

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

DOUGLAS EDWARD DENT

Applicant

**Decision on Application
for Stay of Proceedings**

Written submissions: February 4, 2014, February 6, 2014

President's Designate: David Mossop, QC

Counsel for the Law Society: Jaia Rai

Counsel for the Respondent: Ravi Hira, QC

[1] The Applicant has brought an Application for a Stay of Proceedings pursuant to Rule 5-14(3) pending hearing of a Review with respect to a disciplinary action that resulted in a 45 day suspension.

[2] The Applicant was cited for professional misconduct on February 18, 2013 for improperly withdrawing trust funds to pay fees and disbursements contrary to the Rules of the Law Society. The Applicant entered into an Agreed Statement of Facts on or about September 20, 2013 and admitted that his conduct constituted professional misconduct under the *Legal Profession Act*.

[3] A hearing panel was convened to determine the appropriate disciplinary action. The hearing occupied one-half day on October 11, 2013 and the hearing panel issued its decision on January 27, 2014.

[4] Pursuant to the Agreed Statement of Facts, the Applicant admitted having received \$2,000 from his client for the purposes of forwarding these funds to the client's ex-spouse pursuant to his separation agreement. The Applicant applied the funds toward legal fees and disbursements. The Applicant alleges he acted under the mistaken but honest belief that he obtained the express consent of the client to redirect the funds for this purpose. It is this conduct that was at issue in the hearing panel's decision and that resulted in the hearing panel's orders.

[5] The hearing panel ordered that the Applicant be suspended for a period of 45 days commencing February 10, 2014 and pay costs in the amount of \$4,720.

[6] The Applicant has applied for a Review of the hearing panel decision and for the hearing panel's orders to be set aside. The Applicant alleges that the hearing panel erred in its decision by:

- (a) failing to consider the range of penalties in similar cases;
- (b) imposing a disciplinary penalty that was disproportionate to the misconduct admitted;
- (c) applying the concept of progressive discipline in circumstances where the application of such

concept was inappropriate;

(d) basing its decision on facts that were not before the hearing panel and which should not have formed the basis of its decision;

(e) making improper findings of fact by going behind the Agreed Statement of Facts provided to the hearing panel.

[7] The Applicant practises in 100 Mile House. He employs 12 people, inclusive of the Applicant and two associates.

[8] The Applicant alleges that he will suffer economic prejudice and harm to his reputation.

LEGAL BASIS

[9] The Applicant relies on Rule 5-14(3) of the Law Society Rules, which provides that a party may apply for a stay of any order not referred to Rule 5-14(1) or (2). The leading Law Society case in this matter is *Re: Chiang*, 2013 LSBC That case states the Applicant must satisfy the President or the President's designate that:

(a) the review raises a serious issue;

(b) the Applicant will suffer irreparable harm if the stay is not granted; and

(c) balance of convenience favours the imposition of the stay.

The Review raises a serious issue that is neither vexatious or frivolous

[10] With respect to the first factor, the question of whether or not the review raises a serious issue, a Bencher hearing an application for a stay need only be satisfied that the review is neither "vexatious nor frivolous". The Bencher hearing the application for a stay should not engage in extensive review of the merits (see *Re: Goldberg*, 2007 LSBC 53 at paragraph 10).

[11] The Law Society concedes that the review is neither "vexatious nor frivolous".

The Respondent will suffer irreparable harm in the form of economic prejudice or further harm to his reputation if the stay is not granted

[12] I restrict my comments to the economic harm that the Respondent will suffer if the stay is not granted

[13] His income will drop because he will not be able to practise law for 45 days. It is true that he has two associate lawyers in his law office. However, one of them is on maternity leave. In addition, he has sworn in his affidavit he may have to lay off employees, namely support staff, if the suspension goes forward. This would be a major disruption of this law practice.

[14] The Law Society concedes the irreparable harm test.

The balance of convenience favours the grant of the stay because the public will not be put at risk if the stay is not granted

[15] As far as the balance of convenience is concerned, this involves the question of whether or not the granting of this stay will put the public at risk again. I find there is little evidence that the public will be put at risk in these circumstances.

[16] The Law Society concedes this point.

GENERAL COMMENTS ON STAYS

[17] The Applicant bringing a stay application must satisfy the above three tests. However, he or she must provide more information. The Applicant must satisfy the President or the President's designate that the matter will be brought on quickly. Some of the considerations include:

(a) have the transcripts been ordered?

(b) has the Applicant canvassed the Hearing Administrator and the other side about possible hearing dates? It may be possible to set a review date right away.

(c) is there an ultimate end date for the stay unless the Review Board otherwise orders? Most cases require an ultimate date for the stay to end, subject to any order of the Review Board.

[18] All of the above should be set out in an affidavit in order to enable the Chambers Benchers to be satisfied that the Review is going to be heard quickly.

[19] The parties in this matter agreed to a final end date, namely September 30, 2014. That end date is a long time in the future. However, in this case, counsel for the Applicant has a busy calendar.

NATURE OF ORDER GRANTED

[20] It is ordered that the order of the hearing panel issued January 27, 2014 in this matter respecting the disciplinary action is stayed until whichever of the following events occurs first:

(a) the Applicant's review is discontinued or abandoned by the Applicant;

(b) the Applicant's review is dismissed by the Review Board;

(c) the Review Board otherwise orders; or

(d) September 30, 2014.