

2011 LSBC 07

Report issued: February 22, 2011

Citation issued: April 6, 2010

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 penalty concerning

David Stephen Rulton Burgess

Respondent

Decision of the Chambers Benchers

Application date: January 28, 2011

Benchers: Alan M. Ross

Counsel for the Law Society: Jaia Rai

Applying on his own behalf: David Burgess

Background

[1] The Respondent applies for a stay of penalty pursuant to Rule 5-14(3).

[2] On December 2, 2010 a Hearing Panel found that the Respondent had breached Rule 3-51.1 of the Law Society Rules, commonly referred to as the "No Cash Rule". The Hearing Panel imposed a fine of \$750 plus costs of \$1,500, to be paid by February 28, 2011.

[3] The Respondent filed a Notice of Review dated December 29, 2010 seeking to set aside the adverse determination made by the Hearing Panel as well as the fine and costs.

Material and Position of the Parties

[4] In support of his application the Respondent provided his "Application for Stay of Penalty" with no supporting affidavit material. In the Application document, he submits, at paragraph 2(d) that he has suffered:

serious and significant hardship including legal fees, travel expenses and out of office expenses to date, tremendous loss of legal time from his practice addressing these issues ...

[5] As a result, the Respondent seeks a stay of the fine of \$750 until the Review by the Benchers is complete.

[6] Counsel for the Law Society opposes the application for a stay of the penalty. Counsel notes that any order of costs against a lawyer is stayed automatically by Rule 5-14(1) when a Review is filed.

[7] With respect to the stay of the penalty, counsel for the Law Society cited *RJR McDonald Inc. v. Canada (Attorney General)* (1994), 111 DLR (4th) 385 (SCC), which requires an applicant to satisfy a three part test:

- (a) The Review must raise a serious question to be tried.
- (b) The applicant would suffer irreparable harm if the application were refused.
- (c) The balance of convenience taking into account the public interest must favour the imposition of a stay until final disposition of the legal issues.

[8] Counsel for the Law Society concedes that the first part of the test is satisfied. The Respondent's review, I am informed, raises a serious question to be tried.

[9] However, with respect to the second part of the test, counsel for the Law Society submits that the Respondent has not provided any evidence of irreparable harm.

[10] With respect to the third aspect of the test, counsel for the Law Society argues that unless the Respondent can put forward tangible evidence of harm, the application should be dismissed.

Discussion

[11] As noted above, the entirety of the information regarding the "irreparable harm" and "balance of convenience" elements of the *RJR McDonald Inc.* test is contained in paragraph 2(d) of the Respondent's submission. In short, there is no evidence that the Respondent would suffer irreparable harm. Further, although the payment of any amount of money can be said to be "inconvenient", there is no suggestion that harm will come to the Respondent or to others if the fine is paid now, pending the outcome of the Review.

[12] On that basis, the Respondent has failed to meet the test required for achieving a stay of the penalty imposed by the Hearing Panel.

[13] The Respondent's application for a stay of the imposition of the penalty is therefore denied.