

2020 LSBC 22
Decision issued: May 28, 2020
Citation issued: June 21, 2017

THE LAW SOCIETY OF BRITISH COLUMBIA

In the matter of the *Legal Profession Act*, SBC 1998, c. 9

and a section 47 review concerning

DANIEL BRUCE GELLER

RESPONDENT

**DECISION OF THE PRESIDENT'S DESIGNATE
ON AN APPLICATION TO DISMISS THE REVIEW**

Written submissions: May 7, 2020

President's Designate: Dean Lawton, QC

Discipline Counsel: Mandana Namazi
No-one appearing on behalf of the Respondent

BACKGROUND

- [1] On June 21, 2017 a citation was issued concerning the conduct of the Respondent, Daniel Geller, for failing to comply with Law Society Rule 2-24(4) by practising law in Yukon while suspended from doing so in that jurisdiction.
- [2] The hearing panel conducted a three day hearing on July 23, 24, and 25, 2018.
- [3] The Respondent appeared on his own behalf at the hearing.
- [4] On December 27, 2018 the hearing panel issued written reasons, having determined that the Respondent engaged in the unauthorized practice of law and, thereby, committed a breach of Law Society Rule 2-24(4) (*Law Society of BC v. Geller*, 2018 LSBC 40).

- [5] On June 24, 2019 the hearing panel conducted a hearing on disciplinary action. The Respondent appeared on his own behalf at the hearing.
- [6] On September 20, 2019 the hearing panel ordered a fine of \$5,000 and costs of \$10,335 (*Law Society of BC v. Geller*, 2019 LSBC 35).
- [7] On October 15, 2019 the Respondent applied for a s. 47 review of the decision on Facts and Determination and the decision on Disciplinary Action.
- [8] On November 7, 2019 the Respondent applied, pursuant to Law Society Rule 5-12(1)(a)(i), for an extension of time to pay the fine.
- [9] On December 18, 2019, the Vice-Chair of the Discipline Committee granted the Respondent's application to extend the time to pay the fine.
- [10] On December 31, 2019 the Respondent terminated his practice and retired from the practice of law.
- [11] On April 29, 2020 the Law Society, through a paralegal in its Discipline Department, wrote to the Respondent by email (the "April 29, 2020 email") asking if he intended to proceed with the review given he had terminated his practice and retired. In that email, the Law Society stated the Record in respect of the review should have been filed by the Respondent within 60 days of filing the Notice of Review and that time had long-expired. The April 29, 2020 email concluded with the statement that absent a response from the Respondent, the Law Society, "*would have to take alternative steps to bring the matter to resolution.*" (Exhibit "C" to the Affidavit of Tara McPhail sworn or affirmed on May 7, 2020.)
- [12] In her written submissions on this application dated May 7, 2020, Law Society counsel has stated the Respondent had provided an email address for delivery in respect of this discipline process. In this context, I am satisfied the Respondent received the April 29, 2020 email.
- [13] Also in her written submissions, Law Society counsel has stated she has not received a response from the Respondent to the April 29, 2020 email. I note the addressee line on the May 7, 2020 written submissions in respect of this application states the written submissions were sent to the Respondent by courier and by email.

THE APPLICATION TO DISMISS THE REVIEW

- [14] The Law Society's dismissal application relies on Rule 5-28. It states:

Inactive reviews

- (1) If no steps have been taken for 6 months or more, a party may apply for an order dismissing a review by delivering to the President and the other party a notice in writing that sets out the basis for the application. ...
- (3) If it is in the public interest and not unfair to the respondent or applicant, the President may dismiss the review.
- (4) The President may designate another Bencher to make a determination under subrule (3).

[15] I am concerned that the April 29, 2020 email did not explicitly state the Law Society intended to apply for an order dismissing the review. While I think there is an implication the Law Society would take further steps in respect of the review, the word choice in the April 29, 2020 email does not, in my opinion, make it clear what those further steps would be and, more significantly, that those steps would include an application to dismiss the review. Although I recognize the May 7, 2020 written submissions are clear in stating the Law Society seeks a dismissal of the review, those submissions must follow upon appropriate notice first being delivered to the Respondent.

[16] A condition precedent to a decision I may make to dismiss the review under Rule 5-28 requires that I be satisfied the dismissal is not unfair to the Respondent. In my opinion the April 29, 2020 email does not meet the notice requirements of Rule 5-28(1) in that it does not state the Law Society is applying for a dismissal of the review, and accordingly it would be unfair to the Respondent should I order the dismissal of the review on the current record of events.

ORDER

[17] In the circumstances, I order the Law Society's application to dismiss the review be adjourned generally with leave to bring it at any time 14 days after the Respondent has been given correct notice in writing pursuant to Rule 5-28(1).

[18] I remain seized of this matter in accordance with the President's designation of authority.