

2006 LSBC 52

Report issued: December 21, 2006

Citation issued: July 15, 2005

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

Michael Lee Seifert

Respondent

Decision of the Hearing Panel

Hearing date: August 8, 2006

Panel: Gordon Turriff, QC, Chair, Richard Stewart, QC, Ralston Alexander, QC

Counsel for the Law Society: Maureen Baird and J.A. Dawson

Counsel for the Respondent: Marvin R.V. Storrow, QC and David T. Neave

Background

[1] The Respondent applies for an order striking out:

- (a) paragraph 3 of the Affidavit of Mary Clare Baillie sworn on July 20, 2006;
- (b) Exhibits "A", "F" and "P" of the Affidavit of Michael Lucas sworn on July 17, 2006;
- (c) paragraphs 9, 10, and 11 and Exhibits "A", "B" and "C" of the Affidavit of Howie Caldwell sworn on July 20, 2006; and
- (d) the whole of the Affidavit of Julian A. Dawson sworn on August 2, 2006.

[2] Mr. Neave argued that the impugned parts of the Affidavits were not probative of the question of whether the Amended Citation should be quashed for inordinate and unreasonable delaying prejudicing the Respondent and that the Affidavits are prejudicial to the Respondent because their only purpose is to cast aspersions on him that are highly prejudicial to his defence of the Citation.

[3] Ms. Baird argued that the evidence was highly relevant because it would be relied on by the Law Society to prove, first, that the Respondent was himself responsible for at least some of the delay about which he complains and, second, that there is good reason for the Law Society to have taken the time it has taken in investigating the Respondent's conduct.

[4] The Panel is satisfied that the impugned evidence is both factually and legally relevant, to use Mr. Neave's language, because it is logically probative, tending to prove or disprove facts that the Law Society must prove to overcome the delay defence, namely, what the Respondent and the Law Society were doing during the period alleged to be the period of delay, and tending to prove or disprove a proposition of law that is a legal issue before the Panel, namely, whether the Respondent should be found responsible for at least some of the delay about which he complains and whether there is good reason for the Law Society to have

proceeded in the way it did with its investigation.

[5] Mr. Neave expressed particular concern about innuendos that he said were contained in the impugned Affidavits, arguing that, even if the evidence was relevant, its prejudicial effect exceeded its probative value. Ms. Baird answered by arguing that the evidence was necessarily adduced to meet the Respondent's delay argument and that it would be ironic if the Respondent could require the Law Society to produce its "work product" file so that he could advance his delay point but at the same time prevent the Law Society from relying on evidence that it believed tended to prove that the Law Society was justified in taking the time it did in investigating the Respondent's conduct.

[6] The Panel is satisfied that no irrational prejudice will arise if the evidence is admitted and that the fairness and integrity of the prosecution will not be undermined by its admission. Accordingly, the Respondent's motion to strike is dismissed.

[7] The Law Society is entitled to its costs of this application.