

2014 LSBC 48  
Decision issued: October 22, 2014  
Oral decision: September 22, 2014  
Citation issued: April 2, 2012

**THE LAW SOCIETY OF BRITISH COLUMBIA**

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

**and a hearing concerning**

**GARY RUSSELL VLUG**

**APPLICANT**

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**DECISION ON  
APPLICATION FOR STAY**

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Application date: September 11, 2014

President: Jan Lindsay, QC

Counsel for the Law Society: Carolyn Gulabsingh  
Applying on his own behalf: Gary R. Vlug

- [1] The Applicant has brought an Application for the stay of an order pursuant to Rule 5-14(3) pending the hearing of a Review with respect to the disciplinary action ordered, namely a suspension for six months commencing October 1, 2014. 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).
- [2] The hearing panel decision on disciplinary action was issued on September 5, 2014, and Mr. Vlug notified the Law Society by letter on September 11, 2014 that he is seeking a Review of this decision.
- [3] On September 22, 2014 the parties were advised that a stay of the suspension was directed with reasons to follow. These are those reasons.

- [4] The onus is on the Applicant to establish that he is entitled to a stay. To do this, he 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) *Dent*, 2014 LSBC 12
  - (b) *Chiang*, 2013 LSBC 30
  - (c) *Burgess*, 2011 LSBC 07
  - (d) *Richardson*, 2008 LSBC 34
  - (e) *Goldberg*, 2007 LSBC 53 and 2008 LSBC 03
- [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. 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 look to 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”. ...
- [8] The Applicant raises a number of issues in his materials that are best left to the Benchers on the review. I cannot conclude that the application is vexatious or frivolous, and therefore the first part of the test is met.
- [9] On the second part of the test, the Applicant submits that a suspension of six months would wipe out any existing clients, making it impossible to return to practice. There are no associate lawyers in his office as he is a sole practitioner, and two employees would lose their employment.

- [10] A suspension is a serious sanction and, unlike a fine, is not a sanction that can be returned to the Applicant if he is successful on Review. The Review may be rendered moot if the stay is refused. The second part of the test is met.
- [11] With respect to the third part of the test, the Applicant submits that there is no injury to the Law Society or anyone in having an orderly procedure that does not involve a rushed suspension and that the balance of convenience favours the granting of a stay. I agree.
- [12] There is no date set for the Review, and it is not known at this time if the Review would be heard before the suspension is completed.
- [13] The Law Society notes that the Applicant was permitted to practise, without conditions, pending the outcome of the proceedings before the hearing panel, and therefore, it cannot be said that the public will be at risk by granting the stay.
- [14] I find that the public is not at further risk by a stay being directed.
- [15] The submission of the Law Society is that the stay, if granted, should be with conditions that promote a timely resolution of the Review. The Law Society asks that, if a stay is ordered, a time restriction be included as part of the conditions. The Applicant agrees with some of the conditions.
- [16] Accordingly, the stay is granted on the following conditions:
- 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, 2015,
- whichever event occurs first.
- [17] The Applicant sought an order that the stay be granted until "45 days after the Applicant's review is dismissed by the Review Board." The Applicant is at liberty to seek that order from the Benchers on Review.