

Jeremy Donaldson

Victoria, BC

Called to the Bar: May 17, 1991

Discipline hearing: June 16, 2003

Panel: G. Ronald Toews, QC, Chair, Gordon Turriff, QC and Michael Falkins

Decision: June 16, 2003

Reports issued: June 25, 2003; indexed as [2003] LSBC 27

Counsel: Jessica S. Gossen, for the Law Society; Michael M. Ranspot, for Mr. Donaldson

Summary

For two years, Mr. Donaldson collected from clients but failed to remit Goods and Services Tax and Provincial Sales Tax as required by statute. Specifically, he failed to remit \$20,500 in GST and \$5,750 in PST. Mr. Donaldson acknowledged, and the discipline hearing panel found, that his conduct constituted professional misconduct. The panel ordered that he be reprimanded, pay a \$1,500 fine and \$1,000 in costs within 18 months, provide to the Law Society quarterly statutory declarations on the total amount of fees he has billed and total GST and PST remittances for each quarter (until relieved of this condition by the Discipline Committee) and provide to the Society a letter from his physician on the status of his health.

Facts

For two years in his legal practice, Mr. Donaldson collected from clients but failed to remit Goods and Services Tax (GST) and Provincial Sales Tax (PST) as required by statute. Specifically, he failed to remit \$20,500 in GST to the Government of Canada and \$5,750 in PST to the Consumer Taxation Branch of the Government of BC.

Mr. Donaldson set out these facts in a proposal under the *Bankruptcy and Insolvency Act* in 2001. No creditors opposed Mr. Donaldson's proposal, and it was approved in January, 2002.

The Law Society was notified of the proposal in July. In a letter of explanation to the Society in September, 2002, Mr. Donaldson attributed his financial collapse and his failure to remit GST and PST to the fatigue that resulted from a serious illness he had suffered. He had completed treatment for that illness, although he required a follow-up, and his physician reported an optimistic outlook.

Verdict

Mr. Donaldson acknowledged, and the discipline hearing panel found, that his conduct in failing to remit GST and PST as required by statute constituted professional misconduct.

Penalty

The hearing panel regarded Mr. Donaldson's failure to remit taxes as a serious matter. The statutes governing the collection and remittance of GST and PST each create a statutory trust. A failure to remit these taxes as required by statute is a breach of that trust. It is, moreover, a breach of duty to a client who does not pay such tax in anticipation that a lawyer will use it to prop up a marginal practice.

Mr. Donaldson advised the panel that he was entirely up to date in his payments under the bankruptcy proposal and in his remittances of GST and PST. The panel noted that, after payment of his debts and support provided to his step-daughters, Mr. Donaldson had very little discretionary income. The panel was sympathetic to his plight and accepted that his serious illness had contributed to his misconduct. The panel also noted that Mr. Donaldson had no previous disciplinary history, had cooperated with the Law Society throughout its investigation and had acknowledged his misconduct at an early stage.

The panel wished to verify that Mr. Donaldson remained free of his illness to ensure that there was no repetition of these events.

The panel pointed to the need for general deterrence in the profession and to maintain public confidence. It further considered the various circumstances and range of penalties reflected in precedent decisions.

After considering all these factors, the panel ordered that Mr. Donaldson:

1. be reprimanded;
2. pay a fine of \$1,500 within 18 months;
3. pay \$1,000 towards the costs of the proceedings, within 18 months;
4. provide to the Law Society quarterly reports on his total billings and remittances of GST and PST for each quarter, until relieved of this condition by the Discipline Committee; and
5. provide to the Law Society, within three months, a letter describing the current status of his health from his physician or from another qualified medical practitioner acceptable to the Discipline Committee.