

2008 LSBC 15

Report issued: May 29, 2008

Oral Reasons: December 5, 2006

Citation issued: June 19, 2006

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

**Douglas Hewson Christie**

Respondent

**Decision of the Hearing Panel  
on Preliminary Application**

Hearing date: December 5, 2006

Panel: Robert M. McDiarmid, QC, Chair, Gavin Hume, QC, James D. Vilvang, QC

Counsel for the Law Society: Jaia Rai

Appearing on his own behalf: Douglas Christie

## Background

[1] At the commencement of the hearing the Respondent applied to have the proceedings stayed on the basis of delay. During his argument, he also applied for a stay on the basis of double jeopardy. The Panel dismissed both applications, with written reasons to follow. These are the written reasons for that decision.

[2] The chronology of this matter is as follows:

1. Events giving rise to the complaint by Mr. Armstrong (the issuance of the three " Subpoenas for Documents" forms), occurred in December of 2003.
2. On February 16, 2004 the Law Society received a complaint from the Attorney General of British Columbia dated February 2, 2004. The complaint dealt with a stamp placed on certain documents which closely resembled the Victoria Court Registry stamp.
3. The Law Society requested further details from the Attorney General's office and then communicated the complaint to the Respondent by way of a letter dated April 29, 2004.
4. The initial letter was misdirected and forwarded to the Respondent by way of a letter dated May 12, 2004.
5. After receiving a reply from the Respondent dated May 14, 2004, the Law Society conducted a further investigation.
6. Ultimately the Law Society concluded that there was no evidence that the Respondent had any knowledge of, or contributed in any way, to the obtaining and utilizing of the stamp which closely

resembled the Victoria Court Registry stamp.

7. As a result, on July 19, 2004 the Law Society advised the Respondent that the file was closed.

8. The stamp was used on documents which related to an effort to obtain production of documents in the litigation which resulted in the decision in *Ravnyshyn v. Drys*, 2005 BCSC 561, which decision was rendered by The Honourable Mr. Justice Warren on April 14, 2005.

9. On May 30, 2005 the Law Society received a complaint from Mr. Armstrong dated May 26, 2005 and opened a file on June 1, 2005.

10. The subsequent investigation by the Law Society was detailed in an Affidavit from Mr. Cameron, Director of Professional Regulation of the Law Society of British Columbia filed in this matter.

11. The matter was referred to outside counsel on January 4, 2006. Outside counsel reviewed the file and reported to the Discipline Committee in early May 2006.

12. The Discipline Committee considered the matter on May 11, 2006 and directed the issuance of a citation against the Respondent. The details of the efforts to schedule the hearing and the issuance of the citation are set out in the Affidavit of Mr. Cameron.

13. On June 19, 2006 a citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rule 4-13 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 directs that this Hearing Panel inquire into the Respondent's conduct as follows:

1. Your conduct in the course of your representation of the plaintiffs in *Ravnyshyn and others v. Drys*, B.C. Supreme Court Action No. 01/2947, Victoria Registry, and in particular, your conduct in causing the preparation and delivery of a document entitled " Subpoena for Documents" issued to BMO Bank of Montreal, 3481 Cook Street, Victoria British Columbia for purposes of improperly obtaining documents from a third party to the litigation.

2. Your conduct in the course of your representation of the plaintiffs in *Ravnyshyn v. Drys*, BC Supreme Court Action No. 01/2947, Victoria Registry, and in particular, your conduct in causing the preparation and delivery of a document entitled " Subpoena for Documents" issued to Royal Jubilee Hospital Medical Records Department, 1952 Bay Street, Victoria, British Columbia for purposes of improperly obtaining documents from a third party to the litigation.

3. Your conduct in the course of your representation of the plaintiffs in *Ravnyshyn v. Drys*, BC Supreme Court Action No. 01/2947, Victoria Registry, and in particular, your conduct in causing the preparation and delivery of a document entitled " Subpoena for Documents" issued to Mr. RY of [address], Los Angeles, California for purposes of improperly obtaining documents from a third party to the litigation.

[3] The third count referenced one of the documents that had been provided to the Law Society as a result of the complaint from the Attorney General of British Columbia. The other two documents referenced in the first and second counts had not been previously received by the Law Society.

[4] Prior to the hearing, the Respondent indicated in his correspondence to the Law Society that he wished to apply for a stay on the grounds of delay. During his argument, he also submitted that he was, in effect, subjected to what was described as double jeopardy.

## Analysis

[5] The Respondent, in his argument, reviewed *Law Society of BC v. Skogstad*, 2006 LSBC 40. Ms. Rai also reviewed *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307. There were two circumstances in which a delay may warrant a stay of proceedings. They are as follows:

- (a) where a delay impairs a member's ability to make full answer and defence, thereby prejudicing the fairness of the hearing; and
- (b) where the Respondent member has suffered prejudice in the form of significant duress and stigma from an unacceptable delay such that it amounts to an abuse of process, even when the fairness of the hearing has not been compromised.

In both circumstances, the delay must be inordinate or unacceptable.

[6] Mr. Armstrong testified that he felt that it was inappropriate to make the complaint until after the decision had been rendered.

[7] The Panel was of the view that this was the correct approach because making a complaint before the decision was rendered might have been viewed by some as a tactic in the trial, or otherwise viewed as an inappropriate mingling of the issues in the trial, which were, of course, very different from the issues revolving around governance of the legal profession.

[8] Once the complaint was made, it was investigated over the next several months.

[9] In early January, 2006, a decision was made to refer the complaint to outside counsel. Outside counsel completed her review of the matter and gave advice to the Discipline Committee, which met to consider the complaint on May 11, 2006.

[10] The delay in investigation of the matter from the date of the complaint in May of 2005 until the matter was dealt with by the Discipline Committee might have been somewhat longer than a desirable goal, but was not unduly long. There was no evidence of prejudice to the Respondent arising from the delay between the complaint and the review by the Discipline Committee. The Panel did not view this delay as being inordinate or unacceptable. In addition, there was no evidence that the Respondent was unable to respond to the citation fully or that he had suffered prejudice in the form of significant duress and stigma from an unreasonable delay.

[11] The Discipline Committee decided to recommend to the Chair that there be a direction to issue a citation. Thereafter, the matter proceeded to hearing on December 5, 2006 with relative promptness.

[12] The delay between the issuance of the citation and the commencement of the hearing was substantially less than one year.

[13] Once the citation was issued, the matter proceeded to a hearing with relative promptness.

[14] The Panel was of the view that there had not been an inordinate or unacceptable delay from the time of the consideration of the issue by the Discipline Committee and the commencement of the hearing. In addition, there was no evidence to indicate that the Respondent was unable to respond to the citation fully, nor was there any evidence that he had suffered prejudice in the form of significant duress and stigma from an unacceptable delay.

[15] In addition, the Respondent argued that he was, in effect, subject to double jeopardy that flowed from the fact that in 2004, when the Law Society received the initial complaint from the Attorney General, it

received one of the documents that formed the subject matter of the citation. The first complaint dealt with the issue of the use of what purported to be a Court Registry stamp. The focus of the Law Society's investigation was on that stamp. As previously stated, the Law Society concluded that the Respondent was not involved in the inappropriate use of a stamp that purported to be a Court Registry stamp and as a result closed its file.

[16] It was not until the complaint was filed in May of 2005, subsequent to the judgment, that the Law Society focused on the broader issue of the inappropriate use of what purported to be Subpoenas to obtain documents from non-parties in an improper manner.

[17] In our view it was not unreasonable for the Law Society to only focus on the specific complaint from the Attorney General's office in the first instance.

[18] Subsequently, the Law Society commenced a broader investigation of the use of the Subpoenas by the Respondent. In our view, it was appropriate that the Law Society conduct the broader review when it had the matter specifically drawn to its attention in May of 2005. It was not until the complaint of May 2005 that two of the three documents that were the subject matter of the citation were brought to the Law Society's attention.

[19] The focus of the Law Society as a result of the Attorney General's complaint was appropriately on the potential misuse of the Court Registry stamp. This was of considerable concern to the trial judge and therefore the Law Society. The investigation of this complaint led to the conclusion that the Respondent was not involved and the file was closed. As the Law Society did not have all of the documents until May, 2005 and as its focus was appropriately on the Attorney General's specific complaint in the first instance, we concluded that the Respondent's application with respect to double jeopardy should also be dismissed.