

2008 LSBC 34

Report issued: October 9, 2008

Citation issued: April 12, 2006

The Law Society of British Columbia
In the matter of the *Legal Profession Act*, SBC 1998, c.9
and an application for a stay of proceedings concerning

John Owen Richardson

Applicant

Decision

Bencher: John J.L. Hunter, QC

Counsel for the Law Society: Maureen Boyd

Counsel for the Respondent: Terrence Robertson, QC

Background

[1] On March 2, 2007, a Hearing Panel found John O. Richardson guilty of professional misconduct. The Panel imposed a penalty of a fine in the amount of \$2,500 on February 8, 2008. The Applicant has applied for a section 47 Review of the finding of professional misconduct and has applied to me, pursuant to Rule 5-14, for a stay of the payment of the fine pending such review.

[2] The principles to be applied on such an application were reviewed by President Fung in *Law Society of BC v. Goldberg*, 2007 LSBC 53 at para. [9]:

In order for the Applicant to be successful on his application for a stay, he must satisfy me that he is entitled to a stay in accordance with the three-part test set out in *RJR McDonald Inc. v. Canada (Attorney General)* (1994), 111 DLR (4th) 385 (SCC) at page 400:

1. The review must raise a serious question to be tried.
2. The Applicant would suffer irreparable harm if the application were refused.
3. The balance of convenience, taking into account the public interest, must favour the imposition of a stay until final disposition of the legal issues.

[3] Mr. Richardson's application for a stay was contained in two brief letters from his counsel. The three-part test set out in *RJR McDonald (supra)* was not addressed.

[4] The threshold for the merits test is a low one and the Law Society has properly not disputed that the section 47 review raises a serious issue within the meaning of the test. However, the Law Society opposes the stay based on a consideration of the second and third tests.

[5] The Law Society points out that there is no evidence that the Applicant will suffer irreparable harm if the stay is not granted. The stay is a financial penalty. If the Applicant is successful on the Review, the fine will be refunded. In my view, in the absence of evidence of irreparable harm, the stay must be refused.

[6] While it is not strictly necessary to consider the balance of convenience when irreparable harm has not been established, the balance of convenience is against a stay, independent of considerations of irreparable harm. The statutory scheme is that an order for costs is stayed upon the filing of a section 47 Review, but penalties, including fines, are not, absent a stay ordered by the President or the President's designate. In the absence of tangible evidence of harm to the Applicant or others, there is a public interest in not deferring disciplinary sanctions.

[7] The stay is refused.