

2021 LSBC 47
Hearing File No.: HE20210062
Decision Issued: November 30, 2021
Citation Issued: September 4, 2018

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
REVIEW DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

HONG GUO

RESPONDENT

**DECISION OF THE PRESIDENT’S DESIGNATE ON A
JOINT APPLICATION FOR STAY OF DISCIPLINARY ACTION
PENDING REVIEW**

Written materials: November 26, 2021

President’s Designate: Michael F. Welsh, QC

Discipline Counsel: Tara McPhail
Counsel for the Respondent: Gerald Cuttler, QC

BACKGROUND TO APPLICATION

[1] The Law Society of British Columbia (the “Law Society”) has filed for a review under section 47 of the *Legal Profession Act* of a decision of a hearing panel on disciplinary action in this matter (*Law Society of BC v. Guo*, 2021 LSBC 43). I am advised that the Respondent is about to file her own section 47 review notice. The parties jointly apply for a stay of the hearing panel’s order that the Respondent be

suspended from the practice of law for one year, commencing December 1, 2021, pending the hearing of those section 47 reviews. As the President's designate I made that order on November 26, 2021 and now provide reasons for it.

- [2] In its disciplinary action decision issued October 26, 2021, the hearing panel suspended the Respondent for a period of one year, commencing November 1, 2021 or on an alternate date agreed to by the parties in writing. The parties agreed on December 1, 2021.
- [3] While this is a joint application, it falls to me as President's Designate to determine whether a stay of the suspension is warranted.

LEGAL PRINCIPLES

- [4] In making that determination I utilize the three-pronged test set out in the well-known decision on granting of interlocutory injunctions, *RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 SCR 311. It has been applied frequently in Law Society stay decisions and the parties agree that the test applies in this case.
- [5] The three prongs are:
- (a) the review must raise a serious question to be determined;
 - (b) there must be irreparable harm if the stay is not granted;
 - (c) the balance of convenience must favour the imposition of the stay.
- [6] The overarching consideration is the interests of justice. (*Teal Cedar Products Ltd. v. Rainforest Flying Squad*, 2021 BCCA 387 at para. 12).

APPLICATION FOR A STAY

- [7] The parties agree that the Law Society's grounds for review and the basis of the anticipated review sought by the Respondent are "neither vexatious nor frivolous" quoting from *Law Society of BC v. Chiang*, 2013 LSBC 30 at para. 7. As that decision states: "The threshold required to meet the first part of this three-pronged test is low. All that is required is a preliminary assessment of the merits of the Review. A Benchler hearing an application for a stay need only be satisfied that the Review is 'neither vexatious nor frivolous.'"

- [8] While neither specifically discloses those grounds for review to me in the materials, the Law Society has stated publicly that it seeks disbarment. The clear issue is whether, given the seriousness of the professional misconduct found and the appropriateness of the mitigating factors also found by the hearing panel, a one-year suspension is a proper disciplinary action. The basis of the Respondent's review is not clear in the materials. Before the hearing panel, the Respondent did not submit what she proposed as proper, other than arguing it should be something less than disbarment. Her position will, I trust, be fleshed out in time. Even so, I accept the joint submission that there are serious questions in the review.
- [9] The parties also jointly submit that the Respondent will suffer irreparable harm if the stay is not made. She will suffer significant economic harm if she is suspended. If her anticipated review is granted and the suspension is overturned and a lesser sanction imposed, the parties submit that this economic harm will be irrecoverable and thus irreparable. I again accept their submission in this case.
- [10] Lastly, the parties jointly submit that the balance of convenience favours the stay. The Respondent is subject to practice conditions and limitations from three Orders of three Benchers made in 2017 that include not operating a trust account. Those orders will remain in effect pending the review if the stay is granted. As noted, the overarching consideration here is the interests of justice. In this context those interests must address whether granting the stay will put the public at risk. The parties submit that, with the practice conditions and limitations in place, this will not occur. I accept that submission as well, and find that the balance of convenience favours a stay of the suspension.
- [11] The conditions of the stay under the consent order I made are:
- (a) the stay will terminate on the earliest of the following dates:
 - (i) 30 days after the later of the discontinuation or abandonment of the Law Society's review and the Respondent's review;
 - (ii) 30 days after the later of the dismissal of the Law Society's review and the Respondent's review;
 - (iii) further order of the Review Board.
 - (b) the parties may agree in writing to vary the 30-day period.