

2018 LSBC 08  
Decision issued: February 21, 2018  
Citation issued: November 9, 2016

**THE LAW SOCIETY OF BRITISH COLUMBIA**

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

**and a hearing concerning**

**SUMIT AHUJA**

**RESPONDENT**

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**DECISION OF THE HEARING PANEL  
ON AN APPLICATION TO AMEND DECISION**

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Written submissions: November 29, 2017 and  
December 9, 2017

Panel: Herman Van Ommen, QC, Chair  
Dennis Day, Public representative  
Gillian M. Dougans, Lawyer

Discipline Counsel: Carolyn Gulabsingh  
Counsel for the Respondent: Henry C. Wood, QC

**BACKGROUND**

- [1] On October 31, 2017 the Hearing Panel issued its decision on the Facts, Determination and Disciplinary Action in this matter (*Law Society of BC v. Ahuja*, 2017 LSBC 39).
- [2] The decision was released to the parties and to the Benchers, but before it was released to the public, the Respondent applied to redact paragraphs 55 and 56 and make other ancillary revisions including a revision to paragraph 43.

- [3] The Respondent argues that paragraphs 55 and 56 make findings that are highly critical of the Respondent's integrity, which was inherently unfair and a fundamental breach of the principle of natural justice in light of the agreement between counsel to amend the citation to remove the "integrity offences".
- [4] The Executive Director has ordered that there will be no general publication of the original decision while the Respondent's application is under consideration.

## ISSUES

- [5] The Panel must first decide whether it has jurisdiction to amend its decision after it has been issued to the parties but before it has been released to the public. In other words, is the Panel *functus officio*?
- [6] If the Panel is not *functus* then we must decide if paragraphs 55 and 56 should be redacted along with necessary revisions related to those redactions.

## FACTS

- [7] The citation was authorized on November 3, 2016, issued on November 9, 2016 and amended at the start of the hearing on September 6, 2017.
- [8] The amendments to the citation were negotiated and agreed to by both parties.
- [9] The amended citation removed allegations of professional misconduct for certain offences described as "integrity offences" by counsel for both parties.
- [10] In her opening remarks, counsel for the Law Society stated:
- ... and we have amended or are proposing to amend the citation so that essentially the focus of the entire citation of all three allegations have removed the integrity offence, if you will, from ... which is the portions of the *Code*, the Rules 2.2-1 and 3.2-2, so that essentially what you are left with is a failure to follow client instructions and a failure to provide adequate quality of service to the client.
- [11] Counsel for the Respondent followed those opening remarks with his own:
- ... I emphasize that the citation has been amended specifically to remove allegations of integrity. We are dealing with quality of service. There was miscommunication, misunderstanding here, and there's no dispute that ultimately he must bear responsibility for that. I'll add generally,

obviously you are not exposed to all the details, but there is a background, again, I think my friend would readily agree, of conflicting evidence on certain issues throughout this matter between SB and [the Respondent], and they are generally not ones that lend themselves to easy resolution, and that has certainly influenced the basis on which we end up before you here.

[12] The portions of the citation that were removed were not referred to in the decision.

[13] The Respondent attended but did not testify at the hearing.

[14] The Respondent admitted that his conduct, as set out in the amended citation, amounted to professional misconduct. The Panel retired to consider the admission and decided to accept it and make a finding of professional misconduct.

[15] The parties agreed that a one-month suspension was appropriate in the circumstances. The Law Society argued that the suspension should be consecutive to a pending suspension and the Respondent argued that the suspension should be concurrent.

[16] The Panel decided that a consecutive suspension was the appropriate remedy.

## **POSITION OF THE PARTIES**

### ***Functus officio***

[17] The Respondent's position is that the Panel is not *functus officio*. He relies on the decision in *Chandler v. Alberta Association of Architects*, [1989] 2 SCR 848, which stated the general rule that a final decision of a court cannot be reopened once the formal judgment had been drawn up, issued and entered subject to two exceptions: where there had been a slip in drawing it up or where there was an error in expressing the manifest intention of the court. The dissenting judge quoted a BC Court of Appeal decision that said an arbitrator is *functus* when he has done all that he can do, namely, reduce it to writing and publish it as his award.

[18] The Respondent argues that the release of the Panel's decision to the public and the profession is the act that triggers the Panel's *functus* status and that act has not happened yet.

[19] The Law Society's position is that the Panel is *functus officio*. The Law Society also relies on the decision in *Chandler* and argues that, once the Panel has rendered a decision in the manner set out in the *Legal Profession Act*, and provided that

decision to the parties, then it is *functus*. The fact that the decision has not been provided to the public and the profession does not alter its final status.

### **Revisions to the decision**

- [20] The Respondent's position is that paragraphs 55 and 56 are critical of the Respondent's integrity and that the Panel is precluded from making findings about the Respondent's integrity as a result of the agreement made with the Law Society to remove the integrity offences.
- [21] The Respondent says that the comments in paragraphs 55 and 56 are findings by the Panel on issues that were not before it, were not argued by the parties and on which the Respondent did not lead evidence.
- [22] The Respondent says that, had he known the Panel was considering these findings about his integrity, he might have made different decisions about the amendments to the citation.
- [23] The Law Society's position is that, while the integrity offences were removed from the citation, that did not mean all integrity concerns had been removed. The evidence showed a clear instruction from the client to "Please do everything you can to stop the divorce on that day of November 18" and the Respondent did not testify to explain why he did not follow that instruction, or correct his client's belief that he had attended court on her behalf or advise his client of the need to seek an adjournment of the summary trial. The Respondent's admission of professional misconduct, against a backdrop of the evidence before the Panel left it open for the Panel to conclude that the failure to follow instructions involved a lack of candour or integrity.

### **DETERMINATION**

- [24] Law Society Rule 4-43 requires a panel to do the following after hearing evidence and submissions on facts and determination:
- (1) Following completion of the evidence, the panel must invite submissions from discipline counsel and the respondent on each allegation in the citation.
  - (2) After submissions under subrule (1), the panel must
    - (a) find the facts and make a determination on each allegation, and

(b) prepare written reasons for its findings on each allegation.

(3) A copy of the panel's reasons prepared under subrule (2) (b) must be delivered promptly to each party.

[25] Rule 4-44(4) has a similar direction for the panel's reasons on disciplinary action.

[26] Delivery of the reasons to each party is the last action required by the Panel and is the equivalent of "issuance and entry of a decision" or "publish it as his award" as those phrases are used in *Chandler*. The Panel's actions meet the test in *Chandler*.

[27] The Panel is *functus officio*. To hold otherwise would be to invite the parties to review a draft decision and make submissions before a final version is released to the public. That is not a process available to the parties.

[28] If the Panel were not *functus* we would have refused to redact paragraphs 55 and 56. The Panel is entitled to its own views of the evidence put before it by the parties. The comments on the Respondent's lack of candour do not amount to findings about his integrity.

[29] The agreement between counsel was to remove certain offences from the original citation. That was done. Counsel for the Respondent seeks to enlarge that agreement to encompass all integrity "issues" and to prevent the Panel from commenting on the Respondent's integrity, credibility or lack of candour.

[30] The agreement between counsel, as communicated to the Panel, went no further than to remove the integrity offences from the citation. Even if counsel had agreed to remove all integrity issues, it would not prevent the Panel from commenting on the evidence before it.

[31] The Respondent's application is dismissed.