

2016 LSBC 15
Decision issued: May 2, 2016
Oral reasons: February 24, 2016
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 section 47 review concerning**

CATHERINE ANN SAS

APPLICANT

**DECISION ON
APPLICATION FOR STAY**

Application date: February 9, 2016

President's Designate: Lee Ongman

Discipline Counsel: J. Kenneth McEwan, QC
Counsel for the Respondent: Peter J. Wilson, QC

[1] The Applicant has brought an application for a stay pursuant to Rule 5-20, pending the hearing of a review with respect to the disciplinary action of a suspension for four months commencing March 1, 2016. The hearing panel that imposed the disciplinary action also made an order for costs, which is automatically suspended by operation of the Rules.

[2] The hearing panel decision on Facts and Determination was issued on April 20, 2015, and on January 25 2016 the hearing panel (the "Panel") imposed a four-month suspension, to take effect March 1, 2016. A Notice of Review dated

February 9, 2016 was delivered to the Law Society applicable to both Panel decisions. Ms. Sas is seeking a Review of both decisions. The application to stay the commencement of the suspension was also delivered February 9, 2016 and is supported by the Applicant's affidavit number 1 (the "Affidavit").

- [3] The Law Society does not oppose the application, contingent on certain conditions that are set out in a letter to Mr. Wilson dated February 15, 2016 and filed herein. The conditions are that the stay will terminate upon the Applicant's review being:
- (a) discontinued or abandoned by the Applicant;
 - (b) dismissed by the Review Board;
 - (c) upon further order of the Review Board; or
 - (d) on September 15, 2016,

whichever event occurs first.

- [4] As the Applicant had little time before the date the suspension was to commence, I provided a written summary decision and directed that a stay of the suspension be entered on February 24, 2016 with reasons to follow. These are the reasons.

REASONS

- [5] The onus is on the Applicant to establish that she is entitled to a stay.
- [6] To do this, she must satisfy the threefold test set out in the case of *RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 SCR 311, which has been followed by several Law Society decisions, including:
- (a) *Law Society of BC v. Burgess*, 2011 LSBC 07;
 - (b) *Law Society of BC v. Richardson*, 2008 LSBC 34;
 - (c) *Law Society of BC v. Goldberg*, 2007 LSBC 53, and 2008 LSBC 03;
 - (d) *Law Society of BC v. Martin*, 2006 LSBC 22; and
 - (e) *Law Society of BC v. Welder*, 2005 LSBC 52.
- [7] Although Discipline Counsel is not opposed to the application for a stay pending the review, with conditions, the three-part test as set out in *RJR MacDonald* must still be satisfied, namely:

- (a) The review must not be frivolous or vexatious;
- (b) The Applicant must show that she will suffer irreparable harm if the stay is not granted;
- (c) The granting of the stay must not put the public at risk (balance of convenience).

[8] With respect to the first part of the test, the *Goldberg* decision at paragraph 10 clearly sets out the threshold, which I adopt:

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.”

[9] A cursory review of both decisions of the Panel shows that, in the facts and determination decision, there are issues of fact and law that a review board may analyze and, in the disciplinary stage, the review board may analyze the appropriateness of the severity of the sanction. The decision on Facts and Determination has been appealed to the British Columbia Court of Appeal, and that decision has not yet been delivered. That judicial decision may be relevant to the subsequent reviews, although I am not suggesting that the reviews be delayed until the decision of the Court of Appeal is delivered. I am satisfied that the review is neither vexatious nor frivolous and as such meets the first test.

[10] On the second part of the test, the Applicant’s application and affidavit clearly address the irreparable harm the suspension would do to her immigration practice at this time. The citation dealt with a bookkeeping and file-closing practice that allowed the improper removal of leftover funds held in trust.

[11] This was the first disciplinary action on the Applicant’s professional conduct record after 26 years of practice. The Applicant is a sole practitioner and employs staff consisting of two paralegals, an office administrator and a bookkeeper. She practises immigration law.

[12] The financial records and information are set out in the affidavit. I conclude from the affidavit that there has been a large financial burden on the Applicant in defence of the citation. It has strained her resources and impacted her ability and opportunities to generate income and to pay staff from that income. The practice cannot absorb a suspension commencing on March 1, 2016 as it is still recovering financially from the financial impacts since the subject of these proceedings began.

- [13] The Applicant's practice consists of providing legal assistance to applicants for temporary or permanent residence in Canada, many of whom are applicants before the Federal Court and the Immigration and Refugee Board. She currently has several cases that are pending hearing. These clients face uncertainty if she were to be suspended at this time. They may not be able to engage alternate immigration lawyers of equal experience and competence to prepare and conduct their hearing at short notice.
- [14] The Applicant has approximately 161 files ongoing at various stages. It is unlikely that this number of files can be efficiently transferred or managed by another immigration lawyer, if one can be found, within the short time available. It is equally apparent that the clients will suffer immediate harm. Moreover, the loss of the opportunity to generate income as a result of the significant disruption to the practice will cause financial distress upon herself, her staff and the Applicant's family who rely on her financially. The harm identified is financial and professional and will impact more individuals than just the Applicant.
- [15] The Applicant will be engaging in a Section 47 Review of both decisions of the Panel. The Panel ordered a suspension to commence on March 1, 2016, a date that is well before the review will begin. As stated by the panel in *Law Society of BC v. Tungohan*, 2015 LSBC 54, a suspension is a serious penalty and, unlike a fine, is not a penalty that can be returned to the Applicant if she is successful in her application for a review. For this reason, combined with the reasons set out above, I am satisfied that the Applicant has satisfied the second part of the threefold test.
- [16] The third part of the test described in *RJR Macdonald* is whether the granting of the stay will put the public at risk. The Applicant's case was not about her competence to practise immigration law. It was about bookkeeping and office procedures that she utilized to close multiple outstanding files that remained open on the books of the practice but where all legal work was completed. The Applicant has received admonishment from the Law Society. All clients affected have been reimbursed by the Applicant. Therefore, I am satisfied that there is no future risk to the public by directing a stay.
- [17] Accordingly, the stay is granted upon the following conditions:
1. The stay will terminate :
 - (a) upon the Applicant's Review being discontinued or abandoned by the Applicant;
 - (b) upon the Applicant's Review being dismissed by the Review Board;

(c) upon further order of the Review Board; or

(d) on September 15, 2016,

whichever event occurs first.

[18] The order for costs is automatically stayed pursuant to the Rules.