

Douglas Warren Welder

Kelowna, BC

Called to the bar: May 12, 1981

Discipline hearing : April 27, 2012

Panel : Tony Wilson, Chair, William Jackson, QC and David Chiang

Report issued : May 17, 2012 (2012 LSBC 18)

Counsel : Carolyn Gulabsingh for the Law Society and Douglas Warren Welder on his own behalf

FACTS

In October 2007 and December 2008, the Canada Revenue Agency (CRA) registered two certificates in Federal Court for debts owed by Douglas Warren Welder.

Between February 2009 and April 2010, the Law Society sent numerous letters to Welder inquiring about the amount of taxes owing. He did not reply to any of the correspondence until April 5 and May 31, 2010 when he wrote that he had to obtain the figures from CRA. On June 11, 2010, Welder advised the Law Society of the amount of taxes he owed.

In January 2011, the Law Society notified Welder that his failure to communicate with the Law Society regarding taxes owed to CRA, as well as his failure to comply with the order of a 2007 review panel, would be referred for possible disciplinary action. The Law Society invited Welder to provide a proposal to satisfy the CRA judgments. He did not respond to the Law Society.

In the 2007 review panel decision, Welder was suspended from practice for three months and ordered that, upon his return to practice, he provide the Law Society with monthly proof that he had remitted the social services tax due. After Welder returned to practice, the Law Society wrote to Welder on four occasions requesting proof of payment of the social services tax for the period ending December 31, 2009. On February 5, 2010, Welder provided proof he had paid the social services tax and on April 5, 2010 he finally provided the GST return and proof of payment.

admission and DISCIPLINARY ACTION

The obligation to immediately notify the Law Society of an unsatisfied monetary judgment is part of a lawyer's professional responsibility.

Welder failed to respond substantively to seven letters from the Law Society between February 2009 and January 2011. His conduct was ongoing, repeated and occurred over a period of approximately 20 months. The panel believed that his actions were obstructionist in nature.

Welder's conduct was similar concerning his failure to provide a proposal to satisfy the judgments. He had also failed to respond to Law Society inquiries about a proposal to satisfy the CRA judgments. He was offered a final chance to provide a proposal in January 2011 and again failed to do so.

Welder has a professional conduct record that includes five conduct reviews and five prior citations. The pattern of misconduct, particularly when combined with an admission of failure to comply with the provisions of an earlier review panel decision, strike at the ability of the Law Society to perform its core function, which is to regulate lawyers in the public interest.

Welder gained an advantage from the misconduct by failing to prove to the Law Society that his payments to CRA were current. He had the benefit of use of the funds he had collected for taxes but which had not been remitted.

The panel was also troubled with Welder's comment during the hearing: "I am hopeful that I will change my behaviour," which is not the same as "I will change my behaviour."

Welder conditionally admitted that his conduct in respect of both allegations constituted professional misconduct. The panel accepted his admissions and ordered that he:

1. be suspended from practice for three months; and
2. pay \$2,500 in costs.

Dissenting opinion (Chiang)

Panel member David Chiang disagreed with the disciplinary action, as it was not within the range for repeated and frequent misconduct. He believed that Welder's lengthy history of professional misconduct, his lack of contrition, and the number of times the offending conduct occurred should be taken into account. In Chiang's view, a suspension greater than the range for first instances of failure was warranted.