

**IN THE MATTER OF PART 3 OF THE *LEGAL PROFESSION*
ACT, RSA 2000, C. L-8**

AND

**IN THE MATTER OF A HEARING REGARDING THE
CONDUCT OF NAVDEEP VIRK, A MEMBER OF THE LAW
SOCIETY OF ALBERTA**

Hearing Committee

Doug McGillivray, Q.C. – Chair
Barbara McKinley – Bencher
Buddy Melnyk – Bencher

Appearances

Karen Hanson – Counsel for the Law Society of Alberta (LSA)
Navdeep Virk – self-represented

Application Hearing Date

February 20, 2020

REASONS ON THE DISCONTINUANCE AND STAY APPLICATIONS

A. Background

1. The Applicant, Mr. Virk, is a former lawyer who was disbarred by virtue of the decision and order of the Hearing Committee dated January 31, 2020. The Applicant filed applications to have the proceedings against him discontinued (Discontinuance Application) or, alternatively, the order of disbarment stayed pending the resolution of an appeal the Applicant has filed (Stay Application).
2. The Hearing Committee held an oral hearing on February 20, 2020, to consider the Discontinuance and Stay Applications. On February 24, 2020, the Hearing Committee issued an Order granting the Stay Application, for a limited time and on conditions, with written reasons to follow. The reasons for granting the Order are set out below. The Order is appended to these reasons.

B. Jurisdiction on the Discontinuance Resolution

3. The Discontinuance Application was brought under Section 62 of the *Legal Profession Act* (the *Act*). Under that section, a hearing committee that has commenced a hearing and is satisfied that the circumstances of the conduct do not justify continuation of its proceedings respecting that conduct can issue a resolution to discontinue its proceedings in respect of that conduct.

4. In this case, however, the hearing into the Applicant's conduct has been completed. The Hearing Committee issued its decision on sanction on January 31, 2020.
5. Our view is that the Hearing Committee, having completed its hearing into the Applicant's conduct and issued its decision, is *functus officio*. We, as the original Hearing Committee, no longer have jurisdiction to make the resolution sought, even if we were so inclined.

C. Jurisdiction on the Stay Application

6. The Stay Application was brought under Subsection 75(6) of the *Act*. That Subsection states:

At any time after the Hearing Committee informs the member of its decision to make an order against the member under section 72(1) and on notice to the Executive Director, the member may apply to the Hearing Committee for a stay of the operation of the order, pending the conclusion of the appeal to the Benchers.

7. The appeal was filed on February 3, 2020, and the Notice of the Appeal and the Stay Application, as amended, were provided to the Executive Director. Accordingly, we are of the view that the Hearing Committee has jurisdiction to consider the Stay Application.

D. Analysis

8. In coming to this decision, we have reviewed and considered all evidence, briefs, submissions, and cases provided.

i. Considerations to be Applied on the Stay Application

9. Subsection 75(7) of the *Act* allows the Hearing Committee to grant a stay with or without conditions, but not where the conduct of the member involves misappropriation or where "having regard to the nature of the member's conduct", it is proper to refuse to make the order.
10. In this case, all parties agree that the three-part test for an interim injunction should be applied, as appropriately modified for the particular circumstances.

ii. Serious Question on Appeal

11. The first part of the test requires that there be a serious question to be heard on appeal.
12. The threshold for such a test is very low and while the grounds for the Applicant's appeal do not appear to be particularly strong, the LSA has conceded that there is a serious question to be tried. We accept this concession.

iii. Irreparable Harm

13. The second part of the test is a consideration of whether the Applicant will suffer irreparable harm if the stay is refused.
14. This part of the test is directed to harm occurring to the Applicant and not to third parties.

15. The Applicant asserts that the immediate application of the disbarment order causes him irreparable harm in that he loses his primary source of income. He asserts that he loses his health coverage. He asserts that his inability to pay loans and lines of credit associated with his practice of law effectively puts his solvency at risk.
16. He also asserts that, as a result of the LSA's interpretation of Section 106 of the *Act*, he is prohibited from gaining access to records and accounts relating to businesses he runs and owns, which are not part of the practice of law. In particular, the building in which Virk Law carries on business is owned by a company owned by the Applicant. The company has other tenants, besides Virk Law, and is not engaged in the practice of law. In addition, the Applicant owns NavLegal, a company that facilitates the filing of legal forms and notarization and commissioning of documents in Edmonton and in 32 other locations in Canada. He asserts that this business does not form part of the practice of law and that his inability to access NavLegal's business records improperly jeopardizes that company and, through it, the Applicant.
17. Other general grounds of asserted irreparable harm were raised but in our view were merely subsets of the economic grounds raised above.
18. As the Applicant has other sources of income and assets, we do not find that he is irreparably harmed by his inability to practice law pending his appeal.
19. With respect to access to the documents and accounts of NavLegal and the Applicant's property ownership and management firms, we do believe that the Applicant's inability to access business records for non-legal businesses could well amount to irreparable harm.

iv. Balance of Convenience

20. The third test is whether the balance of convenience favours granting a stay or keeping the original order in place.
21. This is a balancing of the extent of the irreparable harm against the criteria in which the disbarment order was issued in the first place.
22. Those criteria are set out more specifically in the Reasons of the Hearing Committee on sanction, but in general relate to the protection of the public and the protection of the reputation and integrity of the legal profession as a whole.
23. The Applicant argues that the LSA was aware of the nature of his conduct for a considerable period of time before the Hearing Committee rendered its sanction. No applications were made to suspend him pending the completion of that hearing. He asserts therefore that he could not be a danger to the public in an emergent sense and that there would be no harm in staying the current disbarment order until his appeal to the Benchers is concluded.
24. There is no evidence before us on the reasons for the LSA not seeking an interim suspension, but overall we do not view the Applicant's argument as conclusive given the findings of the Hearing Committee of the merits stage of the Hearing.

25. While this argument might satisfy the public protection aspect of LSA's regulatory hearings, it does not deal with the protection of the reputation and integrity of the profession. The argument is not compelling.
26. We believe, however, that the irreparable harm to the Applicant's non-legal businesses would likely be minimized if a stay were granted for a very short period of time to allow the Applicant to access those records and accounts relating to the business of NavLegal and his property ownership and management firms.
27. In our view, the risk of harm to either the public or the reputation of the legal profession is minimized by a stay on strict conditions and, importantly, for a short period of time. In our view, any longer stay, for example, through to the completion of the Applicant's appeal to the Benchers, would significantly increase the risks. Notwithstanding the strict conditions imposed, we would view that the balance of convenience does not favour granting such a lengthy stay of the operation of the order of disbarment.
28. With respect to conditions, we note that the Applicant sets out a lengthy list of conditions that he feels would satisfy protection of the public in his Affidavit and in his application materials. However, the conditions do not deal with the protection of the reputation and integrity of the legal profession. As a result, the conditions he suggests are not satisfactory and they are rejected.
29. As we have found that there is potentially irreparable harm based on the evidence, we believe that this irreparable harm can be minimized by allowing the Applicant access, under supervision, to the accounts and records of NavLegal and his property ownership and management firms.

E. Conclusion

30. Pursuant to an Order of the Hearing Committee, on February 24, 2020, the Hearing Committee granted a stay from February 24, 2020 to 12:00 noon on Friday, March 6, 2020, in order to allow the Applicant to access those files and records of NavLegal and his property ownership and management firms. The stay was subject to a number of conditions, set out in the Order. The Order is appended to these reasons.
31. Any breach of the Order or the conditions will result in the immediate revocation of the short-term stay.
32. As noted in the Order, the Hearing Committee retains jurisdiction to clarify, add to or delete the conditions on application to the Hearing Committee before the expiry of the stay.
33. As stated, we have found that the balance of convenience favoured granting a stay here only because the stay is for a limited purpose and for a limited period of time. In our view, the balance of convenience would not likely favour a longer stay.
34. Pursuant to the Order, a Notice to the Profession was issued regarding the stay.
35. These Reasons, the attached Order and any Exhibits introduced as evidence before the Hearing Committee for the Discontinuance and Stay Applications shall be made available for public inspection, and copies shall be provided upon request for a reasonable copy fee, pursuant to Rule 98(3) of the Rules of the Law Society of Alberta.

All identifying information about persons other than the Applicant shall be redacted and additional redactions shall be made as necessary to preserve client confidentiality and solicitor-client privilege.

February 28, 2020.

Doug McGillivray, Q.C. – Chair

Barbara McKinley

Buddy Melnyk

THE MATTER OF PART 3 OF THE *LEGAL PROFESSION ACT*, RSA 2000, C. L-8

AND

IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF NAVDEEP VIRK, A MEMBER OF THE LAW SOCIETY OF ALBERTA

ORDER OF TEMPORARY STAY OF DISBARMENT

WHEREAS Navdeep Virk, Barrister and Solicitor, was ordered disbarred by an order of a Hearing Committee, set out in its Hearing Committee Report dated January 31, 2020, which disbarment took effect immediately;

AND WHEREAS Virk provided notice to the Executive Director on February 3, 2020 of his intention to appeal the Order;

AND WHEREAS Virk has filed an Application for a Resolution of the Hearing Committee discontinuing all of the proceedings against him or alternatively, seeking an Order staying the Order of Disbarment;

AND WHEREAS the Hearing Committee heard the Application for a Stay and for a Resolution of Discontinuance on February 20, 2020;

AND WHEREAS the LSA submitted that, having issued its decision in Hearing HE20170299, the Hearing Committee no longer has jurisdiction to discontinue the proceedings pursuant to section 62 of the *Legal Profession Act*;

AND WHEREAS the Hearing Committee finds that it no longer has jurisdiction to issue a Discontinuance Resolution;

AND WHEREAS the Hearing Committee is satisfied that a limited stay of the Disbarment Order with conditions would not be contrary to the public interest and the balance of convenience favours granting a limited stay, with conditions;

AND WHEREAS the Hearing Committee finds that, under the circumstances, it is appropriate to provide an Order reflecting its decision now, with reasons to follow.

IT IS HEREBY ORDERED that:

The Order of Disbarment made January 31, 2020 is hereby stayed until 12:00 p.m. on Friday, March 6, 2020, subject to Virk meeting and complying with the following conditions:

- a) During this period, Virk is restricted from undertaking any of the activities set out in Section 106 of the *Legal Professional Act*. This includes, but is not limited to

- i. practicing law or providing legal advice or guidance,
 - ii. providing strategic guidance or research, to clients, to the public, or to lawyers (and their staff) advising clients.
 - b) Virk is prohibited from contacting Virk Law clients.
 - c) Virk may only access the Virk Law premises, as well as the computer system or physical records of NavLegal and his real estate ownership and management company, for the sole purpose of making copies of business and financial records for only those businesses (not for Virk Law). Originals are not to be removed from the premises, and a record of which documents were copied must be made by the informal custodian or the Responsible Lawyer of Virk Law and provided to the LSA on request.
 - d) There is to be no interaction with staff or lawyers at the NavLegal premises, except for the sole purpose of facilitating the copying the business and financial records specified in clause 3, or for non-business-related purposes. Notes or records of any communication relating to facilitation of the copying of business and financial records must be made by the informal custodian or the Responsible Lawyer of Virk Law and provided to the LSA on request.
 - e) The informal custodian or the Responsible Lawyer for Virk Law must monitor compliance with the above conditions and prepare a report on compliance. The report must be provided to the LSA on request.
3. In the event there is any violation of the above-noted conditions, the Stay granted herein shall immediately be revoked and the Order of Disbarment shall become effective.
 4. The Hearing Committee retains jurisdiction to clarify, add to or delete the conditions on application to the Hearing Committee before the expiry of the Stay granted herein.
 5. For clarity, the within Stay expires at noon on Friday, March 6, 2020 and the Order of Disbarment shall be automatically effective without further order or direction.
 6. The Executive Director shall issue a Notice to the Profession regarding this Stay Order, including the conditions under which it is granted.

Dated in the Province of Alberta February 24, 2020.

Doug McGillivray, Q.C. – Chair

Barbara McKinley

Buddy Melnyk