



Law Society of Ontario v. Kim, 2021 ONLSTH 133 (CanLII)

Date: 2021-10-14
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LAW SOCIETY TRIBUNAL HEARING DIVISION

Citation: *Law Society of Ontario v. Kim*, 2021 ONLSTH 133

Date: October 14, 2021

Tribunal File No.: 21H-100

BETWEEN:

Law Society of Ontario

Applicant

- and -

Hee Bum Kim

Respondent

Before: Malcolm M. Mercer (Chair)

Heard: September 17, 2021, by videoconference

Appearances:

Nathan Prendergast, for the applicant

Respondent, not present or represented

KIM – Summary Hearing – Failure to Co-operate – Proceeding in the Absence of the Licensee – The Lawyer was given proper notice and the hearing proceeded in his absence – The Lawyer did not provide any answers to the investigative requests – The panel ordered a one-month definite suspension to follow an indefinite suspension pending compliance.

REASONS FOR DECISION

[1] Malcolm M. Mercer:– In this summary hearing, Hee Bum Kim is alleged to have failed to co-operate with two Law Society investigations by failing to provide prompt and complete responses to the Law Society investigator's requests for information and documents.

[2] There is a third allegation, as follows:

Since March 2021, the Respondent has failed to co-operate with a Law Society investigation by failing to produce information and documents, including books and records, requested by the Investigation Services Department, contrary to s. 49.3(2) of the *Law Society Act* and Rule 7.1-1 of the *Rules of Professional Conduct*.

[3] However, counsel for the Law Society advised that this third allegation does not substantively add to what is alleged in the other two allegations.

[4] Mr. Kim did not attend the hearing. I concluded that he was given proper notice and that the hearing should proceed in his absence.

THE ALLEGED FAILURE TO CO-OPERATE

[5] The evidence at the hearing consisted of an affidavit of the investigator. The investigator's evidence included the following information:

- Investigation of both complaints was authorized on March 19, 2021.
- On April 1, 2021, investigative requests for information and documents in both investigations were sent to Mr. Kim by e-mail to his personal and business e-mail addresses.
- On April 26, 2021, a follow-up request for information and documents in the first investigation was sent to Mr. Kim by e-mail to his personal and business e-mail addresses and by courier to his home and business addresses.
- On April 27, 2021, a follow-up request for information and documents in the second investigation was sent to Mr. Kim by e-mail to his personal and business e-mail addresses and by courier to his home and business addresses.
- On May 18, 2021, a further request for information and documents in both investigations was sent to Mr. Kim by e-mail to his personal and business e-mail addresses and by courier to his home address. The letter was not couriered to his business address as the investigator had information suggesting that the office had been abandoned.
- Mr. Kim has not responded at all.

[6] As the Court of Appeal recently held in *Law Society of Ontario v. Diamond*, 2021 ONCA 255 at para. 67:

... r. 7.1-1 of the *Rules of Professional Conduct* is designed to ensure that there is a complete response and no inordinate delays in investigations by the self-regulated authority. It requires nothing more than prompt and complete responses when requested, which are essential to moving investigations forward. Delays in doing so can only serve to shake the public's confidence in the Law Society's self-regulatory authority ...

[7] The Court of Appeal further held at para. 50 that:

In the end, the test for determining a failure to cooperate with the Law Society's requests, as espoused by the Hearing Division, the Appeal Division, and the Divisional Court, focusses on the determination of a licensee's good faith efforts to cooperate with the Law Society. While articulated slightly differently by the Hearing Division, the Appeal Division, and the Divisional Court, the following considerations emerge from these decisions: (a) all of the circumstances must be taken into account in determining whether a licensee has acted responsibly and in good faith to respond promptly and completely to the Law Society's inquiries; (b) good faith requires the licensee to be honest, open, and helpful to the Law Society; (c) good faith is more than an absence of bad faith; and (d) a licensee's uninformed ignorance of their record-keeping obligations cannot constitute a "good faith explanation" of the basis for the delay.

[8] The evidence is clear, and I find, that Mr. Kim has not provided any answers to the investigative requests made of him. I have no evidence suggesting any reason that he has not done so. I accordingly find that Mr. Kim has failed to act responsibly and in good faith to respond promptly and completely to the Law Society's inquiries and therefore find that he has engaged in professional misconduct for failing to respond to the inquiries described above.

PENALTY AND COSTS

[9] The Law Society seeks an indefinite suspension followed by a one-month fixed suspension, a fixed fine of \$2,000 and a conditional fine of \$2,000.

[10] Mr. Kim does not have a discipline history. In the circumstances, the conventional order is for a one-month definite suspension and an indefinite suspension pending compliance. There is no

reason to not to make these usual orders. For the reasons given in *Law Society of Ontario v. Hans*, 2021 ONLSTH 40, I conclude that the one-month definite suspension should follow the indefinite suspension. As is ordinarily ordered, the one-month suspension will not begin until Mr. Kim is not otherwise suspended in order to ensure that the one-month suspension has a disciplinary effect.

[11] Mr. Kim's licence is currently administratively suspended and has been since June 30, 2021. An indefinite suspension would not immediately deter him from continuing to engage in professional misconduct by failing to co-operate. In these circumstances, a conditional fine is usually ordered to provide current specific deterrence. I conclude that a conditional fine of \$2,000 is appropriate in this case.

[12] If a suspended licensee does not intend to continue to practise, a fixed suspension may have no impact. Where it is reasonable to think that this may be the case, a fixed fine is often ordered. However, Mr. Kim has only been suspended for a relatively short time. Law Society counsel did not press for a fixed fine when I raised my concern that the evidence does not show, one way or the other, whether Mr. Kim will return to practice. I do not consider a fixed fine to be appropriate here.

[13] The Law Society seeks costs in the amount of \$2,053.50. This is a reasonable amount which is below the usual range for costs for an investigation and hearing such as this.

CONCLUSION

[14] For these reasons, I ordered that:

1. The respondent's licence to practise law shall be suspended immediately and continue indefinitely until, to the satisfaction of the Law Society's Executive Director of Professional Regulation or his designate (the Executive Director), the respondent has provided a complete response to the requests made by the Law Society's Investigation Services department in letters dated April 1, 26 and 27 and May 18, 2021.
2. The respondent's licence shall be suspended for one month to follow immediately upon the latter of:
 - a. the end of the suspension ordered at paragraph 1, above; and
 - b. the end of all current or currently pending suspensions of the respondent's licence under Part II of the Act.
3. If the respondent does not satisfy the condition specified at paragraph a by October 18, 2021, he shall pay a further \$2,000 fine.
4. The respondent shall comply fully with the terms of the Law Society's *Guidelines for Lawyers Who Are Suspended or Who Have Given an Undertaking Not to Practise* while suspended pursuant to this order.
5. The respondent shall pay costs to the Law Society in the amount of \$2,053.50 by September 19, 2022. This deadline may be extended by the Law Society in accordance with the by-laws. Interest will accrue on any overdue part of the costs at the rate of 2% per year.



LAW SOCIETY TRIBUNAL
HEARING DIVISION

Malcolm Mercer (Chair)

September 17, 2021

BETWEEN:

Law Society of Ontario

Applicant

and

Hee Bum Kim

Respondent

ORDER – CONDUCT APPLICATION

The Law Society alleged that Hee Kim Bum, 2019, of Toronto, engaged in professional misconduct.

The panel determined that the following allegations were established:

- Since April 1, 2021, the respondent has failed to co-operate with two Law Society investigations by failing to provide a prompt and complete response to the Law Society investigator's requests for information and documents, contrary to s. 49.3 of the Law Society Act (the Act) and Rule 7.1-1 of the Rules of Professional Conduct (the Rules).
- Since April 1, 2021, the respondent has failed to co-operate with a Law Society investigation by failing to produce information and documents, including books and records, requested by the Investigation Services department, contrary to s. 49.3(2) of the Act and Rule 7.1-1 of the Rules.

The panel orders:

1. The respondent's licence to practise law shall be suspended immediately and continue indefinitely until, to the satisfaction of the Law Society's Executive Director of Professional Regulation or his designate (the Executive Director), the respondent has provided a complete response to the requests made by the Law Society's Investigation Services department in letters dated April 1, 26 and 27 and May 18, 2021.
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 - a) the end of the suspension ordered at paragraph 1, above; and

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Malcolm Mercer



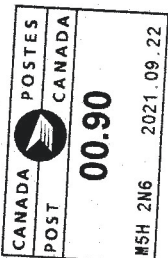
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