2005 LSBC 06
Report issued: February 14, 2005
Oral Reasons: February 3, 2005
Citation issued: February 19, 2004

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

Kevin Patrick Doyle

Respondent

Decision of the Hearing Panel

Hearing date: February 3, 2005

Panel: James Vilvang, Q.C., Single Bencher Panel

Counsel for the Law Society: James Doyle
Counsel for the Respondent: Albert Roos

[1] On February 19, 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 directed that this Panel inquire into the Respondent' s conduct as follows:

1. Your failure to register as required by the *Social Service Tax Act* as a vendor with the Consumer Taxation Branch of the Ministry of Finance of British Columbia until approximately May 2003.

2. Having collected the funds, you failed to remit Provincial Sales Tax as required by the *Social Service Tax Act* from approximately 1991 to 2003, and thereby breached a statutory trust.

3. Having collected the funds, you failed to remit Goods and Services Tax to the Government of Canada as required by the *Excise Tax Act* from approximately 1991 to 2003, and thereby breached a statutory trust.

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

[3] The citation comes before this Panel as a conditional admission of a disciplinary violation and consent to specific disciplinary action pursuant to Rule 4-22. The Respondent admitted that he professionally misconducted himself by:

a) failing to register as required by the *Social Services Tax* Act as a vendor with the Consumer Taxation Branch of the Ministry of Finance of British Columbia, until approximately May 2003;

b) having collected the funds, he failed to remit the Provincial Sales Tax as required by the *Social Services Tax Act* , from approximately 1991 to 2003; and

c) having collected the funds, he failed to remit Goods and Services Tax to the Government of Canada, as required by the *Excise Tax Act* , from

approximately 1991 to 2003.

[4] The admission, an Agreed Statement of Facts, and a proposal regarding penalty were considered by the Discipline Committee on January 13, 2005. The Discipline Committee resolved to accept Mr. Doyle' s admission and the proposed disciplinary
action. The Committee further resolved to instruct Law Society counsel to recommend acceptance of Mr. Doyle' s conditional admission to the Hearing Panel.

[5] An Agreed Statement of Facts was submitted as Exhibit 3. It contained the following:

> 1. Kevin Patrick Doyle was called to the Bar in Victoria, British Columbia, on August 1, 1985. At all material times he has been a Member of the Law Society of British Columbia (the " Respondent")
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> 2. In terms of employment history, the Respondent practiced as a sole practitioner from August 1, 1985 to December 31, 1985. He ceased practice on December 31, 1985 until March 6, 1987. He then practiced as a sole practitioner from march 6, 1987 until February 12, 1990. From February 12, 1990, the Respondent practiced as an associate with Hatter, Thompson and Shumka. From April 30, 1990 to July 1, 1990, the Respondent practiced as a sole practitioner. From July 1, 1990 until February 1, 1992, he practiced as an associate with Smith Hutchison. From February 1, 1992 to date, the Respondent has practiced as a sole practitioner, mainly in the areas of real estate, immigration, personal injury, wills and estates, general litigation and aboriginal law.
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> 3. By letter dated April 22, 2003, the Respondent wrote to the Law Society, advising that he had made an assignment into bankruptcy, effective April 15, 2003. He attached correspondence from his Trustee in Bankruptcy as well as a copy of his Statement of Affairs.
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> 4. The Respondent' s Statement of Affairs indicated a debt owing to Canada Customs and Revenue Agency (" CCRA") in the sum of $113,586.00, as well as an amount owing to the Ministry of Finance, attention Social Services Tax, in an unknown amount.
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> 5. A member of the Department of Audit and Investigations of the Law Society (" Audit Department") wrote to the Respondent on April 4, 2003, requesting information regarding the amount owed the Minister of Finance.
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> 6. The Respondent responded on May 20, 2003, stating:
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> > " In answer to your query, the precise amount owing for Social Service Tax is not yet determined but will either be agreed or possibly be determined after an audit."
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> 7. The Audit Department wrote to the Respondent on May 23, 2003 asking that the Respondent provide the known amount for Social Service Tax (" SST"), also known as Provincial Sales Tax (" PST") and once the audit was complete, the precise amount. An inquiry was also made as to whether monies were owed to GST and the amount, if any.
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> 8. The Respondent replied on June 19, 2003 indicating that he did not have a precise amount for SST, but he believed the amount was not less than $17,500.00 and may be considerably more when interest and penalties are applied. In terms of GST, he indicated that as of June 5, 2003, the amount owing for GST was $17,308.89, plus interest of $5,446.99 and $7,863.87 for penalties, for a total of $30,619.75.
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> 9. The Audit Department wrote to the Respondent on June 20, 2003 inquiring as to why the GST amount was not listed on the Respondent' s Statement of Affairs, how the indebtedness arose and

when. An inquiry was also made as to the SST account number.

10. The Respondent advised on August 27, 2003, that the Trustee, in preparing the Statement of Affairs, " . . . did not separate out from the total amount listed a breakdown of what was owed to CCRA for arrears of income tax and what GST. Secondly, it was only after receiving notice of my bankruptcy that CCRA made a revised claim. . ." The precise figure owing the GST, inclusive of interest and penalty, was not known until June 5, 2003, as the Respondent had indicated in his letter of June 19, 2003 to the Audit Department. He further indicated that the indebtedness arose " due to my failure to file Returns quarterly and pay proper amounts owing when due . . ."

11. In terms of the PST, the Respondent indicated that until May 30, 2003 he had never registered as a collector of PST at all. He further indicated that he had collected PST on his accounts since about 1991, but had not remitted the amounts collected.

[6] Counsel for the Law Society and counsel for the Respondent jointly submitted the appropriate penalty would be:

1. A fine in the amount of $2,000.

2. Costs in the amount of $3,000

3. The Respondent should have 18 months to pay the fine and costs.

[7] Having considered the agreed upon facts, the evidence of the Respondent, the submissions of counsel, and the authorities presented, I conclude that the penalty proposed is appropriate.

[8] I would add that if additional time to pay is required the Respondent should have leave to apply.

Anonymous Publication

[9] Counsel for the Respondent member applied to the Panel for an order that publication of these discipline proceedings should not identify the Respondent. That application was opposed by counsel for the Law Society.

[10] Counsel agreed that as a general rule, publication of the Respondent' s name was required and that only in exceptional circumstances is that rule to be departed from.

[11] Rule 4-38.1 provides:

(1) Except as allowed under this Rule, a publication under 4-38 must identify the Respondent.

And:

(3) The panel may order that publication not identify the respondent if

a) the panel has imposed a penalty that does not include a suspension or disbarment, and

b) publication will cause grievous harm to the respondent or another identifiable individual that outweighs the interest of the public and the Society in full publication.

The issue in this case is, in the circumstances of this case, will publication of the Respondent' s name cause grievous harm to the Respondent or another identifiable individual that will outweigh the public

interest in full publication.

[12] The Respondent testified that he is 67 years of age, single, with no dependents, and living a very modest life style. He rents space from a law firm, but conducts a sole practice. He earns his living mainly by doing personal injury work, but he devotes a tremendous amount of time to pro bono legal work and other community service on behalf of many groups, including gays and lesbians, the disabled, the homeless, First Nations organizations, cultural groups, and the Catholic Church. In approximately 19 years of practice, his professional record has been unblemished except for this.

[13] In support of the Respondent, letters were submitted by a member of the firm from which the Respondent rents space and from the chief councillor of a First Nations group for which the Respondent works for free.

[14] Counsel for the Law Society described the letter from the First Nations group as " perplexing" . I agree. The letter from the First Nations group contains the following statements:

> " Mr. Doyle brings a unique legal professional perspective difficult to replicate in another lawyer in British Columbia. Throughout this matter, Mr. Doyle has done this work for us completely pro bono. Had Mr. Doyle charged us fees, it would have cost us up to this time in excess of $50,000, and this fight is far from over yet. We simply do not have the money to employ a lawyer in this vital and ongoing matter. Yet, it would be impossible for us to carry on without a lawyer' s help.

Yet the letter also says that they would not continue to take his free assistance if his name was published. That is their choice. And in my humble opinion, their mistake.

[15] They say: " The loss of Mr. Doyle' s services would undoubtedly cause us grievous harm." In my view, that is far different from saying, " The publication of his name would undoubtedly cause us grievous harm" . Even if they did say that, I would not accept their view of things. I would agree with the submission of counsel for the Law Society that: " One would think his timeless efforts, valued service, and unique legal professional perspective would garner support for him personally and allow him to continue to assist them in their cause."

[16] Although it is beyond the scope of what I am required to decide, I cannot help but add that, in my view, they need him more than he needs them. I cannot see that the possible loss of this " client" could cause the Respondent any " grievous harm" .

[17] The letter from the member of the firm from which the Respondent rents space is very helpful in describing the effects of full publication on Mr. Doyle personally.

[18] I have been greatly assisted by the clear and well-focused submissions by both counsel and by the authorities submitted, particularly the decision in " A Lawyer" , 2004 LSBC 19. I agree with the Panel' s conclusions that:

> . . . medical evidence is not always required to establish grievous harm and that each case is to be decided on its own facts and merits.

And this from paragraph 12:

> . . . the test that should be applied in regard to Rule 4-38.1 is to balance the grievous harm to the individual, taking into account the individual' s self-worth, emotional health, and reputation against the interest of the public and the Law Society in publication.

[19] I also note that the member’ s background in that case was similar to the Respondent’ s. I will quote at this point from paragraph 14 of that judgment. It says:

> The circumstances in the present case were exceptional in that the member had 29 years of discipline free practice, he had been contrite and admitted his wrong, his misconduct had caused no harm or risk of prejudice in the transaction and he was not motivated by self-gain. His risk to the public was minimal. The public interest would be served by his continued volunteerism which might be jeopardized by publication.

[20] However, there are differences between that case and this one. First, in that case, the member altered one document without having authority to do so. It was a momentary slip. There was no personal gain. In this case, the Respondent failed to remit PST and GST for approximately nine years. There was an element of personal gain, in that he did collect the money to pay those taxes from his clients, but instead of remitting it, as required, he kept it for himself. The total amounts involved will never be known precisely but they exceed $35,000. Second, in the “ A Lawyer" case, neither the client nor the public suffered any direct harm. In this case, the public is the victim of the Respondent’ s actions. The money collected should rightfully have become public money. As a result, the public has an even greater interest in knowing “ who did what" than in a case in which only the money of one client might have been jeopardized.

[21] I respectfully disagree with the conclusion of the panel in the “ A Lawyer" case as stated in paragraph 15 of their judgment, where they say:

> The Panel did not agree with Mr. Follett’ s argument that the public have a right to know “ who did what" – that discipline of a lawyer must be meted out in the context of upholding and protecting the public interest in the administration of justice.

[22] I do believe the clear intention of Rule 4-38 and 4-38.1 is that the public should know “ who did what" and that only in exceptional circumstances where full publication will cause grievous harm will that right be abrogated.

[23] The modern trend is very strongly toward transparency in disciplinary proceedings. The public has a strong and legitimate interest in knowing the legal profession is being properly governed generally and in knowing which individual lawyers have professionally misconducted themselves.

[24] Perhaps this interest was expressed best not by a judge or a Bencher but by a member of the public, a Mr. Del Vecchio, who was quoted in the Benchers'decision in the *Morris* case dated March 6, 1998, Discipline Case Digest 98/9. Mr. Del Vecchio said:

> In my view, it would not be fair to future clients to be deprived of this information, considering the seriousness of his citation and his past response regarding his past conduct. The public has little enough knowledge of lawyers'pasts as it is.

[25] While I am sympathetic to the Respondent, I must conclude that the harm to him of full publication is outweighed by the public interest. I therefore order full publication. I also order that full publication shall not occur until after any applicable appeal period has passed.