

2024 LSBC 26
Hearing File No.: HE20200041
Decision Issued: May 21, 2024
Citation Issued: June 8, 2020

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

HONG GUO

RESPONDENT

**DECISION OF CHAIR ON ADJOURNMENT
OF DISCIPLINARY ACTION HEARING**

Hearing date: May 9, 2024

Hearing Panel: Michael F. Welsh , KC, Chair
Katharine E. Saunders, Lawyer

Discipline Counsel: Saheli Sodhi

Respondent not appearing

OVERVIEW

[1] The Respondent did not appear on the scheduled date of the disciplinary action (“DA”) phase of the hearing of this Citation, that was held on the Zoom platform. The Panel stood down for about 25 minutes to await her potential arrival and then heard from the Law Society counsel on an application to proceed in the Respondent’s absence. After hearing from counsel and reviewing the affidavit material provided by the Law Society,

the Panel deferred its decision on the Law Society's application and instead decided to adjourn the DA hearing until June 10, 2024, on conditions. Under Rule 5-5.2(3) of the Law Society Rules, as Panel Chair, I made the order to adjourn on the terms as set out below with these brief reasons for the order to follow. If the Respondent does not attend on the new date, then the Law Society may continue with its application to proceed in the Respondent's absence.

FACTUAL BASIS FOR ADJOURNMENT

[2] The decision of this Panel on facts and determination was issued on July 27, 2023, with three findings of professional misconduct.

[3] One Panel member subsequently resigned from the Tribunal hearing pool and the Tribunal Chair ordered that this DA hearing proceed with the remaining two Panel members.

[4] In making the application to proceed in the absence of the Respondent, counsel for the Law Society very fairly provided any material the Law Society had on the circumstances of the Respondent, who, according to the last information it has obtained, is in China and receiving treatment for mental health diagnoses that are set out with only such detail as is necessary to explain the reasons for this adjournment.

[5] This material included affidavits from the Respondent and a lawyer who sublet space from her that were made and filed in October, 2023, in another proceeding for which she sought and obtained an adjournment of a hearing. In those affidavits, summarized in the reasons of the motions adjudicator issued on October 11, 2023, granting that adjournment, the Respondent stated that she was "simply overwhelmed by these proceedings and feel[s] unable to proceed at this time."¹ According to the decision, she was taking medication for depression, her family doctor referred her for psychological and counselling services, and she was seeing a registered clinical counsellor. A report from that clinical counsellor dated November 22, 2022 was provided by the Law Society in the material before the Panel.

[6] Between January and March 2024, counsel for the Law Society made efforts to reach the Respondent to set a date for this DA hearing. The Law Society received a reply from the Respondent on February 6, 2024, with reference to another citation matter, but not this one. In that email the Respondent apologized for not attending a different hearing and asked what it was about and about any decision made. Prior to that communication, the Respondent had last emailed the Law Society on December 30, 2023, at which time she was no longer represented by legal counsel and stated in part:

I am still in China receiving treatment to my [mental health breakdown] and am unable to research and prepare the submissions in an official formality [sic]. On top of that, the communications with Canada are poor due to the government's restrictions. Thank you very much for your understanding. I badly need a pro bono lawyer. I have lots of arguments but unable to fully deliver in my mental and financial condition. ... I am very very tired. Give me two more years please, I have to see my two children out of universities and independent. Then I will be free to rest in heaven. Thank you.

[7] On April 12, 2024, the Respondent's sister, M. Guo, who is in BC, emailed the Law Society using the Respondent's work email account and expressing "grave concerns" about her sister and "her ability to effectively respond" to the various disciplinary matters. She stated:

Given that [the Respondent] does not have access to her email account in China, I have taken the responsibility of forwarding your emails and letters to her via WeChat. Regrettably, she has not responded to any of my messages, including those pertaining to your inquiries. In attempts to obtain answers, I have resorted to calling her directly, only to find her responses perplexing. Instead of addressing your questions, she becomes obsessed on [sic] talking about how she has been mistreated and abused since 2016. The only useful response was when she asked me to find a lawyer to represent her. ...

Moreover, whenever asked with contacting [sic] individuals or addressing urgent matters, [the Respondent] assures me she will do so promptly, yet fails to follow through. She completely forgets things in a moment. Her current living arrangements at my brother's house further raise concerns, as she appears to be withdrawn and spends excessive amounts of time in bed, engrossed in her cell phone. She even needs someone to bring food to her bed ...

[The Respondent] was completely struck down since last October which brought her [a mental health breakdown] and suicidal thoughts. As her symptoms develop, I grow increasingly concerned about her mental capacity to handle any issue. I've come to realize that discussing her lawsuits with her not only seems pointless but also harms her mental well-being.

...

[8] Law Society counsel also referred the Panel to some clinical records it had received from BC and from China. These include:

- (a) A Discharge Summary from Vancouver Coastal Health dated September 26, 2023, showing that the Respondent had been diagnosed with MDD

for which she was receiving prescription medication and outpatient psychiatric follow up. It states she was admitted for emotional distress and suicidal ideation.

- (b) Outpatient Medical Record from Beijing Huilongguan Hospital dated November 2, 2023, again indicating suicidal thoughts and with a similar diagnosis along with anxiety.
- (c) Outpatient Follow-up Medical Record from Beijing Huilongguan Hospital dated November 14, 2023, noting that the Respondent had not agreed to hospitalization as medically advised, and on return to the hospital still had suicidal thoughts. The diagnosis is the same with the addition of an additional sleep disorder, and the record specifically states:

...Continues to feel low mood, lethargic, unwilling to do things, and has suicidal thoughts. Poor appetite, weight loss details unknown. Mental clarity is not good. Poor sleep, easily awakened, difficulty falling asleep.

The recommendations include “[s]trict prevention of self-harm and suicide, 24-hour family accompaniment, medication to be kept by family” and “[c]omplete rest for a month”.

ANALYSIS AND FINDINGS

[9] Section 42(2) of the *Legal Profession Act*, SBC 1998, c. 9 (“LPA”) permits a panel to proceed with a hearing in the absence of a respondent if satisfied that the respondent was properly served with the notice of hearing. In applying this provision, relevant considerations may include:

- (a) whether the respondent has been provided with notice of the hearing date;
- (b) whether the respondent has been cautioned that the hearing may proceed in their absence;
- (c) whether the panel adjourned for 15 minutes in case the respondent was merely delayed;
- (d) whether the respondent has provided any explanation for the non-attendance; and

(e) whether the respondent is a former member of the Law Society.²

[10] In this case, it is clear that the Respondent, who is a former member, was given notice, sent to her work email address that was provided to the Law Society, and was cautioned that the hearing may proceed without her. The Panel stood down for about 25 minutes in case she was delayed. Counsel for the Law Society advised that, during the short adjournment, counsel conveyed an email to the Respondent advising that the hearing may proceed and received no immediate response from the Respondent.

[11] However, the email used by the Law Society is the account that her sister states the Respondent cannot access in China. The Respondent's sister says she forwards emails from that account to the Respondent by WeChat.

[12] Also, the evidence provided by the Law Society raises significant concerns as to the mental well-being of the Respondent and her ability to participate meaningfully in these proceedings even if she has notice.

[13] While it is in the public interest to conclude this hearing and issue a DA decision, especially given the very long time that has passed since the Citation was issued, there is no urgency given that the Respondent has already been twice disbarred and her practice is under Law Society custodianship. In the circumstances, ensuring the fairness of this hearing process is paramount.³

[14] Under Rule 5-5.2 (3), once a hearing commences the chair can order an adjournment on conditions.

[15] While the Panel has discretion to proceed in the absence of the Respondent, in this case, given the concerning nature of the medical evidence from the clinical reports, as confirmed in the statements of the Respondent's sister and others, the Panel has decided to provide the Respondent with a final opportunity to either attend, or to provide current medical evidence of why she cannot and a date by which she will be able to do so. As noted earlier, if she does not attend then the Law Society may continue with its application to proceed in her absence, and the Panel will review any material from or on behalf of the Respondent at that time.

ORDERS

[16] The DA hearing is adjourned to Monday, June 10, 2024, at 9:30 am to be held on the Zoom platform.

[17] Conditions of the adjournment are:

- (a) the Respondent will attend in person or by legal counsel on June 10, 2024 at 9:30am, or
- (b) prior to the June 10, 2024 hearing date, the Respondent will provide a written medical opinion setting out the medical reasons why the Respondent cannot attend on that date, and any such medical opinion will also provide a date by which the Respondent will be able to attend a disciplinary action hearing on the Zoom Platform.

[18] Pursuant to Rule 10-1, the Law Society will notify the Respondent of this Order:

- (a) by email to the Respondent's last known email address; and
- (b) if the Law Society is able to locate contact information for the Respondent's sister, by providing the Respondent's sister with a copy of this Order and requesting it be conveyed to the Respondent.

¹ *Law Society of BC v. Guo*, 2023 LSBC 41, paras. 17 and 19.

² *Law Society of BC v. Ganzert*, 2023 LSBC 48, para. 7.

³ *Law Society of BC v. Welder* 2014 LSBC 53, para. 32.