2015 LSBC 29
Decision issued: June 26, 2015

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

PATRICK MICHAEL FITZMAURICE

APPLICANT

DECISION OF THE HEARING PANEL
ON APPLICATION FOR ANONYMOUS PUBLICATION

Submissions received date:	March 13, 2015 April 21, 2015 May 8, 2015
Panel:	Philip A. Riddell, Chair Jazmin Z. Ahmad, Lawyer Satwinder Bains, Public representative
Counsel for the Law Society:	Henry Wood, QC
Counsel for the Applicant:	Morgan Camley

[1] Mr. Fitzmaurice (the "Applicant") applies for an extension of time under Rule 2-69.2(4). The Law Society consents to this extension of time.

[2] The Applicant seeks that the decision of the Hearing Panel be published anonymously. The authority for such an application is set out in Rule 2-69.2(3), which states:

> (3) The panel may order that publication not identify the applicant if

(a) the application is approved without conditions or limitations on the practice or articles of the applicant, and

(b) publication will cause grievous harm to the applicant or another identifiable individual that outweighs the interest of the public and the Society in full publication.

[3] Rule 2-69.2(1) presumes publication of the identity of an applicant at a credentials hearing if the application has been successful.

[4] In this case, the condition of Rule 2-69.2(3)(a) has been met in that the Applicant was approved without condition. The issue to be addressed is whether or not the publication of the Applicant's identity would cause "grievous harm to the Applicant."

[5] Both counsel for the Applicant and for the Law Society agreed that there is no law directly on point. The decision of a review panel in *Law Society of BC v. Doyle*, 2005 LSBC 24, is the authority which has been most helpful. The review panel dealt with Rule 4-38.1(3), which at the time stated:

4-38.1(3) The panel may order that publication not identify the respondent if

(a) the panel has imposed a penalty that does not include a suspension or disbarment, and

(b) publication will cause grievous harm to the respondent or another identifiable individual that outweighs the interest of the public and the Society in full publication.

[6] The review panel in determining the meaning of grievous harm stated at paragraph 26:

[26] What is grievous harm and when can it occur? This Review Panel finds that grievous harm can only occur in rare and exceptional circumstances, taking it out of the ordinary, or beyond what one would reasonably expect in the circumstances. The focus is on the member's personal circumstances. In order to be grievous, the harm must be exceptional, unusual, onerous, and injurious to a member, and cause a member to experience catastrophic loss both personally and professionally. The harm must involve significantly more than damage to the member's reputation or

> embarrassment that would normally be expected to flow from being found guilty of professional wrongdoing.

[7] The Panel accepts that definition of "grievous harm" for the purposes of this application.

[8] In light of that definition, in order for the Applicant to succeed on this application, he must demonstrate that the harm that he will suffer if the decision of the Hearing Panel is not published anonymously "… must be exceptional, unusual, onerous, and injurious to a member, and cause a member to experience catastrophic loss both personally and professionally."

[9] The Applicant does not dispute the definition of "grievous harm" as set out in *Doyle* or the general application of that definition to these proceedings (being a credentials hearing as opposed to a disciplinary hearing). However, counsel for the Applicant submits that, unlike the case in respect of disciplinary decisions (as was the case in *Doyle*), general concern over reputational harm or embarrassment *can* constitute "grievous harm" in the context of credentials decisions.

[10] Specifically, the Applicant argues that, because the Applicant is a junior member of the profession who does not have an established reputation, the "reputational" harm to him would be greater than the harm done to a more senior member of the Bar who, at a later point in his or her career, is the subject of a disciplinary hearing. By his argument, the senior member would have the benefit of the reputation and goodwill he or she developed to offset any of the reputational harms associated with disciplinary action. The junior member subject of a credentials hearing would not have that reputation or goodwill.

[11] We are unable to accept that argument.

[12] The argument made by counsel for the Applicant is so broad that it would be open to any first time applicant and, in all likelihood, to any person seeking re-admission after being away from practice for a period of time, to make an application for the anonymous publication of a credentials decision. Neither class of applicant has an established reputation, either by virtue of being new to the professions or by virtue of being away from the profession for a period of time and having had his or her reputation fade over time.

[13] In both cases, there would be no reason for inquiry into an applicant's character, repute and fitness by way of a credentials hearing unless some past transgression, conduct or incident warranted that inquiry. It is difficult to imagine a case that was referred to a credential hearing in which the underlying circumstances did not have

the *potential* of affecting a person's reputation. That being the case, by the Applicant's argument, every applicant before a credentials hearing would suffer "grievous harm" if such past transgression, conduct or behaviour were made public. That cannot be the case. As noted in *Doyle*, grievous harm "must be exceptional, unusual, onerous and injurious to a member."

[14] Furthermore, while the Panel does not wholly discount the possibility that there may be unique circumstances in which the reputational harm or embarrassment may constitute "grievous harm," there is no evidence before us that convinces us that this is such a case.

[15] In this case, counsel for the Applicant argues that, especially in the age of "Google," the credentials decision will be easily accessible to the public. However, other than that general submission, we have not been provided with any information or evidence that such access would cause the Applicant to suffer any harm other than the "reasonably expected" or "ordinary" consequences contemplated in *Doyle*. In particular, he has provided no evidence to satisfy the threshold requirement of harm that is "exceptional, unusual, onerous, and injurious to a member, and cause a member to experience catastrophic loss both personally and professionally."

[16] For those reasons, we see no reason to depart from Rule 2-69.2(1), which presumes publication of the identity of an applicant at a credentials hearing if the application has been successful.

[17] Accordingly:

(a) an extension of time for bringing this application is granted;

(b) the application for anonymous publication is dismissed; and

(c) the parties have 14 days from the date of the release of this decision to provide written submissions with regard to costs of this application.