

2016 LSBC 08
Decision issued: February 17, 2016
Oral reasons: January 25, 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
CONCERNING THE ADJOURNMENT OF
RESPONDENT'S NOTICE OF MOTION**

Hearing date: January 25, 2016

Panel: Dean Lawton, Chair
Haydn Acheson, Public representative
Richard Lindsay, QC, Lawyer

Discipline Counsel: Carolyn Gulabsingh
Appearing on his own behalf: Gerhard Pyper

- [1] The citation in this matter was scheduled to be heard November 6, 2015. The Respondent, Mr. Pyper, appeared before the Hearing Panel on November 6, 2015. On his application, the Panel granted Mr. Pyper an adjournment to permit him additional time to contact one or more witnesses for the hearing. The Panel directed that the new hearing date was peremptory on Mr. Pyper.

- [2] Law Society counsel, Ms. Gulabsingh, and Mr. Pyper informed the Panel they would communicate with one another concerning further procedural steps concerning arrangements for the hearing to continue.
- [3] In all proceedings to date involving this Hearing Panel, Mr. Pyper has appeared on his own behalf.
- [4] At the November 6, 2015 hearing, Mr. Pyper provided the Law Society with a Notice of Motion and affidavit seeking an order from the Panel that the citation be dismissed or stayed. The Panel was provided with the Notice of Motion and affidavit at the outset of the hearing on November 6, 2015. Mr. Pyper did not provide any written argument in respect of the motion. The hearing of the motion did not proceed on November 6, 2015.
- [5] On December 7, 2015, by written memorandum to the Panel, counsel for the Law Society sought direction regarding the process to be followed to adjudicate Mr. Pyper's motion.
- [6] The Hearing Panel convened a conference telephone call on December 18, 2015 to hear submissions from Mr. Pyper and the Law Society respecting the process to be followed to adjudicate Mr. Pyper's motion.
- [7] During the conference telephone call the Panel Chair made directions in accordance with Rule 5-6(1) as follows:
- (a) Mr. Pyper was required to deliver written submissions on his motion to the Law Society by January 8, 2016;
 - (b) The Law Society was required to deliver any responding written submissions by the close of business on January 18, 2016.

The written submissions were delivered as directed and subsequently provided to the Hearing Panel.

- [8] The Panel heard Mr. Pyper's motion on January 25, 2016. The hearing included affidavit and *viva voce* evidence from Mr. Pyper, and cross-examination of Mr. Pyper by counsel for the Law Society. The Panel heard oral submissions by Mr. Pyper and counsel for the Law Society in addition to the written submissions.
- [9] Mr. Pyper alleged in his motion materials, his *viva voce* testimony, and his written and oral submissions that the Law Society had, among other things, wrongfully and maliciously taken disciplinary steps against him, had appointed a custodian for his

practice, had “basically destroyed” his practice, and “is digging up anything they can to create citations” against him.

- [10] In her written and oral submissions, counsel for the Law Society referred to a recent Law Society hearing panel determination in respect of another citation against Mr. Pyper. In *Law Society of BC v. Pyper*, 2016 LSBC 01, (decision issued January 11, 2016) the hearing panel in that case dealt with a preliminary motion by Mr. Pyper in which he sought an order that, by reason of what Mr. Pyper described as “institutional bias” on the part of the Law Society, the hearing panel lacked jurisdiction to hear the citation against him. Mr. Pyper’s allegations against the Law Society in that case are remarkably similar to those he made before this Panel on January 25, 2016.
- [11] Counsel for the Law Society in the *Pyper* decision referred to above submitted that the preliminary motion Mr. Pyper brought in that case was a collateral attack and an abuse of process in the context of Mr. Pyper not having exercised his right to apply for a review or appeal of an earlier determination of another Law Society hearing panel suspending him from practice. The citation against Mr. Pyper in the *Pyper* decision came as a direct aftermath to his earlier suspension, in that it alleged he practised law while suspended.
- [12] In its decision, at paragraph [13], the hearing panel in *Pyper* found as follows:
- We agree that, to the extent that Mr. Pyper alleges unfairness in the process leading to his suspension or bias of the May 23, 2014 panel, he was required to take the appeal and/or review procedures available to him. He failed to do so, and it would be improper for this Panel to consider and rule on the propriety of the May 23, 2014 panel proceeding as it did. During the hearing we advised Mr. Pyper that we were dismissing his preliminary jurisdiction motion
- [13] During his oral submissions at the hearing on January 25, 2016, Mr. Pyper told the Panel that he had the present intention to appeal the decision of the hearing panel in *Pyper*. As of January 25, 2016, he had time remaining to him to bring such an appeal.
- [14] At the conclusion of hearing of Mr. Pyper’s motion before us, including all the evidence, together with his submissions and those of the Law Society in respect of that motion, the Panel adjourned the hearing of the motion. We did so because we wish to ensure both fairness and procedural economy in the hearing process in the context of Mr. Pyper’s stated intention to appeal the decision in the *Pyper* decision issued in January, 2016.

- [15] In particular, given Mr. Pyper's very similar allegations of "institutional bias" in that case and before us, we have concluded that the outcome of any appeal may have a bearing on our consideration of the motion before us. Consequently, we have further concluded that the balance of fairness demonstrates it is appropriate to adjourn the hearing of the motion pending a determination of any appeal in the earlier *Pyper* decision with respect to the issues of whether Mr. Pyper's preliminary motion in that case are collateral attacks on an earlier determination of a hearing panel, or are otherwise *res judicata*.
- [16] If Mr. Pyper does not appeal the earlier decision within the time permitted or otherwise granted to him, the Hearing Panel will provide its determination of the motion in this case with written reasons.
- [17] The Hearing Panel is seized of this matter.