

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

IAN DAVID REITH

RESPONDENT

**DECISION OF THE PRESIDENT'S DESIGNATE
ON AN APPLICATION FOR A STAY OF
AN ORDER TO PAY A FINE**

Submissions: August 30, 2016
September 23, 2016

President's Designate: Herman Van Ommen, QC

Discipline Counsel: Mark Bussanich
Appearing on his own behalf: Ian Reith

- [1] The Respondent applies for:
- (a) an extension of time to pay the fine and costs ordered by the hearing panel decision issued on May 30, 2016; or
 - (b) a stay of the panel's decision that a fine of \$7,500 be paid by November 30, 2016.
- [2] I understand that the Respondent is now only pursuing a stay of the payment of the fine pursuant to Rule 5-20(3).

- [3] The jurisprudence concerning the granting of a stay is well established. The three-part test set out in *RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 SCR 311 has been applied in several Law Society decisions.

Law Society of British Columbia v. Goldberg 2007 LSBC 53;

Law Society of British Columbia v. Richardson, 2008 LSBC 34;

Law Society of British Columbia v. Burgess 2011 LSBC 7.

- [4] The three-part test is as follows:

- (a) the review must raise a serious question to be determined;
- (b) the respondent must suffer irreparable harm if the stay is not granted; and
- (c) the balance of convenience must favour the imposition of a stay.

- [5] The Law Society concedes that the first part of the test is met, that is, the review sought is neither vexatious nor frivolous.

- [6] The Law Society asserts though that the Respondent has not established irreparable harm. The Law Society states as follows:

However, the Respondent has failed to provide evidence that paying the fine would result in irreparable harm. The fine, by its very nature is monetary. The Respondent will not be prevented from practising law if he is required to pay the fine. Indeed, if he is successful on review, the Law Society will return his fine.

- [7] The Respondent has not provided any affidavit concerning his financial situation. A key submission in his application for a stay is this:

The Respondent respectfully submits that the Hearing Panel's order of a November 30, 2016, deadline date for payment of the fine and costs is unduly harsh and punishing, given the Respondent's limited financial resources and that the Respondent already has a fine and LIF premium due for assisting on the time-share week matter.

- [8] The hearing panel, in its reasons at paragraph 22, states:

The Respondent in his submissions advised us that he was called to the Bar in British Columbia in 1989. He is 55 years of age. In 2014 he had a

net income of approximately \$55,000. He is a single parent of two children. ...

[9] The Respondent has not asserted that he cannot pay, although he is clearly of limited means, or that he will suffer harm in the sense that it is irreparable by being required to make such a payment. There is no evidence that refusing to grant a stay will cause irreparable harm.

[10] With respect to the balance of convenience, although it is not strictly necessary to consider it when irreparable harm has not been established, I note and adopt the comments made in *Richardson* at para. 6 as follows:

... the balance of convenience is against the stay, independent of considerations of irreparable harm. The statutory scheme is that an order for costs is stayed upon the filing of a section 47 Review, but penalties, including fines, are not, absent a stay ordered by the President or the President's designate. In the absence of tangible evidence of harm to the Applicant or others, there is a public interest in not deferring disciplinary sanctions.

[11] The application for a stay is refused.