



## **OVERVIEW OF THE DISCIPLINARY HEARING PROCESS**

Disciplinary hearings before the LSBC Tribunal generally consist of six steps:

1. Commencement of the proceeding,
2. Before the hearing,
3. Scheduling of the hearing,
4. Hearing (two phases: facts and determination and disciplinary action),
5. Panel decision and reasons for decision, and
6. Review, if any.

Set out below is a brief overview of a disciplinary hearing process. For your convenience, a table setting out the standard steps and timelines in a disciplinary proceeding is attached.

### **1. COMMENCEMENT OF THE PROCEEDING**

The Law Society of British Columbia commences a disciplinary proceeding by issuing, serving and then filing a public document called a citation. The decision to authorize a citation and hold a hearing is made by the Discipline Committee. The citation contains the allegation of misconduct made against the lawyer or articulated student. A Law Society lawyer (discipline counsel) presents evidence to prove the allegations in the citation. The lawyer or articulated student who is the subject of the citation is called the respondent, and may be represented by their own lawyer.

The hearing panel consists of three people, is chaired by a lawyer, and usually includes at least one bencher who is a lawyer, a non-bencher lawyer and a member of the public who is not a lawyer. In certain situations, the case may be heard by a single bencher lawyer. The panel or single bencher act as judges.

### **2. BEFORE THE HEARING**

#### **Pre-hearing conferences and Comprehensive Pre-hearing conferences**

A pre-hearing conference or comprehensive pre-hearing conference may be scheduled at the request of discipline counsel, the respondent or the respondent's counsel, or on the LSBC Tribunal's own initiative. It is usually held by a Zoom conference on a Thursday.

The purpose of the conference is to assist with case management, including to:

- simplify the issues so that the hearing will proceed smoothly;
- discuss the need for any changes to the citation;
- address the possibility of the lawyer admitting to any of the allegations;
- ensure all documents are available;
- set a date for the hearing to begin;
- discuss any other matters that may aid the fair and expeditious disposition of the citation.

The motions adjudicator conducting the conference may make appropriate orders on preliminary matters.

### **Preliminary Questions**

A party can also seek a determination of a more substantive preliminary question relevant to the hearing. These questions are also normally referred to a motions adjudicator who can also act as a single bench panel.

### **Adjourning a hearing**

Before a hearing begins, the respondent or discipline counsel can apply in writing to adjourn the hearing. A motions adjudicator appointed by the LSBC Tribunal Chair will decide whether to allow the application. Once the hearing has started, only the chair of the panel may adjourn the hearing.

## **3. SCHEDULING THE HEARING**

A hearing can be scheduled by the parties on consent at any time. If the parties cannot agree to a scheduled hearing date or if the date has not been set within four months of authorization of the citation, the date will be set at a prehearing conference.

## **4. HEARING**

Hearings are usually in two parts:

### **Part 1: Facts and determination**

The purpose of the first phase is to consider the allegations in the citation and determine if the lawyer has in fact committed a discipline violation. The onus is on the Law Society to prove the allegations. After the hearing is over, a written decision is issued outlining the findings of facts and the decision of the panel.

If the hearing panel finds the allegations have not been proven, the citation will be dismissed. Otherwise, the hearing panel will find the lawyer committed one or more of the following:

- professional misconduct,

- conduct unbecoming the profession,
- a breach of the *Legal Profession Act* or the Law Society Rules, or
- incompetent performance of duties undertaken in the capacity of a lawyer.

## **Part 2: Disciplinary action**

If necessary, a second hearing will be held to determine the appropriate disciplinary sanction. As with the first phase, a written decision will be issued and made public. The panel may consider a number of factors, including the following:

- the nature and gravity of the conduct proven;
- the age and experience of the lawyer;
- the previous character of the lawyer, including the lawyer's professional conduct record;
- the impact upon the victim;
- any advantage gained, or to be gained, by the lawyer;
- the number of times the offending conduct occurred;
- whether the lawyer has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;
- the possibility of remediating or rehabilitating the lawyer;
- the impact of the proposed disciplinary action on the lawyer;
- the impact upon the lawyer of any sanctions or penalties outside of the Law Society's jurisdiction;
- the need for specific and general deterrence;
- the need to ensure the public's confidence in the integrity of the profession;
- the range of sanctions imposed in similar cases.

The possible sanctions for a lawyer who has committed a discipline violation may include:

- a reprimand;
- a fine not exceeding \$50,000;
- the placement of conditions or restrictions on the lawyer's practice;
- a suspension from the practice of law or from practice in one or more fields of law (with or without conditions) for a specified period of time;
- disbarment.

Sometimes the panel will decide that the lawyer must pay some of the costs of the hearings, in accordance with an established tariff. The panel may also consider:

- the seriousness of the violation;
- the financial circumstances of the lawyer;

- the total effect of the sanction, including possible fines and/or suspension;
- the extent to which the conduct of each of the parties has resulted in costs accumulating or, conversely, being saved.

### **What happens if a lawyer admits the misconduct prior to the hearing?**

Sometimes a lawyer may choose to admit to the discipline violation (misconduct) before the hearing proceeds. If the lawyer admits the discipline violation and the lawyer and discipline counsel agree to a sanction, the parties can make a joint recommendation to the panel under Rule 5-6.5 of the Law Society Rules. Alternatively, the lawyer can admit the discipline violation and agree to proceed directly to the sanction phase of the hearing. If the panel agrees, the facts and determination and disciplinary action phases of the hearing are then heard together.

### **Summary hearings**

Summary hearings are used when the alleged misconduct concerns one or more of the following:

- breach of a Law Society rule;
- breach of an undertaking given to the Law Society;
- failure to respond to a communication from the Law Society;
- breach of an order made by the Law Society.

In both of these cases, the hearing panel will make both their decision on facts and determination and their disciplinary action decision at one hearing, resulting in one written decision.

## **5. PANEL DECISION**

The hearing panel will issue a written decision setting out its findings and reasons at the end of both the facts and determination and disciplinary action hearing. The decision is sent to the parties and posted to the LSBC Tribunal website shortly thereafter. A copy of the decision is also sent to CanLII.

## **6. REVIEW OF DECISION**

Either the Law Society or the respondent may apply for a review of the hearing panel's decisions to a review board comprised of five panel members after the disciplinary action phase of the citation hearing. The Law Society may apply for a review of the facts and determination decision.

## **DISCIPLINARY PROCEEDING: TABLE OF STEPS AND TIMELINES**

Attached for your convenience is a table setting out the standard steps and timelines in a disciplinary proceeding. Please refer to the Law Society Rules and *Legal Profession Act*:

**DISCIPLINARY PROCEEDING: STANDARD STEPS AND TIMELINES**

<b>Dates</b>	<b>Tribunal</b>	<b>Law Society/Respondent</b>
		Citation authorized by Law Society Discipline Committee
Within 45 days of authorization		Citation issued and served on Respondent
Not earlier than 7 clear days after respondent has been notified of issuance of the citation	Citation filed with Tribunal Office and posted on website	
1-4 months of authorization of citation		Law Society provides evidentiary disclosure to Respondent
Within 4 months of issuance of Citation if hearing not scheduled	Prehearing conference held to set date of hearing	
Within 8 months of issuance of Citation if hearing not scheduled or hearing scheduled for more than 5 days	Comprehensive prehearing conference held	
Any time after citation has been issued		Law Society/Respondent bring any preliminary motions
At least 45 days prior to the scheduled hearing date		Law Society/Respondent prepare agreed statements of facts or notices to admit and provide it to the other side
At least 30 days prior to the scheduled hearing date		Parties confirm presumptive hearing format (zoom hearing) and inform Tribunal Office of any accommodation needs
At least 30 days prior to the scheduled hearing date	Notice of Hearing delivered	
Usually 1 week prior to the scheduled hearing date	Tribunal Office sends email to parties advising names of assigned adjudicators	
Usually within 9-12 months of authorization of Citation	Facts and determination hearing commences	

Usually within 90 days of the date of last submission	Facts and determination hearing decision issued	
Within 4 months of facts and determination decision being issued if hearing not scheduled	Case Conference held with panel chair or panel to schedule disciplinary action hearing	
Usually within 2-4 months of facts and determination decision being issued	Disciplinary action hearing commences	
Usually within 90 days of the date of last submission	Disciplinary action hearing decision issued	
Within 30 days of being notified of disciplinary action decision	Notice of review filed (if any)	
Within 60 days of filing the notice of review	Review record prepared and filed	
Between 90-120 days of filing notice of review	Submissions (written Legal Argument) exchanged and filed	
Usually within 4-6 months of review record being filed	Review hearing held	
Usually within 90 days of the date of last submission	Review Decision issued	