

THE LAW SOCIETY OF BRITISH COLUMBIA

**In the matter of the *Legal Profession Act*, SBC 1998, c. 9
and a a section 47 review concerning**

VIVIAN CHIANG

APPLICANT

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

Application date: September 10, 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. On October 31, 2013 a stay of the suspension was ordered with conditions (see 2013 LSBC 30). The Review hearing is scheduled to take place on September 12, 2014. The Applicant seeks an adjournment of this Review hearing.
- [2] This matter has been set for a Review hearing twice before, on March 31, 2014 and July 21, 2014. Prior to each Review hearing the Applicant made an application for adjournment which was denied. (See 2014 LSBC 10; and 2014 LSBC 28). Subsequent to each decision and on the eve of each Review hearing the Applicant renewed her application for an adjournment and was granted the adjournment on the basis that she was seeking the assistance of counsel or, as in the last application

for an adjournment that she had recently retained counsel who needed more time to prepare for the hearing. Indeed, counsel represented the Applicant on the last application for an adjournment on July 17, 2014. However, given the two prior adjournments, the Review hearing date of September 12, 2014 was made preemptory on the Applicant. In other words, the matter would proceed with or without the Applicant having counsel.

- [3] Unfortunately the Applicant and her counsel have parted ways, and the Applicant is without counsel to represent her at the Review hearing. The Applicant has set out the reasons for her application in a letter to the Law Society dated September 8, 2014. Essentially the letter blames her counsel for the problems she now faces. The Applicant does not provide an affidavit, and there is nothing from her counsel to confirm the details in her letter. The Law Society has provided a letter dated August 29, 2014 from the Applicant's counsel indicating that he was ceasing to act for the Applicant. The letter was "cc'd" to the Applicant.
- [4] There are various factors that must be taken into consideration when determining whether to grant an adjournment request. The Applicant has referred to two decisions:
- (a) *Law Society of Upper Canada v. Igbinosun*, 2009 ONCA 484; and
 - (b) *Law Society of Upper Canada v. Abrahams*, 2014 ONLSTH 64.
- [5] Unfortunately, in light of the facts of this case the above cases do not assist the Applicant. In *Abrahams* the tribunal held at paragraphs 22-25:
- [22] I recognize that, in a case like this, the proceeding may have a significant impact on the licensee and this is an important factor. Given the nature of the allegations, he may lose his licence to practise law.
 - [23] At the same time, there are other important values that must be considered. The public protection mandate of the Tribunal requires that the administration of justice move forward in a timely and expeditious manner. This is true even though the licensee is not practising law; the public, the profession and complainants expect that matters before the Law Society Tribunal will be dealt with in a timely way.
 - [24] Minimizing adjournments is also important to effective administration of the Tribunal. All adjudicators at the Law Society

Tribunal, other than the Chair, are part-time. When a hearing is scheduled, they set aside time and prepare for the hearing when materials are filed in advance. When a hearing is adjourned at the last minute, their time often cannot be used for other matters and a new panel must be found for another date.

[25] Similarly, counsel for the Law Society, witnesses and the public may have prepared for a hearing and set aside time to be there. Adjournments, particularly at the last minute, often lead to cost and inconvenience and impede the effective administration of justice at the Tribunal.

[6] In the case of *Igbinosun* at paragraph 37 the following is said:

Factors which may support the denial of an adjournment may include a lack of compliance with prior court orders, previous adjournments that have been granted to the applicant, previous peremptory hearing dates, the desirability of having the matter decided and a finding that the applicant is seeking to manipulate the system by orchestrating delay. Factors which may favour the granting of an adjournment include the fact that the consequences of the hearing are serious, that the applicant would be prejudiced if the request were not granted, and a finding that the applicant was honestly seeking to exercise his right to counsel and had been represented in the proceedings up until the time of the adjournment request. In weighing these factors, the timeliness of the request, the applicant's reasons for being unable to proceed on the scheduled date and the length of the requested adjournment should also be considered.

[emphasis added]

[7] The fact that the Applicant is without representation is unfortunate but in and of itself cannot be determinative of the issue in these circumstances. The issue of the Applicant's retainer with her chosen counsel is between her and her counsel. The onus is and always has been on the Applicant to be diligent in making positive efforts to limit the likelihood of delay.

[8] The Applicant has had plenty of time to prepare for this matter, with or without counsel. I note that the Applicant has represented herself throughout the history of this matter and a request to seek counsel came at the last minute when her first application for an adjournment of the March 31, 2014 Review hearing was denied. Further, the Applicant has not complied with any of the requirements for service of documents or written submissions even after being given generous extensions of

time to do so. The past history shows that whenever a deadline approaches (to file written submissions) the Applicant has made a request for an adjournment.

- [9] I find that the submissions provided by the Applicant and the history of these proceedings – and specifically the timing of every adjournment application – show the Applicant is attempting to manipulate the system to orchestrate a delay. The Applicant has not provided any evidence to provide comfort or assurance that she will ever be ready to conduct this hearing. The integrity of the process is at stake and to grant a further adjournment would lessen the integrity of the system.
- [10] With respect to the prejudice to the Applicant, this is a serious matter but I take note of what was said in a prior decision on this matter after the Applicant's application for an adjournment of the July 21, 2014 Review hearing. In 2014 LSBC 28 at paragraph 22 it was held:

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.

- [11] The Applicant's request for an adjournment is denied.