

2011 : No. 1 Spring

Douglas Warren Welder

Kelowna, BC

Called to the bar: May 12, 1981

**Discipline hearing** : March 3 and 4, 2010

**Panel** : Leon Getz, QC, Chair, Robert Brun, QC and Alan M. Ross

**Bench review**: December 8, 2010

**Benchers**: David M. Renwick, QC (Chair), Haydn Acheson, Rita Andreone, Patricia Bond, David Crossin, QC, David Mossop, QC, Thelma O'Grady and Gregory Petrisor

**Oral decision issued**: March 4, 2010

**Report issued** : March 24, 2010 (2010 LSBC 05) and February 18, 2011 (2011 LSBC 06)

**Counsel** : Maureen Boyd on behalf of the Law Society and Douglas Warren Welder on his own behalf (facts and verdict); Thomas R. Manson, QC on behalf of the Law Society and Douglas Warren Welder on his own behalf (review)

## Facts

On May 1, 2007 the Law Society began investigating a complaint about the alleged participation of Douglas Warren Welder in a fraudulent Ponzi scheme. Two days later, a class proceeding was commenced against Welder and another lawyer, alleging fraud, breach of trust and breach of fiduciary duty.

The Law Society sought confirmation of all trust and general accounts to which Welder was signatory during the period of investigation from April 2004 to November 2007. During the field investigation, Welder provided the Law Society with limited access to two trust accounts and one general account. The Law Society had reason to believe that he had other bank accounts for his law practice. Welder advised that he was not prepared to grant access to any other bank accounts.

The Law Society made further requests for information from Welder; some of those requests were answered and some were not. As a result, the Law Society issued a citation with a three-part allegation against Welder for:

- (a) not responding to the Law Society's December 8, 2008 letter requesting details of any bank accounts which hold or held trust or general funds for the period of investigation and not providing an explanation for continuing to deny the Law Society access to the records for those accounts;
- (b) not providing access to all trust and general bank account records; and
- (c) failure to respond to questions in the Law Society's letter of April 17, 2009.

## Determination

Welder argued that the Law Society was seeking access to his private bank accounts. Throughout the investigation and audit, the Law Society was only interested in the banking records that pertained to his law practice. He also argued that, since he told the Law Society about his three bank accounts, there was nothing further he could tell them. This argument ignores his responsibility to respond to the Law Society's letters and to cooperate with the investigation.

Welder testified that during the relevant period he operated a total of three bank accounts relating to his practice. It was only during the course of the hearing that Welder provided this confirmatory evidence about his bank accounts, despite being given several opportunities to provide that information in writing to the Law Society.

The panel found that, if no other bank accounts existed, there was no evidence that Welder failed to provide details of the other accounts. The panel dismissed allegations (a) and (b) and found that Welder had committed professional misconduct in allegation (c).

The Discipline Committee initiated a Benchers review of the dismissal of allegation (a).

## **Benchers Review**

The Benchers determined that the hearing panel asked itself the wrong question or embarked upon the wrong inquiry. In allegation (a), Welder was cited for not responding to a number of letters; he was not cited for failure to provide details about non-existent bank accounts.

There is an obligation on lawyers to reply promptly to any communication from the Law Society. During an investigation or audit, a lawyer may be asked oral questions by Law Society staff. Later, the staff may ask the same or similar questions for clarification or to have a written record of the lawyer's answer. A lawyer who feels that the questions are repetitive or unnecessary, however, cannot ignore the questions as Welder did.

The Benchers concluded that allegation (a) was proven and amounted to professional misconduct. The matter was referred back to the hearing panel to consider submissions on the appropriate disciplinary action for allegations (a) and (c).