

2024 LSBC 41
Hearing File No.: HE20210025;
HE20220034
Decision Issued: October 18,
2024 Citation(s) Issued: July 26,
2021; October 26, 2022

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

BIJAN AHMADIAN

RESPONDENT

**DECISION OF THE MOTIONS ADJUDICATOR ON AN
APPLICATION TO WITHDRAW DEEMED ADMISSIONS**

Hearing date: October 10, 2024

Motions Adjudicator: Herman Van Ommen, KC

Discipline Counsel: Jordanna Cytrynbaum
Rajit Mittal

Counsel for the Respondent: Arthur E. Vertlieb, KC
Matthew G. Siren

INTRODUCTION

[1] The Respondent applies to withdraw the deemed admissions to paragraphs 50, 51, 54, 55, 293 and 310 of the Amended Notice to Admit dated June 2, 2022 (“Amended NTA”). The Respondent’s application regarding his deemed admission to paragraph 59 of the Amended NTA was abandoned.

[2] Paragraphs 50, 51, 54, and 55 of the Amended NTA concern an admission that he breached an undertaking in a real estate transaction on January 20, 2020. Paragraphs 293 and 310 of the Amended NTA concern an admission that YK was a client from whom he borrowed money contrary to rule 3.4-31 of the *Code of Professional Conduct* (the “BC Code”).

[3] The Law Society opposes this application on the grounds that the deemed admissions are true. They are based on previous admissions made by the Respondent and his counsel at the time of the investigation when it was in the Respondent’s interest to make those admissions.

[4] The parties agree on the legal test to be applied for the withdrawal of admissions in a preliminary hearing.

[5] In *Law Society of BC v. Palmer*, 2023 LSBC 36, at para. 6, the motions adjudicator noted that there “were no known reported decisions of the LSBC Tribunal concerning an application to withdraw admissions at a preliminary stage.”

[6] The motions adjudicator considered a line of cases from the British Columbia Court of Appeal with respect to the test to be applied in civil procedure where a party wishes to withdraw admissions and a decision from the Law Society of Upper Canada’s Tribunal indexed as *Law Society of Upper Canada v. Abrahams*, 2014 ONLSTH 64: *Palmer*, at paras. 7 to 9.

[7] The motions adjudicator concluded that the non-exhaustive factors to be considered in the regulatory context are:

- (a) whether there is evidence that the admitted fact is untrue;
- (b) whether the “fact” admitted was or was not within the knowledge of the party making the admission;
- (c) whether the admission was made inadvertently, hastily, or without knowledge of the facts;

- (d) the nature of the admissions sought to be withdrawn and the significance of the same to the determination of the citation on its merits;
- (e) timeliness of the request to withdraw and where there has been delay, the reason provided for the delay;
- (f) whether and to what extent the withdrawal will result in further delays;
- (g) procedural considerations, including prior adjournments, orders, and positions taken by the parties;
- (h) whether and to what extent the withdrawal of the admission would prejudice a party; and
- (i) whether and to what extent the withdrawal will impact the administration of justice and the public interest.

Palmer, at para. 11.

[8] Circumstances may exist in other cases where additional factors ought to be considered: *Palmer*, at paras. 10 and 12. The ultimate test is whether it is in the interests of justice that the admission be withdrawn or qualified.

BACKGROUND

[9] In July and August 2019, the Law Society conducted a compliance audit (the “Compliance Audit”) of Bijan Law Corporation, the Respondent's law practice. The Compliance Audit identified concerns about trust shortages, funds borrowed from clients, and noncompliance with trust accounting requirements.

[10] Two citations were subsequently issued against the Respondent; they are currently scheduled to be heard together at an eight-day hearing commencing December 9, 2024.

[11] The admissions sought to be withdrawn relate to the citation issued on July 26, 2021 (the “First Citation”) which has been previously heard. A panel issued reasons for their facts and determination decision on April 5, 2023 finding professional misconduct in relation to allegations 1 to 7 and a breach of the Law Society Rules in relation to allegation 8.

[12] The Respondent appealed to the Court of Appeal which largely overturned the panel’s decision and remitted allegations 1 to 7 back to the panel for rehearing: *Ahmadian v. Law Society of British Columbia*, 2023 BCCA 470. The Court of Appeal upheld the panel’s decision that the Respondent was deemed under Rule 5-4.8(7) of the Law Society

Rules to have admitted all of the facts set out in the Amended NTA because the Respondent failed to provide a substantive response to the Amended NTA as required by Rule 5-4.8(6)(b).

UNDERTAKINGS

[13] Paragraphs 50, 51, and 54 all concern the Respondent's handling of a Form A transfer document when "he did not have sufficient funds in his trust account to the credit of the Clients to complete the Purchase Transaction." Paragraph 55 contains the admission "I acknowledge that I breached an undertaking."

[14] The complete undertaking states:

1. We will not deal with the executed documents in any manner whatsoever until such time as we hold in our trust account sufficient funds which, when added to the proceeds of any new mortgage being granted by the Buyers (the "Mortgage"), will allow us to complete this transaction.

[15] The Respondent says that in this particular case the entire purchase price was to be paid from mortgage financing so that he was not required to have any funds in his trust account. He says that he was entitled to rely on an Order to Pay issued by the Lender.

[16] That makes the next undertaking relevant. It states:

2. To the best of our knowledge, if the Buyers are obtaining a new mortgage, the Buyers have fulfilled all the conditions for funding except for submitting the new mortgage for registration and we know of no reason why the new mortgage should not be registered and funds disbursed thereunder in the ordinary course of business.

[17] Just prior to filing the Form A transfer, the Respondent received an email from the lender's solicitor stating: "We have yet to receive the confirmation that the mortgage will be funded. However, the conditions have been met as far as we know. I will let you know as soon as possible."

[18] The Respondent says he proceeded to file the Form A transfer relying on the Order to Pay. Whether he was entitled to do so in face of the advice that the funding of the mortgage was not confirmed will determine whether he was in breach of his undertakings.

BORROWING FROM A CLIENT

[19] In paragraph 293 the Respondent is deemed to have admitted “[YK] is the Respondent’s client.” In paragraph 310 the Respondent was deemed to admit:

... in respect of the YK loan, ... [t]he \$30,000.00 was a private VERY short-term loan from a personal friend of Bijan Ahmadian (friend of 15+years). The lender is also a client. At the time of the loan, he had no ongoing client matter with us.

[20] The Respondent now says that at the time of the loan, from the advance to repayment, he had no open matters, trust funds, or retainers for YK. He has also provided an affidavit from YK where he deposes that during the time of the loan, he did not consider the Respondent to be his lawyer and did not seek advice from him regarding the loan.

[21] The Respondent acknowledges that he acted for YK on various matters before the loan. One matter concluded around April 30, 2019. The loan was advanced on May 15, 2019 and repaid on May 24, 2019. He started another file on August 7, 2019.

[22] The commentary to section 3.4-31 of the *BC Code* states that:

[1] Whether a person is considered a client within this rule when lending money to a lawyer on that person’s own account or investing money in a security in which the lawyer has an interest is determined *having regard to all circumstances*. If the circumstances are such that the lender or investor might reasonably feel entitled to look to the lawyer for guidance and advice about the loan or investment, the lawyer is bound by the same fiduciary obligation that attaches to a lawyer in dealings with a client.

[emphasis added]

[23] The Respondent wishes to now argue that YK was not a client at the time of the loan. He acknowledges the Commentary to section 3.4-31 of the *BC Code* but says KY’s affidavit answers that. The Commentary refers to “the lender or investor *might reasonably* feel entitled to look to the lawyer for guidance and advice... [emphasis added]” which is an objective test. YK’s subjective view may not be a full answer.

LAW SOCIETY RESPONSE

[24] The Law Society points to communications from the Respondent and his counsel during the investigation. His counsel wrote a long and detailed letter to the Law Society

dated March 30, 2020 seeking to avoid an application for an interim suspension. He wrote:

While he admits to having made mistakes, Mr. Ahmadian is most concerned with the allegations of dishonesty and deceit made in your letter, which he strenuously denies. We have drafted this letter in the hopes it will remove any doubts about integrity, and allow the real and accepted shortcomings of this member to be the focus of assessment and collaboration.

Mr. Ahmadian has provided facts and documents which ought to provide you assurance that: (i) he has not lied to or misled the Law Society; (ii) he is willing to take all steps necessary to ensure his practice is compliant, and to work with the Law Society cooperatively and proactively; and (iii) there is no proper basis for extraordinary action under Rules 3-10 and 3-12 or otherwise. Categorically, the public is not at risk from Mr. Ahmadian's continued practice of law, and in our respectful submission, he would be unreasonably prejudiced if extraordinary and draconian steps were taken at this time.

[25] He enclosed a letter from the Respondent of the same date. In that letter the Respondent wrote:

As set out in Mr. Cameron's letter, I acknowledge I breached an undertaking on Matter No. 143-33, which involved a conveyancing transaction.

Below, I outline in detail the events that led to this breach, and explain how it happened. I had never faced circumstances similar to these and had to make a judgement call. On reflection, I accept and acknowledge that my judgment was wrong.

[26] The Law Society did not proceed with an application for an interim suspension and counsel says that having received the benefit of those admissions, the Respondent should not now be permitted to withdraw them.

WERE THE FACTS ADMITTED WITHIN THE RESPONDENT'S KNOWLEDGE / WAS THE ADMISSION MADE HASTILY

[27] The underlying facts admitted by the Respondent were within his knowledge. His letters with respect to the undertakings are detailed and refer to all the facts including his reliance on the Lenders Order to Pay. He had the benefit of counsel at the time who also reviewed the facts in detail and concluded that the Respondent had breached his undertaking. The admission that YK was a client was made while noting that he had no active files at the time of the loan.

[28] The admissions the Respondent seeks to withdraw are the deemed admissions not the admissions made during the course of the investigation. Those admissions cannot be withdrawn, only explained if the deemed admissions are withdrawn. The admissions were deemed to be true because his counsel provided a non-responsive answer to each of the paragraphs in the Amended NTA. The Court of Appeal has upheld that finding by the hearing panel although the Court was not considering an application to withdraw deemed admissions.

IS THERE EVIDENCE THAT THE ADMITTED FACT IS UNTRUE

[29] The Law Society's position is that because of the Respondent's prior admissions the deemed admissions are true.

[30] The Respondent retained new counsel in June 2024 who identified the issues leading to this application. If the legal issues raised are upheld by the panel rehearing the First Citation, the admissions of breaching an undertaking and borrowing from a client will be untrue.

TIMELINESS

[31] The Law Society submits that the application is not timely. The deemed admissions were made in 2022. The Respondent says he has moved promptly after retaining new counsel in June 2024.

[32] The relevant timeline starts from the Court of Appeal order to rehear the First Citation. That occurred in December 2023. The First Citation which was referred back to the panel for a rehearing was joined in March 2024 with the second citation (together the "Citations") and set for hearing August 12, 2024. That date was adjourned in June 2024 because the Respondent had retained new counsel.

[33] The hearing of the Citations is now set to commence December 8, 2024, a little less than two months away.

WILL WITHDRAWAL RESULT IN FURTHER DELAY

[34] The Law Society submits that withdrawal of the deemed admissions may prolong the hearing resulting in an adjournment. When setting a hearing of eight days for the Citations it was expected that the time spent on the First Citation would be one or two days because of the deemed admissions.

[35] If the deemed admissions are withdrawn there will be additional time spent exploring the facts to determine whether there was a breach of undertaking or an impermissible loan from a client. This may require additional witnesses. The deemed admissions only go to the breach of an undertaking and the loan from a client not whether those breaches constitute professional misconduct. That inquiry must be undertaken whether the deemed admissions are withdrawn or not. All the underlying admissions remain so the extent of the additional factual disputes should not be too time consuming.

[36] There will be additional prehearing conferences in this matter to address as best as possible the additional issues that will have to be covered to avoid any further adjournments.

PREJUDICE

[37] The Law Society submits that it will be prejudiced by the withdrawal. It says that it has taken this matter to hearing once based on the deemed admissions, was prepared to go to hearing on those admissions on August 12, 2024 and if they are withdrawn now in advance of the December 2024 hearing it will have to devote additional time to prepare for the hearing.

[38] This is not the type of prejudice that should properly be considered to prevent withdrawal of deemed admissions.

CONCLUSION

[39] The Respondent's application to withdraw the deemed admissions in paragraphs 50, 51, 54, 55, 293, and 310 of the Amended NTA is granted.

[40] The Respondent has until October 25, 2024 at 4:00pm to file a Supplemental Response to the Amended NTA with respect to paragraphs 50, 51, 54, 55, 293 and 310 as set out in paragraphs 5, 6, 7, 8, 10, and 12 of Part 3 of his Notice of Application dated September 27, 2024.