

2013 LSBC 30

Report issued: November 04, 2013

Citation issued: May 11, 2007

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

Vivian Chiang

Respondent

Decision on Application for Stay of Proceedings

Application date: October 23, 2013

President's Designate: Lynal Doerksen

Counsel for the Law Society: Henry C. Wood, QC

Applying on her own behalf: Vivian Chiang

[1] The Applicant has brought an Application for a Stay of Proceedings pursuant to Rule 5-14(3) pending the hearing of a Review with respect to the disciplinary action of a suspension for one month commencing November 1, 2013. The hearing panel that imposed the disciplinary action also made an order for costs which is automatically suspended by operation of Rule 5-14(1) and therefore does not concern this application.

[2] The hearing panel decision on disciplinary action was issued on September 25, 2013 and Ms. Chiang notified the Law Society by letter on October 23, 2013 that she is seeking a Review of this decision. Ms. Chiang supplied three affidavits in support of her application.

[3] As the Applicant notified the Law Society only a week before the suspension was to commence, a stay of the suspension was directed on October 31, 2013 with reasons to follow. These are those reasons.

[4] The onus is on the Applicant to establish that she is entitled to a stay. To do this, she must satisfy me of the following:

1. The review must raise a serious issue.
2. The Applicant must suffer irreparable harm if the stay is not granted.
3. The balance of convenience must favour the imposition of a stay.

[5] This test setting out the three aforementioned thresholds was established in the case of *RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 SCR 311, which has been followed by several Law Society decisions, such as:

(a) *Burgess*, 2011 LSBC 07

(b) *Richardson*, 2008 LSBC 34

(c) *Goldberg*, 2007 LSBC 53; and 2008 LSBC 03

(d) *Martin*, 2006 LSBC 22

(e) *Welder*, 2005 LSBC 52

[6] Counsel for the Law Society is not opposed to the application for a stay pending the Review, but with conditions attached with respect to time limits and the Applicant being required to provide an address for service. Although mindful of the Law Society's lack of opposition to the application for a stay, I must still be satisfied that the three part test as set out in *RJR MacDonald* is satisfied.

[7] With respect to the first part of the test, I take guidance from the *Goldberg* decision at paragraph 10:

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 Bencher hearing an application for a stay need only be satisfied that the Review is "neither vexatious nor frivolous".

The Applicant raises many facts and issues in her materials, and some appear to be irrelevant to the merits of the Review. However, although it was at first difficult to discern the Applicant's basis for the application for Review, she does raise a sufficient number of factors that are best left to the Review Panel. Thus, I cannot conclude that the application is vexatious or frivolous, and therefore the first part of the test is met.

[8] On the second part of the test, the Applicant's application and affidavits do not clearly address this factor. The Applicant's submissions seem to solely address the alleged harm already done by the mere prosecution of the citation by the Law Society and not the issue of what irreparable harm the suspension would do to her. She is fortunate to be assisted by the reasons of the hearing panel on disciplinary action, which held (at para. 24) that Ms. Chiang's "consulting practice would likely be impaired in some ways by a suspension."

[9] A suspension is a serious penalty and, unlike a fine, is not a penalty that can be returned to the Applicant if she is successful in her application for a Review. If the suspension is not stayed, the penalty would be served long before the Review could be conducted. As with *Goldberg* (at paragraph 11) on that basis and the findings of the hearing panel as set out above, part two of the test is met.

[10] Turning to the third part of the test, I must ask myself, as was done in *Welder* (at para. 7), "whether the granting of the stay will put the public at risk again." I note that the facts of this case concern conduct before the courts in this province in 2005 and that there has been no allegation of a similar or continuing nature. Indeed, the hearing panel on disciplinary action (at para. 37) removed the practice restrictions that Ms. Chiang was under and did not make these practice restrictions part of the penalty. The Law Society has not asked that the Applicant be placed under these restrictions while a stay is in place. I find that the public is not at further risk by a stay being directed.

[11] The submission of the Law Society that the stay, if granted, be with conditions that "promote expeditious pursuit of the Review" are reasonable. I note that Ms. Chiang (at paragraphs 27-30 of her Application for Stay of Proceedings) is not opposed to abiding by conditions and references the *Welder* case as an example. What the Law Society suggests and what I have ordered is less onerous than what was imposed in *Welder*.

[12] Accordingly the stay is granted upon the following conditions:

1. The stay will terminate upon the Applicant's Review being:

(a) discontinued or abandoned by the Applicant;

(b) dismissed by the Benchers on Review;

(c) upon further order of the Benchers on Review; or

(d) on April 30, 2014,

whichever event occurs first.

[13] Ms. Chiang is required to provide in writing an address for service within the Greater Vancouver area to the Law Society's Hearing Administrator no later than 5:00 pm on November 4, 2013. This can be done by letter, e-mail or facsimile.