

CANADIAN ADMINISTRATIVE LAW – SAMPLE QUESTION AND ANSWER

Session: Contents of Procedural Obligations

Topic: Right to be Heard

Recommended time: 1 hour 30 minutes

Score: 100 Marks

Author: **Manuel Akinshola**

Facts

Robson has been in law practice as a sole practitioner in Paradise, Newfoundland. Five years ago, one of his clients, Watt, made a complaint to the police about a mortgage fraud involving Robson's handling of his property sales transaction. In the course of investigations, the police discovered that Robson had in fact engaged in a series of mortgage fraud and he was charged accordingly. However, last summer, the criminal charges against Robson were dismissed for unreasonable delay under s. 11(b) of the Charter.

Watt subsequently filed a complaint with the Law Society of Newfoundland (The Law Society) which referred the matter to its investigating Committee. At the conclusion of investigations, it was recommended that Robson should face disciplinary proceedings, the consequence of which could result in disbarment if he is found guilty.

After he was served with the notice of the hearing date, Robson engaged Greene as his defence attorney who immediately filed a motion to the effect that he was otherwise engaged on the scheduled date. Greene's request for adjournment was granted and another date scheduled for the hearing. Two weeks before this new hearing date, Greene filed a motion to have himself removed as Counsel of record, albeit without Robson's consent, alleging Robson's loss of confidence in him. On the scheduled date, the motion to remove Greene was granted and Robson requested for an adjournment of 2 months to enable him retain another legal representative. The

request was granted in part as the hearing was only rescheduled for two days later, against Robson's protest.

Robson retained Gracie the following day who on the scheduled date made several requests for an adjournment to enable her get familiar with the facts and prepare adequately for the defence. These requests were refused on the grounds that previous requests for adjournment had been granted and the matter needed to be disposed of timeously in the interest of justice. Gracie further requested for an adjournment to the following day, at least; this was also refused, upon which Gracie withdrew her representation. The Hearing Panel then proceeded with the hearing, requesting Robson to defend himself. Robson refused on the ground that he did not feel confident enough to defend himself and would need to retain another counsel. When his request for adjournment was again rejected, Robson refused to participate further in the proceedings and left the hearing.

The Hearing Panel found Robson guilty of professional misconduct. It then proceeded immediately to a determination of the appropriate penalty, dispensing with compliance with the formal notice requirements for victim impact statements on which the Law Society was to rely. A fax message was sent to Robson to notify him of the penalty hearing scheduled for two hours later that day. At the end of the penalty hearing, Robson was disbarred.

Robson immediately filed an appeal to the Appeal Panel, contending that he ought to have been granted the adjournment to enable him retain another lawyer. He argued also that the by-law of the Law Society requires that disciplinary proceedings must proceed in two phases, the disciplinary hearing, and if found guilty, the penalty hearing. He was of the opinion that the Hearing Panel denied him fair hearing by breaching his right to counsel and his right to notice of the penalty hearing.

The Law Society responded to the appeal, claiming that Robson's own conduct contributed to some of the several adjournment requests and a denial in those circumstances did not amount to a denial of natural justice. On the issue of notice at the penalty stage, counsel to the Law Society admitted that though the hearing did not meet the notice requirement, but since Robson refused to participate further in the proceedings, he was deemed to have abandoned the case and no longer entitled to notice.

The Appeals Panel has delivered a ruling which dismissed Robson's appeal.

Question:

Robson is interested in challenging the decision in court. Please address the following points:

- 1) Whether the Hearing Panel afforded Robson a fair hearing.
- 2) In which court would Robson challenge the decision of the Appeal Panel and if successful, what remedy would the court grant?