

2004 LSBC 08

Report issued: April 26, 2004

Oral Reasons: April 14, 2004

Citation issued: January 12, 2004

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

**PHILIP RICHARD DERKSEN**

Respondent

**Decision of the Hearing Panel  
on Facts and Verdict**

Hearing date: April 14, 2004

Panel: Grant C. Taylor, Single Bencher Panel

Counsel for the Law Society: Luisa Hlus

Counsel for the Respondent: G. Jack Harris, Q.C.

## Background

[1] On January 12, 2004, a citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rule 4-15 of the Law Society Rules by the Executive Director of the Law Society of British Columbia pursuant to the direction of the Chair of the Discipline Committee. The citation, as amended, directed that this Hearing Panel inquire into the Respondent's conduct as follows:

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.

3. You failed:

(a) to hold funds collected in payment of Social Services Tax as required by the *Social Services Tax Act*, and;

(b) to remit such funds as required to the Consumer Taxation Branch of the Government of British

Columbia.

4. Between July 1 and September 24, 2003, you practiced law without having paid your professional liability insurance fee due June 30, 2003, contrary to s. 30(7) of the *Legal Profession Act*.

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

[3] Pursuant to Rule 5-2(2) the Respondent agreed to a Panel consisting of a single Benchers.

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

1. Philip Richard Derksen was called to the British Columbia Bar in May, 1988. He is 46 years old.
2. Mr. Derksen practices exclusively in the area of criminal law and shares office space with John W. Conroy, Q.C. in Abbotsford, BC.

#### **Citation Count 4**

3. On May 29th, 2003, the Law Society wrote to Mr. Derksen advising him that his second insurance installment in the amount of \$802.50 and his late filing fee for his Form 47 report in the amount of \$214 were both due by June 30th, 2003. Mr. Derksen acknowledges having received the Law Society's letter.

4. In a telephone conversation on July 11th, 2003, Law Society staff advised Mr. Derksen that he was uninsured as the Law Society had not received his second insurance installment, and referred him to the *Law Society Rules*. Mr. Derksen advised the Law Society that he had cash flow problems because CCRA was garnishing his billings.

5. On July 18th, 2003, the Law Society wrote to Mr. Derksen, seeking his second insurance installment and accountant's report late filing fee. Mr. Derksen acknowledges having received the Law Society's letter.

6. On July 31st, 2003, the Law Society wrote to Mr. Derksen to advise he was not currently insured due to non-payment of his second insurance installment. The Law Society further advised Mr. Derksen that he must immediately cease the practice of law. Mr. Derksen acknowledges having received the Law Society's letter.

7. On August 27th, 2003, the Law Society wrote to Mr. Derksen respecting his failure to pay the second insurance installment and seeking information as to his law practice related activities since July 1st, 2003. Mr. Derksen acknowledges having received the Law Society's letter.

8. On September 11th, 2003, a Law Society staff inquiry with Mr. Derksen's secretary indicated that Mr. Derksen continued to meet with clients in his office as part of his law practice.

9. On September 17th, 2003, the Law Society received Mr. Derksen's cheque dated August 31st, 2003 payable to the Law Society in the amount of \$1,016.50.

10. On September 22nd, 2003, the cheque was returned without being cleared by the bank.

11. On September 24th, 2003, the Law Society wrote to Mr. Derksen advising him he must immediately cease the practice of law and surrender his practising certificate as his second insurance installment payment was still outstanding. Mr. Derksen acknowledges having received the Law Society's letter.

12. On September 26th, 2003, Mr. Derksen obtained a bank draft payable to the Law Society in the

amount of \$1,100, and delivered it to the Law Society's offices on September 26th, 2003.

13. On October 24th, 2003, Mr. Derksen advised the Law Society in a letter from his counsel that his delayed payment of the second insurance installment fees was attributable to a cash shortage due to CCRA garnishment of his Legal Services Society payments and to his avoidance/procrastination problem, for which he had since commenced medication.

14. Mr. Derksen admits that he continued to practice law from July 1st to September 24th, 2003 without having paid his professional liability insurance fee due June 30th, 2003, contrary to s. 30(7) of the *Legal Profession Act*, and that such continued practice of law constituted professional misconduct.

### **Citation Counts 1, 2 and 3**

15. On April 11th, 2003, CCRA advised the Law Society of three Requirements to Pay issued respecting Mr. Derksen's practice. The Law Society sought Mr. Derksen's explanation in letters dated May 7th, 2003, May 28th, 2003, June 19th, 2003, and July 10th, 2003.

16. On September 16th, 2003, Mr. Derksen wrote to the Law Society, responding to earlier Law Society inquiries respecting the CCRA Requirements to Pay and advised as follows:

(a) he was unaware of the CCRA Requirements to Pay until he received the Law Society's correspondence;

(b) he had failed to file GST and employee remittance returns for a number of months and was in payment arrears for a number months before that;

(c) he made a proposal to CCRA;

(d) CCRA was taking 100% of his Legal Services Society billings since April 9th, 2003, to date amounting to \$30,000; and

(e) he acknowledged he did not deal with CCRA in a timely fashion.

17. On September 24th, 2003, the Law Society wrote to Mr. Derksen seeking particulars of his CCRA and PST related debts.

18. On October 7th, 2003, the Law Society wrote Mr. Derksen's counsel seeking an explanation concerning his unpaid debts for GST, PST and remittances to CCRA.

19. On October 24th, 2003, Mr. Derksen advised the Law Society in a letter from his counsel that:

(a) GST and employer remittances for which garnishee orders were in place by CCRA have now been paid in full and perhaps an over-payment has been made, depending on the ruling with regard to Mr. Derksen not having employees during some of the time when he was "required to pay employee remittances" ;

(b) Mr. Derksen has been receiving income with which he has paid all of his practice debts, with the exception of PST;

(c) Mr. Derksen hoped to retire the PST debt, estimated at \$11,000, by mid-2004 in monthly installment payments;

(d) Mr. Derksen has retained a bookkeeper, Tracey Mrak; and

(e) Mr. Derksen continues to be under his physician's care and on medication to assist with his

psychological issues.

20. On October 29<sup>th</sup>, 2003, the Law Society wrote to Mr. Derksen's counsel seeking further information respecting GST, PST and employee remittances.

21. On November 13<sup>th</sup>, 2003, Mr. Derksen advised the Law Society in a letter from his counsel as follows:

(a) he has long suffered from clinical depression which when untreated manifests itself in a lack of motivation, procrastination, avoidance and delay;

(b) in approximately April 2003, CCRA commenced garnishment proceedings and attached Mr. Derksen's income from Legal Services Society accounts, which accounted for the vast majority of his income;

(c) the CCRA garnishment contributed to a reoccurrence of the onset of Mr. Derksen's depression through to the end of September 2003; and

(d) since the end of September 2003, Mr. Derksen has received an adjustment of his medication from his psychiatrist, has reinstated regular meetings with his psychologist, is fully paid up with CCRA, is fully paid up in his indebtedness for PST, has a practice supervisor, has a legal secretary and a bookkeeper in his employ and has retained an accountant for income tax.

22. On January 12<sup>th</sup>, 2004, Dr. Ancill wrote to the Law Society with a report of Mr. Derksen's status.

23. On January 12<sup>th</sup>, 2004, Mr. Derksen advised the Law Society through his counsel that he was making inquiries with CCRA to determine the extent of his apparent over-payment of employee remittances (due to over-garnishment), and that Mr. Derksen was exploring an associate position with Mr. Conroy.

24. On January 12<sup>th</sup>, 2004, a citation was issued against Mr. Derksen (the " Citation" ).

25. On January 13<sup>th</sup>, 2004, the Law Society wrote to Mr. Harris seeking further particulars of Mr. Derksen's indebtedness to CCRA and for PST.

26. On March 18<sup>th</sup>, 2004, Mr. Derksen advised the Law Society in a letter from his counsel of a letter confirming that his PST account is up to date and a credit with his CCRA account, believed to relate to his employee source deductions.

27. Mr. Derksen admits and acknowledges that he failed to hold funds collected in payment of GST and to remit such funds as required to CCRA.

28. Mr. Derksen admits he failed either to file records clarifying that he did not owe employee deduction remittances, or to make appropriate remittances. In the result, Mr. Derksen is unable to determine from his records whether or not he owed CCRA any funds for employee source deductions when garnishment began in approximately April 2003.

29. Mr. Derksen acknowledges and admits that he failed to remit to the Consumer Taxation Branch of the Government of British Columbia, funds which he collected in payment of Social Services Tax.

30. Mr. Derksen admits that the conduct described in paragraphs 27 and 29 constitutes professional misconduct in relation to counts 1 and 3 of the Citation.

[5] At paragraph 27 of the Agreed Statement of Facts the Respondent acknowledges he failed to hold the

funds collected in payment of GST and to remit such funds to the CCRA, also known as the Canadian Revenue Agency, as it's now known. I note that the actual amount of the amount failed to be remitted is not known with certainty but that the Respondent was garnished by CCRA.

[6] At paragraph 29 of the Agreed Statement of Facts the Respondent also admits that he failed to remit to the Consumer Taxation Branch of the Government of British Columbia funds which he collected in payment of the Social Services Tax.

[7] I find that Counts 1 and 3 are proven and the conduct constitutes professional misconduct.

[8] In relation to Count 2, which alleges that the Respondent failed to hold funds deducted from employee wages and source deductions pursuant to the *Income Tax Act* and to remit such funds to the Government of Canada, I am not satisfied that the evidence provided by the Law Society is sufficient to warrant a finding against the Respondent. I therefore dismiss Count 2.

[9] Finally, there is Count 4 in the amended Schedule that alleges the Respondent, between July 1<sup>st</sup> and September 24<sup>th</sup>, 2003, practised law without having paid his professional liability insurance fee due June 30, 2003, contrary to Section 30 (vii) of the *Legal Profession Act*. That subsection reads as follows:

Subject to rules made under Section 23 (vii) a lawyer must not practice law unless the lawyer has paid the insurance fee when it is due or is exempted from payment of the fee.

[10] In relation to that Count the Agreed Statement of Facts indicates that on or about May 29, 2003, the Respondent received a letter from the Law Society advising him that the second insurance installment in the amount of \$802.50 and his late filing fee for his Form 47 report in the amount of \$214 are both due by June 30, 2003. Subsequent letters were written to the Respondent from the Law Society indicating they were concerned about non payment and that he should not be practising law until payment is made.

[11] Apparently the Respondent tendered a cheque dated August 31, 2003, payable to the Law Society. This was received by the Law Society on September 17<sup>th</sup>. The amount of the cheque was \$1016.50. It was returned without being cleared by the bank. A photocopy of the cheque has NSF written on it.

[12] On September 26<sup>th</sup> the Respondent obtained a bank draft payable to the Law Society in the amount of \$1100 and delivered it to the Law Society offices on September 26<sup>th</sup>. It appears that partly as a result of ongoing matters in relation to Counts 1 and 3 of the citation certain garnishee proceedings were being instituted by various governments against the Respondent and accordingly he didn't have income, as it was in the hands of the government. This is the Respondent's explanation for why he wasn't able to pay his insurance. The Respondent also admits he had an avoidance/procrastination problem, all of which leads to the Respondent admitting he continued to practice law from July 1<sup>st</sup> to September 24<sup>th</sup>, 2000, without having paid his professional liability insurance fee and that such continued practice constituted professional misconduct. Accordingly, on Count 4 of the Schedule I find the Respondent guilty of professional misconduct.