

2018 LSBC 05
Decision issued: February 13, 2018
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 AN
EXTENSION OF TIME**

Written submissions: December 12 and 14, 2017

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

Discipline Counsel: Graham MacLennan
Appearing on his own behalf: Leonides Tungohan

- [1] The Applicant, Leonides Tungohan, applies pursuant to Rule 5-12(1)(a) of the Law Society Rules for an extension of time to pay costs arising from his s. 47 review, and an extension of time to begin producing accountant's reports regarding his law practice.

- [2] On June 5, 2015, a hearing panel found the Applicant committed professional misconduct in his billing practices and trust accounting. He was ordered to pay a fine of \$3,000 and to pay \$29,200 in costs. He was also ordered to produce accountant's reports to the Law Society (by an accountant approved of by the Law Society) on a quarterly basis until relieved of the condition by the Practice Standards Committee. The order with respect to accountant's reports was based on the concern expressed by the hearing panel that the Respondent did not appreciate his obligations pursuant to Law Society accounting rules: *Law Society of BC v. Tungohan*, 2015 LSBC 26 at paras. 10 through 12.
- [3] The Applicant applied for a s. 47 review of the hearing panel's decision. While the s. 47 review was pending, the Applicant sought and was granted a stay of the penalty, including the requirement for the production of accounting reports: *Law Society of BC v. Tungohan*, 2015 LSBC 54.
- [4] In a decision dated December 12, 2016 (*Law Society of BC v. Tungohan*, 2016 LSBC 45), this Review Board upheld the decision of the hearing panel. The parties subsequently made submissions on the costs of the review hearing, and the Law Society sought clarification of the accounting report requirement. In particular, the Law Society sought clarification of the time period to be covered by the accountant's reports. On May 30, 2017, the Review Board made an order that the Applicant pay the review hearing costs in the amount of \$12,119.26 and directed that the accountant's reports cover the time period from the date of the Decision on Disciplinary Action (June 5, 2015): *Law Society of BC v. Tungohan*, 2017 LSBC 19. The first accountant's report was due within 30 days of that ruling.
- [5] On June 29, 2017 (the day the first accounting report was due), the Applicant submitted a request for "deferment of the enforcement of the decision" regarding the payment of the fine, costs and the accounting report. The basis for the request included that the Applicant had appealed the decisions of the Review Board. The request for deferment was referred to the Review Board as an application for an extension of time pursuant to 5-12(1) of the Law Society Rules. The Review Board held as follows in a decision issued August 30, 2017 (*Law Society of BC v. Tungohan*, 2017 LSBC 31, the "August decision") at paras. 16 and 17:

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.

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.

- [6] In that decision, we stated that, if an accountant's report had not already been submitted, it was overdue and must be submitted forthwith. The time period for payment of the fine and costs order arising from the s. 47 review was extended until December 12, 2017, by which time it was anticipated by the parties that the appeal of the s. 47 review decision would be heard.
- [7] We are advised by the Applicant in his submissions that he has filed two separate appeals in the Court of Appeal:
- (a) the first, in respect of the Review Board's decision upholding the hearing panel's decision in respect of the fine and costs of the discipline hearing; and
 - (b) the second, in respect of the Review Board's decision respecting clarification of the time period to be covered by the accountant's reports and the costs of the review.
- [8] The Applicant's first appeal was heard in November, 2017. On November 24, 2017, the Court of Appeal allowed the Applicant's appeal to the extent of remitting to the Review Board for reconsideration the issue of the costs order arising from the discipline hearing.
- [9] We are advised by the Law Society in its submissions that the second appeal has not yet been set for hearing.
- [10] The Applicant has now paid the \$3,000 fine imposed by the hearing panel.
- [11] The Applicant submits that the time for payment of costs of the review should be extended because his appeal of that decision remains pending. He submits that his arguments and the issues to be decided by the Court of Appeal in respect of the costs of the review are similar to the arguments and issues before the Court of Appeal in relation to the costs of the discipline hearing, and the first appeal was successful, at least to the extent of remitting the issue of costs for reconsideration.
- [12] The Applicant further submits that he should be given an extension of time to begin providing accountant's reports. He submits that the requirement for him to begin

providing those reports is unreasonable pending further clarification of the time period to be covered by the first such report.

- [13] The Applicant further submits that the Law Society did not accept the accountant he proposed to prepare the accountant's reports, but did not communicate its position in a timely way. The Applicant referred in his submissions to communication with the Law Society regarding the nomination of an accountant approved by the Law Society. The Applicant had reportedly sought approval for an accountant who had previously worked with the Applicant. The Law Society advised on September 28, 2017 that the proposed arrangement was not approved by the Law Society. Law Society staff advised the Applicant that he was to provide the reports by an approved accountant by December 18, 2017. The Applicant submits that the delay made it impossible for him to comply with the deadline for producing an accountant's report.
- [14] The Law Society supports the Applicant having an extension of time to pay the costs of the review until the Review Board has completed its reconsideration of the costs of the discipline hearing.
- [15] The Law Society opposes the Applicant's request for an extension of time to provide an accountant's report. The Law Society submits that, after considering the Applicant's circumstances, the hearing panel and the Review Board, in three separate decisions, have determined that the public interest requires the Applicant to provide accountant's reports.
- [16] The Law Society further submits that the obligations of the Applicant as set out by the Review Board do not require further clarification.
- [17] In our December 12, 2016 decision, we cited, at paragraph 20, overwhelming evidence that the Applicant failed to properly account for client funds he handled and a consistent failure on the part of the Applicant to properly record transactions and to maintain proper records. At paragraph 24, we agreed with the hearing panel's finding that the Applicant appeared to fail to comprehend his obligations to his clients in respect to accounting and handling of clients' funds. At paragraph 39, we held that the requirement for accountant's reports was reasonably necessary to monitor the Applicant's compliance in protection of the public interest.
- [18] As noted above, a previous application for an extension of time to file the accountant's report was dismissed in the August decision. We directed at that time that the first accountant's report be submitted forthwith. The Respondent has apparently not yet filed an accountant's report. In making this further application for an extension, the Applicant has repeated the argument that was advanced in his

previous application regarding the time period to be covered by the accountant's report. In particular, he repeats his submission that the hearing panel did not require accounting reports for 2015. This argument was considered in the August decision at paragraphs 18 and 19:

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 in August decision]

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.

[19] As stated, the Court of Appeal has ordered that costs in respect of the discipline hearing be reconsidered. As stated, the Law Society supports an extension of time in respect of the payment of the costs of the review until the Review Board has completed its reconsideration of the costs of the discipline hearing. The Applicant's filing of an appeal does not in itself relieve the Applicant of his obligation to comply with orders imposed by the Law Society. In the circumstances, we extend the Applicant's time to pay the costs of the review to the date of our decision in respect of our reconsideration of the costs of the discipline hearing.

- [20] As stated, we have held that the Applicant failed to account properly for client funds and failed to keep proper records. We found the Applicant's providing quarterly accountant's reports is reasonably necessary to monitor the Applicant's compliance with his obligations in respect of client funds. The first such report was due June 29, 2017, and remains outstanding. We held at paragraph 15 of the August decision that the Applicant has exhibited an unacceptable pattern of disregard for his professional obligations arising from these proceedings and that compliance with discipline orders is not optional.
- [21] The public interest, including public confidence in the integrity of lawyers and lawyers' handling of, and accounting for, client funds must be protected vigorously. The reasons for which the Applicant was ordered to provide quarterly accountant's reports, commencing June 29, 2017, remain of concern. The Applicant has failed to provide any basis upon which we could conclude the risk to clients from his failure to properly account for client funds has been addressed. The Applicant has failed to provide any basis upon which his continued lack of compliance would not harm public confidence in the regulation of the legal profession. The application for an extension of time for the Applicant to produce accountant's reports is dismissed.