

2017 LSBC 41
Decision issued: November 10, 2017
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 A MOTION TO DISMISS THE CITATION**

Written submission: October 5, 2017

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

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

INTRODUCTION

- [1] The citation in this matter was to be heard November 6, 2015 by this Panel. The Respondent, Mr. Pyper, appeared on his own behalf that day. On his application, the Panel granted Mr. Pyper an adjournment permitting 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] Additionally on November 6, 2015, 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 submission in respect of the motion. The hearing of the motion was adjourned to January 25, 2016.

- [3] The Panel heard Mr. Pyper's motion on January 25, 2016. At the conclusion of hearing, the Panel adjourned the motion hearing pending an appeal to the Court of Appeal by Mr. Pyper in connection with another citation and motion to dismiss that citation. The reasons of this Panel in respect of the adjournment of the motion hearing can be found at 2016 LSBC 08.
- [4] On March 3, 2017 the Court of Appeal gave oral reasons for judgment in *The Law Society of BC v. Pyper*, 2017 BCCA 113 ("Pyper"). In that case the Court of Appeal was dealing with an appeal brought by Mr. Pyper to dismiss a Law Society discipline citation determination that he had been practising law while suspended, resulting in a further suspension from practice. Mr. Pyper contended that the panel in that case erred by dismissing his preliminary objection without fully hearing from him and by misunderstanding his objection as an attack on the suspension; that the panel was personally and institutionally biased; that the panel lacked jurisdiction to make its findings; and that the panel erred in determining his actions were practising law.
- [5] The Court of Appeal in *Pyper*, found that Mr. Pyper's preliminary objection was a collateral attack upon the suspension, that there was no merit to the allegation of bias, and that the Law Society had the jurisdiction to proceed with the citation pursuant to its obligations and mandate under the *Legal Profession Act*, SBC 1998, c. 9. As a consequence of these findings the Court of Appeal dismissed Mr. Pyper's appeal.
- [6] In *Law Society of BC v. Pyper*, 2017 LSBC 27 (31 July 2017), a discipline panel provided a decision confirming that it was the third panel to hear a very similar jurisdictional challenge against the panel, and allegation of institutional bias on the part of the Law Society, from Mr. Pyper.
- [7] On September 27, 2017 this Panel issued a memorandum to Law Society discipline counsel, Ms. Gulabsingh, and to Mr. Pyper stating that, in light of the decision of the Court of Appeal in *Pyper*, this Panel was ready to proceed with the consideration of Mr. Pyper's motion that had been adjourned on January 25, 2016.
- [8] The memorandum invited the Law Society and Mr. Pyper to provide written submissions regarding the effect of the Court of Appeal decision in *Pyper* on Mr. Pyper's motion to dismiss the citation based on his allegations of institutional bias on the part of the Law Society, and lack of jurisdiction in the Panel to conduct a hearing in respect of the citation. We required any written submissions to be provided by October 6, 2017.
- [9] The Law Society provided written submissions; Mr. Pyper did not do so.

- [10] The Law Society opposes Mr. Pyper's motion to dismiss the citation on two primary bases, namely that the issues of want of jurisdiction and bias raised by Mr. Pyper are an abuse of process by re-litigation, or they are *res judicata* based on issue estoppel.
- [11] Given the findings of the Court of Appeal in *Pyper*, and upon reviewing the facts and circumstances of that case and comparing them with Mr. Pyper's motion materials before us, this Panel agrees with the submissions of the Law Society. We have concluded that Mr. Pyper's motion is a vehicle through which he is attempting to re-litigate his allegations of institutional bias against the Law Society and lack of jurisdiction in this Panel to hear the citation. In our opinion Mr. Pyper's motion is an abuse of process.
- [12] The motion is dismissed. The citation hearing will proceed before this Panel on December 4, 2017 as scheduled.