2018 LSBC 06
Decision issued: February 15, 2018
Citation issued: November 10, 2016

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

PIR INDAR PAUL SINGH SAHOTA

RESPONDENT

DECISION ON APPLICATION FOR ADJOURNMENT

Written submissions:	February 1, 2018 February 6, 2018
Bencher:	Steven McKoen
Discipline Counsel:	Alison Kirby
Counsel for the Applicant:	Craig Jones, QC

INTRODUCTION

[1] Counsel for the Respondent seeks an adjournment of the hearing currently scheduled in respect of the citation issued against the Respondent on November 10, 2016.

[2] A pre-hearing conference was held in April 2017, and a hearing was scheduled for October 24, 2017.

[3] The Respondent is the subject of a prior citation that was issued on May 11, 2015. A hearing for that matter was held in April 2016, and a decision on facts and determination was rendered on July 25, 2016 (*Law Society of BC v. Sahota*, 2016 LSBC 29). The penalty hearing occurred on November 24, 2016, and a decision on penalty was issued on May 30, 2017 (*Law Society of BC v. Sahota*, 2017 LSBC 18). That decision is now the subject of a s. 47 review, the hearing for which will be held on February 27, 2018.

[4] The original hearing for this matter did not commence because the Respondent requested an adjournment for medical reasons. That adjournment was granted on October 23, 2017. The President of the Law Society directed that the Respondent provide alternate dates for a hearing in November or December 2017 by October 30, 2017.

[5] On October 31, 2017, the Respondent provided certain materials to the President (of which neither a copy nor a description has been provided to me). As a result, the President directed that the Respondent had until November 10, 2017 to provide available dates for a hearing in December, January or February. The President informed the Respondent that, if those dates were not provided then the President would set a date pursuant to Rule 4-32, as requested by counsel to the Law Society.

[6] On November 28, 2017, counsel to the Law Society informed the Law Society's hearing administrator that the Respondent had not provided available dates for a hearing and requested that the President set a date for a hearing under Rule 4-32. The Respondent responded on November 29, 2017 that he needed more time to retain and instruct counsel and indicated that he would not be in the country in January 2018. Later on November 29, 2017, the President ordered that the hearing be set for Thursday February 15, 2018.

[7] On December 12, 2017, the Respondent raised an issue with the content of the Notice to Admit that was served on him on July 24, 2017 and asked for consent to respond to the Notice to Admit or for leave to withdraw the admissions therein. The status of the Notice to Admit is not before me in this application.

[8] On December 28, 2017 counsel for the Respondent informed counsel for the Law Society that he had been retained. On January 16 counsel for the Respondent requested certain changes be made to the Notice to Admit. Primarily these went to whether the Notice to Admit should state that certain matters were known to the Respondent or merely that he admitted having been served. On January 17, counsel for the Law Society declined to agree to those changes.

[9] On February 1, counsel for the Respondent made this application, namely that the hearing, currently set for February 15, be adjourned generally with direction that it be rescheduled upon the release of the decision currently the subject of the s. 47 review. Also, the Respondent requests that the matter be referred to a Bencher for a pre-hearing conference upon rescheduling.

POSITION OF THE RESPONDENT

[10] The Respondent argues that:

(a) the citation in this matter relates to a real estate matter;

(b) the Respondent has voluntarily ceased practising real estate law;

(c) the current citation is an allegation of carelessness or incompetence and not dishonesty or personal gain by the Respondent;

(d) given that the Respondent no longer practises real estate law, the public is not in danger of suffering from any continued carelessness or incompetence the Respondent may have in that area;

(e) the prior citation that is the subject of the upcoming s. 47 review also relates to the Respondent's real estate practice and his failure to observe the most basic standards of real estate practice; and

(f) the decision of the hearing panel in the prior citation was that the Respondent "appears to be a competent lawyer apart from the demonstrated accounting shortcomings."

[11] The Respondent argues that, given the parallels between the matter that is the subject of the s. 47 review and the subject of the current citation (i.e., they both relate to the Respondent's real estate practice and his competence in that regard), it will be most efficient to allow the s. 47 review decision to be rendered before proceeding with this matter.

[12] As well, the Respondent argues that prior to a decision on penalty in the current matter, a final determination of the prior citation is necessary so that the cumulative effect of the penalties for incompetent real estate practice (should that be the finding) can be assessed by the hearing panel for the current citation.

[13] Finally, the Respondent argues that, since the two citations are inter-related, it will be more likely that a Rule 4-30 admission will be made once the review of the prior citation is complete.

POSITION OF THE LAW SOCIETY

[14] The Law Society argues that the current citation and the prior citation are not as inter-related as the Respondent argues.

[15] The Law Society points out that the prior citation concerned a failure to comply with trust accounting obligations and was not restricted to the Respondent's real estate practice. Further, the prior citation did not relate to allegations of breaches of undertaking or substandard quality of service.

[16] By contrast, the Law Society points out that the current citation relates to a breach of an undertaking given by the Respondent to opposing counsel and a financial institution in a real estate matter and the quality of service rendered to his client in that matter.

[17] Further, the Law Society states that it opposes the adjournment because:

(a) a facts and determination hearing on February 15 will not prejudice the Respondent;

(b) it is in the public interest to proceed in a timely fashion with hearings;

(c) the Respondent has shown a pattern of delay;

(d) the Respondent has not taken the steps necessary to avoid an adjournment by making a Rule 4-30 proposal;

(e) the Respondent's speculation that it may make a Rule 4-30 proposal in the future is not a basis for an adjournment; and

(f) the Respondent is asking for an adjournment of unknown length.

DISCUSSION

[18] In *Howatt v. College of Physicians and Surgeons of* Ontario, [2003] OJ No. 138, 167 OAC 340 at para. 31, the Ontario Divisional Court stated:

> There is no doubt that the right to an adjournment before an administrative tribunal, including a disciplinary body, is not an absolute right. In each case, whether or not the adjournment should be granted must be considered in the light of the circumstances, having regard to the right of the applicant to a fair hearing weighed against the obvious desirability of a speedy and expeditious hearing into charges of professional misconduct. When balancing these two factors, the right of the applicant to a fair hearing must be the paramount consideration.

[19] Applying that standard to the matter at hand, it is clear that the Respondent has been the cause of substantial delay to this point. His failure to respond to various

attempts to set the hearing date, combined with his failure to retain and instruct counsel from October till the end of December, resulted in the President setting this matter down for hearing on February 15, 2018 on a preemptory basis. Even with a preemptory date being chosen, the Respondent's repeated failure to engage in this process has resulted in a hearing that was originally sought to be heard in November or December of 2017 being set for hearing in February of 2018. Granting the adjournment could result in further delay of many more months.

[20] What must be weighed against this continued delay is whether not granting an adjournment will work any unfairness on the Respondent. The Respondent places great emphasis on the findings of the hearing panel in the prior citation with respect to the Respondent's honesty, good character, and absence of venality. Counsel for the Law Society, in its submissions opposing this application, note that those findings are part of the disciplinary action decision and as such are in part the subject of the review.

[21] The disciplinary findings of the prior citation, to the extent they go to the Respondent' honesty, good character, and absence of venality, may well be relevant to the hearing panel in this matter. The current citation, according to the Law Society, involves allegations of breach of undertaking. Honesty, character and venality are all potentially relevant to matters involving a breach of undertaking. Since the Law Society indicates that those character findings are in part the subject of the review in the s. 47 hearing, they may be overturned or they may be upheld. In either result, those findings seem likely to be relevant to the disposition of this matter.

[22] But for the upcoming s. 47 review being held on February 27, I would not be inclined to grant an adjournment in this matter. The Respondent has exhibited a pattern of delay that has resulted in this matter coming on for hearing months after it could have been dealt with. However, as indicated in *Howatt*, I must weigh the public interest in an expeditious disposition of a matter against the potential for unfairness to the Respondent. Here, there are findings of a hearing panel that will either be overturned or upheld by the s. 47 review board, and which of those occurs appears likely to be relevant to the hearing panel in the current matter. As such, I find that an adjournment is warranted until the decision is rendered in the review matter.

DECISION

[23] For the reasons set out above, I grant the Respondent's application for an adjournment generally and direct that the matter be rescheduled upon the release of

the decision of the s. 47 review board in the prior citation relating to the Respondent.

[24] Also, the Respondent requests that the matter be referred to a Bencher for a pre-hearing conference upon rescheduling. Given the Respondent's submission that he finds that the simplification of the issues in this matter is highly likely after the s. 47 review is completed, I find that it is appropriate that a pre-hearing conference be held as expeditiously as possible after the release of the decision of the s. 47 review board for the purpose of obtaining admissions that might facilitate the hearing and for the purpose of setting a date for the hearing to commence.