

2008 LSBC 24

Report issued: August 6, 2008

Oral Reasons: July 30, 2008

Citation issued: February 22, 2008

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

Jeffery-Emanuel Wittmann

Respondent

Decision of the Hearing Panel

Hearing date: July 30, 2008

Panel: James D. Vilvang, QC, Chair, Joost Blom, QC, Leon Getz, QC

Counsel for the Law Society: Maureen S. Boyd

Counsel for the Respondent: Patrick Lewis

Background

[1] On February 22, 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 of British Columbia on the direction of the Chair of the Discipline Committee. The citation, as amended, directed that there be an inquiry into the Respondent's conduct as follows:

1. Between approximately April 2001 and March 2003, you collected Goods & Services Tax (" GST") from your client(s) but failed to remit funds due to Canada Revenue Agency, contrary to the provisions of the *Excise Tax Act*, RSC 1985, c. E-15, as amended.
2. Between approximately April 2001 and March 2003, you collected British Columbia Provincial Sales Tax (" PST") from your client(s) 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. Between approximately April 2001 and March 2003, you submitted PST returns to the provincial government, which you certified to be true and correct when they were not, you stated that your total sales and tax due were both " nil" , and you did so without due regard for their truth.

[2] The requirements for service of this citation upon the Respondent, pursuant to Rule 4-15, were admitted by the Respondent.

[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 and consented to the following disciplinary action:

(a) a fine in the amount of \$3,000; and

(b) costs in the amount of \$1,500.

Statement of Agreed Facts

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

1. Jeffery-Emanuel Wittmann was admitted to the bar of the Province of British Columbia on December 15, 1995. He was previously called in Ontario in 1992.
2. The Respondent is presently employed as the Director of Business and Legal Affairs by S Inc., where he commenced employment on June 5, 2006.
3. On April 17, 2001, the Respondent was engaged as an independent contractor by P Inc. (the "Company"), by which he agreed to provide legal services as " in-house" counsel and the Company agreed to pay him an amount of at least \$4,000 per month as " salary" .
4. The Respondent issued bills to the Company and was paid monthly. These payments included defined amounts for Goods & Services Tax (" GST") and provincial sales tax (" PST").
5. Between April 17, 2001 and March 31, 2003, the Company regularly paid the Respondent for his services, including any GST and PST which was owing.
6. Between April 17, 2001 and March 31, 2003, the Respondent also provided legal services to other clients, through Wittmann Law Corporation.
7. On or about March 31, 2003, the Respondent ceased working for the Company due to a change in ownership.
8. In or about 2002, the Respondent began to experience personal financial difficulties.
9. On November 18, 2003, the Respondent declared personal bankruptcy.
10. On March 29, 2004, the Respondent wrote to the Law Society to advise that he had declared bankruptcy.
11. On May 27, 2004, the Respondent sent to the Law Society a Declaration and enclosed a copy of his Statement of Affairs.
12. On November 9, 2005, the Respondent applied to be discharged from bankruptcy, which application was adjourned, pending completion and filing by the Respondent of his 2004 and 2005 income tax returns and payment of any outstanding taxes.
13. In or about November 2005, the Respondent was conditionally discharged from bankruptcy.

Allegation #1 - Non-Remittance of Funds Collected for GST

14. Between April 2001 and March 2003, the Respondent regularly collected GST from his clients and remitted funds in the following amounts:

Year	Collected	Remitted
2001	\$12,586.76	\$2,507.76 (input tax credit)
2002	6,965.76 (before input tax credit)	0.00
2003	1,975.76 (before input tax credit)	0.00

15. On February 23, 2004, the Respondent filed a GST Return for the period from January 3, 2003 to November 12, 2003, and remitted the net tax owing which he calculated as \$972.93.

16. The Respondent failed to remit GST due to Canada Revenue Agency in the total amount of \$21,528.28. The Respondent used these funds collected in respect of GST for his own purposes.

17. In or about May 2003, Canada Revenue Agency served a garnishing order upon the Respondent's then employer, Watson Goepel Maledy, in respect of the Respondent's unpaid GST, although no funds were remitted because of the firm's view the garnishing order was defective.

18. The unpaid GST was subsumed as a debt within the Respondent's bankruptcy.

19. The Respondent has explained his failure to remit GST as required, on the basis that it was his understanding that he did not have to remit GST until his earnings exceeded \$30,000.

20. The Respondent admits that between April 2001 and March 2003, he collected GST from his clients but failed to remit funds due to Canada Revenue Agency, contrary to the provisions of the *Excise Tax Act*, R.S.C. 1985, and c. E-15, as amended. The Respondent further admits that this conduct is contrary to Rule 2 of Chapter 2 of the *Professional Conduct Handbook* and is professional misconduct.

Allegation #2 - Non-Remittance of Funds Collected for PST

21. Between April 2001 and March 2003, the Respondent regularly collected PST from his clients in the following amounts:

Year	Collected	Remitted
2001	\$5,673.09	\$0.00

2002	6,215.73	0.00
2003	1,578.49	0.00

22. On May 29, 2005, the Respondent wrote to the Law Society to provide his explanation of his failure to remit any PST. He provided further explanations in a letter dated March 24, 2006 and by emails dated August 23, 2007, and October 19, 2007.

23. The unpaid PST debt was subsumed within the Respondent's bankruptcy.

24. The Respondent admits that between April 2001 and March 2003, he collected British Columbia Provincial Sales Tax from his clients, but failed to remit funds due to the provincial government, contrary to the provisions of the *Social Service Tax Act*, R.S.B.C. 1996, c. 431, as amended. The Respondent further admits that this conduct is contrary to Rule 2 of Chapter 2 of the *Professional Conduct Handbook* and is professional misconduct.

[5] The Panel accepts the Respondent's admission of professional misconduct.

[6] The Panel has considered the authorities cited, the factors to be considered in imposing penalty as set out in *Law Society of BC v. Ogilvie*, [1999] LSBC 17, the thorough submissions of counsel on both sides, the letter from the Respondent's physician relating to the Respondent's medical circumstances in the relevant period, and the two letters from the Respondent's professional colleagues, and we have concluded that the proposed penalty is appropriate.

[7] The Panel therefore orders that the Respondent:

1. pay a fine in the amount of \$3,000; and
2. pay costs in the amount of \$1,500.

[8] The Panel further directs that the Respondent have until January 31, 2010 to pay both the fine and costs.