

**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 CHRISTOPHER TAHN
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Hearing Committee

Margaret Unsworth, QC – Chair and Bencher
Louise Wasylenko – Lay Bencher
Martha Miller – Adjudicator

Appearances

Shanna Hunka – Counsel for the Law Society of Alberta (LSA)
Dennis McDermott, QC – Counsel for Christopher Tahn

Hearing Dates

November 19-20, 2020
January 11-13, 2021

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT – PRELIMINARY APPLICATIONS

Introduction

1. On November 19, 2020, the Hearing Committee (Committee) convened a hearing into the conduct of Christopher Tahn, based on 14 complaints and a total of 69 citations. Mr. Tahn was present for the hearing and was represented by Mr. Dennis McDermott. The Law Society of Alberta (LSA) was represented by Ms. Shanna Hunka.
2. At the outset of the hearing, on prior Notice, Mr. Tahn brought two preliminary applications seeking a stay of this matter (1) challenging the composition of the panel and (2) arguing breach of procedural fairness, namely undue delay plus lack of disclosure.
3. The hearing of the merits of the citations was delayed pending these challenges. This Report provides the determination and direction of the Committee in relation to those applications.

4. The Committee dismissed the first application challenging the panel composition orally during the first day of argument and these reasons summarize that decision.
5. The remaining days of hearing were evidence and argument for a stay of the citations based on arguments of delay and lack of disclosure. The Committee dismisses that application for the reasons that follow.

Jurisdiction and Preliminary Matters

6. Exhibits 1, 2, 3, and 4 consisting of the Letter of Appointment of the Hearing Committee (June 10, 2020), the Notice to Attend (October 30, 2020), the Certificate of Status (November 13, 2020) and the Letter of Discretion (November 13, 2020) established the jurisdiction of the Committee.

Challenge to the Composition of the Panel

7. Mr. Tahn sought a stay based on the composition of the Committee.
8. The Chair of this Committee is a lawyer and a Bencher with the LSA. Another Committee member is a lay Bencher appointed by the Minister of Justice and Solicitor General of Alberta pursuant to section 11 of the *Legal Profession Act* (the *Act*) and is not a lawyer. The third member of the Committee is neither a Bencher nor a lawyer but has been appointed an adjudicator by the LSA.
9. The background of each Committee member is publicly available on the LSA website.¹
10. Mr. Tahn argued that the Committee composition is open to challenge because only one of its members is a lawyer. He argued that the LSA is trying to deprive him of his profession and he is therefore entitled to be judged by his peers, which should at a minimum constitute a majority of the Committee.
11. Mr. Tahn referred to no authority for this argument except, peripherally, the Supreme Court of Canada decision of *Pushpanathan* where the court confirms deference to an administrative panel because of their expertise in the area². He argued he cannot be sure the Committee has the necessary expertise.
12. Mr. Tahn also argued a breach of the principles of fundamental justice guaranteed in section 7 of the *Canadian Charter of Rights and Freedoms* (the *Charter*). He suggested, as well, a breach of section 11 of the *Charter*. No authority was presented for either argument.

¹ <https://www.lawsociety.ab.ca/regulation/hearings/adjudicator-directory/>

² *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 778 (SCC) at page 1008, paragraphs 35-38.

13. The LSA responded by referring the Committee to section 59 (1)(b) of the *Act* and argued it is a full response to the arguments raised by Mr. Tahn. LSA counsel noted that the LSA has been using publicly appointed adjudicators since 2016.
14. The LSA did not respond to the *Charter* arguments except to argue that the case law is clear section 11 does not apply to administrative bodies. LSA counsel offered to provide further detailed response on the *Charter* if the Committee wished.
15. The Committee dismissed the challenge to the composition of the Committee in orally on November 19, 2020 for the following reasons:
 - Section 1(f) of the *Act* defines a lay Bencher as a Bencher for purposes of the *Act*;
 - Section 59(1)(b) of the *Act* provides that this Hearing Committee must consist of “3 or more persons, at least one of whom must be a Bencher or former Bencher”;
 - This Committee consists of two Benchers and thus meets the statutory requirements of composition;
 - There is no authority for the proposition advanced by Mr. Tahn. Both the non-lawyer members on this Committee have significant experience as Committee members and our lay Bencher has chaired and written the decision of at least one panel. Neither their experience nor the statute are challenged;
 - There is no legal support for the *Charter* arguments raised:
 - Section 11 of the *Charter* applies to persons ‘charged with an offence’ and does not apply to administrative proceedings or to this Committee³;
 - There is no principle of fundamental justice in section 7 of the *Charter* stating that a majority of Committee members must be lawyers. To establish a breach of section 7 the challenger must prove first a breach of life, liberty and security of the person. That has not happened here. Administrative decisions are not a breach of life, liberty or security⁴. Secondly, even if a breach of life, liberty or security of the person is established, that breach does not constitute a breach of section 7 of the *Charter* if it is in accordance with principles of fundamental justice.
16. The challenge to the composition of the panel is dismissed.

Application for a stay

Undisputed facts

17. On May 15, 2018, another Hearing Committee found Mr. Tahn guilty of 24 of 25 citations based on an executed Statement of Admitted Facts and Admissions of Guilt. That Hearing Committee agreed with the joint submission as to sanction, suspending Mr. Tahn for 15 months effective July 1, 2018. “The delay would allow Mr. Tahn to transition

³ *R. v. Wigglesworth*, [1987 CanLII 41 \(SCC\)](#).

⁴ *Robertson v. Edmonton (City) Police Service (#1)*, [2002 ABQB 368](#).

some of his files to other counsel, return other files to clients and complete the rest of his files, such that a custodian for his practice would not be required”⁵

18. On August 16, 2018, the LSA received an *ex parte* Order of Custodianship Signed by the Honourable Justice M. Hollins. Justice Hollins specified in the Order that its operation was stayed until noon on August 17, 2018 “to facilitate discussion with Mr. Hepner”, then counsel for Mr. Tahn [Exhibit 13].
19. The LSA, on behalf of the custodian, pursuant to the Order, removed all hard files and two computers from Mr. Tahn [Exhibit 14 and Evidence of C. Tahn]. All client files, along with two desktop computers have been in the possession of the LSA since implementation of the custodianship [Exhibits 14 and 23].
20. The Custodianship Order has not been contested nor has a variance been sought.
21. The current proceeding involves 14 complaints and 69 citations arising from those 14 complaints. The details of the citations are not relevant for this stay application.
22. The complaints are generally referred to in four groupings:
 - The first group are complaints 1-4. Nine citations based on these four complaints were directed by Conduct Committee on December 13, 2017 [Exhibits 6, 7 and 17].
 - The second group are complaints 5-10. Forty-seven citations were issued by Conduct Committee on May 15, 2018 in relation to these six complaints [Exhibits 6, 7 and 30].
 - Complaints 11 and 12 are the third group of complaints. Seven citations were issued by Conduct Committee on September 17, 2018 based on these two complaints [Exhibits 6 and 7].
 - The final group is complaints 13 and 14 with three citations issued on each, June 18 and June 28, 2019 [Exhibits 6 and 7].
23. There are eight complaints still outstanding from 2018 [Exhibits 8 and 9]. The LSA has said “No final determination has been made in these matters as the Law Society is awaiting the outcome of the current discipline proceedings” [Exhibit 9].

Delay

24. Mr. Tahn gave evidence on both the delay and the lack of disclosure challenges.
25. His evidence on delay was that:
 - Although he was aware of the complaints, he did not know of the citations until they were posted on the LSA website sometime in the fall of 2018;

⁵ *Law Society of Alberta v. Tahn*, [2018 ABLs 10](#) paragraph 17. [Exhibit 18]

- Although there were pre-hearing conferences (PHCs) from June 2018 well into 2020, he rarely knew they were coming up, never saw copies of the PHC reports and never attended any of the PHCs until he retained his current counsel in April or May 2020;
 - He had no knowledge of any delay concerns and was unaware that an Agreed Statement of Facts was being prepared by LSA counsel;
 - He first saw the proposed Agreed Statement of Facts around December 19, 2019 and by April 2020 was being pressured to respond but could not as all his records were under the control of the custodian.
26. He acknowledged being at a meeting about one month before the May 15, 2018 hearing and described it as an ambush. His evidence was that the LSA was trying to get him to agree to a disbarment. He did not mention discussion of the current citations at that meeting nor did he note the presence of his counsel Mr. Hepner.
27. Karl Seidenz was LSA hearing counsel throughout the PHCs leading up to the May 15, 2018 hearing and continued in that capacity until September 2020 when current LSA counsel took on the file. He was called as a witness on this stay application by the LSA.
28. During the entire time leading up to the May 15, 2018 hearing Mr. Seidenz dealt with Alain Hepner who was counsel for Mr. Tahn. Mr. Hepner continued as counsel on the current matter until March 2020 when Mr. McDermott became Mr. Tahn's counsel.
29. The February 7, 2018 PHC Report for the May 15, 2018 hearing [Exhibit 12] states that Mr. Seidenz and Mr. Hepner jointly asked the PHC Chair to consolidate the first four complaints in the current matter with those to be dealt with on May 15, 2018. The PHC Chair declined. LSA counsel argues that it was clear counsel for Mr. Tahn was aware of the first four complaints in this matter and the relevant citations.
30. An email from Mr. Hepner to Mr. Seidenz summarizes a meeting that was held on April 25, 2018 [Exhibit 40]. Mr. Seidenz identified that the purpose of this meeting was to finalize the Agreed Statement of Facts for the May 15, 2018 hearing. His evidence was that Mr. Hepner and Mr. Tahn were both present at the meeting. LSA notes that the email specifically refers to other citations.
31. Mr. Seidenz referred to the regular PHCs held in relation to the current matter from July 2018 to December 2019. During that time period additional citations were issued until there were the current 69. Mr. Seidenz finalized an Agreed Statement of Facts in December 2019 and finished disclosure.
32. The LSA argues that these PHC reports reveal Mr. Hepner, counsel for Mr. Tahn, was present at every PHC and not only consented to having resolution of the citations postponed pending an Agreed Statement of Facts but encouraged same.

33. Mr. Hepner was called as a witness for the LSA. His evidence was:
- He attended all PHCs on behalf of his client and telephoned Mr. Tahn after each PHC to advise on what happened;
 - He was aware the LSA was working on an Agreed Statement of Facts and encouraged this as a way to streamline the process;
 - He had no objection to the time it took;
 - At the April 2018 meeting, both he and his client were in attendance. There was discussion at that meeting of some upcoming 40 or so citations. Immediately following that meeting, he went with his client to discuss matters further. There is no doubt, he says, that Mr. Tahn knew of at least 40 citations which are before this panel.
34. The basic position of the LSA is that there was no delay given the complexity of the facts and the number of citations. If there was delay, it was waived by Mr. Hepner as counsel for Mr. Tahn until January 2020. After that, any delay is attributable to Mr. Tahn, who had the Agreed Statement of Facts but never responded or commented back to the LSA.

Disclosure

35. Mr. Tahn's evidence as it relates to his argument to lack of disclosure was:
- The Custodianship Order is directly contrary to his agreement with LSA;
 - He did not want his practice wrapped up and intended to have some semblance of a practice remaining once his suspension ended;
 - He disputes the rationale for the Custodianship Order outlined in the Armeneau Affidavit filed in support of the Order [Exhibit 19];
 - By July 1, 2018 his paralegal was ensuring clean up of his files under another law firm;
 - His computers, seized under the Custodianship Order, have all the records relating to the current 14 complaints;
 - In addition, some materials relating to the 14 complaints were paper only;
 - He has never been able to access any material and cannot reply to the 14 complaints as all material is with the custodian;
 - He first saw a proposed Agreed Statement of Facts around December 19, 2019 and by April 2020 was being pressured to respond but could not as all his records were under the control of the custodian;
 - In about April 2020, he received access to the LSA share site of disclosure documents, which then was in excess of 10,000 pages;
 - In August 2020, he realized some material was missing from the disclosure package, including some psychological reports which had been in hard copy only;
 - He first expressed his concern about disclosure in September 2020 and was told he could attend at the custodian's office at any time to look at the computers, but the custodian never seemed to have time and he gave up asking.

36. In brief, Mr. Tahn argues that he never consented to nor was he given Notice of the Custodianship Order and the result of the Order is that he cannot access files to respond to the current complaints. He argues that he should not have to attend at the LSA office but should be able to take his computers.
37. The evidence of Mr. Seidenz for the LSA was that there was disclosure of approximately 23,000 pages which was served on Mr. Hepner and then provided to Mr. McDermott, counsel for Mr. Tahn at all relevant times.
- Disclosure on the first four complaints was made to Mr. Hepner April 20, 2018 [Exhibit 43 and 44];
 - Disclosure on the second set of complaints (complaints 5-10) was made to Mr. Hepner January 29, 2019 [Exhibit 43 and 45];
 - Disclosure on the third set of complaints (complaints 11 and 12) was made to Mr. Hepner January 29, 2019 [Exhibit 43];
 - Disclosure on the fourth set of complaints (complaints 13 and 14) was made to Mr. Hepner December 2, 2019 [Exhibit 43].
38. In relation to Mr. Tahn's access to materials formerly held by the custodian, Mr. Seidenz said Mr. Tahn was welcome at any time to come to the LSA office and go through either or both of his hard files and his computers. Mr. Tahn and his counsel have known this for some time but have never availed themselves of the opportunity.
39. Ms. Armeneau gave evidence for the LSA on matters surrounding the Custodianship Order:
- She swore the Affidavit in support of the Custodianship Order;
 - The LSA proceeded *ex parte* under the Act but did give a courtesy email to Mr. Hepner stating they were proceeding [Exhibit 52];
 - Mr. Hepner did not appear in court and the Order was suspended until noon the following day to allow a discussion;
 - She does not know precisely what property was taken from Mr. Tahn pursuant to the Order but would not find it atypical to have hard files and computers taken. The Order granted allows the custodian to take both.
40. The LSA argues there has not been lack of disclosure. The disclosure has been extensive, Mr. Tahn has never identified anything he thinks is missing and has never availed himself of the opportunity to attend at the LSA office to review his hard files or his computers for anything he feels is missing.

Analysis and Decision

Delay

41. The argument advanced by Mr. Tahn was that the time period between the dates of the complaints and the current hearing alone, and without more, constitutes unreasonable delay. Complaint number 13 was 31 months between the receipt of the complaint and November 19, 2020 (the least amount of time) whereas the time period between the first complaint and November 19, 2020 was 49 months (the longest time period). All other complaints fell within 32 and 45 months 'delay' [Exhibit 11].
42. Mr. Tahn made no comment on the cause of the alleged delay whereas the evidence and argument of the LSA was directed toward establishing that any delay was not inordinate and that counsel for Mr. Tahn throughout consented to any delay. For the period of January 2020 to November 2020, when this hearing was scheduled to start, the LSA argues the delay is attributable solely to Mr. Tahn.
43. Mr. Tahn ended his argument by stating that the delay was caused by the LSA because they collected and disclosed over 23,000 pages of documents.
44. Mr. Tahn referred the Committee to the *Abrametz* decision from the Saskatchewan Court of Appeal as an example of delay in a Law Society context but did not tie the rationale in that case to the facts before us⁶.
45. As noted by the LSA, *Abrametz* does not establish new law in determination of delay in the administrative tribunal context. The leading decision on delay in the administrative context is *Blencoe v. British Columbia (Human Rights Commission)* and it is the principles in *Blencoe* which must be applied here⁷.
46. The *Blencoe* test for what constitutes delay was succinctly stated by the Court:

The determination of whether a delay has become inordinate depends on the nature of the case and its complexity, the facts and issues, the purpose and nature of the proceedings, whether the respondent contributed to the delay or waived the delay, and other circumstances of the case. As previously mentioned, the determination of whether a delay is inordinate is not based on the length of the delay alone, but on contextual factors, including the nature of the various rights at stake in the proceedings, in the attempt to determine whether the community's sense of fairness would be offended by the delay⁸.

⁶ *Abrametz v. The Law Society of Saskatchewan*, [2018 SKCA 37](#).

⁷ *Blencoe v. British Columbia (Human Rights Commission)*, [2000 SCC 44 \(CanLII\)](#).

⁸ *Blencoe*, paragraph 122.

47. The Committee has concerns about the length of time it took the LSA to get these matters to hearing and the fact that there seemed to be no effort made to get these citations to hearing before the end of the 15-month suspension, which ended September 2019.
48. That said, the *Blencoe* test is clearly not mere passage of time. Here the LSA initially had four complaints but over a period of time more complaints were made and more citations issued. Counsel for the LSA and Mr. Tahn continued to discuss the possibility of an Agreed Statement of Facts on all citations. Counsel for Mr. Tahn specifically waived the passage of time as the LSA worked on some cohesive way of addressing not only the 69 citations but also the thousands of pages of disclosure made by the LSA to address the citations.
49. Mr. Tahn suggests that the scope of the disclosure by the LSA was the cause of delay. The Committee does not accept this suggestion. Disclosure in relation to the 69 citations did not arrive all at once but was served on Mr. Tahn's counsel in four groups from April 2018 to December 2019. Notwithstanding this period of time, Mr. Hepner and Mr. Tahn both gave evidence that they have not looked at the disclosure. Current counsel for Mr. Tahn received all the disclosure at some point after he was retained yet he too says to the Committee that he has not reviewed any of the disclosure.
50. The Committee dismisses the application for a stay based on delay for the reasons given.

Disclosure

51. Much of the argument by Mr. Tahn about lack of disclosure is that there should never have been a Custodianship Order, that the *Act* and the Order do not allow seizure of computers, and that there is no reason the computers cannot be returned to Mr. Tahn.
52. None of these arguments relate to the challenge of failure to disclose. Mr. Tahn never challenged the Order nor sought a variance and those are his remedies. If he is of the view that the legal position of the LSA is wrong and his computers should not have been seized, then this Committee has no jurisdiction. The Courts are the proper body to interpret or vary the Order.
53. Mr. Tahn argues that the amount of disclosure caused delay yet he argues that the disclosure has been inadequate.
54. Mr. Tahn has not identified one document which he says is not disclosed.
55. The LSA has told him many times that he can have full access to his computers and hard files yet Mr. Tahn has not availed himself of that opportunity. He disagrees with the LSA that he cannot take the computers off site, but again this is the legal interpretation

of the *Act* and the Order taken by the LSA. To challenge, Mr. Tahn needs to attend court.

56. The Committee dismisses the application for a stay based on lack of disclosure for the reasons given.

Concluding Matters

57. The LSA can continue with the hearing on the citations commencing February 22, 2021 at 9:30 am.
58. The exhibits and this report will be available for public inspection, including the provision of copies of exhibits for a reasonable copy fee, except that identifying information in relation to persons will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated February 1, 2021.

Margaret Unsworth, QC

Louise Wasylenko

Martha Miller