

2016 LSBC 22
Decision issued: June 9, 2016
Oral reasons: April 22, 2016
Citation issued: March 23, 2015

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

GERHARDUS ALBERTUS PYPER

RESPONDENT

**DECISION OF THE HEARING PANEL
ON AN APPLICATION FOR DECLARATIONS**

Hearing date: April 22, 2016

Panel: Herman Van Ommen, QC, Chair
James Dorsey, QC
Dan E. Goodleaf, Public representative

Discipline Counsel: Kieron Grady
Appearing on his own behalf: Gerhard Pyper

[1] This Panel delivered its reasons on Facts and Determination on January 11, 2016. The reasons decided matters in relation to a citation issued on March 23, 2015 and amended on April 29, 2015. This date was scheduled for the disciplinary action phase of the hearing. The Respondent filed a Notice of Appeal in the Court of Appeal on February 3, 2016 appealing the findings on Facts and Determination.

[2] The Respondent brought two motions seeking:

(a) declarations that he was entitled to act in two specific situations; and

(b) an adjournment of this hearing pending the appeal.

- [3] At the hearing we dismissed his first application with the reasons to follow and granted the adjournment on specified conditions. These are the reasons for dismissing his application for declarations.
- [4] The Respondent sought declarations that he was permitted to give advice to a client in Rome, Italy and to communicate with lawyers in Cape Town, South Africa concerning a case in which he was involved in 2014 and 2015.

JURISDICTION

- [5] The Respondent cited no authority or source for this Panel having the authority to make such declarations. This Panel was appointed pursuant to Rule 4-39 to hear the citation referred to above. Rule 4-39 states:

When a citation is issued under Rule 4-17(1) the President must establish a panel to conduct a hearing, make a determination under Rule 4-43 and take action, if appropriate, under Rule 4-44.

- [6] This Panel made a determination pursuant to Rule 4-43. We have yet to take action under Rule 4-44.
- [7] In *Law Society of BC v. McLean*, 2014 LSBC 38, a panel, when considering the extent of its jurisdiction, wrote as follows at paras. 9 through 12:

The Panel obtains its power by virtue of that appointment and is restricted to statutory powers granted to it pursuant to the *Legal Profession Act* and Law Society Rules.

Beyond the ultimate question on a citation, the Panel's authority is limited to the determination of questions of practice and procedure relating to the citation.

A hearing panel is structured according to specific provisions of Rule 5-2 and is given specific powers such as the compulsion of witnesses and the production of documents. Importantly, practice and procedure to be followed at the hearing is provided to the Panel by Rule 5-5(1).

The ultimate judicial *vires* of the Panel is restricted to that provided for in the *Legal Profession Act* and Law Society Rules. The Panel is not similar to a court of general jurisdiction. It has no power, other than that granted

in Rule 5-5, to control its own process or make orders beyond that for which it was constituted.

- [8] The declarations the Respondent seeks have no relation to the amended citation. He is mistakenly seeking this Panel's blessing for a course of conduct he wishes to pursue unrelated to the subject matter of the amended citation. We do not have the authority to provide him with that assistance.
- [9] We therefore dismiss his application.