

2005 LSBC 20

Report issued: May 30, 2005

Oral Reasons: May 12, 2005

Citation issued: December 15, 2005

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

David Robert Greig

Respondent

Decision of the Hearing Panel

Hearing date: May 12, 2005

Panel: Anne Wallace, Q.C., Single Bencher Panel

Counsel for the Law Society: Maureen Baird

Counsel for the Respondent: Terrence Robertson, Q.C.

[1] On December 15, 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. That you failed to retain records, specifically certain receipt books and payment ledger books, for at least ten years, in contravention of Rule 3-68(1).
2. That you failed to record in your general account records all funds received by your firm for miscellaneous services in contravention of Rule 3-63(2).
3. That you failed to report to the Canada Customs and Revenue Agency miscellaneous income to your firm received from 1995 to 2000.

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

[3] This 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 and consented to the following disciplinary action:

- (a) a reprimand;
- (b) payment of a fine in the amount of \$7,500; and
- (c) payment of costs in the amount to be assessed by the Hearing Panel.

Agreed Statement of Facts

[4] An Agreed Statement of Facts was filed as Exhibit 3 in these proceedings. It provides as follows:

1. In February 2003, the Law Society of British Columbia (the "Society") received a complaint from a member, Mr. Cowley, raising allegations that Mr. Greig had engaged in tax fraud by (1) not reporting cash income received from walk-in clients for notarizations, and (2) not reporting cash payments from regular clients. The failure to properly record and report these payments would have affected Mr. Greig's liability to remit income tax, GST and PST.
2. As a result of Mr. Cowley's complaint, a Rule 4-43 audit order was obtained on March 20, 2003 and presented to Mr. Greig on March 22, 2003. The field work for the audit commenced that day. The audit report is dated June 4, 2003.
3. The citation in this case was issued on December 15, 2004.

Audit Report Findings

a) **Rule 3– 68** (Paragraph 1 of the Citation)

i) Mr. Greig did not produce Receipt Books for the following time periods:

- February 3, 1995 to March 9, 1999;
- November 13, 1999 to July 15, 2001;
- May 31, 2002 to January 27, 2003;

ii) Mr. Greig did not produce a Payment Ledger Book for the following time period:

August 1, 1996 to June 30, 1998

b) **Rule 3-63(2)** (Paragraph 2 of the Citation)

Funds received for an eight month period in 1999 (being the period examined) which were received on account of fees in the amount of \$1,590 were not recorded in the general account record of the firm, nor deposited into the firm's bank account.

c) **Failure to report income to CCRA** (Paragraph 3 of the Citation):

The audit report found, for the period examined, that there were 78 instances of payments totaling \$1,590 for notary and other miscellaneous fees, like Lawyer Referral fees, which were not reported for tax purposes.

5. Mr. Greig does not dispute the Rule breaches and he admits the failure to properly record and report notary and other miscellaneous fees. He has since voluntarily reported to the Canada and Customs Revenue Agency that his firm had unreported income from notary fees of \$12,208 for the period from 1995 to 2000 (which included the \$1,590 for the period examined). Mr. Greig was reassessed additional taxes of \$4,100.41 for 1999 and \$999.07 for 2000. Tax on the notary fees collected for 1995 – 1998 is statute barred under the *Income Tax Act*.

6. Mr. Greig was called to the Bar in British Columbia on June 12, 1987 and has been a member of the Law Society since that time.

Mr. Greig is the senior partner of a law firm based in Surrey (with a branch in Vancouver since August 1999), which has gone through the following partnership changes in the last decade:

July 19, 1993 - August 20, 1996 Greig Skagen Kennedy

August 20, 1996 - March 22, 1999 Greig Skagen & Co.

March 22, 1999 - March 18, 2002 Greig Skagen & Wilson

March 18, 2002 – present Greig Wilson Brajovic

7. The complainant, Mr. Cowley, was an associate at the firm from May 23, 1997 to October 1, 2000.

8. Mr. Cowley acted for Rhonda Blake, a former receptionist with Greig Skagen & Wilson, who was suing the firm for wrongful dismissal. She alleged that during the period she worked for the firm (1994 – 2001) that one or more partners of the firm had engaged in tax fraud by pocketing cash payments for notarizing documents and other miscellaneous legal work.

9. Mr. Cowley advised the Society that at a Small Claims settlement conference regarding Ms. Blake's lawsuit, Mr. Greig had admitted taking unreported notary fees. The Settlement Conference Record, signed by Mr. Greig, contains the following note after the heading, " Agreed facts and outstanding issues" :

Allegation of unreported income from front desk notary fees is admitted by defendants.

The audit confirmed that the cash notary fees were not deposited into the firm's accounts and were not recorded in the firm's books as income.

10. The auditor also examined a period in 2002 (from January 1 to May 30) for comparative purposes and found that during this period all monies for which receipts were issued appear to have been deposited. Therefore, it seems that by 2002 the firm had cleaned up its practices regarding cash payments. The auditor was limited by the scope of the work that would have been involved in examining everything for the last 10 years (the minimum period law firms are supposed to keep records) and by the fact that some of the receipt books and payment ledgers are missing.

11. In his response to the Society, Mr. Greig explained that the missing records were probably accidentally thrown away during a " spring cleaning" in March 2003. He told the Society that he had taken steps to ensure such an event does not happen again. He also says the firm's accounting systems have been tightened up, with the bookkeeper, rather than the receptionist, being responsible for all incoming funds.

12. With respect to the issue of notary fees, Mr. Greig stated the following to the Society:

"The notarial fees received were placed in the petty cash envelope or box at the front desk. These fees were then used for incidental office necessities and for lunches. Given that we maintain a significant conveyance practice, we often lunch with bankers and realtors and other referral sources several times per week. Between 1995 and 2000, we used a firm credit card for that purpose on occasion, but this card typically had a minimal " limit" on it, and we considered it reserved for activities of particular importance to the firm as a whole, and utilized it predominantly when we were together. It was, accordingly, not uncommon for me to take a family counselor, realtor, or other business contact out for lunch with petty cash for that, and claim no reimbursement.

"The notarial fees were also used for occasional Friday night beer and wine get-togethers with the staff. These events occurred about once or twice a month, and would involve most of the lawyers and most of the staff getting together in the board room for a drink or two on Friday between 4:30

and 5:30. Often, someone would provide snacks. Given that there were often 10-15 people in attendance, it was not unusual to consume a half dozen beer and 2-3 bottles of wine.

"No reimbursement was sought for these expenses. And although occasionally, for special events, a receipt would be surrendered to insure reimbursement for " big ticket" office promotional events, it was common for the partners to have access to the petty cash for these activities. The monies were never used as personal disposable income: no claim to reimbursement was made for the use the notarial money expended [sic]. These expenses (for lunches and promotion) were not shown as expenses of the firm or Management Company and no claim was made in respect thereto for law practice expense.

"There was no secret made of this practice. No notarial fees were charged unless the service was provided. Often, the service was provided and no fee was charged or collected."

[5] Mr. Greig admits and agrees with the facts contained in the Agreed Statement of Facts, and admits the facts alleged in the citation.

[6] Mr. Greig admits and agrees that the facts set out in this Agreed Statement of Facts and in the citation constitutes Professional Misconduct.

[7] After considering the circumstances set out in the Statement of Facts, and having heard the submissions of counsel, the Panel accepts the admission and finds that the Respondent professionally misconducted himself.

[8] The Panel further finds that the penalty proposed by the Respondent and recommended by the Discipline Committee to be appropriate in all of the circumstances.

[9] It is accordingly ordered that the Respondent be reprimanded, and pay a fine of \$7,500.

[10] This Panel also ordered that the Respondent pay costs in the amount of \$30,399, half to be paid on July 1, 2005, and the remaining half on November 1, 2005.

[11] The Executive Director is instructed to record the finding of professional misconduct on the Respondent's Professional Conduct Record, to impose the disciplinary action and to inform the complainant of the disposition.