

2025 LSBC 12
Hearing File No.: HE20180041
Decision Issued: May 7, 2025
Citation Issued: May 15, 2018

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

VALORIE FRANCES HEMMINGER

RESPONDENT

**DECISION OF THE HEARING PANEL ON AN
APPLICATION FOR AN *IN CAMERA* HEARING**

Written Submissions: April 4 and 17, 2025

Panel: Jennifer Chow, KC, Chair
Monique Pongracic-Speier, KC, Lawyer

Discipline Counsel: Angela R. Westmacott, KC
Alandra Harlinton

Appearing on her own behalf on
the Motion: Valorie Frances Hemminger

INTRODUCTION

[1] The Respondent seeks an order that the remainder of the Facts and Determination hearing in this matter (the “F&D Hearing”) be *in camera*. The Law Society consents to an order to proceed *in camera*, given the unique circumstances of the case. For the reasons which follow, the Panel orders that the hearing scheduled for June 4 to 6 and 18 to 20 will be *in camera*.

BACKGROUND

[2] The citation against the Respondent alleges that on various occasions between 2011 and 2015, the Respondent failed to deposit client trust funds as soon as practicable, failed to report trust shortages, misappropriated or improperly withdrew trust funds, and failed to prepare timely trust reconciliation reports.

[3] All proceedings in the F&D Hearing to date have been held by Zoom hearing.

[4] The Panel heard evidence over seven days between September 14 and December 15, 2020, by which time both parties had closed their cases. Argument was scheduled for January 2021 but did not proceed. Instead, there were Court proceedings and applications to the Tribunal.

[5] In July 2024, the Panel granted the Respondent leave to reopen her case: *Law Society of BC v. Hemminger*, 2024 LSBC 34. The F&D Hearing continued between March 10 and 13, 2025. The F&D Hearing was fully open to the public through March 10, 2025.

[6] On March 11, 2025, the Respondent applied for, and was granted, an order excluding a member of the public, BL, from the remainder of the F&D Hearing: *Law Society of BC v. Hemminger*, 2025 LSBC 9 (“*Exclusion Decision #1*”).

[7] Two people attended the F&D Hearing after BL was excluded. The Respondent submitted that these people were proxies for BL. She led evidence to show that both individuals were connected to BL. This included compelling evidence that one of the two is intimately involved with BL, and that the other is BL’s friend.

[8] The F&D Hearing is scheduled to continue June 4 to 6 and 18 to 20, 2025 (the “Continuation”). The sole purpose of the Continuation is for the Panel to hear evidence concerning the Respondent’s mental health at the time of the events at issue in the Citation.

SUBMISSIONS

[9] Both parties rely on the criteria articulated in *Sherman Estate v. Donovan*, 2021 SCC 25, to adjudicate applications for orders that would limit the open court principle. *Sherman Estate* requires an applicant for such an order to show that:

- (a) an open hearing poses a serious risk to an important, competing public interest;
- (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

The Respondent's Submissions

[10] Applying the *Sherman Estate* criteria to the case, the Respondent submits that the remainder of the F&D Hearing should be closed to all members of the public to uphold two important public interests: the protection of private information going to the Respondent's biographical core and the protection of her mental health. With respect to the second point, the Respondent filed evidence from treatment providers that the Respondent's mental health has recently deteriorated.

[11] The Respondent also submits that an order to proceed *in camera* is reasonably necessary. The Respondent argues that BL has disobeyed Court orders in the past and probably will attempt to enlist others to attend the remainder of the F&D Hearing as proxies for him. The Respondent notes that the Panel has already recognized that BL has an *animus* towards her and likely would weaponize sensitive personal information about the Respondent to target her on social media. In addition, the Respondent's treatment providers opine that subjecting the Respondent to an open hearing would be harmful to her mental health and may inhibit her from giving evidence on some topics. The Respondent says that, for these reasons, a publication ban would not be sufficiently protective of her interests and does not offer a reasonable alternative to an order closing the hearing to the public.

[12] The Respondent argues that the order sought is proportionate in its effects because it would support the public interest in the proper functioning of Law Society regulatory proceedings, by affirming the importance of supporting the mental health and wellbeing of lawyers. She further submits that the proposed order supports the judicious use of Tribunal resources because the order would pre-empt the prospect of continued

interruptions in the proceedings, should others attempt to attend the F&D Hearing as proxies for BL.

The Law Society's Submissions

[13] The Law Society stresses that an order for an *in camera* hearing is an extraordinary remedy. Such an order will not be warranted in every disciplinary proceeding where mental health or other core biographical information may be canvassed in evidence. The Law Society says an order to close the Continuation to the public is only warranted in this case because of exceptional facts.

[14] Based on *Exclusion Decision #1*, the Law Society accepts that an open hearing in the Continuation would pose a serious risk to interests of public importance.

[15] Moreover, the Law Society accepts that an order to exclude all members of the public from the Continuation is reasonably necessary, for the following reasons:

- (a) The family law litigation which gives rise to BL's grievance against the Respondent was "remarkably contentious". The Court expressed "serious reservations" about BL's conduct in that litigation and affirmed that he had "repeatedly" breached Court orders. There is, additionally, evidence of a criminal law investigation related to the family law proceedings, and the Respondent is mentioned as a target. The Law Society describes BL as a tenacious litigant with "unique tendencies".
- (b) *Exclusion Decision #1* accepted that BL has an *animus* towards the Respondent and has used social media to vilify, troll and demean the Respondent.
- (c) One of the people who attended the F&D Hearing after BL was excluded "seemingly attempt[ed]" to mislead the Panel about their family-like relationship with BL. This is "deeply troubling" behaviour. It is reasonable to treat the individual as a proxy of BL and to infer from events in March 2025 that the integrity of the proceedings is at risk.
- (d) Zoom log-in information is transferrable and observing a Tribunal hearing on Zoom offers a person a high degree of anonymity. The Panel cannot be confident that a person observing a Zoom hearing is not acting as a proxy for BL. It is, however, inefficient and procedurally untenable for the Panel to question members of the public about their reasons for attending the F&D Hearing, especially when they have a *prima facie* right to observe the proceedings.

- (e) The Continuation will be devoted to the tendering and probing of mental health and sensitive personal information and, as found in *Exclusion Decision #1*, this is bound to be interwoven with some other evidence and argument. This results in a situation where the Continuation Hearing cannot reasonably be severed into parts.

[16] The Law Society also argues that, in the peculiar circumstances of this case, the benefits of proceeding *in camera* outweigh the negative effects of the order on the open hearing principle. Indeed, the Law Society goes so far as to argue that an order for the Continuation to be heard *in camera* is “the only possible way to avoid the Panel being put in a position of having to ensure that BL and his proxies are not in attendance and undermining the intent of the exclusion order”. The Law Society additionally notes that most of the F&D Hearing has been open to all members of the public, with just three days of the Hearing closed only to BL. It says that some of the issues to be addressed in the Continuation have already been canvassed by the Respondent in direct and cross-examination in open hearings (we do not understand this to mean that evidence will be repeated but that some of the themes that may arise in the Continuation have already been touched upon in the F&D Hearing).

ANALYSIS

[17] Pursuant to Rule 5-8 of the Law Society Rules (the “Rules”), the Tribunal’s hearings are presumptively open to the public but hearing panels have discretion to make an order to close a hearing, where the public interest or the interests of an individual so demand. Rules 5-8(1) and (1.1) provide:

(1) Every hearing is open to the public, but the panel ... may exclude some or all members of the public.

(1.1) The panel ... must not make an order under subrule (1) unless, in the judgment of the panel ...

(a) the public interest or the interest of an individual in the order outweighs the public interest in the principle of open hearings in the present case, or

(b) the order is required to protect the safety of an individual.

[18] As discussed in *Exclusion Decision #1*, an application for an order to close a hearing to the public should be approached with analytic rigour. The Panel agrees with the parties that the *Sherman Estate* test should be applied in determining this application. In addition, in determining whether to exercise discretion to close a hearing to the public,

the Panel is required to consider relevant *Charter* values: *Commission scolaire francophone des Territoires du nord-ouest v. Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31 at paras. 64 to 68 and 77.

[19] We are persuaded that the Continuation should be heard *in camera* because in the unique circumstances of this case the public interest in the integrity of the Tribunal's process outweighs the public interest in the principle of hearing openness. We reach this conclusion for the following reasons:

- (a) The Continuation has a limited, and tightly defined, purpose: for the Panel to hear evidence on matters concerning the Respondent's mental health at the time of the events alleged in the citation. As noted in *Exclusion Decision #1*, at para. 31, the detailed biographical information expected to be canvassed during the Continuation is of little value to the public's understanding of the issues at stake in the citation but will include highly sensitive personal information.
- (b) Interests of public importance will be at issue in the Continuation. These include the Respondent's privacy interests and the overarching public interest in the proper administration of justice in the hearing of the citation. The Panel acknowledges that an order for the Continuation to be heard *in camera* implicates freedom of expression. In our view, however, the limited deleterious impact of an order to close the Continuation to the public is significantly outweighed by the salutary effects of the order on the protection of autonomy, human dignity and privacy, all of which are *Charter* values: *R. v. Mabior*, 2012 SCC 47 at para. 45.
- (c) The Continuation is scheduled to proceed by Zoom hearing. This form of hearing offers observers a unique form of anonymity that is potentially open to abuse. The Panel accepts the submission that, given the events that transpired in March 2025, the Panel must be alive to the risk of log-in information being misused to circumvent the Order excluding BL from the F&D Hearing. A publication ban is not sufficiently responsive to this risk.
- (d) It would be unseemly for Tribunal staff or the Panel to screen members of the public during the Continuation to determine whether they have a connection to BL. Intrusive screening of members of the public who have a *prima facie* right under the Rules to attend a hearing to be informed of and understand Tribunal proceedings is inimical to open justice, which may reasonably be considered an aspect of the

enhancement of democracy, a recognized *Charter* value: *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27 at para. 85.

- (e) An order that the Continuation will be heard *in camera* is a tailored remedy that will have a limited effect on hearing openness. Only six days of hearing time in June 2025 – in a proceeding that began in 2020 – will be affected by the order. In the Panel’s view, the negative impact of the order on hearing openness is proportionate to the interests and values it is intended to safeguard.

ORDER:

[20] The Panel therefore orders that the Continuation Hearing scheduled for June 4 to 6 and 18 to 20 will proceed *in camera*.