

2008 LSBC 23

Report issued: July 29, 2008

Citation issued: February 15, 2008

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

Andrew James Bonfield

Respondent

Decision of the Hearing Panel

Hearing date: June 25, 2008

Panel: Leon Getz, QC, Chair, Kathryn Berge, QC, David Renwick, QC

Counsel for the Law Society: Eric Wredenhagen

Counsel for the Respondent: Jerome Ziskrout

Background

[1] On February 15, 2008 a citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rule 4-13 of the Law Society Rules by the Executive Director of the Law Society on the direction of the Chair of the Discipline Committee. The citation, as amended, directed that this Panel inquire into the Respondent's conduct as follows:

1. Between approximately February 2002 and May 2007, you failed to register for the remittance of British Columbia Provincial Sales Tax, contrary to the provisions of the *Social Service Tax Act*, RSBC 1996, c. 431, as amended.
2. Between approximately February 2002 and May 2007, you collected British Columbia Provincial Sales Tax ("PST") from your clients but failed to remit funds due to the provincial government, contrary to the provisions of the *Social Service Tax Act*, RSBC 1996, c. 431, as amended.
3. In 2005 and 2006, you collected Goods & Services Tax ("GST") from your client(s) but failed to remit funds due to Canada Revenue Agency, or failed to remit such funds in a timely manner, contrary to the provisions of the *Excise Tax Act*, RSC 1985, c. E-15, as amended.
4. In your Trust Report for the period ending July 31, 2005, you represented to the Law Society that your practice had paid all PST and GST remittances to the government when due, when that statement was not true.

[2] The Respondent admits service of the citation in accordance with Rule 4-15 of the Law Society Rules.

Admission and Penalty

[3] This citation came before this Panel as a conditional admission of a disciplinary violation and consent to a specific disciplinary action pursuant to Rule 4-22 of the Law Society Rules. The Respondent admitted that he had professionally misconducted himself by committing the disciplinary violation set out in the Further Amended Schedule to the citation and consented to the following disciplinary action:

1. a fine in the amount of \$5,000 payable by December 31, 2009;
2. costs in the amount of \$1,500 payable by December 31, 2009; and
3. Delivery of quarterly statutory declarations to the Law Society on the schedule set out below, setting out, for the preceding quarter (1) total billings to clients, (2) amounts billed in respect of PST and GST, (3) amounts collected in respect of PST and GST, and (4) amounts remitted to the provincial and federal government in respect of PST and GST:

<u>Statutory Declaration Period</u>	<u>Statutory Declaration Due Date</u>
July 1/08 to Sept. 30/08	October 31/08
Oct. 1/08 to Dec. 31/08	January 31/09
Jan. 1/09 to March 31/09	April 30/09
April 1/09 to June 30/09	July 31/09
July 1/09 to Sept. 30/09	October 31/09
Oct. 31/09 to Dec. 31/09	January 31/10

Agreed Statement of Facts

[4] An Agreed Statement of Facts was filed in these proceedings. It provided as follows:

1. The Respondent was called to the Bar of British Columbia on May 19, 2000.
2. From September 1, 2000, the Respondent has practised as Andrew J. Bonfield in Vancouver, British Columbia.
3. Pursuant to Law Society Rule 3-72, practising lawyers are required to complete an annual Trust Report and submit it to the Law Society of British Columbia (the "Law Society").
4. The Respondent completed and submitted a Trust Report for the period ending July 31, 2005.
5. Question 8 of Section B of the 2005 Trust Report required the Respondent to respond **Yes** or **No** to the following question: "The practice has paid all payroll, PST and GST remittances to government when due." The Respondent initially ticked the "No" box, then scratched out that answer and ticked "Yes", initialing the change.
6. Section B contains the following "Lawyer's Declaration" :

I Andrew Bonfield certify that all the information contained in Section B is true and correct, and, if applicable, I will disclose to the Accountant named in Section C all account records of this law practice, and all other information necessary for the accountant to complete this form.

7. The Lawyer's Declaration was signed by the Respondent on December 16, 2005.
8. By ticking "Yes" to question 8 of Section B of the 2005 Trust Report, the Respondent understood that he was representing to the Law Society that he did not owe to either the federal or provincial government any arrears of payroll taxes or remittances, nor any arrears of PST or GST. The Respondent admits that he was grossly negligent in making this representation to the Law Society.
9. In the 2006 Trust Report, Question 9 of Section B required the Respondent to respond **Yes** or **No** to the following question: "The practice has paid all payroll, PST and GST remittances to government when due."
10. The Respondent answered by ticking the "No" in response to Question 9 of Section B of the 2006 Trust Report. When the 2006 Trust Report was received and reviewed by the Law Society's Trust Assurance Department, the Respondent's representation that he owed arrears of taxes and/or payroll remittances was noted and triggered a Compliance Audit of the Respondent's law practice.
11. The Compliance Audit was held on March 13 – 15, 2007 and revealed, among other things, that the Respondent appeared not to have remitted GST for 2005 and 2006 and did not appear to be registered to remit PST.
12. The Law Society subsequently referred the matter for investigation by its Professional Conduct department and on June 22, 2007, Howie Caldwell, a Law Society staff lawyer, sent a letter to the Respondent asking, among other things that he:
 - (a) explain why he failed to register with the provincial government for payment of PST;
 - (b) clarify the status of his PST arrears; and
 - (c) clarify the status of his GST arrears.
13. The Respondent replied to the above letter on July 20, 2007 and acknowledged, among other things, that he had been in arrears of both GST and PST in 2005.
14. The Respondent sent further correspondence dated August 27, 2007 attaching "notices of assessment for my Income Tax, GST and PST". The GST "Statement of Arrears" indicates a balance owing for the period ending December 31, 2005 of \$4,748.57. The "Notice of Assessment" from the provincial government states that "[t]he full amount due for your social service tax return for the period February 1 2002 to December 31 2006

has not been received."

15. The attachments to the September 25, 2007 letter reveal, among other things, that as at August 15, 2007 the Respondent owed arrears of PST in the amount of \$8,453.37 and as at September 18, 2007 owed re-assessed GST of \$1,145.13 in respect of the year 2005.

16. On November 13, 2007 a letter was sent to the Respondent by the Law Society requesting his explanation for answering "Yes" to Question 8 of Section B of the 2005 Trust Report, namely: "The practice has paid all payroll, PST and GST remittances to government when due."

17. The Respondent responded by letter dated November 25, 2007 in which he provided an explanation but also acknowledged that his response was incorrect and misleading, and further acknowledged he had failed to properly inform himself about the meaning of *Christie v. Attorney General of BC et al.*, 2005 BCSC 122 (subsequently reversed on appeal, 2005 BCCA 631, 2007 SCC 21) and the Law Society's advice on the effect of that case.

18. The Respondent admits that:

(a) between approximately February 2002 and May 2007, he failed to register for the remittance of British Columbia Provincial Sales Tax, contrary to the provisions of the *Social Service Tax Act*, RSBC 1996, c. 431, as amended;

(b) between approximately February 2002 and May 2007, he collected British Columbia Provincial Sales Tax ("PST") from his clients but failed to remit funds due to the provincial government, contrary to the provisions of the *Social Service Tax Act*, RSBC 1996, c. 431, as amended;

(c) in 2005 and 2006, he collected Goods & Services Tax ("GST") from his client(s) but failed to remit funds due to Canada Revenue Agency, or failed to remit such funds in a timely manner, contrary to the provisions of the *Excise Tax Act*, RSC 1985, c. E-15, as amended; and

(d) in his Trust Report for the period ending July 31, 2005, he was grossly negligent in incorrectly representing to the Law Society that his practice had paid all PST and GST remittances to the government when due.

(e) The Respondent admits that his conduct as described above constitutes professional misconduct.

[5] After considering the circumstances set out in the Agreed Statement of Facts and having heard the submissions of counsel, the Panel accepts the admission and finds the Respondent guilty of professional misconduct.

[6] The Panel finds the penalty proposed by the Respondent, and recommended by the

Discipline Committee, to be appropriate in all of the circumstances.

[7] It is accordingly ordered that the Respondent:

1. pay a fine in the amount of \$5,000 payable by December 31, 2009;
2. pay costs in the amount of \$1,500 payable by December 31, 2009; and
3. deliver quarterly statutory declarations to the Law Society on the schedule set out below, setting out, for the preceding quarter (1) total billings to clients, (2) amounts billed in respect of PST and GST, (3) amounts collected in respect of PST and GST, and (4) amounts remitted to the provincial and federal government in respect of PST and GST:

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Oct. 31/09 to Dec. 31/09	January 31/10

[8] The Executive Director is instructed to record the Respondent's admission on the Respondent's Professional Conduct Record.