

2024 LSBC 04  
Hearing File No.: HE20230002  
Decision Issued: February 5, 2024  
Citation Issued: March 8, 2023  
Citation Amended: July 26, 2023

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL  
HEARING DIVISION

BETWEEN:

**THE LAW SOCIETY OF BRITISH COLUMBIA**

AND:

**LEONIDES TUNGOHAN**

RESPONDENT

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

Hearing Date:	January 18, 2024
Motions Adjudicator:	Nicole Byres, KC
Discipline Counsel:	Marsha J. Down
Appearing on his own behalf:	Leonides Tungohan

**ISSUE FOR DETERMINATION**

[1] Leonides Tungohan (the “Respondent”) applied to adjourn the facts and determination hearing (the “Application”) scheduled for four days commencing on January 22, 2024. The Application was opposed by the Law Society.

- [2] I reviewed the extensive written materials filed by the Respondent as well as the Law Society’s response. After hearing the oral submissions, I dismissed the Application on January 18, 2024 with reasons to follow. I now provide reasons for dismissing the Application.

### **Factual Background**

- [3] The citation was issued on March 8, 2023, and amended on July 26, 2023 (the “Citation”).
- [4] The Citation relates to the Respondent’s failure to submit quarterly accountant’s reports to the Law Society for 11 reporting periods between March 1, 2020, and November 30, 2022.
- [5] The facts and determination hearing of the Citation (“F&D Citation Hearing”) was scheduled for four days commencing on January 22, 2024 at a prehearing conference on September 14, 2023.
- [6] The Respondent filed the Application on January 5, 2024 seeking an order that the F&D Citation Hearing be adjourned until the decision is issued on the section 47 review (the “Review”) of the facts and determination and disciplinary action decisions of a prior citation, Hearing File No. HE20200033 (the “Prior Citation”).
- [7] The Respondent filed the Review on September 12, 2023 but the hearing date of the Review had not been scheduled as of the date of the hearing of the Application. Accordingly, the Respondent applied to have the F&D Citation Hearing adjourned generally.

### **Applicable Legal Principles**

- [8] Before a hearing begins, a party may apply to adjourn pursuant to Rule 5-5.2 of the Law Society Rules; as motions adjudicator, I have the authority to grant an adjournment with or without conditions.
- [9] The granting of an adjournment is a discretionary matter, and the decision on whether to grant an adjournment must be considered in light of the circumstances, having regard to the right of the applicant to a fair hearing weighed against the desirability of a speedy and expeditious hearing<sup>1</sup>.

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<sup>1</sup> *Howatt v. College of Physicians and Surgeons of Ontario*, [2003] O.J. No. 138 at para. 31

- [10] In *Law Society of BC v. Hart*<sup>2</sup> at para. 13, the panel referred to the non-exhaustive list of factors to be considered in an adjournment application:

In this context, as stated in Macaulay & Sprague, *Practice and Procedure Before Administrative Tribunals*, (Toronto: Thomson Carswell, 2004), the following non-exhaustive list of factors are to be considered:

- (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.

### **Submissions of the parties**

- [11] The Respondent submits that an adjournment should be granted because many of the issues, admitted facts and documents, and the Law Society's witnesses for the F&D Citation Hearing are the same as the issues, admitted facts and documents, and witnesses in the hearing of the Prior Citation. The Respondent's application also included examples of the Respondent's defenses and submissions tendered in the hearing of the Prior Citation that he says he would tender in the F&D Citation Hearing.

- [12] The Respondent argues that because of these similarities and duplication of evidence, the parties need to wait for the outcome of the Review because whether

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<sup>2</sup> 2019 LSBC 39

the Prior Citation decisions are overturned or upheld, the Review decision will be relevant to the F&D Citation Hearing. Accordingly, the Respondent says that as a matter of fairness, an adjournment is necessary.

- [13] In support of the Application, the Respondent relied on the *Law Society of BC v Sahota*, 2018 LSBC 06 decision dealing with an application for adjournment by Mr. Sahota. In that decision, the Tribunal's motions adjudicator granted an adjournment of the facts and determination hearing of a second citation generally, pending the release of the review board's decision on a first citation because that decision would likely be relevant to the hearing panel of the second citation.
- [14] The Law Society does not dispute the Respondent's position that many of the issues, admitted facts and documents, and the Law Society's witnesses for the F&D Citation Hearing are the same as the issues, admitted facts and documents, and witnesses for the hearing of the Prior Citation.
- [15] However, despite the similarities or duplication of issues, admitted facts and documents, the Law Society says that the Citation deals with new or different infractions of a June 5, 2015 order<sup>3</sup> requiring the Respondent to produce to the Law Society a report from an accountant on a quarterly basis. The Citation relates to the Respondent's failure to submit quarterly accountant's reports to the Law Society for reporting periods between March 1, 2020 and November 30, 2022 whereas the Prior Citation addressed the Respondent's failure to submit quarterly accountant's reports for reporting periods in 2019.
- [16] The Law Society noted another distinction between the Citation and the Prior Citation, namely, in the Prior Citation the Respondent argued his filing of accountant's reports with his annual Trust Report satisfied the requirement to file quarterly reports whereas in the Citation, the Respondent did not file an accountant report with his annual Trust Report. Accordingly, the Law Society submits that there is a different issue to be tried in the Citation.
- [17] The Law Society submits that the magnitude of the delay that would ensue from a general adjournment awaiting the Review decision, where the Review hearing has not even been scheduled, would damage public confidence in the ability of the Law Society to effectively regulate its members and be contrary to the public interest in an expeditious disposition of matters before the Tribunal. Finally, while the Law Society does not concede that an adjournment is necessary for a fair hearing, it submits that should anything come out of the Review decision that affects the

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<sup>3</sup> *Law Society of BC v. Tungohan*, 2015 LSBC 26

outcome of the F&D Citation Hearing, the Respondent would be free to raise that at the time.

### **Analysis**

- [18] In *Sahota*, the motions adjudicator was persuaded to adjourn the hearing because: (1) the review hearing was imminent (12 days after the scheduled hearing date of the second citation), and (2) the issues under review were material to the second citation, namely the respondent's competence regarding his real estate practice.
- [19] In my view, *Sahota* is distinguishable from the facts here. Firstly, not only is the Review hearing not imminent, but it has not been scheduled. Secondly, the hearing panel in the Citation will be dealing with allegations that the Respondent failed to submit quarterly accounting reports for different reporting periods.
- [20] I am not persuaded that proceeding with the F&D Citation Hearing before the Review decision is issued would impact the Respondent's right to a fair hearing. Accordingly, the public interest in having this matter proceed expeditiously prevails.

### **Order**

- [21] For the reasons set out above, the Respondent's application to adjourn the F&D Citation Hearing is denied.