

2004 LSBC 16

Report issued: May 26, 2004

Oral Reasons: April 5, 2004

Citation issued: January 13, 2004

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

MALCOLM GRANT MCMICKEN

Respondent

Decision of the Hearing Panel

Hearing date: April 5, 2004

Panel: Grant C. Taylor, Single Bencher Panel

Counsel for the Law Society: Luisa Hlus

Appearing on his on behalf: Malcolm G. McMicken

Background

[1] On January 13, 2004, a citation was issued against the Respondent directing an inquiry into misconduct alleged in the Schedule to citation, namely:

1. You failed:

- a) to hold funds collected in payment of Goods and Services Tax as required by the *Excise Tax Act*, and;
- b) to remit such funds as required to the Government of Canada.

2. You failed:

- a) to hold funds deducted from employee wages as source deductions pursuant to the *Income Tax Act*, and;
- b) to remit such funds as required to the Government of Canada.

[2] The citation comes before this Panel as a conditional admission of a disciplinary violation and a consent to a specified disciplinary action pursuant to Law Society Rule 4-22. The Respondent admits that the conduct alleged in the Schedule to citation constitutes professional misconduct and he consented to disciplinary action consisting of:

- a) a reprimand;

- b) a fine of \$1,500, payable by November 30, 2004;
- c) costs of \$2,000, payable by November 30, 2004; and
- d) filing quarterly statutory declarations addressed to the Law Society advising as to the currency of his remittances of GST and employee source deductions commencing June 30, 2004, up to and including June 30, 2005.

[3] The Respondent acknowledged proper service of the citation and waived the requirements of Rule 4-15 of the Law Society Rules.

[4] The Respondent agreed in writing that the matter could be heard before a single Bench Panel, as permitted by Law Society Rule 5-2(2).

[5] It is now up to me to determine whether the admission of a disciplinary violation and the consent to specified disciplinary action pursuant to Law Society Rule 4-22 is appropriate in the circumstances. This Panel has authority only to accept or reject the proposed disposition.

Agreed Statement of Facts

[6] An Agreed Statement of Facts was filed in this matter. It provides as follows:

1. Malcolm Grant McMicken was called to the British Columbia Bar in September 1975. He is 55 years old.
2. Mr. McMicken practices with one or more lawyers in a shared facility located at 303 - 1111 Blanchard Street, Victoria BC.
3. In June 1999, Mr. McMicken contacted the Law Society to advise that he was in the process of making a proposal under the Bankruptcy and Insolvency Act.
4. On July 13, 1999, Mr. McMicken filed a notice of intention to make a proposal pursuant to the Bankruptcy and Insolvency Act. As part of the proposal, Mr. McMicken listed unsecured creditors which included Revenue Canada Taxation - GST in the amount of \$20,570.57 and Revenue Canada Taxation - source deductions in the amount of \$31,914.19.
5. On August 5, 1999, Mr. McMicken signed a proposal under the Bankruptcy and Insolvency Act, with the stated objective of paying \$15,000.00 to the trustee for the benefit of his creditors by minimum monthly payments of \$500.00 for 30 months (the "Proposal"). The Proposal also stipulated that Mr. McMicken shall file all necessary forms and remittances required by Revenue Canada Taxation, including GST and payroll source deductions, and that failure to file and/or remit would be considered a default pursuant to the terms of the Proposal. Mr. McMicken's Proposal was accepted by court order pronounced December 1, 1999.
6. On May 8, 2000, Mr. McMicken advised the Law Society that all payments required to be made pursuant to the Proposal had been made.
7. On August 13, 2001, Canada Customs and Revenue Agency ("CCRA"), wrote to advise Mr. McMicken's trustee in bankruptcy that Mr. McMicken had accumulated GST debts of \$10,250.37 and source deduction debts of \$12,877.47 since the date of the court's approval of the Proposal. On that basis, CCRA requested that a default be entered against Mr. McMicken.
8. On August 29, 2001, Mr. McMicken wrote to advise the Law Society of CCRA's position respecting a

default under the Proposal and disclosed CCRA's letter dated August 13, 2001.

9. On May 1, 2002, Mr. McMicken completed a Statement of Affairs (non- business bankruptcy). On May 22, 2002, Mr. McMicken wrote to the Law Society enclosing his Statement of Affairs in Bankruptcy as well as a Statutory Declaration.

10. On April 15, 2003, Mr. McMicken wrote to advise the Law Society that he was granted a conditional discharge from bankruptcy on April 3, 2003, with an absolute discharge pending Mr. McMicken's payment to the trustee of the total receivables collected. Mr. McMicken provided further particulars to the Law Society with a copy of his trustee's letter dated May 30, 2003.

11. On June 25, 2003, a court order was pronounced which granted Mr. McMicken an absolute order of discharge from bankruptcy.

12. On July 15 and 16, 2003, Mr. McMicken wrote to the Law Society with an explanation as to his GST and source deduction remittances, including a schedule summarizing his payments to the Receiver General.

13. On September 8, 2003, Mr. McMicken wrote to the Law Society providing a further explanation of his indebtedness to CCRA.

14. In November 2003, Law Society staff referred to the Discipline Committee Mr. McMicken's failure to remit GST and source deductions to CCRA. At its meeting on November 13, 2003, the Discipline Committee authorized the issuance of a citation against Mr. McMicken. The citation was issued on January 13, 2004 (the "Citation").

15. On February 3, 2004, the Law Society hearing administrator wrote to Mr. McMicken by registered mail, enclosing a copy of the issued Citation in accordance with Rule 4-15(1)(a) of the Law Society Rules. Mr. McMicken acknowledges receipt of the Citation on or about February 5, 2004.

16. In relation to count one of the Citation, Mr. McMicken admits that he failed to hold funds collected in payment of GST as required by the Excise Tax Act, and that he failed to remit such funds as required to the Government of Canada. Mr. McMicken admits that his failures to do so constitute professional misconduct.

17. In relation to count two of the Citation, Mr. McMicken admits that he failed to hold funds deducted from employee wages as source deductions pursuant to the Income Tax Act, and failed to remit such funds as required to the Government of Canada. Mr. McMicken admits that his failures to do so constitute professional misconduct.

[7] I have reviewed the Agreed Statement of Facts in these proceedings, in particular paragraphs 16 and 17, to the extent that the Respondent admits that he failed to hold funds collected in payment of GST as required by the *Excise Tax Act* and that he failed to remit such funds as required to the Government of Canada and he admits that failure to do so constitutes professional misconduct.

[8] The Respondent also admits that he failed to hold funds collected from employee wages as source deductions pursuant to the *Income Tax Act* and failed to remit such funds as required to the Government of Canada. This failure to do so constitutes professional misconduct.

[9] I have taken into account my own sense of the matter plus the submissions of Ms. Hlus to the effect that the Respondent has been very forthcoming with the Law Society at every turn. So obviously the Respondent has been far better in his self-reporting to the Law Society than I can say some other members have been in the past, as evidenced by some of the cases put before me today.

[10] Taking into account the matters as I have already summarized, the Agreed Statement of Facts, the cases put before me, and the recommendations of the Discipline Committee, I find that the admission and proposed disciplinary action is appropriate.

[11] Accordingly, this Panel therefore confirms the penalty as proposed:

- a) a reprimand;
- b) a fine of \$1,500, payable by November 30, 2004;
- c) costs of \$2,000, payable by November 30, 2004; and
- d) filing quarterly statutory declarations addressed to the Law Society advising as to the currency of his remittances of GST and employee source deductions commencing June 30, 2004, up to and including June 30, 2005.

[12] The Executive Director of the Law Society is hereby instructed to record the Respondent's admission on his Professional Conduct Record, and to impose the approved disciplinary action.

[13] There will be publication of this decision in the normal course.