for over 37 years with no previous disciplinary problems of any sort;
- (b) the Respondent admitted that he was an alcoholic and drinking to excess from no later than 1981 until 1992;
- (c) in 1992 the Respondent's friends organized an intervention that was successful. He has refrained from the consumption of alcohol since that date, although he remains an alcoholic;
- (d) by the time he stopped drinking, the Respondent was already indebted to PST in the amount of \$10,000. Rather than deal with the matter, he continued the practice of failure to remit, thereby compounding the problem.

[9] A letter provided by Dr. Stephen Kline explained that it is common for alcoholics to be beset by fears, anxieties and doubts when they stop drinking and that they often fear that a relapse will occur if they do certain things. The Panel accepts that the Respondent's failure to address the problem in the early stages was due to the fear of relapse under pressure. Unfortunately, the problem was left to compound over years.

[10] In about 2003, the Respondent's wife was diagnosed with an incurable cancer that claimed her life in 2005. Supporting his wife through her illness and coping with her death further prevented the Respondent from dealing with the issue. Finally, in 2005, the Respondent self-reported the fact of his failure to remit PST. He cooperated with the Law Society and admitted his professional misconduct.

[11] Today, the Respondent has a modest practice. He is faced with heavy debts incurred as a result of his years of drinking and, of course, his current debt of about \$167,000 for PST. The Respondent also cares for his adult daughter who suffers from depression. He has no alternative now but to sell his house to meet his financial obligations and he has stated that he intends to do so.

[12] Counsel for the Respondent provided a medical report from Dr. Kline, as well as letters from eight friends and colleagues. All of the letters spoke to the Respondent's skill as counsel, his honesty and his difficulties with alcohol and subsequent recovery.

[13] The Panel recognizes that protection of the public must always be our primary concern. We are satisfied that the Respondent's own efforts to rehabilitate himself, coupled with the stigma attached to a finding of professional misconduct after 37 years of blemish-free practice, and the penalty we are about to impose will sufficiently meet the goal. We are satisfied that specific deterrence is not required in this case. We note that the Respondent, by his admission and sobriety, has already rehabilitated himself to a large degree. We also take into account his plan to remediate the situation by selling his house and paying off his PST debt.

[14] In conclusion, the Panel has decided that:

- (a) having regard to the fact that in all previous cases involving failure to remit PST or GST, a fine was deemed to be the appropriate penalty for a first offence;
- (b) considering the factors set out in *Law Society of BC v. Ogilvie*, [1999] LSBC 17;
- (c) considering the Respondent's personal circumstances; and
- (d) considering that the Respondent reported himself and admitted his misconduct

a fine in the amount of \$5,000 and an order pursuant to s. 38(5)(c), as previously referred to, is the appropriate penalty.

Costs

[15] While supporting the basic principle that, in most cases, full indemnity is appropriate, the Panel in this case has elected to reduce the costs sought by the Law Society by the amount of the Panel fees for two days in recognition of the relatively brief period required for the hearing on Facts and Verdict, thanks to the admission of the Respondent, and thanks to the efficiency of counsel in presenting their submissions on penalty.

[16] We have also taken into account the modest personal circumstances of the Respondent.

[17] The costs, therefore, are set at \$4,885.50.

[18] The Panel orders that the Respondent be given one year in which to pay the costs and fine.