

2014 LSBC 41
Decision issued: September 8, 2014
Oral reasons: April 15, 2014
Citation issued: May 29, 2013

THE LAW SOCIETY OF BRITISH COLUMBIA

In the matter of the *Legal Profession Act*, SBC 1998, c. 9

and a hearing concerning

LEONIDES TUNGOHAN

RESPONDENT

**DECISION OF A BENCHER ON AN APPLICATION
CONCERNING A PRELIMINARY QUESTION**

Pre-hearing date: April 15, 2014

Benchler: Tony Wilson

Discipline Counsel: Alison Kirby
Appearing on his own behalf: Leonides Tungohan

FACTS AND ISSUES

- [1] The Respondent, Leonides F. Tungohan, was to appear before a hearing panel at 9:30 am on April 15, 2014 in respect to a citation issued May 29, 2013.
- [2] The Respondent faxed an application pursuant to Rule 4-26.1 to the Law Society at the end of the day on Friday, April 11, 2014. I understand that, because his application was received “after hours” on Friday, it was only considered by the Law Society the morning of Monday, April 14, 2014. I did not hear anything from the Respondent as to why his application was made so late that we are hearing it the morning of the hearing, when counsel are present, witnesses have been arranged to attend, court reporters retained and, very likely, at least one of the panellists has travelled from outside the Vancouver area for the purpose of the hearing.

- [3] The Respondent submitted the following questions for determination prior to the hearing, as follows:
- (a) to seek relief as a point of law, whether the Law Society of British Columbia is precluded from issuing a citation to inquire into the truth of the allegations under paragraphs 3(a), 3(b), (c) [sic], 3(d), 3(e), 3(f), 3(g), 3(h), 3(i), 3(j), 3(k), 3(l), 3(m), 3(n), 3(o), 3(p), 3(q), 4(a), 4(b), 4(c), 4(d), 4(e), 4(f) and 5 on account of abuse of process, *res judicata*, and violation of procedural fairness;
 - (b) to ask for clarification of the phrase “May 2011” as alleged in paragraph 3 of the citation;
 - (c) to determine the legal import and effect of the acceptance of the “the [sic] referral of the G complaint from the Investigations, Monitoring & Enforcement (Professional Conduct) Department for inclusion in the Respondent’s practice standards file”;
 - (d) to determine the legal import and effect of the acceptance of the referral of the Auditor’s Report by the Practice Standards Committee;
 - (e) to determine compliance with Rule 4-25(2) and Rule 4-25(3) of the Rules; and
 - (f) To prevent roving inquiry.
- [4] In the alternative, the Respondent sought to make a preliminary application pursuant to Rule 4-16.2 of the Rules that allegations contained in paragraphs 1, 1(a), 1(b), 1(c) 1(d) and 2 in the citation be determined in a separate hearing.
- [5] The Law Society submitted its response to the Respondent’s submission by memo dated April 14, 2014. The Respondent provided a reply dated April 15, 2014.
- [6] Paragraph 1(b) of the Respondent’s submission was clarified by the Law Society (it appeared to be a typographical mistake with respect to a date).
- [7] Upon hearing the position of the Respondent, the essential thrust of his argument was that certain allegations in the citation had already been ruled upon, and that to rule upon them again before a formal hearing panel would amount to *res judicata*, an abuse of process and a violation of procedural fairness.
- [8] Without commenting upon the validity of the allegations contained in the citation, they involved alleged breaches of the Law Society’s accounting rules respecting

trust funds; failure to comply with Law Society rules with respect to the rendering of bills before trust monies can be applied to fees (there were 18 such allegations); and failure to report a judgment against him to the Law Society, as required under the Law Society Rules.

- [9] Each of the allegations contained in the citation would be matters about which evidence would be adduced during the hearing by the Law Society, which evidence the Respondent could challenge within the hearing process. In other words, the Respondent was in the position of making argument before the hearing panel that the Law Society was wrong on one or more of the allegations, or submitting that the Law Society could not prove its case against the Respondent.

DECISION

- [10] The Respondent believed that a judgment had already been made by the Practice Standards Committee with respect to paragraphs 3(a) to (q), 4(a) to (f) and 5 of the citation. I determined that the Respondent had not been “judged” on those allegations.
- [11] At the outset, I agree with discipline counsel that the Chambers Benchers does not have the jurisdiction to rescind an allegation contained in a citation. The Discipline Committee directed that the citation be issued. It is for either the Discipline Committee to rescind it pursuant to Rule 4-13(2) or the hearing panel to dismiss any of the allegations pursuant to section 38(4)(a) of the *Legal Profession Act*.
- [12] It was the Respondent’s position is that it would be an abuse of process to permit a hearing on the allegations contained in the citation on the grounds that the accounting matters had already been considered and determined by the Investigation, Monitoring and Enforcement Group, the compliance auditor and/or the Practice Standards Committee. Although the Respondent made reference to *Danyluk v. Ainsworth Technologies Inc*, 2001 SCC 44, he did not provide a copy of the case to me. He certainly could have argued the applicability of this case to the hearing panel, and may still do so.
- [13] I agree with discipline counsel that there have been no prior judicial or quasi-judicial proceedings at which findings of fact or law have been made on issues similar to the issues on which the hearing panel would be asked to rule, which would give rise to the application of the doctrines of abuse of process or *res judicata*. The Respondent is confusing the roles of the Practice Standards Committee and the auditor. Neither the auditor, nor anyone that the Respondent has had dealings with within the Law Society, is an adjudicative body capable of

making findings of fact or law or adverse determinations under section 38 of the *Legal Profession Act*.

- [14] In particular, the Practice Standards Committee is not an adjudicative body but a committee within of the Law Society with the role of remediating the competency of lawyers and helping, where possible, to bring them up to an acceptable standard of practice expected by the Law Society. It is not a committee that has the authority to penalize lawyers for breach of the Act or Rules.
- [15] To put the Practice Standards Committee's role more simply, the committee would advise a member, "*You are deficient in these particular areas Here is what we would recommend for you to get up to standards expected of lawyers.*" There is no ability of the Practice Standards Committee to make a finding of professional misconduct. That is reserved for hearing panels to determine, one way or the other, based on the evidence. The Practice Standards Committee may well make recommendations with respect to a lawyer's competency, but if the Discipline Committee determines that the conduct complained of is not suitable for the Practice Standards Committee, and more suitable for a discipline hearing, then a discipline hearing will be ordered.
- [16] The Respondent also submitted that allegations 1 and 2 of the citation be severed and determined at a separate hearing. The application to sever was heard the morning the hearing was scheduled. Witnesses had been arranged in advance. Counsel's schedules had been cleared in respect of this hearing. Panellists may have flown in from other cities. I see no prejudice to the Respondent if all these matters are heard together, particularly because all of the allegations revolve around compliance with his accounting and compliance with Law Society accounting rules. Indeed, recognizing the Law Society's overriding mandate to uphold and protect the public interest, I believe there would be greater prejudice to the Law Society, and the public interest, if the hearing were suspended, or the procedure severed, causing additional delays.
- [17] Accordingly, I dismissed the Respondent's applications.