

2018 LSBC 18
Decision issued: July 3, 2018
Citation issued: October 20, 2016

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

MALCOLM HASSAN ZORAIK

RESPONDENT

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

Submissions: April 22, 2018
May 23, 2018
May 25, 2018
June 14, 2018

Panel: Sandra Weafer, Chair
Satwinder Bains, Public representative

Discipline Counsel: Jaia Rai
Counsel for the Respondent: Russell S. Tretiak, QC

- [1] On April 20, 2018 this Panel released its decision on disciplinary action. In that decision we refer to Mr. Zoraik's wife and son, albeit not by name.
- [2] On April 22, 2018 counsel for Mr. Zoraik wrote to the Law Society seeking the Law Society's support for Mr. Zoraik to have the decision amended to delete all references to Mr. Zoraik's wife and son in the decision. On May 9, 2018 Mr. Tretiak provided the Law Society counsel with a letter with respect to amending the decision. A response was filed by the Law Society, with a reply by counsel for Mr. Zoraik. We permitted counsel for the Law Society to file a sur-reply based on new matters raised in reply.

- [3] The issue before this Panel now is whether the April 20, 2018 decision can be amended to delete references to Mr. Zoraik's wife and son or whether this Panel is *functus officio*. As set out by counsel for Mr. Zoraik in his reply submissions on this application, the general rule is that, once a formal judgment had been drawn up, issued and entered, the matter cannot be reopened unless either there was a slip in drawing it up, or there was an error in expressing the manifest intention of the decision-maker (*Chandler v. Alberta Association of Architects*, [1989] 2 SCR 848 at para. 75; *Law Society of BC v. Ahuja*, 2018 LSBC 8).
- [4] It is this Panel's recollection, borne out by notes of the hearing that at the end of the hearing on disciplinary action, counsel for Mr. Zoraik asked the Panel not to refer to his son by name. That was the extent of the request that was made, and the Panel did not refer to the son by name in its decision. We have confirmed this recollection by reviewing a transcript of the relevant portion of the hearing:
- Mr. Tretiak: ... I am not asking for non-publication of Mr. Zoraik's name but I am asking you, panel, to please consider whether you see value to not mentioning [son] by name. I know that isn't a complete protection for [son] but it seems to me that if the panel decides that they are going to refer to [son], which they may not, that I would very much appreciate it, and I don't think it violates any rules at all for you to not use [son's] name at all. That would be in his interest. I do ask you that.
- [5] Our April 20, 2018 decision reflects not only the intention of the Hearing Panel, but also the actual request made before us at the hearing. We are now *functus* to change that decision to consider requests not made to us at that time. We cannot entertain now a request to redact portions of the decision. As stated in *Ahuja*, "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."
- [6] Counsel for Mr. Zoraik has also argued that the Panel made a representation at the hearing that we would not refer to Mr. Zoraik's wife and son in its decision and as such the Panel created a legitimate expectation that the names would not be used. Again, it is the recollection of the Panel, borne out by the transcript, that the only thing that was directly sought was that the decision not mention the son by name. The Panel honoured that request, and has no authority to do more now. As no other request was made before us at the hearing, it would be inappropriate for us to express any view as to what we would have done had a different request been made to us at that time.