

2023 LSBC 41  
Hearing File No.: HE20210026  
Decision Issued: October 11, 2023  
Citation Issued: July 23, 2021

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL  
HEARING DIVISION

BETWEEN:

**THE LAW SOCIETY OF BRITISH COLUMBIA**

AND:

**HONG GUO**

RESPONDENT

**DECISION OF THE MOTIONS ADJUDICATOR  
ON AN APPLICATION FOR ADJOURNMENT**

Written materials:	September 18 and 19, 2023
Motions Adjudicator:	Michael F. Welsh, KC
Discipline Counsel:	J. Kenneth McEwan, KC Saheli Sodhi
Counsel for the Respondent:	Gerald Fahey

**OVERVIEW**

- [1] The Respondent applied in writing to adjourn a eight day Facts and Determination (“F&D”) Hearing in this matter, that was scheduled to commence September 26, 2023, to a mutually convenient date to be agreed upon by counsel or set by the Tribunal. The Law Society opposed.

- [2] On September 21, 2023, I, as motions adjudicator, granted the adjournment on terms, with reasons to follow. The terms are set out at the end of these reasons.
- [3] The Respondent sought an adjournment because she submitted that she does not currently have legal counsel, is mentally and physically unable to represent herself, and needs time to retain new legal counsel. Mr. Fahey, who prepared the application, is the person the Respondent is looking to retain to act for her generally. He is apparently not available for the original Hearing dates.

## **FACTUAL BACKGROUND**

- [4] The Respondent and a lawyer who sublets office space from her provided affidavits, as did an assistant to counsel for the Law Society. The affidavits disclose the following facts, none of which were made an issue in the application.
- [5] The Citation, issued on July 23, 2021, concerns conduct that occurred in 2019 and 2020.
- [6] The F&D Hearing was originally set for June 19 to 30, 2023.
- [7] On June 2, 2023, the F&D Hearing was adjourned by consent to September 26 to 29, and October 3 to 6, 2023.
- [8] On August 18, 2023, David Gruber, now former counsel for the Respondent, sought an extension of time for the delivery of the Respondent's Response to Notice to Admit in this matter to September 8, 2023. Counsel for the Law Society agreed to this extension.
- [9] On August 30, 2023, Mr. Gruber advised counsel for the Law Society that the Respondent intended to retain new counsel.
- [10] The Respondent states that the reason she was no longer retaining Mr. Gruber was that she could no longer afford it.
- [11] On August 31, 2023, Mr. Gruber advised counsel for the Law Society that the Respondent intended to seek an adjournment due to personal health issues. The following day Mr. Gruber advised that the adjournment application would be made after September 11, 2023.
- [12] The Respondent did not deliver her Response to Notice to Admit on September 8, 2023.

- [13] On September 12, 2023, Gerald Fahey confirmed to the Law Society that he had been retained by the Respondent, although it is unclear from the material whether he was retained generally as her counsel, or only to make this application.
- [14] On September 18, 2023, the Respondent delivered the Notice of Motion seeking an adjournment of this matter, together with supporting affidavits and on September 19, 2023, the Law Society filed its Response and supporting affidavit.
- [15] This is but one of a multitude of citations that the Respondent faces or has recently faced for allegations of professional misconduct or breach of the *Legal Profession Act* (the “*Act*”) and the Law Society Rules. Several have been to hearings with decisions rendered and disciplinary action imposed. As a result of one of those proceedings, the Respondent is presently suspended from practice until March 8, 2024.
- [16] The Respondent deposes that responding to the investigations and hearings has taken a toll on her physical and emotional health and negatively affected her ability to care for her family. She is a single mother of two children, one in university and one just entering university and is also caring for her mother who has dementia. She further deposes that she frequently feels “overwhelmed, exhausted and unable to act” in the various Law Society proceedings. At a recent hearing she became physically ill while under cross-examination by Law Society counsel and the hearing had to be adjourned.
- [17] She is taking medication for depression and her family doctor has referred her for psychological and counselling services. Since November 2022, she has been seeing a registered clinical counsellor.
- [18] She further deposes that, as a result of the multi-million-dollar theft from her office in 2016 (that is referred to in some of the decisions rendered on other citations) and the costs of covering the loss and defending herself in civil and Law Society disciplinary proceedings, her personal finances have, as she puts it, suffered immensely. In late August this year, after a review of what she terms her financial matters, she determined that she could no longer afford to retain Mr. Gruber. She says that Mr. Fahey recently agreed to act, at least to make this adjournment application. It is unclear as to the breadth of his retainer past this application.
- [19] The Respondent concludes her affidavit by stating that without the adjournment being granted it is probable she would be representing herself and she does not presently feel capable of doing so, or of properly instructing Mr. Fahey if he is able to represent her at the September and October dates set. She is “simply overwhelmed by these proceedings and feel[s] unable to proceed at this time.”

## APPLICABLE LEGAL PRINCIPLES

[20] The Rule governing adjournments is 5-5.2 as supplemented by the Tribunal Practice Direction 5.4. That Practice Direction states:

- (1) Adjournments are not automatic, even if the parties consent. Once an appearance before the assigned hearing panel or a review board is scheduled, that date is firm and adjournments will be granted only in exceptional circumstances. ...
- (2) Exceptional circumstances may include matters such as the illness of a party, witness or representative. Late retention of counsel, the unavailability of counsel or the parties' wishes to engage in last-minute settlement discussions will generally not be considered exceptional circumstances.

[21] As the Law Society notes in its submission, referencing prior BC and Ontario disciplinary decisions, the granting of an adjournment is a discretionary matter, weighing the right to a fair hearing against the desirability of that hearing being held expeditiously, (the Law Society uses the phrase "speedy and expeditious", which is a redundancy). Section 3 of the *Act* provides that the Law Society must protect the public interest in the administration of justice. Part of that public interest mandate includes hearing discipline matters in a timely manner.

[22] The Law Society relies on the decision in *Law Society of Upper Canada v. Abrahams*,<sup>1</sup> that lays out eleven non-exhaustive factors to potentially consider. A similar but more succinct, albeit again non-exhaustive list of factors is articulated in *Law Society of BC v. Hart*,<sup>2</sup> and I will reference those fewer but appropriate factors. Ultimately, whether to grant an adjournment is a discretionary decision of a motions adjudicator.

## SUBMISSIONS OF THE PARTIES

[23] The Law Society makes the following points:

- (a) The Hearing was originally scheduled to proceed in June and was adjourned to the current dates on the consent of both parties, at a time when the Respondent was represented by counsel. The Respondent has

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<sup>1</sup> 2014 ONLSTH 64, cited with approval in *Law Society of BC v. Sas*, 2015 LSBC 38 and *Law Society of BC v. Chiang*, 2014 LSBC 43.

<sup>2</sup> 2019 LSBC 39, at para. 13, approved and adopted most recently in *Law Society of BC v. Vining*, 2023 LSBC 19.

been aware of these Hearing dates for months but delivered this motion one week out from the Hearing.

- (b) Despite this, and despite her awareness of the medical issues described in her affidavit, the Respondent has not obtained any medical evidence in support of her adjournment motion. Apart from her own affidavit, the Respondent has tendered an affidavit of TE, a lawyer, who is not a medical expert and cannot provide an opinion in that respect. The Respondent's affidavit refers to the opinion of a registered clinical counsellor, whose evidence is not available on this motion and, in any event, is not qualified to give "medical evidence."
- (c) The Respondent's affidavit does not make it clear whether she has taken steps to retain new counsel for this matter since late August, when she says that she determined she could no longer retain Mr. Gruber. Her affidavit suggests that Mr. Fahey is solely retained for the purpose of this adjournment application, rather than for the proceeding.
- (d) The Respondent has not provided her Response to Notice to Admit or requested an extension of time to provide the Response, nor has she indicated when or whether she intends to do so.
- (e) The upcoming Hearing will involve testimony from five witnesses (in addition to the Respondent), including a witness in Taiwan, all of whom will need to be rescheduled upon the adjournment being granted.

[24] Conversely, the Respondent in her affidavit, supported by the affidavit of TE, states that she is having memory issues, difficulty sleeping and feelings of anxiety and sadness. In particular, in the past several months, she has found her cognitive ability, especially her memory, has diminished and she often finds her mind "locking" and failing to remember names and events, even from the recent past.

[25] TE confirms from his dealings with the Respondent that she is having difficulty coping, cannot retain information, or recall recent events, and appears depressed and overwhelmed.

## **ANALYSIS AND FINDINGS**

[26] The Respondent barely clears the bar for this adjournment. If it was not in relation to one of many hearings she has been dealing with, some in close proximity in time to each other, the application would not have been granted.

[27] I review the following factors from *Hart* I consider to be relevant:

- (a) *The purpose of the adjournment (relevance to the proceedings, necessary for a fair hearing).* The main reason postulated for the adjournment is the physical and mental ability of the Respondent to conduct her case, either through counsel or alone, at this time. It appears that she cannot do so. Looking at the issue of a fair and full hearing before the panel, I have to weigh whether the public interest is met in proceeding with or adjourning a hearing where the Respondent may not be able to effectively participate.
- (b) *Has the participant seeking the adjournment acted in good faith and reasonably in attempting to avoid the necessity of adjourning?* This is the factor most heavily weighing against the adjournment. The Respondent has not made it clear why she did not move earlier to adjourn, and has not made it clear whether, if the adjournment was granted, Mr. Fahey will be acting for her. I can only read between the lines that this will be the case. However, I accept that her physical and mental condition may have played into why she is not better prepared, and that she generally needs additional time to rally herself.
- (c) *The position of other participants and the reasonableness of their actions.* The Law Society has clearly been reasonable, agreeing to the first adjournment and to the extension of time to respond to the Notice to Admit. No blame can be laid at its feet for opposing this application. Its concerns for an expeditious resolution of this Citation and the inconvenience to witnesses is wholly reasonable.
- (d) *The seriousness of the harm resulting if the adjournment is not granted.* This has been largely addressed. As the Practice Direction notes, exceptional circumstances may include matters such as the illness of a party; and whether it is from exhaustion, stress, depression, or a combination, it appears the Respondent needs some recovery time to be able to properly participate in a Hearing of this Citation.
- (e) *The seriousness of the harm resulting if the adjournment is granted (to the other participants, etc., including the length of the adjournment required).* The main harm is the further delay. However, the terms I have imposed should minimize that harm and, with the Respondent currently suspended, any general public interest harm is minimized meantime. Finally, again this Citation cannot be considered in isolation from the

other ongoing disciplinary proceedings the Respondent faces. They also proceed, and this one will proceed again soon.

- (f) *Is there any way to compensate for any harm identified?* The terms I have set out for this adjournment, largely suggested by the Law Society should an adjournment be granted, ought to ameliorate the harm identified in the preceding subparagraph.
- (g) *How many adjournments has the party requesting the adjournment been granted in the past?* As noted there has been one adjournment that went by consent. This further adjournment, barring extraordinary (as opposed to merely exceptional) circumstances, is the last the Respondent will get. Given the Practice Direction, this is so whether or not Mr. Fahey is ultimately retained to act for the Respondent at the Hearing.
- (h) *Was the hearing set on a peremptory basis and was the Respondent aware of this?* It was not. The next one is peremptory.

## **ORDERS**

- [28] The Hearing currently scheduled for September 26 to 29 and October 3 to 6, 2023 is adjourned.
- [29] This matter is set on the list for Tribunal Chambers on October 12, 2023, or another date agreed to by the parties, to confirm or set new Hearing dates.
- [30] The Hearing will be reset to dates to commence no later than January 29, 2024, subject to agreement by the parties otherwise.
- [31] The new Hearing dates are peremptory on the Respondent.