

2022 LSBC 35
Hearing File No.: HE20210003
Decision Issued: October 4, 2022
Citation Issued: March 3, 2021

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

PAUL OTTO DE LANGE

RESPONDENT

**DECISION OF THE MOTIONS ADJUDICATOR
ON AN APPLICATION TO ADJOURN**

Hearing date:	September 29, 2022
Motions Adjudicator:	Steven McKoen, KC
Discipline Counsel:	Irwin Nathanson, KC and Julia Lockhart
Counsel for the Respondent:	J. Jaia Rai

BACKGROUND

- [1] On September 22, 2021, the Respondent requested, pursuant to Rule 5-5.1 and Rule 5-5.2 of the Law Society Rules (the “Rules”), that the hearing on Facts and

Determination scheduled for three weeks from November 14, 2022 to December 2, 2022, be adjourned generally or to a fixed date in Spring 2023. The Respondent also applied for an extension of time to respond to the Law Society's Notice to Admit (the "NTA") dated August 15, 2022 and an adjournment of dates previously set for the parties' delivery of witness and exhibit lists.

- [2] The citation for this matter was issued on March 3, 2021 and contains twenty allegations. The allegations made are serious and the Law Society has informed the Respondent that it will be seeking disbarment if professional misconduct is found to have occurred on the cited allegations.
- [3] The Law Society delivered its disclosure to the Respondent in two parts in October, 2021 and then in March, 2022. The Law Society then asked for hearing dates to be set down in November, 2022. The Respondent submitted that November would not allow him enough time to prepare. The matter of the hearing date was brought to a pre-hearing conference on April 14, 2022 where Bencher Spraggs considered the parties' submissions and ordered that the hearing be set down for three weeks beginning on November 14, 2022.
- [4] A pre-hearing conference was held on July 21, 2022 and at that conference Bencher Westwood ordered that the following milestone dates be set, subject to the Respondent's right to seek a further extension to respond to the Law Society's NTA or apply to adjourn the hearing following receipt of the NTA:
- (a) August 15, 2022 – delivery of the Law Society's NTA;
 - (b) October 3, 2022 – delivery of the Respondent's response to the Law Society's NTA;
 - (c) October 14, 2022 – delivery of the Law Society's list of witnesses;
 - (d) October 28, 2022 – delivery of the Respondent's list of witnesses;
 - (e) November 7, 2022 – delivery of the Law Society's list of exhibits; and
 - (f) November 10, 2022 – delivery of the Respondent's list of exhibits.
- [5] The Law Society delivered its NTA on August 15, 2022. The NTA is large and consists of 1419 paragraphs referencing 420 documents. The Law Society states that approximately 370 of those documents are from the Respondent's files.
- [6] Under Rule 5-4.8(4) a party has three weeks to respond to a notice to admit. In this matter, Bencher Westwood extended that period to seven weeks.

- [7] The Respondent's submission is that, due to the volume of material in the NTA, while he has been working diligently to review the materials, he requires an additional two weeks to complete that review. The Respondent noted in his submissions before Bencher Westwood that his limited financial means constrain his ability to retain counsel to review evidence in this matter. The Law Society noted in this hearing that no evidence has been provided to support the assertion that the Respondent has been diligently reviewing materials, such as particulars of time spent reviewing. While it is true that no such evidence is before me, the Respondent did point out that his review time has been limited by his being a sole practitioner who is engaged full time in running his practice.
- [8] The Respondent noted in his written argument that when his response to the NTA is delivered, due to the NTA seeking admission of very serious allegations, it is unlikely that his response will result in a significant reduction of hearing time or witnesses.
- [9] On September 28, 2022 the Law Society proposed by email to the Respondent's counsel that they would agree to an extension of time to October 10, 2022 for the delivery of the Respondent's response to the NTA. The Respondent indicated at the hearing that he would do his best to respond by October 10, but he did not believe that was sufficient time for him to complete his review.
- [10] During the hearing of this motion, the Respondent asserted that an adjournment would provide the parties with more time to pursue a consent resolution of this matter. The evidence presented of efforts being taken toward a proposal is that the Law Society provided a list of core admissions on April 1, 2022 to the Respondent, and the Respondent has not, as of this date, offered a proposal in response. The Respondent noted in his submissions before Bencher Westwood that no meaningful progress could be made toward negotiating admissions until the facts relied upon to prove the allegations were specified. Since the NTA was provided to the Respondent, no proposal for negotiated admissions has been made by the Respondent.
- [11] The Respondent also submitted that if a two week extension of time was given for a response to the NTA then the existing hearing date could be preserved in the form of a hearing where the Law Society could enter the admissions that may be made into evidence and then the remainder of the hearing could proceed on the adjourned date. The Respondent submitted that such a process may present the parties with more time to seek consensus on a proposal to resolve this matter by consent. The Law Society opposed this suggestion as it did not believe that a short hearing as proposed would be a meaningful activity.

ANALYSIS

[12] A motions adjudicator has the authority to grant an adjournment of a hearing, with or without conditions, under Rule 5-5.2 and has the authority under Rule 5-5.1 to make an order with respect to setting deadlines for completion of procedures related to the hearing, if in the judgment of the motions adjudicator, it will aid in the fair and expeditious disposition of the matter.

[13] In *Law Society of BC v. Welder*, 2014 LSBC 53, the panel noted the need to proceed with and ensure a fair hearing and cited *Howatt v. College of Physicians and Surgeons of Ontario*, 2003 CanLII 29563 (ON SCDC), [2003] OJ No. 138, at paragraph 31 as follows:

There is no doubt that the right to an adjournment before an administrative tribunal, including a disciplinary body, is not an absolute right. In each case, whether or not the adjournment should be granted must be considered in the light of the circumstances, having regard to the right of the applicant to a fair hearing weighed against the obvious desirability of a speedy and expeditious hearing into charges of professional misconduct. When balancing these two factors, the right of the applicant to a fair hearing must be the paramount consideration.

[14] In both *Welder* and in *Law Society of BC v. Hart*, 2019 LSBC 39 the panel cited the following non-exhaustive list of factors to be considered for adjournment motions as set out in Macaulay & Sprague, *Practice and Procedure Before Administrative Tribunals*, (Toronto: Thomson Carswell, 2004):

- (a) the purpose of the adjournment (relevance to the proceedings, necessary for a fair hearing);
- (b) has the participant seeking the adjournment acted in good faith and reasonably in attempting to avoid the necessity of adjourning;
- (c) the position of other participants and the reasonableness of their actions;
- (d) the seriousness of the harm resulting if the adjournment is not granted;
- (e) the seriousness of the harm resulting if the adjournment is granted (to the other participants, etc., including the length of adjournment required);
- (f) is there any way to compensate for any harm identified;

- (g) how many adjournments has the party requesting the adjournment been granted in the past; and
- (h) was the hearing to be peremptory, and if so, were the parties consulted in selecting the date and were they advised of its peremptory nature.

[15] I apply these consideration to the facts before me as follows;

- (a) the purpose of the adjournment is to complete the Respondent's review of the NTA, take advice from counsel and finalize his response. However, the Respondent has noted that he does not consider it likely that his response will significantly reduce the time needed for a hearing or the witnesses that will need to be called. Therefore, while an adjournment may produce some admissions that will streamline matters, the Respondent does not think that likely and it does not appear that any issues as to the fairness of the proceedings are raised;
- (b) the Respondent has acted in good faith but there is no evidence before me of the efforts he has undertaken to complete his review of the NTA within the seven weeks that Bencher Westwood has already granted him to complete this part of the proceedings. I cannot, therefore, find that reasonable efforts have been undertaken and that the time allotted for this phase was inadequate;
- (c) while the Law Society has produced a voluminous NTA, I have no evidence before me that it was unreasonable of them to do so. With 20 allegation in the citation, it is reasonable to expect that the NTA would be lengthy, and I concur with Bencher Westwood that more than three weeks would be necessary to review a NTA in a matter with 20 allegations. However, I do not have any evidence before me that seven weeks is inadequate to review a large NTA;
- (d) it does not appear that there is a potential for serious harm to the Respondent if the adjournment is not granted. The Respondent has already been given seven weeks to review the NTA, and has stated that it is unlikely that any significant reduction in the length and breadth of the hearing will result from his response;
- (e) if the adjournment is granted, it does not appear that any harm will occur to the Law Society, however, the public has an interest in the administration of justice moving forward in a timely manner and that

public interest would be harmed by a citation from March of 2021 not being heard until spring of 2023;

- (f) the harms that must be balanced here are on the one side, the interest of the public in an expeditious hearing which would be facilitated by admissions being made and agreed to, thus reducing the matters in dispute between the parties, and on the other side, the harm to the public interest of a significant delay in the hearing of this matter. An adjournment seems unlikely to produce significant common ground on the NTA given the Respondent's submissions on that point and an adjournment will harm the public interest in timely resolution of proceedings;
- (g) while this is the first adjournment request by the Respondent, I note that the Respondent has already been granted more than twice the time normally allotted for a response to the NTA; and
- (h) the hearing date previously established was set after a full hearing on the matter where counsel appeared and made submissions, though I note that the Respondent did note that he reserved the right to make a motion to adjourn after receipt and consideration of the notice to admit.

[16] The Respondent cited *Law Society of BC v. Guo*, 2021 LSBC 09, in support of his application. In that matter, a hearing panel granted an adjournment of a disciplinary action hearing. Counsel for the respondent in that matter had requested that the Law Society provide its submissions on why disbarment was the appropriate disposition of that matter at least thirty days before the hearing so that an appropriate response could be prepared, given the severity of the sanction being sought. The hearing was scheduled for March 3 and the respondent requested the submissions be delivered by January 22. On February 19 the respondent's counsel requested the adjournment, and on that date the Law Society's submissions had not yet been provided. That case is helpful, in that it endorses the approach to adjournments in *Hart*, but it is a case where the panel found there was a potential for substantial harm to the respondent, which I do not find here, and as such I find that the facts in *Guo* distinguish it from the matter before me.

[17] After considering the foregoing factors and the cases cited by the Respondent, I find that proceeding with the hearing timing set out in Bencher Spraggs and Bencher Westwood's orders does not raise substantial concerns that the Respondent will not be provided a fair hearing. While an adjournment may result in a narrowing of the issues before the hearing panel, which would satisfy

the public's interest in an expeditious hearing, when that potential benefit is weighed against the harm to the public interest that would result from a significant delay of the resolution of this matter, I find that the public interest is better served with proceeding on the hearing schedule ordered by Bencher Spraggs. I therefore decline to order an adjournment of the hearing which is to commence on November 14, 2022 as originally ordered. Consequently, there is no need to modify Bencher Westwood's direction with respect to the dates for the exchange of witness and exhibit lists.

- [18] The Respondent also applied for an extension of time to respond to the Law Society's NTA by an additional two weeks. The Law Society proposed, in an email to the Respondent's counsel, an extension by a week to October 10, 2022. October 10 is a statutory holiday, so in effect that is an offer of an extension to October 11. The Respondent's submissions before me were that he would do his best to respond by that date but preferred two weeks from the date of the motion, which would be October 13. Given that the Law Society will need time to prepare its witness list for delivery on October 14, I find that it is fair and expeditious to reduce the Respondent's requested extension by two days to October 11 to provide the Law Society with adequate time to prepare.

DECISION

- [19] For the reasons provided in this decision, I deny the Respondent's request to adjourn the Facts and Determination hearing currently scheduled for November 14 to December 3, 2022 and I deny the request to set aside the dates set for the delivery of witness and exhibit lists. However, I find that it is fair and expeditious to grant the Respondent's request for an extension of time to respond to the Law Society's NTA dated August 15, 2022 and direct that the Respondent deliver their response to the NTA by October 11, 2022. No other date from the original schedule directed by Bencher Westwood is changed by this decision.