

Hearing File No.: HE20180090
2021 LSBC 42
Oral Decision: May 28, 2021
Decision Issued: October 26, 2021
Citation Issued: October 25, 2018

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

SUMANDIP SINGH

RESPONDENT

**DECISION OF THE PRESIDENT’S DESIGNATE
ON AN APPLICATION FOR A STAY OF
DISCIPLINARY ACTION**

Application date: April 22, 2021

President’s Designate: Jamie Maclaren, QC

Discipline Counsel: Mandana Namazi
Counsel for the Respondent: Joven Narwal

BACKGROUND

- [1] The Respondent is a sole practitioner who was called to the British Columbia bar on December 4, 2013.
- [2] In a decision on Facts and Determination in *Law Society of BC v. Singh*, 2020 LSBC 01 (“*Singh F&D*”), the hearing panel found the Respondent to have

committed over 40 events of professional misconduct between June 2015 and July 2017. These events were grouped under five broad headings:

- (a) facilitating the unauthorized practice of law by a recently disbarred lawyer;
- (b) misconduct in communications and submissions with respect to members of the public, other lawyers and the courts/tribunals;
- (c) misconduct by improperly commissioning documents for use in court proceedings and Land Title Office matters;
- (d) misconduct demonstrated by the provision of legal services to clients that failed to meet the quality of service required by members of the legal profession; and
- (e) misconduct in his dealings with the Law Society during the course of the investigation.

- [3] Before a hearing on disciplinary action could commence, the Chair of the *Singh* F&D panel was appointed as a judge of the Provincial Court of British Columbia. The President of the Law Society decided, pursuant to Law Society Rule 5-3, that the remaining two members should proceed with the hearing on disciplinary action.
- [4] The Respondent then applied for an order to reconstitute the disciplinary action hearing panel to include a Law Society Benchler as a third member and Chair. The President dismissed the application in *Law Society of BC v. Singh*, 2020 LSBC 25, and confirmed his earlier decision that the remaining two members of the *Singh* F&D panel should decide on disciplinary action as an adequately constituted hearing panel.
- [5] In *Law Society of BC v. Singh*, 2021 LSBC 12 (“*Singh* DA”), the Law Society argued that the Respondent’s professional misconduct warranted a suspension from practice of at least 18 months. The Respondent suggested that he be permitted to continue practice under the strict supervision of an approved supervisor, and that if the supervisor noted any misconduct on his part while under supervision, he should serve a suspension of predetermined length. The Respondent also suggested that he pay a sizable fine, do community service, and undertake 50 hours of continuing legal education.
- [6] The *Singh* DA hearing panel ordered the Respondent to serve a two-year suspension, commencing on April 1, 2021 or on such other date as the parties agreed upon. The two-member panel further ordered that, for the first full year

following his return to practice, the Respondent must practise under the supervision of a supervising lawyer, and on terms and conditions approved by the Law Society's Practice Standards Committee. The panel also ordered the Respondent to pay \$41,098.77 in costs.

- [7] On March 26, 2021, the Law Society extended the commencement of the Respondent's suspension to May 1, 2021.
- [8] On April 14, 2021, the Respondent filed a Notice of Review concerning the *Singh* DA decision, pursuant to section 47 of the *Legal Profession Act* and Rule 5-19 of the Law Society Rules. He applied for a stay of his suspension under Rule 5-20(3) pending the outcome of the section 47 review.
- [9] The Respondent also applied to the Law Society President under Rule 5-12 for a further postponement of the commencement of his suspension to June 1, 2021. The President referred his application to the *Singh* DA hearing panel, and the panel granted the postponement in *Law Society of BC v. Singh*, 2021 LSBC 15.
- [10] On April 22, 2021, the Respondent provided written submissions to me as the President's Designate, in support of his Rule 5-20(3) application for a stay of his suspension pending review of the *Singh* DA decision. The Law Society opposed the application in its Response Submissions dated May 5, 2021. The Respondent provided a Reply to the Law Society's Response on May 19, 2021.
- [11] On May 28, 2021, I issued an oral decision to grant the Applicant's Rule 5-20(3) application for a stay of suspension until the earliest of the following events:
- (a) the Review Board issues its decision on the section 47 review;
 - (b) the President, the President's Designate or the Review Board makes a further order regarding the stay of suspension; or
 - (c) November 30, 2021
- [12] My written reasons follow.

ISSUE

- [13] Do the circumstances and arguments outlined in the Respondent's Rule 5-20(3) application meet the legal test for a stay of disciplinary action pending a section 47 review?

LAW

[14] Law Society hearing panels generally apply the following criteria from *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1994 SCR 117 (SCC) (“*RJR-MacDonald*”), in assessing whether an application meets the test for a stay of disciplinary action pending a section 47 review:

- (a) the review must raise a serious question to be determined;
- (b) there must be irreparable harm if the stay is not granted; and
- (c) the balance of convenience must favour the imposition of a stay.

ANALYSIS

Does the review raise a serious question to be determined?

[15] The threshold for the first part of the *RJR-MacDonald* test is not onerous. It only requires that the section 47 review be neither vexatious nor frivolous on a preliminary assessment of its merits: *Law Society of BC v. Goldberg*, 2007 LSBC 53, at para. 10; *Law Society of BC v. Sas*, 2016 LSBC 15, at para. 8.

[16] In his Notice of Review, the Respondent set out several issues to be decided by a Review Board. These included, in summary:

- (a) whether the composition of the *Singh* DA hearing panel violated principles of natural justice and procedural fairness because it was a two-member hearing panel without a democratically elected Bencher;
- (b) whether the President’s decision in *Law Society of BC v. Singh*, 2021 LSBC 15 to proceed with a two-member hearing panel was a denial of natural justice and procedural fairness because it denied the Respondent an opportunity to make full legal submissions;
- (c) whether the *Singh* DA hearing panel’s imposition of a suspension beyond the range argued by either party, and its failure to give adequate reasons for exceeding the range argued by either party, constituted an error in law, and was contrary to the principles of natural justice and procedural fairness;
- (d) whether the *Singh* DA hearing panel erred in law by misapplying the concepts of globalization, totality and restraint in assessing appropriate

disciplinary action, by failing to give sufficient weight to mitigating factors, by overemphasizing aggravating factors, and by failing to give weight to the principles of rehabilitation and progressive discipline;

- (e) whether the imposed suspension was excessive and inappropriate;
- (f) whether the *Singh* DA hearing panel's failure to scrutinize the bill of costs and to consider the compound effect of the costs award and suspension was an error in law, and was contrary to the principles of natural justice and procedural fairness; and
- (g) whether the Respondent was denied procedural fairness when counsel for the Law Society presented an offer to resolve his matter through an Agreed Statement of Facts on the morning of the first *Singh* F&D hearing date, and then failed to adequately acknowledge these circumstances and the mitigating effect of acceptance of responsibility by inviting the panel to impose more severe disciplinary action than was sought by the Law Society.

[17] In its Response Submissions, the Law Society argued that many of the Respondent's aforementioned grounds for review lacked a proper factual or legal foundation, and were frivolous in sum. The Law Society challenged the merits of each of the Respondent's grounds for review, and argued some finer points of law to show that the Respondent failed to raise a serious question for a Review Board.

[18] I was satisfied that, as a whole, the Respondent's grounds for review met the test as being neither vexatious nor frivolous, and warranted more than a preliminary assessment of merit. I was particularly convinced that a review is required to determine the serious questions of whether the composition of the *Singh* DA hearing panel violated principles of natural justice and procedural fairness, and whether the panel's imposition of a suspension beyond the range argued by either party constituted an error in law.

Will the Respondent suffer irreparable harm if the stay is not granted?

[19] The second part of the *RJR-MacDonald* test requires an applicant to show they would suffer irreparable harm if not granted a stay of disciplinary action. The *Singh* DA hearing panel acknowledged that the impact of a two-year suspension from practice would be "far reaching and significantly negative" for the Respondent, and would "likely be more significant because he is a sole practitioner": *Singh* DA at para. 58.

- [20] The Respondent provided affidavit evidence that his legal practice is his only significant means of income, and that ceasing to practice for an extended period of time would cause him irreparable financial and professional harm. He deposed that his legal assistant would lose employment if he served a lengthy suspension and he likened his situation to the applicants in *Law Society of BC v. Dhindsa*, 2020 LSBC 6 and *Law Society of BC v. Welder*, 2005 LSBC 52 where sole practitioners were granted stays of disciplinary action on the partial basis that a suspension would cause them irreversible financial distress.
- [21] I was satisfied on the evidence that the Respondent would suffer irreparable harm if he served a lengthy suspension pending a review of *Singh* DA.

Does the balance of convenience favour the imposition of a stay?

- [22] The third part of the *RJR-MacDonald* test requires the balance of convenience to favour a stay of disciplinary action. This engages the public interest, and asks the question of “whether the granting of the stay will put the public at risk again”: *Welder*, at para. 7. Any risk to the public from a stay of disciplinary action must be weighed against any irreparable harm to the applicant if a stay is denied, while prioritizing the public interest.
- [23] The Respondent noted that his proven misconduct occurred between June 2015 and July 2017, and that over a year has elapsed between the *Singh* F&D and *Singh* DA decisions, with no evidence of public harm in the interim. The Respondent also emphasized that the *Singh* DA hearing panel consented to delaying the commencement of his suspension, and the Law Society later agreed to a further extension of one month. In the Respondent’s submission, the delay and extension of his suspension supported the notion that his continued practice does not pose a significant risk to the public.
- [24] The Law Society argued that the Respondent needed to serve a suspension in order for his rehabilitation process to begin. It further argued that the public interest could only be protected by a denial of his application for a stay, and that a stay would otherwise exacerbate damage to the reputation to the legal profession already caused by the Respondent’s misconduct.
- [25] I viewed the balance of convenience in this matter as favouring a stay of the Respondent’s suspension. Given the time that had elapsed since the Respondent’s proven misconduct, and between the various hearings, I determined that a six-month stay of suspension would not place the public at risk comparable to the irreparable harm that the Respondent would suffer from a suspension period of six-months or more in waiting for review. To promote expediency in proceeding to

review, and to limit time held in abeyance, I set the stay of the Respondent's suspension to expire no later than November 30, 2021.

DECISION

[26] The circumstances and arguments outlined in the Respondent's Rule 5-20(3) application meet the legal test for a stay of disciplinary action pending a section 47 review. The Respondent's suspension is stayed until the earliest occurrence of the following events:

- (a) the Review Board issues its decision on the section 47 review;
- (b) the President, the President's Designate or the Review Board makes a further order regarding the stay of suspension; or
- (c) November 30, 2021.