

2004 LSBC 15

Report issued: May 12, 2004

Oral reasons: April 6, 2004

Citation issued: October 14, 2003

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

**BRIAN WILLIAM MEDD**

Respondent

**Decision of the Hearing Panel**

Hearing date: April 6, 2004

Panel: Gordon Turriff, Q.C., Single Bencher Panel

Counsel for the Law Society: Luisa Hlus

Appearing on his own behalf: Brian Medd

[1] Pursuant to Rule 4-22(4) of the *Law Society Rules*, discipline counsel has recommended to me, as a single member panel by consent (Exhibit 1), the acceptance of a conditional admission and proposed disciplinary action referable to the Respondent, against whom a citation (Exhibit 2) had been issued on October 14, 2003.

[2] Following a hearing on April 6, 2004 which the Respondent attended by telephone from Calgary, Alberta at his request (Exhibit 1), I accepted the proposed disciplinary action of:

1. a reprimand;
2. an acknowledgement by the Respondent that he can only practice law in British Columbia as an employee of another lawyer, unless relieved of that condition by the Law Society; and
3. a fine of \$2,000.00 and costs of \$1,000.00 payable by the Respondent by the earlier of November 30, 2004 or the date on which the Law Society receives a reinstatement application from the Respondent.

[3] The allegations made against the Respondent in a schedule to the citation (Exhibit 2) were:

1. Contrary to Rule 3-72 of the *Law Society Rules*,

- (a) your accountant's report for the period ending December 31, 2000, delivered to the Law Society on April 30, 2001, was not completed to the satisfaction of the Executive Director, and
- (b) you failed to deliver a completed accountant's report within three months after that date on which you ceased practice in British Columbia.

2. You failed to remit collected PST contrary to the provisions of the *Social Services Tax Act*.

3. You failed to remit collected GST contrary to the provisions of the *Excise Tax Act*.

[4] The Respondent admitted the allegations in a letter dated August 3, 2003 to the Law Society (Exhibit 3, Attachment 15) and signed an Agreed Statement of Facts dated February 24, 2004 as follows:

1. Brian W. Medd is a former member of the Law Society of British Columbia. Mr. Medd is thirty-seven years old.

2. Mr. Medd was called to the Alberta Bar on July 7, 1992 and has been an active member since. Mr. Medd was called to the British Columbia Bar on August 20, 1996. From September 30th, 1996 to July 1st, 2001, Mr. Medd practiced law in British Columbia as a sole practitioner under the name of Medd & Company. From July 1st, 2001 to January 2nd, 2002, Mr. Medd was a non-practicing member of the Law Society of British Columbia. His British Columbia membership ceased for non-payment of fees on January 1st, 2002.

### Citation Count 1

3. On April 30th, 2001, the Law Society received Mr. Medd's Form 47 Accountant's Report for the 12-month period ending December 31st, 2000 (the "Year 2000 Form 47")(Attachment 1).

4. The Year 2000 Form 47 accountant, Joan Heaver, noted a series of exceptions, including:

a) debit balance on three client files;

b) Ms. Heaver was not provided with deposit books and could not follow the flow of funds from trust clients;

c) non-trust books were not made available to Ms. Heaver;

d) Mr. Medd was using his trust account to manage accounts receivable;

e) two bank errors from the previous fiscal period had not been dealt with in the fiscal period ending December 31st, 2000;

f) on a few occasions, an associate lawyer of Medd & Company working from a different office location made deposits to the trust account without so informing Mr. Medd, resulting in the deposits not being credited to the client's trust account and not recorded in the appropriate accounting records; and

g) Ms. Heaver was not provided with the actual files of clients selected for examination, only with invoices and computer printouts of client trust activity.

5. On June 12th, 2001, the Law Society wrote to Mr. Medd about the exceptions to his Year 2000 Form 47, and sought further information. (**Attachment 2**). The Law Society followed up with letters dated July 9th, 2001 (**Attachment 3**), and August 9th, 2001 (**Attachment 4**).

6. On September 5th, 2001, Mr. Medd wrote to the Law Society responding to the queries about his Year 2000 Form 47, advising of his election to become a non-practicing member and offering his undertaking not to engage in the practice of law ( Attachment 5 ).

7. Mr. Medd acknowledges that his Year 2000 Form 47 was deficient.

8. On October 23rd, 2001 the Law Society received from Mr. Medd his Application for Exemption from Professional Liability Insurance and his Application for Non-Practicing Membership (Attachment 6).

9. On October 31st, 2001, the Law Society notified Mr. Medd that his request for a change in membership status triggered a requirement under Rule 3-72 to complete and deliver a final Form 47 Accountant's Report for the period January 1st, 2001 to June 30th, 2001, or to the closure of his trust accounts (the "Terminal Form 47"). Mr. Medd was granted until November 30th, 2001 to complete his reporting (Attachment 7).

10. On December 4th, 2001, the Law Society followed up on its request that Mr. Medd deliver a Terminal Form 47 ( Attachment 8).

11. On February 28th, 2002, the Law Society advised Mr. Medd of the following outstanding matters relating to his Form 47 Accountant's Reports (**Attachment 9**):

(a) by March 31st, 2002, confirmation that Mr. Medd's accountant has been provided with all books and records for review from the period ending December 31st, 2000;

(b) the closure of Mr. Medd's trust account as soon as possible; and

(c) a Terminal Form 47 Accountant's Report by March 31st, 2002.

12. A further extension to April 30th, 2002 was granted by a follow up letter from the Law Society dated April 11th, 2002 (Attachment 10).

13. To date, Mr. Medd has failed to address subparagraphs (a) and (c) of paragraph 11 above, which failure he admits constitutes professional misconduct.

### **Citation Counts 2 and 3**

14. On September 26th, 2001, the Law Society received Mr. Medd's notice that he made an assignment under the *Bankruptcy and Insolvency Act* as of September 5th, 2001 (Attachment 11).

15. According to Mr. Medd's Statement of Affairs, Liabilities, and Information relating to the affairs of the bankruptcy, Mr. Medd was indebted to the Canada Customs and Revenue Agency ("CCRA") for outstanding G.S.T. remittances ( Attachment 12).

16. On February 26th, 2003, the Law Society sought further particulars from Mr. Medd respecting his indebtedness to CCRA and as to the issues of monies owing for P.S.T. to the Ministry of Finance for the Province of British Columbia ( Attachment 13).

17. On June 13th, 2003, the Law Society received Mr. Medd's response to various outstanding matters, including the provision of the Year 2000 Form 47, the Terminal Form 47, and outstanding G.S.T. and P.S.T. payments ( Attachment 14).

18. Mr. Medd admits that he had at no time registered with the Province of British Columbia under the *Social Services Tax Act*, and that he made no remittances to the Province of British Columbia for P.S.T. which he collected on his accounts for legal services rendered.

19. Mr. Medd admits that his failure to remit collected P.S.T. contrary to the provisions of the *Social*

*Services Tax Act* breaches a statutory trust and constitutes professional misconduct.

20. Mr. Medd admits that his failure to remit collected G.S.T. contrary to the provisions of the *Excise Tax Act* breaches a statutory trust and constitutes professional misconduct.

### **All Citation Counts**

21. On July 22<sup>nd</sup>, 2003, the Law Society wrote to Mr. Medd to advise him that the matters of his outstanding Year 2000 Form 47 and Terminal Form 47 and his failures to remit G.S.T. and P.S.T. would be referred to the Discipline Committee for consideration. Mr. Medd responded to the Law Society with a letter dated August 3<sup>rd</sup>, 2003, admitting to professional misconduct (Attachment 15).

22. On October 14<sup>th</sup>, 2003, a citation was issued against Mr. Medd (Attachment 16). None of the citation counts arose from client complaints. A copy of the citation and schedule was mailed to Mr. Medd by registered mail. Mr. Medd acknowledges receipt of the citation and schedule by registered mail."

[5] As I have said, I accepted the proposed disciplinary action following the hearing on April 6<sup>th</sup>. As I saw it, there was no reason not to do so where the proposed penalty fell within the current range of appropriate penalties for similar misconduct, and having regard to the Respondent's disciplinary history consisting of a single review, in 2000, of unrelated conduct, a review which had culminated in a report to the Discipline Committee that no further action be taken.

[6] I instruct the Executive Director to record the Respondent's admissions on his professional conduct record, to impose the disciplinary action and to inform the Respondent of the disposition. As is understood by the Respondent, publication of a summary of the circumstances, reasons and action will follow in accordance with Rule 4-38.

[7] This is another instance of what is now an unhappily common failure by some lawyers to recognise that their obligation to remit collected G.S.T. and P.S.T. is a trust obligation that cannot be avoided in any circumstance. While I cannot speak for or limit future panels, lawyers who breach the obligation in future should not necessarily expect penalties as light as those within the current range.