

LAW SOCIETY OF ALBERTA
IN THE MATTER OF THE *LEGAL PROFESSION ACT*
AND
IN THE MATTER OF AN APPEAL REGARDING
IHOR BRODA
A DISBARRED MEMBER OF THE LAW SOCIETY OF ALBERTA

Appeal to the Benchers Panel:

Donald Cranston, QC – Chair
Glen Buick
Brett Code, QC
Robert Dunster
Dennis Edney, QC
Julie Lloyd, QC
Robert Armstrong, QC
Louise Wasylenko

Appearances:

Counsel for the Law Society of Alberta – Stuart Weatherill
Ihor Broda – appeared on his own behalf

Hearing Date:

February 11, 2016

Hearing Location:

Law Society of Alberta at 800, The Bell Tower, 10104 – 103 Avenue, Edmonton, Alberta

APPEAL PANEL DECISION

Background

1. Ihor Broda is a disbarred member of the Law Society of Alberta ("Law Society"). Fifty-six citations were issued against Mr. Broda leading to a lengthy hearing which began on February 9, 2009 and continued through October 5, 2009. A 126-page hearing report was issued by the Hearing Committee and is dated November 3, 2009. In summary:

1. Mr. Broda admitted his conduct was deserving of sanction for 16 of the citations;
 2. The Hearing Committee found Mr. Broda guilty of a further 20 citations;
 3. The Law Society invited the Hearing Committee to dismiss 10 citations, and it did so; and
 4. The Hearing Committee found Mr. Broda's conduct was not deserving of sanction concerning the remaining 10 citations.
2. After hearing further evidence concerning sanction, the Hearing Committee issued its sanction decision on March 3, 2010.
 3. Paragraph 586 of the sanction decision contains a summary of the 36 citations for which Mr. Broda was found guilty of conduct deserving of sanction:

"586. Eleven of the citations related to a failure by the Member to respond on a timely basis to his clients (2, 5, 12, 14, 21, 24, 26, 35, 39, 44, & 48). Two of the citations related to a failure by the Member to respond on a timely basis to another lawyer (1 & 29). One of these citations related to the Member's breach of trust conditions imposed by another lawyer (28). Fifteen further citations related to either the failure of the Member to respond on a timely basis to the Law Society, or a failure to cooperate with the Law Society by not providing his file to them (13, 15, 23, 27, 30, 32, 33, 37, 41, 42, 45, 46, 49, 50, & 53). One citation related to the failure of the Member to the Public Trustee's Office (36). The remaining citations upon which he is being sanctioned relate to the Member's breach of the conditions imposed by the Benchers of the Law Society (19), the Member deceiving or seeking to deceive the auditors of the Law Society (20), the breach of trust conditions imposed by another lawyer (28), the Member's failure to follow the Rules of the Law Society regarding his filing of the S and T forms (31), the Member's failure to comply with the Rules of the Law Society and the Rules of Court in rendering an account on a contingency agreement (40), the Member's failure to follow accounting rules and rectify deficiencies (54), and the acceptance by the Member of cash from a client in excess of that permitted by Law Society rules (56)."
 4. The Hearing Committee ordered that Mr. Broda be disbarred, and pay costs in the amount of \$31,748.30.

The Appeals

5. Mr. Broda filed two Notices of Appeal, a Notice of Partial Abandonment of Appeal, and an Amended Notice of Appeal between 2009 and 2011. In summary:
 1. On December 2, 2009, Mr. Broda filed a Notice of Appeal with respect to 13 of the 36 citations;
 2. On March 24, 2010, Mr. Broda appealed the decision to disbar him, which he stated to be "in addition to the previous appeal filed against specified findings of guilty filed December 2, 2009";
 3. On November 1, 2010, Mr. Broda filed a Notice of Abandonment with respect to his appeals concerning 6 citations, leaving appeals with respect to 7 citations; and

4. On July 18, 2011, Mr. Broda filed an Amended Notice of Appeal. In it, he says that he was now appealing against all findings of guilty including those for which he had admitted guilt, together with an appeal of the sanction imposed by the Hearing Committee. That Amended Notice of Appeal came 16 months after the sanction decision of March 3, 2010.

The Pre-Hearing Conferences

6. There were a number of pre-hearing conferences pursuant to Rule 90.1 prior to this matter coming before this Bencher Appeal Panel. Of particular relevance are the last two, on September 16, 2015 and November 18, 2015.
7. On September 16, 2015, the Vice Chair of the Conduct Committee noted that Mr. Broda had asked for an extension to provide his appeal materials on July 15, 2015, which was granted on the basis that the Law Society would have leave to apply to strike the appeal if that deadline was missed. Mr. Broda missed that deadline. On September 16, 2015, the Vice Chair directed that a one-day hearing be set for February 11, 2016, and directed that the parties would be limited to 60 pages in total for their written submissions. Mr. Broda was directed to have his written submissions filed by October 13, 2015. A further pre-hearing conference was set for November 18, 2015.
8. Mr. Broda did not have his written submissions filed by October 15, 2015.
9. On November 18, 2015 the Vice Chair of the Conduct Committee gave Mr. Broda a further chance, and formally directed Mr. Broda, among other things, to serve his written appeal submissions on counsel for the Law Society by November 27, 2015. Mr. Broda agreed with a direction to provide to the Law Society counsel a signed Notice of Abandonment of Appeal dated November 28, 2015 on the understanding that the Notice of Abandonment would be effective if the deadlines were not met by him.
10. On November 19, 2015, Mr. Broda served the Law Society counsel with a Notice of Abandonment of his appeal. He expressly stated that it would be effective in the event that he failed to provide his complete written submissions for the appeal by November 27, 2015.
11. Mr. Broda did not provide his complete written submissions by November 27, 2015.
12. On November 26, 2015, notwithstanding his agreement and the direction of the Vice Chair of the Conduct Committee, Mr. Broda sent a so-called "Notice of Revocation" in which he purported to revoke the Notice of Abandonment earlier provided to Law Society counsel.

The February 11, 2016 Hearing

13. This Bencher Appeal Panel convened on February 11, 2016, the appointed date for the hearing of Mr. Broda's appeal. Mr. Broda had still not provided his appeal materials. On that date, Mr. Broda provided to this Panel a Notice of Application in which he sought four substantive forms of relief:
 1. First and foremost, an Order adjourning the appeal;

2. An Order directing the Law Society to provide a copy of a report entitled "Review of Complaints and Conduct/Discipline Processes for Lawyers" commissioned by the Law Society;
 3. An Order allowing Mr. Broda to provide so-called fresh evidence, as detailed in his written Notice of Application; and
 4. A direction that the entire appeal be held in private.
14. For its part, the Law Society applied to have Mr. Broda's appeal dismissed, principally for two reasons:
1. Mr. Broda had formally abandoned his appeal when he sent to Law Society counsel the Notice of Abandonment on November 19, 2015. The Law Society submitted that directions made at a pre-hearing conference are binding on the parties, and to allow Mr. Broda to unilaterally revoke his Notice of Abandonment is, in effect, to allow Mr. Broda to override or ignore the direction of the Vice Chair of the Conduct Committee and to render pre-hearing conferences meaningless; and
 2. In any event, from a substantive perspective, the Law Society argued that the appeal is without merit for reasons which are set out in the written submission filed by the Law Society counsel.
15. During the hearing on February 11, 2016, the Appeal Panel directly asked Mr. Broda if he could realistically deliver the appeal materials within three weeks. In Mr. Broda's own submission, he stated that he had completed most of the work and, if he did not deliver the materials, Law Society counsel could contact the Appeal Panel and the Panel could revisit the issue more informally, perhaps over the phone.
16. Mr. Broda was also asked by the Panel if he would agree or acknowledge that failure to deliver the appeal materials would result in his appeal being dismissed. He agreed, subject to the development of extenuating circumstances related to his own health or that of family members. He stated that he foresaw no problem in delivering the materials, barring any new or unforeseen medical issues. Mr. Broda had described the long-standing medical issues he had already encountered, but stated that if new circumstances arose, he would expect to come before the Appeal Panel again with medical evidence to address new deadlines. Assuming that the current situation prevailed, however, he stated that three weeks was a reasonable period of time in which he could finalize his submissions.
17. After hearing full submissions from the parties, this Panel reluctantly agreed to adjourn the hearing, but under strict conditions. Mr. Broda agreed with the conditions, and told this Panel he could meet them. The Panel Chair said the following:

"We have considered the application made by Mr. Broda.

With respect to the applications other than the adjournment application, those applications are dismissed.

With respect to the adjournment application, we are very troubled with the idea of giving an adjournment. It caused us some considerable discomfort. But at the end of the day, we have concluded that fairness requires us to give an adjournment with some very strict conditions.

The adjournment will be peremptory on the appellant.

The appellant will have his written submissions – all of them – to Mr. Weatherill's office no later than the close of business on February 22, and will have, to the Law Society, a sufficient number of copies for the Members of this Committee – that submission by March 7.

Mr. Weatherill would have – we hope this will be sufficient time Mr. Weatherill – until the 21st of March for any reply you may wish to make to those submissions.

The adjournment is conditional upon those dates being met."

Events after February 11, 2016

18. Mr. Broda again failed to comply with directions given to him and in particular failed to provide his written submission to Mr. Weatherill by February 22, 2016. He further failed to provide the necessary number of copies to the Law Society offices by March 7, 2016.
19. An exchange of emails initiated by Mr. Broda then occurred:
 1. Mr. Broda sent an email to the Chair of this Panel at 10:49 pm on March 7, 2016, advising that he was requesting a further extension of time. At this point, he had already missed the peremptory deadlines set for the delivery of written submissions. The email was also addressed to Law Society counsel. Mr. Broda indicated he simply could not finish by the deadline, although he had hoped to do so. He variously described the work involved in preparing the materials as "tedious", "onerous" and "mind-numbing". He indicated that his written submissions to that point were 276 pages, and he anticipated his submissions would be 350 pages in total, together with 3 volumes of appendices and another volume of authorities;
 2. On the morning of March 8, 2016, counsel for the Law Society responded. In that response, counsel emphasized that Mr. Broda had the complete appeal records since 2011, and had still not completed his written appeal submissions. Counsel also pointed out that the adjournment decision of this Panel on February 11, 2016 was peremptory on Mr. Broda and that clear directions were given to Mr. Broda concerning the filing of his appeal submissions. Further, he noted the earlier directions of the Vice Chair of the Conduct Committee restricting the appeal submissions to 60 pages, and giving deadlines for the provision of appeal materials. Mr. Broda ignored the Vice Chair's directions. He told this Panel he was expecting his written submissions would come to about 350 pages when finished. The Law Society counsel submitted that the appeal ought to be dismissed;
 3. Mr. Broda replied to that email at 10:42 am on March 8, 2016. As part of his response, he stated that estimates of time are often optimistic. He made reference to his prior medical history of gall bladder surgery in September 2015, of which the Appeal Panel was already aware. He again objected to the page limitations placed on his submissions by the Vice Chair during the pre-hearing conferences. He indicated that, in his view, another few days or weeks would not make a significant difference and would not prejudice the Law Society.
20. This Bencher Appeal Panel considered the emails and the circumstances, and decided that Mr. Broda's request for a further extension of time and adjournment should be denied, and the appeal should be dismissed. The Appeal Panel did not hold another in-person hearing with Mr. Broda

and Law Society counsel present to make further submissions, in light of the submissions which had been made on February 11 and the nature of the submissions contained in the email exchange which took place on March 7 and 8. It was clear that there was no new evidence or new factors to consider and a further appearance to hear evidence or submissions was not required. A brief written notice of decision was issued March 9, 2016, and it was indicated in that brief notice of decision that written reasons from this Benchers Appeal Panel would follow. These are those written reasons.

Reasons for Dismissal of the Appeal

21. Whatever difficulties Mr. Broda may have encountered in his personal life, substantial accommodations were afforded to him, first by the Vice Chair of the Conduct Committee through the pre-hearing conference process, and then by this Panel in granting an adjournment at the February 11, 2016 hearing. The delays by Mr. Broda in advancing this appeal have been excessive. More important, Mr. Broda has failed to comply with directions given to him, first from the Vice Chair of the Conduct Committee through the pre-hearing conference process, and then by this Panel. The directions given to him were clear, and expressed to be peremptory on Mr. Broda. In all cases he had agreed he could meet those deadlines.
22. Mr. Broda started this appeal process on December 2, 2009, over six years before the matter came before this Appeal Panel on February 11, 2016. He had been disbarred almost six years prior to the February 11, 2016 hearing.
23. Mr. Broda came before this Appeal Panel seeking an adjournment of the February 11, 2016 hearing. Pursuant to section 76(11) of the *Legal Profession Act*, this Panel may make an order dismissing an appeal if Mr. Broda appears before the Benchers for the purpose of applying for an adjournment of the hearing, and the Benchers consider the adjournment unjustified in the circumstances. Alternatively, the Benchers may dismiss the appeal if the Benchers are satisfied that Mr. Broda has otherwise abandoned the appeal.
24. The Law Society counsel argued before us on February 11, 2016 that Mr. Broda had abandoned his appeal, and accordingly the appeal should be dismissed. At the pre-hearing conference on November 18, 2015, the Vice Chair of the Conduct Committee, with the express agreement of Mr. Broda, formally directed that Mr. Broda was to serve his written appeal submissions by November 27, 2015. With Mr. Broda's agreement, she also directed that he would provide to the Law Society a signed Notice of Abandonment of Appeal which would become effective if the deadline for provision of his written submissions was not met. That was done with Mr. Broda knowing that the Law Society was considering an application for dismissal of the appeal.
25. We are satisfied that the Notice of Abandonment sent by Mr. Broda was done freely and without duress by the Law Society. Mr. Broda's suggestion that there was duress is without foundation, and we do not accept it. Mr. Broda purported to revoke his Notice of Abandonment when he came to the view that he was, yet again, not going to meet the deadlines imposed upon him for submission of the appeal materials. We are of the view that there is a strong case to be made that Mr. Broda in fact abandoned his appeal and that the appeal accordingly should be dismissed for that reason alone. However, we prefer to rest our decision on section 76(11)(b) of the *Legal Profession Act*.

26. At the February 11, 2016 hearing, without prior notice to the Law Society or its counsel, Mr. Broda applied for, among other things, an adjournment of the hearing. We were told that Mr. Broda expected his written submission to be something in the order of 350 pages, clearly in violation of the direction given to him by the Vice Chair of the Conduct Committee. We were told Mr. Broda had again failed to meet the deadlines imposed on him by the Vice Chair of the Conduct Committee.
27. Nonetheless, with some reluctance, the Appeal Panel agreed to grant an adjournment of the hearing, but only on strict conditions. The adjournment was made peremptory on Mr. Broda, and he was directed by this Panel to have his full written submissions provided to counsel for the Law Society by February 22, 2016, with the necessary number of copies provided to the Law Society offices by March 7, 2016. He failed to do so. Instead, just before midnight on March 7, 2016, he applied yet again for an extension of time. Not having complied with this Appeal Panel's conditions for an adjournment, the adjournment request was again before this Appeal Panel.
28. This Panel has carefully considered the appeal history, the directions of the Vice Chair of the Conduct Committee in the pre-hearing conference process, this Panel's decision on February 11, 2016 and the subsequent emails from Mr. Broda and Law Society counsel. In our judgment, the request by Mr. Broda for a further adjournment and delay is wholly without merit and cannot be justified in the circumstances.
29. When the Appeal Panel directed that Mr. Broda was required to comply with peremptory deadlines, it was expressly contemplated during the exchange which occurred between Mr. Broda and this Panel that failure to meet the deadlines would result in an automatic dismissal of his appeal, provided no new factors arose which the Appeal Panel would be required to consider. No new circumstances have arisen. By making an adjournment peremptory, the decision-maker signals to the parties that it is the final adjournment. There is discretion to grant a further adjournment request if exceptional circumstances exist, based on evidence that new circumstances have arisen. While Mr. Broda has previously submitted that he will be prejudiced if adjournment requests are denied and that further delay does not prejudice the Law Society, this submission fails to recognize that Law Society proceedings involve a commitment of resources which are wasted every time there is a further adjournment (See *Bond v. Deeb*, [2013] O.J. No. 1524). It also fails to recognize that there is a public interest in the administration of justice and in the timely and expeditious resolution of hearings and appeals.
30. The factors relevant to the outcome of an adjournment application are as follows:
 1. lack of compliance with prior court orders;
 2. previous adjournments granted to the applicant;
 3. previous peremptory hearing dates;
 4. the desirability of having the matter decided;
 5. a finding that the applicant is seeking to manipulate the system by orchestrating delay;
 6. the seriousness of the consequences of the hearing to the applicant;
 7. the potential prejudice to the applicant if the adjournment is not granted;

8. if requesting an adjournment to seek counsel, whether the applicant had counsel prior to the hearing and whether the applicant is honestly seeking to exercise the right to counsel;
 9. the timeliness of the request for an adjournment;
 10. the applicant's reasons for being unable to proceed on the scheduled date;
 11. the length of the requested adjournment.
31. The foregoing factors, when weighed and considered, weigh in favour of dismissing Mr. Broda's new request for additional time to complete his submissions and any additional adjournment requests.
32. We have also considered the lengthy hearing process and the decisions made by the Hearing Committee in 2009 and 2010. There were admissions made by Mr. Broda concerning 16 citations, which were serious charges. The Hearing Committee after extensive hearing time and a detailed decision, further found Mr. Broda guilty with respect to 20 further citations. As counsel for the Law Society noted in his application for dismissal that came before us on February 11, 2016, the various matters where Mr. Broda admitted guilt or was convicted after a full hearing were serious failures on the part of Mr. Broda. Two of the more serious matters are described at paragraphs 29, 30 and 31 of the Law Society's written submission to us:
29. On October 19, 2006 the Benchers elected to place conditions on Broda (as opposed to issuing an interim suspension). These conditions included (a) that Broda was not to open any new files, (b) was not to pay himself fees from his CIBC trust account and (c) was to obtain a co-signor on all trust cheques issued on any trust account (see **Exhibit 178**). In contravention of the Bencher conditions, Broda opened approximately 110 new files, paid himself fees totalling approximately \$79,000 by transferring monies from the CIBC trust account and unilaterally cancelled the arrangement to have a co-signor for his trust bank accounts. During the course of the Hearing Broda admitted to these breaches (see **Exhibit 177**).
30. To make matters worse, however, Broda also sought to deceive the Law Society of the fact that he had opened new files in contravention of the Bencher conditions. Instead of opening new files by way of his usual methodology (using consecutive file numbers), in January and February 207 Broda started adding letter prefixes (such as "A" or "B") to existing file numbers (see page 9 of **Exhibit 178**). Furthermore, at a February 12, 2007 meeting with two representatives of the Law Society, Broda "confirmed that he had not taken on any new files since October 2006" (see **Exhibit 182**). This information was false (see Hearing transcript pages 657 and 1772-1773).
31. The Appeal Record contains ample evidence that Broda engaged in conduct that was "deserving of sanction". A review of the Appeal Record leads to the distinct and unwavering conclusion that Broda was ungovernable and deceitful. Therefore the Appeal Record contains ample evidence upon which the Hearing Committee properly concluded (at paragraphs 594, 596-598 of the Hearing Committee's March 3, 2010, Report):

594...[Broda's] actions were not done with the approval, condonation, or acquiescence of the Law Society. It was all done in contravention of the Law Society Rules, and carried out with a deceitful purpose.

...

596...The Member's breach of the imposed conditions was a breach of his duty to the public, as well as a breach of obligations as a governable member of the Law Society. The convictions for failing to respond to client, to other lawyers, and the failure to meet trust conditions were further evidence of his ungovernability. The citations for failing to serve clients support disbarment.

597. Given the repetitive and persistent conduct of the accused towards the Law Society representatives and process, the Panel cannot have any confidence that the future with this Member, were he to be reinstated, would be any different... The Member's conduct was purposeful and self-indulgent. It also had a quality of arrogance to it, in that it was conduct performed in the face of Benchers imposed conditions on his practice which were ignored in strong measure. In the face of this persistent and intentional conduct, what confidence could the Law Society, the public, and other Members have in the Member should he be permitted to practice? The answer we have unanimously come to is that confidence in the integrity of his continued practice would be misplaced.

598. We order that the Member be disbarred.

33. These are serious matters that point to ungovernability of this Member including a persistent willingness of Mr. Broda to act in direct disobedience of directions given to him by his regulator.
34. In our view, while Mr. Broda had a right to appeal the disbarment decision made by the Hearing Committee, that right came with a responsibility to pursue his appeal with reasonable dispatch. He did not do so, acted in contravention of express directions given to him on various occasions, and has again shown by his conduct that he is ungovernable. It is not in the public interest to allow repeated non-compliance with directions from a regulator to go without accountability brought home to Mr. Broda. In our judgment, the request of Mr. Broda for a further adjournment could not in any way be justified, and we accordingly have no hesitation in deciding that the appeal should be dismissed.

Dated at the City of Edmonton, in the Province of Alberta this 17th day of June, 2016.

Donald R. Cranston, Q.C.

Glen Buick

Brett Code, QC

Robert Dunster

Dennis Edney, QC

Julie Lloyd, QC

Robert Armstrong, QC

Louise Wasylenko