

2014 LSBC 28
Decision issued: June 25, 2014
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 section 47 review concerning**

VIVIAN CHIANG

APPLICANT

**DECISION OF THE PRESIDENT'S DESIGNATE
ON AN APPLICATION TO ADJOURN A S. 47 REVIEW
AND AN APPLICATION FOR A FURTHER STAY OF SUSPENSION**

Application date: June 14, 2014

President's Designate: Lynal Doerksen

Counsel for the Law Society: Henry Wood, QC
Applying on her own behalf: Vivian Chiang

- [1] The Applicant has asked for a Review of the hearing panel decision on disciplinary action issued on September 25, 2013. The Review hearing is scheduled to take place on July 21, 2014. On October 31, 2013 a stay of the suspension was ordered with conditions (see 2013 LSBC 30). The Applicant seeks:
- (a) an adjournment of the Review hearing to a later date;
 - (b) an extension of time to exchange written submissions; and
 - (c) an extension of time of the stay of suspension granted October 31, 2013.
- [2] This matter has had a lengthy history, which will not be recounted here but can be found at paragraph 10 of 2014 LSBC 26. The Review hearing was originally

scheduled to be heard on March 31, 2014. The Applicant made an application to adjourn the March hearing date as she claimed “her electronic and documentary records, computer and printer became corrupted or malfunctioned.” The application was denied, but she was granted an extension of time to file her written submissions. See: 2014 LSBC 10.

- [3] On March 12, 2014 the Applicant renewed her application for an adjournment and, on the basis that she wished to have the assistance of counsel, the application for an adjournment was granted. After a pre-review conference on April 3, 2014, a new Review hearing date was set with the consent of the Applicant for July 21, 2014. The Applicant was to submit written submissions by June 16, 2014.
- [4] On June 6, 2014 the Applicant sent two identical emails to Law Society counsel at 3:37 PM and 3:40 PM. This was a Friday afternoon. The Applicant advised in the emails that she had found counsel but he would be unavailable for the Review hearing and she would like to reschedule. She did not mention the name of her counsel.
- [5] On the following Monday, June 9, 2014, the Applicant sent an email to the Hearing Administrator at the Law Society at 1:51 pm advising that she had sent “*a couple of emails last week* but have not received a response” from Law Society counsel. [emphasis added] She further advised that “I am in the process of retaining counsel who advised that he requires rescheduling since he will be away for a fair part of this summer.” Again, there was no mention of counsel’s name.
- [6] On June 10, 2014 Law Society counsel asked to speak with the Applicant’s proposed counsel. On June 13, 2014 Law Society counsel and the Applicant’s proposed counsel, John Mendes, exchanged emails. Mr. Mendes advised: “At this point I have not been retained to represent” the Applicant.
- [7] On June 14, 2014 the Applicant sent a letter (dated June 13, 2014) to the Executive Director of the Law Society requesting an adjournment of the July 21 Review hearing. The Applicant stated:

A few weeks ago, I was finally able to locate someone who was willing to represent me but he required an extension of time. He advised that I seek an adjournment of the hearing with Mr. Wood, counsel for the Law Society. When I requested an adjournment of the hearing date, Mr. Wood would not consent without speaking to my counsel.

My counsel was not able to contact Mr. Wood until this week. However, after speaking with Mr. Wood, he informed me today that he would not be

able to represent me. I would still like to find counsel and ask for more time to do so since *the recent few who agreed to assist would often change their minds after speaking with counsel for the Law Society.*

[emphasis added]

- [8] Counsel for the Law Society has submitted a chain of emails that show that he never actually spoke with Mr. Mendes and they only exchanged voice mails and emails sometime between the dates of June 10 – 17, 2014. This is confirmed in an email by Mr. Mendes.
- [9] In support of this application and in reply to the Law Society’s submissions on this application, the Applicant has submitted an affidavit sworn by Benjamin Chiang. The affidavit is dated June 23, 2014 and is commissioned by the Applicant. Mr. Chiang states that he is “assisting” the Applicant but does not provide any information about the amount or type of assistance he has provided, nor is his relationship to the Applicant revealed.
- [10] At paragraph 3 of the Affidavit, Mr. Chiang states that “between *May and June* of 2014 Ms. Chiang has contacted more than 20 lawyers to discuss possible retainers” [emphasis added] but because of financial setbacks she has “experienced challenges in retaining capable counsel.”
- [11] At paragraph 5 of the Affidavit, Mr. Chiang states “after numerous unsuccessful attempts at retaining counsel between *March and May* of 2014 Ms. Chiang finally obtained a conditional agreement from Mr. John Mendes to assist her in the upcoming review.” [emphasis added]
- [12] Finally at paragraph 26 of the Affidavit Mr. Chiang states:

On June 26, 2014 Ms. Chiang *retained* another counsel, Mr. Tretiak, QC to assist her. Because Mr. Tretiak had just returned from Europe and was required to attend to several pressing matters, he was only able to meet with Ms. Chiang briefly. The within application was not discussed, but Ms. Chiang did forward a copy of the June 19/14 Response by the Law Society to Mr. Tretiak who sent an email on June 20/14 to advise that he would be out of the office and attending a trial for several weeks.

[emphasis added]

Attached to the affidavit is a standard generic “Out of Office Auto Reply” email from Mr. Tretiak.

- [13] The Affidavit makes no mention of the lawyers who agreed to assist the Applicant but declined to do so after speaking with Law Society counsel. Mr. Chiang does not deny any of the facts asserted in the Law Society's submissions.
- [14] The onus is on the Applicant to provide evidence to support this application for an adjournment. There are many problems with this application.
- [15] This application is either inept or intended to mislead. There are many assertions but few details and no supporting documentation, or at least, no supporting documentation that is helpful. For example, the Applicant states in her letter to the Executive Director dated June 13, 2014 that she has been able to find lawyers to assist her but they change their minds once they have spoken to Law Society counsel. No names, dates or details have been provided by the Applicant or her affiant, Mr. Chiang, as to when or with whom these interactions occurred. The implication is clear: the Applicant is suggesting that Law Society counsel is somehow interfering with her ability to retain counsel. Without evidence such a suggestion is reckless and irresponsible.
- [16] Another example is the assertion that the Applicant has "retained" Mr. Tretiak. In support is provided an out of office email. As a lawyer the Applicant surely must know what it means to "retain" a lawyer and that an out of office email would not be evidence of this.
- [17] Another example is the Applicant's email to the Hearing Administrator on a Monday afternoon (June 9) that she sent "a couple of emails last week but have not received a response" from Law Society counsel. Although this statement is technically correct, given the context, it is misleading. There was only one email (sent twice, and only minutes apart), and that email was sent late on a Friday afternoon. It is hardly surprising that the Applicant had not received a response from Law Society counsel by Monday.
- [18] Further, in her application to the Executive Director dated June 13, 2014 the Applicant states that "my counsel [Mr. Mendes] was not able to contact Mr. Wood until this week" after she had advised that she had found a lawyer to represent her "a few weeks ago". Given the context, the letter to the Executive Director is clearly intended to give the impression that the Applicant has been diligent in obtaining counsel and that she has obtained counsel. She had not in fact retained counsel. Also, if the Applicant had obtained counsel "a few weeks ago" and knew that he was unavailable for the Review hearing why did she wait until June 6, 2014 to advise Law Society counsel of this?

- [19] I note that this application and the Applicant's prior applications for adjournments have all come on the eve of the deadline for her to file submissions for the Review hearing. In light of all the circumstances and the timing of this application, I have come to the inescapable conclusion that the Applicant is feigning an earnest effort to find counsel in order to hide her desire to avoid the upcoming hearing.
- [20] The application for an adjournment is denied. I am mindful of the need to balance the paramount right of the Applicant to a fair hearing and the desire for an expeditious hearing as stated in *Howatt v. College of Physicians and Surgeons of Ontario*, [2003] OJ No. 138 (ONSCDC) at para. 31. However, in light of these circumstances it would be improper to grant an adjournment. An adjournment granted on the basis of this application would make a mockery of this process.
- [21] The next question to be considered is: should the applicant be granted an extension of time to file submissions? It seems improper to grant more time to file submissions when the Applicant has not respected the time lines she has previously agreed to and has made such an appalling application as this one. However, the Applicant should not be denied the ability to address the merits of the issue before the Review panel as there is still time available.
- [22] I make two observations: first, the Applicant has represented herself throughout these proceedings, including before the Court of Appeal. She knows firsthand the nature of the proceedings and the issues to be addressed. She is able to represent herself. Second, much of the content in her materials on this application (and in previous chambers applications) is rife with submissions that appear to be relevant to the matter before the Review panel but irrelevant to this and previous adjournment requests. The Applicant should not require a lot of time to put her submissions together. The Applicant has already spent plenty of time preparing her argument, and she has had plenty of time to do so.
- [23] I grant the Applicant until noon on Friday July 4, 2014 to provide her written submissions. Law Society counsel will have until noon on Friday July 18, 2014 to provide the Law Society's submission. As the hearing is on the following Monday, July 21, 2014 the Applicant can seek the permission of the Review panel to file any further submissions in reply.