

2017 LSBC 31
Decision issued: August 30, 2017
Citation issued: October 8, 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

LEONIDES TUNGOHAN

APPLICANT

**DECISION OF THE REVIEW BOARD ON AN
APPLICATION FOR EXTENSION OF TIME**

Written Submissions: June 29, July 6 and 10, 2017

Review Board: Greg Petrisor, Chair
Don Amos, Public representative
Jeff Campbell, QC
Woody Hayes
Carol Hickman, QC, Lawyer
John Hogg, QC, Lawyer
Linda Michaluk, Public representative

Discipline Counsel: Alison Kirby

Appearing on his own behalf: Leonides Tungohan

- [1] The Applicant, Leonides Tungohan, applies to extend the time period for payment of a fine and an order for costs arising from his s. 47 review hearing.
- [2] Mr. Tungohan was cited for issues with respect to trust accounting and billing practices and his failure to notify the Law Society of a judgment against him. On January 14, 2015, the Hearing Panel found that the allegations had been proven and that his conduct constituted professional misconduct. He was ordered to pay a fine in the amount of \$3,000 and costs in the amount of \$29,200 (*Law Society of BC v. Tungohan*, 2015 LSBC 02 and 2015 LSBC 26). He was also ordered to produce to the Law Society a report from an accountant on a

quarterly basis, confirming that his trust and general accounts are in compliance with Law Society accounting rules.

- [3] The fine was ordered to be paid by August 31, 2015. The costs were ordered to be paid within one year of the decision (June 5, 2016).
- [4] The Applicant filed an application for review of both the Hearing Panel's Decision on Facts and Determination and its Decision on Disciplinary Action, pursuant to s. 47 of the *Legal Profession Act*. He also applied for a stay of the orders pending the review, pursuant to Rule 5-20(3) of the Law Society Rules. The application for a stay was granted (*Law Society of BC v. Tungohan*, 2015 LSBC 54).
- [5] The s. 47 review was heard by this Review Board and was dismissed on December 12, 2016 (*Law Society of BC v. Tungohan*, 2016 LSBC 45). The Hearing Panel's decision on penalty was confirmed.
- [6] In light of the dismissal of the s. 47 review, the Applicant was required to pay the fine by March 12, 2017 (three months from the date of the Review Board decision) and the hearing costs of \$29,200 by December 12, 2017.
- [7] The Applicant has not paid the fine. He did not file an application for an extension of time to pay the fine before the date upon which it was due.
- [8] The parties made written submissions on costs of the s. 47 review hearing, and also sought clarification regarding the accountant's report. The request for clarification involved the question of whether the time period for the accountant's review should include the time period since the Hearing Panel's decision. The Review Board issued a decision on May 29, 2017 directing that the accountant's report should cover the time period since the Hearing Panel's decision (*Law Society of BC v. Tungohan*, 2017 LSBC 19). The Review Board directed that the first accounting report be produced by June 29, 2017.
- [9] The Review Board also considered the parties' submissions on costs. The relevant factors in determining an order for costs include the financial circumstances of the lawyer and the extent to which the conduct of the lawyer had resulted in the inflation of costs in the proceedings. After considering the submissions and all the circumstances, the Review Board ordered that the Applicant pay costs of the s. 47 review in the amount of \$12,119.96.
- [10] We are advised that the Applicant has filed Notices of Appeal in the British Columbia Court of Appeal with respect to the decisions of the Review Board in both the s. 47 review and the decision on clarification and costs. The filing of an appeal does not suspend the Applicant's obligations arising from the costs orders and the fine.

- [11] The accounting report was due by June 29, 2017. On that date, the Applicant submitted a request to the Law Society for “deferment of the enforcement” of the payment of fine, the obligation to produce the accounting report, and payment of the Review Board’s costs order. No legal authority was cited for this request. However, the Law Society has referred the Applicant’s request to this Review Board as an application for an extension of time pursuant to Rule 5-12 of the Law Society Rules.
- [12] In the Applicant’s submissions in support of deferment of the fine and costs, he refers to evidence before the Review Board regarding his professional income and billing information for the years 2012 to 2015. It is clear that the Applicant earned little professional income from practising law during that time period. However, the Applicant acknowledged in his testimony before the Review Board having financial assets including investments and real property.
- [13] The fine in this matter is relatively modest. It remains unpaid. The Applicant did not apply for an extension of the time period for payment of the fine before it was due. It is now several months overdue. The Respondent has not advised that he has applied for a stay of the orders pending the hearing of his appeal.
- [14] The Applicant has also not provided the accounting report that was determined to be necessary to ensure that he is properly managing his billing and trust obligations. The Applicant referred in his submissions to accounting reports that have been generated pursuant to regulatory requirements of the Law Society. It is not clear, however, that any such reports fulfill the requirements of the order in these proceedings. On the last day that he was to submit the accountant’s report pursuant to the order of this Review Board, he forwarded this request for “deferment”.
- [15] This is an unacceptable pattern of disregard for the professional obligations arising from these proceedings. Compliance with disciplinary orders is not optional.
- [16] The Hearing Panel’s decision to require accounting reports was based on its concern that the Applicant did not appreciate his obligations under the Law Society billing and trust accounting rules. The Panel considered that the public interest required regular review by an accountant. This Review Board also found that the public interest requires that the Applicant’s billing practices be monitored.
- [17] The fact that the decisions have been appealed does not alleviate the concerns that have been expressed in these proceedings that oversight by an accountant is necessary. The request to defer the obligation to submit an accountant’s report by an accountant approved of by the Law Society is dismissed.

[18] In his written submissions, the Applicant has argued that the Hearing Panel's order to provide accounting reports did not include the year 2015. This submission is based on certain comments in the Hearing Panel's Decision on Penalty. At paragraph 22 of the decision, the Hearing Panel discussed a requirement that apparently had been imposed by Law Society staff that the Applicant provide accounting reports for his trust account. The Panel noted that the Law Society had not required a report for 2015 in light of a pending Law Society audit. In this discussion, however, the Hearing Panel appears to have been referring only to Law Society staff's requirements pursuant to its regulatory authority. It does not appear that the Hearing Panel was limiting its own order (set out in paragraph 34):

The Respondent is required to produce to the Law Society a report from an accountant (approved of by the Law Society Compliance Audit Department) on a quarterly basis. That is to say, *commencing on the date of this decision... and every three month period thereafter*, the Respondent must provide (the report)...

[emphasis added]

[19] The order of the Hearing Panel that the Applicant produce accounting reports confirming that his general and trust accounts are in compliance with Law Society accounting rules has been confirmed. It has also been confirmed that the review by the accountant should cover the time period since the date of the Hearing Panel's Decision on Disciplinary Action (June 5, 2015). If an accounting report has not already been submitted, it is now overdue and must be submitted forthwith.

[20] The remaining issue is the request for an extension of time to pay the fine and order for costs from the s. 47 review.

[21] The Law Society does not oppose an extension to pay the fine and the costs orders until December 12, 2017. We have expressed our concern that the fine has not been paid and is now significantly overdue. However, given the position of the Law Society, we will extend the time period for payment of the \$3,000 fine and the \$12,119.26 costs order arising from the s. 47 review until December 12, 2017. The Applicant's fine and all costs orders are to be paid by that date.