

2024 LSBC 24
Hearing File No.: HE20230008
Decision Issued: May 6, 2024
Citation Issued: June 14, 2023

CORRECTED DECISION: PARAGRAPH [4] WAS AMENDED ON MAY 8, 2024

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

LEONARD HIL MARRIOTT

**DECISION OF THE MOTIONS ADJUDICATOR
ON APPLICATION TO ADJOURN AND FOR PRODUCTION OF DOCUMENTS**

Hearing Date:	April 25, 2024
Motions Adjudicator:	Nicole Byres, KC
Discipline Counsel:	Gagan Mann
Appearing on own behalf:	Leonard Hil Marriott

ISSUE FOR DETERMINATION

[1] Leonard Marriott (the “Respondent”) made an application on short leave for two orders:

- (a) that the facts and determination hearing scheduled for four days commencing on May 6, 2024 be adjourned generally or in the alternative, until evidence sought in the application described in sub-

paragraph (b) below is provided to the Respondent (the “Adjournment Application”); and

- (b) that the Law Society and/or the complainant disclose or produce evidence including recordings and other materials in the possession of the Law Society, the complainant, and/or related persons (the “Disclosure Application”)

(collectively, the Adjournment Application and the Disclosure Application are referred to as the “Applications”).

[2] After reviewing materials and hearing submission by the Respondent and on behalf of the Law Society, I dismissed the Applications with oral reasons, and said that I would follow up with written reasons. I now provide written reasons for dismissing the Applications.

Factual Background

[3] The citation was issued June 14, 2023 (the “Citation”).

[4] The Law Society is not proceeding on allegation 1 of the Citation. Allegations 2 and 3 of the Citation relate to conduct of the Respondent, while he was acting as an executor and trustee of the estate of AB. Specifically,

- (a) allegation 2 alleges that the Respondent improperly withdrew from trust, executor fees prior to receiving signed releases from the beneficiary waiving the passing of accounts, and
- (b) allegation 3 alleges that the Respondent misappropriated or improperly withdrew funds from trust,

contrary to one or more of Rule 3-64 of the Law Society Rules (the “Rules”), rule 3.6-1 of the *Code of Professional Conduct for British Columbia* (“BC Code”), and the Respondent’s fiduciary duties.

[5] The Citation arises from a complaint generated by a Law Society audit, and from a complaint by a member, director and former president of the society (the “Complainant”) named as the beneficiary of AB’s estate (the “Society”).

[6] At a prehearing conference on December 7, 2023, the facts and determination hearing of the Citation (“F&D Hearing”) was scheduled for four days commencing on May 6, 2024.

[7] The Respondent filed the Applications on April 24, 2024 together with a short leave request to have the Applications heard on April 25, 2024. The Law Society did not oppose the short leave request but opposed the Applications.

Applicable Legal Principles

Adjournment Application

[8] Before a hearing begins, a party may apply to adjourn pursuant to Rule 5-5.2 of the the “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 hearing¹.

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

- (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.

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

² 2019 LSBC 39

Disclosure Application

[11] Rule 5-5(5) of the Rules provides that before a hearing begins, a party may apply for an order under section 44 (4)(b) of the *Legal Profession Act* (the “Act”) requiring a person “to produce for the tribunal or a party, a document or other thing in the person’s possession or control, as specified by the tribunal, that is admissible and relevant to an issue in the proceeding.”

Adjournment Application - Submissions of the Parties

Respondent’s submissions

[12] The Respondent argued that the F&D Hearing should be adjourned for the following reasons:

- (a) because the Complainant and/or the Law Society investigator are withholding or refusing to disclose evidence helpful to the Respondent’s case and/or because the Complainant and/or investigator are refusing to consider exculpatory evidence provided to the Law Society by the Respondent;
- (b) recently discovered evidence provided by the Respondent to the Law Society in relation to the allegations in the Citation;
- (c) that there is a BC Supreme Court hearing tentatively scheduled for hearing in Kelowna during the assize of the week of June 3, 2024 that will determine “all the issues and charges in the Citation”;
- (d) the Notice to Admit process has not been completed by both parties;
- (e) the Respondent’s request for disclosure pursuant to the BC *Freedom of Information and Protection of Privacy Act* (“FIPPA”) will not be fulfilled until August 2024, and that this disclosure will include “necessary information” helpful to the Respondent’s case;
- (f) it would be an abuse of process for the F&D Hearing to proceed before the Respondent’s application under the BC *Protection of Public Participation Act*; and
- (g) the BC Law Society will no longer exist in the near future based on recent BC Legislation and it would be unfair to continue proceedings

until the new regulatory body addresses any valid issues in relation to the Citation.

During his submissions, the Respondent made statements that he had or would be retaining counsel to represent him in this matter, however the Respondent did not refer to the availability of counsel as a reason for his adjournment application.

[13] *Withholding/refusing to disclose or consider evidence*: The Respondent did not provide any factual evidence to support his claim that the Law Society or the Complainant were withholding or refusing to disclose evidence. In the face of the Law Society's assertion that it had disclosed everything to the Respondent, the Respondent said he believed recorded conversations and notes of meetings of the Society existed and the Respondent's position was that the onus was on the Law Society to seek out these recordings and notes and then provide copies to him. The Respondent also alleged that he had provided relevant evidence that the Law Society had not considered.

[14] *Parallel Proceedings/BCSC Action*: The Respondent did not provide any specific information about the matter set for hearing in the BC Supreme Court that he said would determine the issues raised in the Citation, other than saying it was a "predominately related hearing". The Respondent also did not provide any information regarding why the issue before that court would be material to or affect the outcome or fair hearing of the F&D Hearing.

[15] *Notice to Admit Process not Completed*: Respondent did not explain why he believed the Notice to Admit process was not completed.

[16] *FIPPA Request Delayed Until August 2024*: The Respondent made a broad request pursuant to FIPPA in early 2024 for documents (not restricted to documents related to the Citation) which resulted in the Law Society identifying nearly 20,000 documents. The Law Society successfully obtained an order from the BC Privacy Commissioner extending the deadline for production until August 2024. The Respondent argued that these materials would include "necessary information relating to the grounds to dismiss the Citation...." and accordingly the Respondent argued that the F&D Hearing could not proceed until he had obtained all of the documents producible by his FIPPA application.

[17] *Protection of Public Participation Act matter*: The Respondent did not explain what his application under this act was or how it would or could impact the F&D Hearing.

[18] *Future Changes to LSBC*: The Respondent did not speak to the last reason included in his application for adjournment, namely that it would be unfair to proceed with the F&D Hearing because the Law Society may not exist in the future.

Law Society's Submissions

[19] The Law Society's overall position is that an adjournment is not necessary for a fair hearing. The Law Society's specific responses to the Respondent's submissions are summarized as follows:

- (a) The Law Society denies that it has withheld any evidence in the matter or refused to consider all available evidence. Further, there was no reason to adjourn the F&D Hearing until after the FIPPA identified documents were provided to the Respondent because all relevant documents to the Citation in the possession of the Law Society had already been produced.
- (b) Until the hearing of this application commenced³, the Law Society had no knowledge of any BC Supreme Court proceedings that could or should affect the fair hearing.
- (c) The Law Society denied that the Notice to Admit process had not been completed and said its Notice to Admit was served and responded to. The Law Society's materials included a copy of its February 8, 2024 Notice to Admit, and evidence that the Respondent responded by the extended deadline of March 22, 2024.
- (d) The Law Society submits that the Respondent's application to the Executive Director of the Law Society under the BC *Protection of Public Participation Act* were not relevant to the Citation.

Disclosure Application

Respondent's Submissions

[20] In the Respondent's materials, he asserted that documents existed that were relevant to his case.

[21] In his oral submissions the Respondent elaborated by saying he believed there were recordings or notes taken from meetings of the Society that would demonstrate the Society authorized the Respondent's withdrawal of the funds referred to in allegation 2 and 3 of the Citation.

³ The Respondent emailed the materials to the Law Society as the hearing of his application began.

[22] The Respondent did not provide any specific information regarding the alleged document such as dates of such documents, who was currently in possession of the documents, or if he had made any attempts to obtain such documents.

Law Society's Submissions

[23] As noted above, the Law Society denies that it has withheld any evidence in the matter or refused to consider all available evidence.

Analysis

Adjournment Application

[24] Practice direction 5.4 (1) states that adjournments are not automatic, even if the parties consent, and 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.

[25] A decision to grant or deny an adjournment requires the balancing of a respondent's right to a fair hearing against the public protection consideration of having the administration of justice move forward in a timely manner.⁴

[26] The Respondent argued that he would not be able to have a fair hearing without an adjournment, however his application materials and submissions did not include any evidence, persuasive or otherwise, that met any of the criteria for an adjournment as articulated in *Hart*⁵.

Disclosure Application

[27] As a motions adjudicator, I may make such an order provided I am satisfied the requested documents are admissible and relevant to an issue in the current proceedings.

[28] In my view, section 44 (4)(b) of the *Act* does not authorize a discovery process, or search for documents without some foundation that documents sought actually exist, are in the possession or control of a named person or organization, and are admissible and relevant to the proceeding.

⁴ *Hart*, fn 2 at para.18

⁵ *Hart*, fn 2

[29] Further, I agree with the Law Society's submissions that the reasoning in the 2022 *Tungohan*⁶ decision is applicable here:

[7] The Respondent seeks disclosure of a variety of materials that are clearly irrelevant. The Respondent appears to believe the way he was investigated is in some way relevant to an administrative hearing into whether he committed the acts alleged in the Citation and whether those acts amount to professional misconduct. The investigation and deliberations by Law Society committees, staff or counsel, are not relevant nor are they issues in the proceeding. Irrelevant materials do not have to be disclosed and should not be.

[8] The Respondent's allegations that the Law Society has violated unspecified principles of natural justice or otherwise acted improperly does not make the investigation into the Respondent's conduct and the legal opinions of discipline counsel relevant to the proceeding. For these materials to become disclosable the Respondent must establish on clear, reliable evidence that the Law Society, Law Society staff, discipline counsel, and/or committee improperly carried out their duties in a manner akin to a malicious prosecution. Speculation and unsupported allegations of improper conduct are insufficient. The Respondent has not provided any evidence supporting a finding of improper conduct. The requested materials are irrelevant and should not be disclosed.

[9] From the Respondent's materials, it is apparent that the Law Society has erred on the side of caution and disclosed more materials than were truly relevant so as to ensure they did not fail to provide all relevant materials. The Respondent speculates that there may be other relevant materials in the Law Society's possession. Absent compelling evidence that the Law Society has withheld relevant materials, I am not prepared to look behind the Law Society's representations. To do otherwise would shift the focus of this administrative process from the allegations that the Respondent misconducted himself in a specific instance to a broad investigation and examination of the Law Society generally. The Law Society's conduct is not at issue in this matter. Only the Respondent's alleged conduct is before the Tribunal. It is the Respondent who faces the burden of establishing that evidence relevant to the Respondent's alleged misconduct has been withheld from him. He has not done so.

[30] In summary, once the Law Society represents that it has provided all disclosure relating to the matter and are not in possession of any further relevant materials, and absent any compelling evidence that the Law Society has withheld relevant materials, the

⁶ *Law Society of BC v. Tungohan*, 2022 LSBC 1 (CanLII)

onus shifts to a respondent to establish that relevant materials exist and are either in the possession of the Law Society or the Complainant.

[31] The Respondent failed to provide any evidence that there were identifiable documents in the Complainant's (or any other person's) possession that may be relevant to the F&D Hearing, and accordingly there is no foundation for me to make the disclosure order requested by the Respondent.

Order

[32] For the reasons set out above, the Respondent's Adjournment Application and Disclosure Application are denied.