Court of Appeal for Saskatchewan

Docket: CACV3371

Citation: *Abrametz v The Law Society of Saskatchewan*, 2019 SKCA 21

Date: 2019-02-22

Between:

Peter V. Abrametz

Applicant/Appellant
(Applicant)

And

The Law Society of Saskatchewan

Respondent/Respondent
(Respondent)

Before:	Leurer J.A. (in Chambers)
Disposition:	Application granted
Written reasons by:	The Honourable Mr. Justice Leurer
On Application From: Application Heard:	2019 SKLSS 2, Regina February 20, 2019
Counsel:	Gordon J. Kuski, Q.C. and Amanda Quayle for the Applicant/Appellant Timothy F. Huber for the Respondent/Respondent

Leurer J.A.

I. INTRODUCTION

[1] On January 10, 2019, a hearing committee of the Law Society of Saskatchewan [Law Society] found Peter Vincent Abrametz guilty of conduct unbecoming of a lawyer (*Law Society of Saskatchewan v Abrametz*, 2019 SKLSS 2). The hearing committee subsequently ordered Mr. Abrametz to be disbarred and imposed an award of costs [penalty order].

[2] Mr. Abrametz has appealed the penalty order, as well as decisions of the hearing committee that preceded it. Mr. Abrametz applies for an order pursuant to s. 56(4) of *The Legal Profession Act, 1990*, SS 1990-91, c L-10.1 [*LPA*], staying the penalty order pending the outcome of his appeal. He proposes that the stay be subject to conditions that will limit any perceived risk to the public and ensure that his appeal is prosecuted promptly. The Law Society opposes Mr. Abrametz's application. It says, in the course of its argument, that the Court has no jurisdiction to impose conditions on any stay that it may order.

[3] I conclude that a stay of the penalty order should be granted. I also conclude that the Court has jurisdiction to impose conditions on the stay and, in the circumstances of this case, conditions are appropriate. My reasons for reaching these conclusions, as well as my specific order, follow.

II. BACKGROUND AND PROCEDURAL HISTORY

[4] Mr. Abrametz was admitted as a member of the Law Society in 1973. His practice is focused on representing claimants under *The Automobile Accident Insurance Act*, RSS 1978, c A-35.

[5] The Law Society began an investigation concerning Mr. Abrametz in 2012. In February 2013, and then again in 2014, the Law Society's Conduct Investigation Committee [CIC] issued notices of its intention to suspend Mr. Abrametz on an interim basis pending the outcome of its investigation and any resulting disciplinary proceedings. After each notice, the Law Society agreed that Mr. Abrametz could continue his practice under certain conditions. There are

14 conditions in all. Broadly speaking, they place Mr. Abrametz under the supervision of an identified member of the Law Society and put controls over Mr. Abrametz's trust account. Finally, the conditions provide mechanisms to allow the Law Society to monitor Mr. Abrametz's practice. There is no suggestion of a repetition of any misconduct on Mr. Abrametz's part since these conditions were imposed.

[6] In July 2015, the CIC recommended that a hearing committee be appointed to determine if Mr. Abrametz was guilty of conduct unbecoming in respect to certain matters, while other matters continued under investigation. The allegations are serious and relate to Mr. Abrametz's management of his trust account, although his counsel emphasizes that there is no evidence of a defalcation or misappropriation.

[7] In March 2016, Mr. Abrametz applied to stay or adjourn the discipline hearing until the investigation into the remaining matters concluded. The decision by the hearing committee to refuse this adjournment is one of the issues raised by Mr. Abrametz's present appeal. Another is an allegation that Mr. Abrametz's *Charter* rights have been breached.

[8] The complaint against Mr. Abrametz was heard over six days between May and September 2017.

[9] On January 10, 2019, the hearing committee determined that Mr. Abrametz was guilty of professional misconduct in respect to four charges. The penalty order issued on January 21, 2019.

III. ISSUES

[10] There are three issues for me to determine:

(a) What test should I apply when determining Mr. Abrametz's application for a stay of enforcement of the penalty order?

(b) Is it open to the Court to impose conditions on the grant of a stay?

(c) Should a stay be granted and, if so, on what conditions?

IV. ANALYSIS

A. What test should I apply when determining Mr. Abrametz's application for a stay of enforcement of the penalty order?

[11] A member of the Law Society may appeal a decision of a hearing committee or penalty imposed by a hearing committee to this Court pursuant to s. 56(1) of the *LPA*. Sections 56(3) and (4) speak to the effect of a member filing a notice of appeal, and state as follows:

> **56**(3) Subject to subsection (4), the commencement of an appeal to the Court of Appeal does not stay the effect of a penalty assessed or requirement imposed by the hearing committee.
>
> (4) An appellant, on five days' notice to the executive director, may apply to the Court of Appeal for a stay of proceedings pending the disposition of the appeal.

[12] I agree with the Law Society that it is appropriate to test Mr. Abrametz's application by applying the three-part test established in *RJR-MacDonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311 [*RJR-MacDonald*]. Some courts have specifically applied the *RJR-MacDonald* criteria in the context of an application for a stay pending the appeal of a professional disciplinary decision. (See, for example: *Sazant v College of Physicians and Surgeons of Ontario*, 2011 CarswellOnt 15914 (WL) (CA) at para 6 [*Sazant*]; *Walton v Law Society of Upper Canada*, 2015 ONSC 2480 at para 9 [*Walton*].) Mr. Abrametz referred in his argument to cases that have applied analogous considerations but without explicit reference to the *RGJ-MacDonald* test. (See, for example: *Cameron v Saskatchewan Institute of Agrologists*, 2016 SKQB 313 at para 30; *Bassett v College of Physicians and Surgeons of Saskatchewan* (1984), 35 Sask R 148 (QB) at para 30.) However, Mr. Abrametz does not contest the general applicability of the *RJR-MacDonald* test.

[13] Restating the *RJR-MacDonald* test to the specific circumstances of this case, it invites consideration of the following questions:

(a) Does Mr. Abrametz's appeal raise a serious question on its merits?

(b) Will Mr. Abrametz suffer irreparable harm if a stay of proceedings is refused?

(c) Will the Law Society or the public at large on the one hand, or Mr. Abrametz on the other hand, suffer greater harm from the granting or refusal of a stay pending a decision on the merits of Mr. Abrametz's appeal?

[14] I consider it is unnecessary to further refine the applicable test in order to decide this application. I am, however, mindful that there is an interrelationship among the three parts of the *RJR-MacDonald* test. In this regard, Richards J.A. (as he then was) explained in *Mosaic Potash Esterhazy Limited Partnership v Potash Corporation of Saskatchewan Inc.*, 2011 SKCA 120, 377 Sask R 78 [*Mosaic*], as follows:

> [113] In the interest of clarity, it may be useful to recapitulate the basic points which have been developed in the course of these reasons and to summarize the approach a judge should typically take when deciding whether to grant interlocutory injunctive relief. This can be done as follows:
>
> > (a) The judge should normally begin with a preliminary consideration of the strength of the plaintiff's case. The general rule in this regard is that the plaintiff must demonstrate a serious issue to be tried, *i.e.* the plaintiff must have a claim which is not frivolous or vexatious. If the plaintiff raises a serious issue to be tried, it is necessary for the judge to turn to the matters of irreparable harm and balance of convenience.
> >
> > (b) Irreparable harm is best seen as an aspect of the balance of convenience. The general rule here is that the plaintiff must establish at least a meaningful doubt as to whether the loss he or she might suffer before trial if an injunction is not granted can be compensated for, or adequately compensated for, in damages. Put another way, the plaintiff must demonstrate a meaningful risk of irreparable harm. If this is done, the analysis turns to the balance of convenience proper.
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> > (c) The assessment of the balance of convenience is usually the core of the analysis. In this regard, the relative strength of the plaintiff's case, the relative likelihood of irreparable harm, and the likely amount and nature of such harm will typically all be relevant considerations. Depending on the particulars of the case, strength in relation to one of these matters might compensate for weakness in another. Centrally, the judge must weigh the risk of the irreparable harm the plaintiff is likely to suffer before trial if the injunction is not granted, and he or she succeeds at trial, against the risk of the irreparable harm the defendant is likely to suffer if the injunction is granted and he or she prevails at trial. That said, the balance of convenience analysis is compendious. It can accommodate a range of equitable and other considerations.
> >
> > (d) The judge's ultimate focus in considering whether to grant interlocutory injunctive relief must be on the overall equities and justice of the situation at hand.

B. Is it open to the Court to impose conditions on the grant of a stay?

[15] While the *LPA* gives authority to the Court to stay proceedings, it contains no express provision authorizing the Court to impose conditions to a stay. The Law Society points out that this stands in contrast to Ontario's *Law Society Act*, RSO 1990, c L.8, which provides as follows:

> **Stay**
>
> **49.36** (1) An appeal to the Appeal Division does not stay the decision or order appealed from, unless, on motion, the Appeal Division orders otherwise.
>
> **Terms and conditions**
>
> (2) In making an order staying a decision or order, the Appeal Division may impose such terms and conditions as it considers appropriate on the licence of a person who is subject to the decision or order.

[16] The Law Society argues that the "apparent inability [in the *LPA*] to impose conditions to safeguard the public must be a factor in assessing the public interest during the third prong of the test relating to balance of convenience". The Law Society further asserts that "no terms or conditions would be able to provide the appropriate safeguards to the public in this case considering, among other things, the damage that will be done to the reputation of the Law Society if the Appellant resumes practice for an extended period of time during the appellate process".

[17] The Law Society provides no authority to support its argument that the drafting decisions made by the Ontario Legislature are relevant to a proper interpretation of this province's legislation, let alone authority that the *LPA* should be interpreted as it suggests. I therefore approach the issue as one of first impression.

[18] The Legislature directs that the *LPA*, like all provincial statutes, "shall be interpreted as being remedial and shall be given the fair, large and liberal construction and interpretation that best ensure[s] the attainment of its objects": *The Interpretation Act, 1995*, SS 1995, c I-11.2, s 10. The Law Society could identify no purpose that would be served if s. 56(4) of the *LPA* was interpreted as providing the Court with binary authority to say only "yes" or "no" to a request for a stay of proceedings. However, it recognizes that a stay is a discretionary remedy. Rather than understanding it to provide a blunt knife, it is more in keeping with the purpose of s. 56(4) to interpret it as allowing the court to calibrate competing interests through the imposition of conditions in conjunction with the grant of a stay.

[19] An interpretation of s. 56(4) that allows for the imposition of conditions to the *grant* of a stay is also consistent with that given by this Court to the analogous authority to *lift* a stay of enforcement of a money judgment pursuant to Rule 15 of *The Court of Appeal Rules*. In *Tekarra Properties Ltd. v Saskatoon Drug and Stationery Co. Ltd.* (1985), 37 Sask R 286 (CA), an appeal was taken from the imposition of conditions to an order lifting a stay of proceedings pursuant to this Rule. The argument was that the Rule did not expressly allow for the imposition of conditions. This submission was tersely rejected by a five-member panel of this Court, writing *per curiam*:

> [5] … The Rule provides that apart from the execution of any one of the four kinds of judgment specifically enumerated, a stay is automatic unless otherwise ordered by a judge of the Court of Appeal. The power to remove the stay is derived from these underlined words. Is it "otherwise ordered" if a judge directs the stay shall be removed but only if the appellant performs a certain act or agrees to a certain thing? I think it is. The power to remove the stay is one of discretion. To exercise a discretion is to choose responsibly. The power of responsible choice can have meaning only if the available choices are capable of producing a responsible result. To give a person only two choices (e.g. to do something or not to do it), neither of which is capable of producing a responsible result, and to decline to give him a third, a fourth and other choices which have that capability, is not to give him the power of responsible choice. The third, fourth and other choices amount to the power to impose conditions. It follows that the power of discretion — the power of responsible choice — necessarily includes the power to impose conditions.
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> [6] To view the Rule from a different but similar perspective, this picture presents itself. In many situations a stay is clearly unjust to one side, but to remove the stay is clearly unjust to the opposite side. What is just is something in between. If that something is outside the reach of the Rule, then the Rule becomes an instrument of injustice — a purpose one can confidently say was not intended by the promulgators of the Rule. Unless the language of the Rule inexorably forces such a construction, the Rule should not be read that way. There is nothing, in my view, in the language of the rule that forces such an undesirable and unintended result.
>
> [7] I turn now to the next question: the limits upon the power to impose conditions. The power, as noted, is one of discretion, an unfettered discretion. The only limits are those of appropriateness and justice.
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> (Underlining in original)

[20] I interpret the authority conferred pursuant to s. 56(4) of the *LPA* in the same way. The Court will be better able to calibrate the balance of the competing interests at play pursuant to the *RJR-MacDonald* criteria if it is able to impose conditions in conjunction with the grant of a stay.

C. Should a stay be granted and, if so, on what conditions?

1. Does Mr. Abrametz's appeal raise a serious question on its merits?

[21] Mr. Abrametz argues he has a meritorious appeal which, if successful, will result in this Court setting aside the finding that he is guilty of conduct unbecoming or, if unsuccessful to the full extent, will result in a penalty that is less severe than disbarment.

[22] The Law Society argues that the findings of the hearing committee are presumed to be correct (in law and on the facts). However, it also concedes in its argument that the threshold Mr. Abrametz must cross on the first element of the *RJR-MacDonald* test is low. Specifically, it states that Mr. Abrametz "need not demonstrate that the appeal will likely succeed, only that it raises a serious issue. This question is sometimes framed as whether the appeal is an 'arguable' one". While the Law Society's argument contains a significant discussion of the complaints against Mr. Abrametz, later, in the context of discussing Mr. Abrametz's grounds of appeal, the Law Society "concedes that it cannot be said that none of the issues raised [in Mr. Abrametz's notice of appeal] represent 'arguable' issues to be tried on appeal".

[23] Mr. Abrametz's appeal is ongoing. At this preliminary juncture it is inappropriate and, in the context of the rather low threshold for testing the merits and the concession given by the Law Society, it is unnecessary for me to say anything more about this issue. Mr. Abrametz's application passes the first threshold of the test.

2. Irreparable harm to Mr. Abrametz

[24] In substance, Mr. Abrametz argues that if a stay is not granted, and he is prohibited from practice pending the appeal, he will be deprived of the fruits of his victory. His argument focuses on unquantifiable, and unrecoverable, economic costs.

[25] Mr. Abrametz says, and common sense suggests, he will suffer a significant loss of income if a stay is not granted. He has not purported to quantify this loss, but he has provided de-

identified particulars of real clients he will have to pass along to other lawyers during the period he is unable to practice. Although the Law Society challenges the adequacy of this evidentiary record, in my respectful view, Mr. Abrametz has created a sufficient evidentiary basis to establish that if he is subject to an immediate order not to practice he will be deprived of significant earnings from his practice that he will not be able to recover in the future.

[26] The Law Society also argues that the evidence does not support the proposition that Mr. Abrametz's "practice will be forever destroyed if a stay is not granted". It characterizes as "speculative" the suggestion that Mr. Abrametz could not rebuild his practice.

[27] I do not draw the same line as the Law Society does between what is speculation and what is common sense. Even accepting that Mr. Abrametz's evidence on this point is thin, the Law Society's argument speaks only to the ability of Mr. Abrametz to *mitigate* loss after the outcome of his appeal is known. It does not address at all the loss that Mr. Abrametz will have suffered because of his inability to practice until the appeal is decided and the inevitable time it will take to rebuild his practice after his right to practice is reinstated, assuming that is the outcome of the appeal. Not only is the full extent of this loss incalculable, but, in any event, it is unrecoverable unless there has been a malicious or otherwise wrongful prosecution, which is in no way suggested.

3. Balance of convenience

[28] Mr. Abrametz seeks to add additional factors onto the scale of the balance of the competing "conveniences". He notes that an employee will be out of work if he is not able to practice. The point seems to be that he will need to lay the employee off if a stay is not granted, although it is not clear whether this will be a loss to the employee or a cost to Mr. Abrametz; for example, because he will be subject to severance obligations. Neither side referred me to authority relating to the weight to be put on this factor and, given the limited evidence provided, I put the argument aside.

[29] Mr. Abrametz also points to clients to whom he will not be able to provide professional service. He emphasizes his specialized practice and the limited number of practitioners in the province with expertise in his practice area. He adds that, if he faces immediate disbarment, even

if other lawyers can pick up his files, he has a number of matters scheduled in the months ahead that will inevitably require adjournments to the prejudice of his clients.

[30] I agree with the Law Society that there are other lawyers who can assume Mr. Abrametz's practice, but I do not completely discount the harm to members of the public if there is a need to hand off the files Mr. Abrametz has been handling. This harm includes delay and also expenses as new lawyers are engaged. All of this may also damage the reputation of the profession, particularly if it is later determined that Mr. Abrametz should not have been suspended at all.

[31] The Law Society argues principally that a broader public interest weighs heavily against whatever risk of prejudice Mr. Abrametz can claim. The Law Society argues, with reference to *Sazant* and *Walton*, that "public confidence in the legal profession and in the Law Society will be severely diminished if the Appellant is allowed to wield appellate delay so as to defeat the Law Society's regulatory process and potentially avoid punishment altogether". The Law Society places particular emphasis on the following passage from *Sazant*:

> **3. Balance of convenience**
>
> [15] Under this part of the test, the court will weigh the interests of Dr. Sazant against those of the public. The public interest goes beyond that of public safety and also includes public confidence in the administration of justice, and in cases such as this, confidence in the disciplinary process of the College.
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> [16] In this case, the interests of Dr. Sazant ultimately come down almost exclusively to his loss of income from his practice of medicine. This must be measured against the weakness of his appeal; the comprehensive and strong reasons of both the Committee and the Divisional Court; and the public interest. The third part of the test favours not granting the stay.
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> [17] *The public confidence in the College's ability to discipline members of the medical profession, in all of the circumstances of this case, weighs against the limited financial interest of Dr. Sazant. These were serious breaches of sexual conduct committed by a medical doctor against young boys. The public has a right to feel confident that the College, in circumstances such as this, will discipline one of its members accordingly and that our courts will respect its decision.*
>
> (Emphasis added by Law Society)

[32] However, each case must be decided in the full light of all circumstances. *Sazant* does not say that in no situation is it inappropriate to grant a stay pending the appeal from a professional licence revocation. Indeed, the procedural history in *Sazant* demonstrates the opposite. In that case, a doctor was found to have engaged in sexual misconduct with young patients, and his

licence was revoked. A judge of the Divisional Court had previously stayed the revocation during the pendency of an appeal. After the Divisional Court dismissed this first appeal, the doctor again appealed, this time to the Ontario Court of Appeal. It was in this context that the doctor, now "almost 76 years old", applied for a stay of the revocation. From this brief narrative, several points of distinction from the present case are obvious: the doctor had already enjoyed the benefit of a stay during one level of appeal; the allegations involved sexual assault of a minor, which very arguably raised higher stakes of public interest; and the grant of a stay to a 76-year-old professional is much more likely to extend a right to practice to the end of the professional's career than in this case.

[33] *Walton* is also distinguishable. That case involved the disbarment of a member of the Law Society of Upper Canada. As the Law Society points out, the court refused to grant a stay of enforcement during an appeal to the Divisional Court. However, the court noted that in the days following the release of the findings of the hearing panel, but before its decision on penalty, the lawyer had diverted funds, an action another judge described as "theft". This, in turn, had generated more complaints and further administrative action by the Ontario law society and the imposition of an "'interlocutory suspension' until the fresh complaints can be investigated". In the context of all of this, it is hardly surprising that the court thought there was a compelling public interest consideration weighing against the granting of a stay.

[34] In my view, although I do not discount the Law Society's concerns, they must be balanced against consequences to third parties if the suspension is immediate and also the irreparable harm that Mr. Abrametz not only might, but which he inevitably *will*, suffer if a stay is not granted but it is later determined that he has a meritorious appeal.

4. Conditions and further analysis

[35] Mr. Abrametz proposes to ameliorate the concerns of the Law Society by continuing his practice under the conditions and undertakings that have been in place since 2013. Mr. Abrametz points out that he has practiced subject to these conditions for almost six years without incident or any demonstrated harm to clients or member of the public. He argues that this should weigh heavily on the scale balancing the competing "conveniences", or perhaps to more accurately

track the metaphor of scales it should take away from the weight of concerns the Law Society expresses.

[36] For its part, the Law Society argues that attaching conditions to Mr. Abrametz's practice after he has been ordered disbarred does not offset the negative public perception, and with it the damage to the reputation of the Law Society and the administration of justice generally, if a person who has been found unsuitable to practice is allowed to carry on his profession.

[37] Respectfully, I am unable to agree that the public is as quickly offended by the deferment of punishment pending an appeal as the Law Society would suggest. Right-minded people will understand that the presumption of innocence the member enjoyed before being found guilty no longer exists, but they will also understand the law provides for rights of appeal and review that may result in a different outcome. In this regard, they will be mindful that a wrong may be committed if someone is punished or subject to an order that is later set aside. Right-minded people will want to ensure that there is no actual risk to the public, or that the actual risk to the public is sufficiently managed while the appeal or review is undertaken. In this case, they will observe that conditions attached to a stay will reasonably achieve this. In short, I do not share the Law Society's concern that, in the circumstances of this case at least, a stay will cause significant harm to the reputation of the Law Society or the administration of justice.

[38] The interests the Law Society protects can be protected by attaching further conditions to the grant of a stay.

[39] Mr. Abrametz has proposed that as a condition to the grant of a stay he will perfect his appeal by May 30, 2019, failing which the Law Society shall have leave to apply on five days' notice to lift the stay. I agree with the appropriateness of an order requiring Mr. Abrametz to perfect his appeal, but to better balance the interests at stake in this matter I would order that he perfect his appeal by April 15, 2019. The Registrar is aware of the benefits of this matter being heard before the summer court recess and has tentatively reserved several dates for this purpose. Counsel should immediately contact the Registrar to agree on a specific date for the hearing. This day will be reserved for the hearing of Mr. Abrametz's appeal, subject to the Law Society's factum being served and filed no later than May 15, 2019, or such later day as may be agreed to by the parties and acceptable to the Registrar. Not only should this ameliorate any possible

perception that Mr. Abrametz is inappropriately exploiting (or "gaming") his right of appeal, but it will be in the control of the Law Society whether the appeal is heard promptly.

[40] Finally, I order that the stay continue only until the hearing of Mr. Abrametz's appeal. It is open to Mr. Abrametz to apply to the full panel presiding at the appeal to continue the stay if judgment is reserved. The panel will have the benefit of having full argument on the underlying merits of Mr. Abrametz's appeal and can consider if this changes the balancing of interests that has led me to conclude that a stay is appropriate.

V. CONCLUSION

[41] For the reasons given, I order as follows:

(a) There shall be a stay of the penalty order until hearing of Mr. Abrametz's appeal;

(b) Mr. Abrametz shall be subject to the same conditions and undertaking that governed his practice prior to the penalty order, or such further and other conditions that may be agreed to in writing by Mr. Abrametz and the Law Society, during the period of the stay;

(c) Mr. Abrametz shall perfect his appeal on or before 4:00 p.m. on April 15, 2019, failing which the Law Society shall have leave to apply on five days' notice to Mr. Abrametz to lift the stay of the penalty order; and

(d) Costs of the application leading to this order shall be in the cause.

"Leurer J.A."

Leurer J.A.