2015 LSBC 38
Decision issued: July 29, 2015
Oral decision: July 22, 2015
Citation issued: August 1, 2013

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

CATHERINE ANN SAS, QC

RESPONDENT

DECISION OF THE HEARING PANEL ON APPLICATION TO ADJOURN

Application date:	July 22, 2015
Panel:	Dean Lawton, Chair Dan Goodleaf, Public representative Donald Silversides, QC, Lawyer
Discipline Counsel:	Kenneth McEwan, QC
Counsel for the Respondent:	Maegan Richards

THE APPLICATION

[1] The Respondent, Catherine Ann Sas, QC, applies to the Hearing Panel ("the Panel") for an order that the disciplinary action phase of the proceedings currently scheduled for September 24, 2015 be adjourned until the completion of the Respondent's appeal in the Court of Appeal.

[2] The Law Society opposes the application.

[3] By conference call on July 22, 2015, the Panel heard oral submissions from Maegan Richards on behalf of the Respondent, and Kenneth McEwan, QC on

behalf of the Law Society. The Panel was also provided with written summaries of counsel submissions and various authorities.

[4] On July 22, 2015 the Panel dismissed the Respondent's application and informed the parties written reasons would follow. These are those reasons.

BACKGROUND

[5] On April 20, 2015 the Panel found that the Respondent committed professional misconduct.

[6] On May 8, 2015 the Respondent appealed the Panel's findings on the facts and determination hearing to the Court of Appeal.

[7] The Respondent's factum is required to be filed on or about August 6, 2015.

[8] The Law Society's factum is required to be filed within 30 days of the filing of the Respondent's factum.

[9] Ms. Richards and Mr. McEwan informed the Panel that it is unlikely the Court of Appeal will hear and decide the Respondent's appeal by September 24, 2015.

SUBMISSIONS OF THE PARTIES

[10] Ms. Richards submitted to the Panel an affidavit sworn July 15, 2015 by Anita Botten, legal assistant.

[11] In paragraph 5 of Ms. Botten's affidavit she deposes:

> I have reviewed Ms. Sas' accounts to date. The amount of time spent in legal fees defending Ms. Sas' matter has been significant. I am told and verily believe that additional costs and legal fees will be incurred to prepare for and make submissions at the discipline and penalty phase of the proceedings. Ms. Sas must also bear the costs of bringing her appeal.

[12] Ms. Richards submitted that the Respondent will be prejudiced if the adjournment is not granted. The prejudice is attributable to the cost of what is characterized as a "multiplicity of proceedings to continue to defend her matter." She submitted that the Law Society would not be prejudiced by the adjournment.

[13] The "multiplicity of proceedings" consists of the disciplinary action phase of these proceedings, and the appeal proceedings.

[14] Ms. Richards invited the Panel to consider several factors that would assist us in exercising our discretion as to whether the adjournment should be granted. These included the following:

(a) An adjournment would not cause expense to the Law Society;

(b) In terms of the public interest being served by a timely determination of the penalty phase, no one would be offended by the adjournment;

(c) There have been no earlier adjournment applications;

(d) It would be a benefit to both parties to avoid costs of the discipline phase of these proceedings pending the outcome of the appeal.

[15] Mr. McEwan opposed the application on the footing that it was not in the public interest to fragment the facts and determination component of these proceedings from the disciplinary action phase.

[16] He submitted that fragmentation should not occur because it is in the public interest to avoid further delay and the uncertainty inherent in delay.

[17] Mr. McEwan submitted that the public interest is served by a timely and expeditious determination of all issues.

[18] Ms. Richards referred us to the helpful decision in *Howatt v. College of Physicians and Surgeons of Ontario*, 2003 CanLII 29563, [2003] OJ No. 138, at paragraph 31 where the Ontario Court emphasized in the context of an adjournment application that, "the right of the applicant to a fair hearing must be the paramount consideration." In particular, paragraph 31 of the *Howatt* decision states as follows:

> There is no doubt that the right to an adjournment before an administrative tribunal, including a disciplinary body, is not an absolute right. In each case, whether or not the adjournment should be granted must be considered in the light of the circumstances, having regard to the right of the applicant to a fair hearing weighed against the obvious desirability of a speedy an expeditious hearing into charges of professional misconduct. When balancing these two factors, the right of the applicant to a fair hearing must be the paramount consideration. *Re Morgan and Association of Ontario Land Surveyors* (1980), 28 OR (2d) 19 (Div. Ct.) at page 3.

[19] Ms. Richards also invited the Panel to review the factors that ought to be considered in determining if an adjournment is appropriate as outlined in Macaulay

& Sprague*, Practice and Procedure before Administrative Tribunals* (Toronto: Thomson Carswell 2004) at pages 12–148.41 to 12–148.42, as referenced in *Law Society of BC v. Welder*, 2014 LSBC 53. These included the following considerations:

> (a) the purpose of the adjournment …;
>
> (b) has the participant seeking the adjournment acted in good faith and reasonably in attempting to avoid the necessity of an adjournment;
>
> (c) the position of the other participants and the reasonableness of their actions;
>
> (d) the seriousness of the harm resulting if the adjournment is not granted;
>
> (e) the seriousness of the harm resulting if the adjournment is granted …;
>
> (f) is there any way to compensate for harm identified;
>
> (g) how many adjournments has the participant seeking the adjournment been granted in the past;
>
> …

ANALYSIS

[20] Although the Panel recognizes the helpfulness of these adjournment considerations, we remain mindful that the right of the applicant to a fair hearing must be the paramount consideration while also considering the public interest in seeing to a timely determination of all issues before the Panel.

[21] Counsel provided the Panel with a number of discipline tribunal determinations, and trial and appellate decisions in which applications for stays of proceedings and adjournments were sought in discipline hearings and civil and criminal cases. The Panel recognizes that, while these authorities are not binding upon us or necessarily directly applicable to the application before us, they are illustrative of a pattern of practice in which "fragmentation" of components or issues of hearings is generally avoided absent significant prejudice accruing to the applicant.

[22] In *Law Society of Upper Canada v. Abrahams*, 2014 ONLSTH 64, the Law Society Tribunal in Ontario set out various considerations on adjournment requests, taken from the relevant rule. These included:

(a) prejudice to a person;

(b) the timing of the request or motion for an adjournment;

(c) the number of prior requests and motions for an adjournment;

(d) the number of adjournments already granted;

(e) prior directions or orders with respect to the scheduling of future hearings;

(f) the public interest;

(g) the costs of an adjournment;

(h) the availability of witnesses;

(i) the efforts made to avoid the adjournment;

(j) the requirement for a fair hearing; and

(k) any other relevant factor.

[23] At paragraph 21 in *Abrahams* there is a helpful reference to the Ontario Court of Appeal decision in *Law Society of Upper Canada v. Igbinosun,* 2009 ONCA 484, in which the Court emphasized that, when considering factors supporting denial or favouring granting of an adjournment request, the most telling is the prejudice to the applicant if the request is not granted. The Court also stated, at paragraph 23 in the decision, "The public protection mandate of the Tribunal requires that the administration of justice move forward in a timely and expeditious manner." The Court then added the following emphasis, "… [T]he public, the profession, and complainants expect that matters before the Law Society Tribunal will be dealt with in a timely way."

[24] A panel of the Law Society of BC considered with approval the adjournment application factors discussed in both *Abrahams* and *Igbinosun.* See *Law Society of BC v. Chiang*, 2014 LSBC 43.

[25] The Panel considered the telling question of prejudice accruing to the Respondent should the adjournment not be granted. Based on the affidavit of Ms. Botten, the prejudice in this instance is the monetary expense that the Respondent will face in both proceeding with her appeal and preparing for and attending at the disciplinary action phase of these proceedings on September 24, 2015. In this context, the Panel asked both Ms. Richards and Mr. McEwan if they were aware of any

authorities in which an adjournment was granted on the basis that cost alone amounted to prejudice sufficient to warrant the adjournment request. Counsel were not able to provide the Panel with any authority on that question.

CONCLUSION

[26] Although the Panel recognizes that many of the adjournment application factors suggested to be considered in *Abrahams*, *Igbinosun* and *Chiang* are not relevant to these proceedings, what is relevant is the paramount question of prejudice to the Respondent in the context of her right to a fair hearing. In our opinion, while the cost of defending proceedings and bringing an appeal can be significant, such cost is a usual and expected feature in quasi-judicial and judicial proceedings. The Panel is not satisfied on the evidence before us and the submissions of counsel that the Respondent will be prejudiced or deprived of a fair hearing should the adjournment not be granted. At the same time, the public interest is served in seeing to the timely determination of all issues in these proceedings. The avoidance of fragmentation of stages in these proceedings is an element of serving the public interest through the encouragement of concluding them in their entirety as soon as reasonably practicable.