

2024 LSBC 32
Hearing File No.: HE20220038
Decision Issued: July 2, 2024
Citation Issued: December 13, 2022

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

LEONARD HIL MARRIOTT

RESPONDENT

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

Hearing date: June 20, 2024
Motions Adjudicator: Herman Van Ommen, KC
Discipline Counsel: Ilana Teicher
Appearing on his own behalf: Leonard Hil Marriott

[1] On Thursday, June 20, 2024, the Respondent applied to adjourn the hearing of a citation against him set to commence Monday, June 24, 2024 (the “Citation”). The application was dismissed with reasons to follow because the parties and witnesses needed to know whether the hearing would be proceeding or not. These are the reasons.

[2] In his Notice of Motion, the Respondent set out the following basis for the adjournment:

1. I am not reasonably able to provide the appropriate time and attention owing to this matter as a direct result of being otherwise engaged with Hearing File No: CI20230010 and am necessarily incapable of attending to both hearings simultaneously;
2. The existing hearing dates were requested and set by legal counsel who is no longer representing me and are subsequently impracticable for my current counsel;
3. Owing to my current status of representation, it has not been possible to attend to the matter of the Notice to Admit. Subject to my procurement of new legal counsel, said counsel will understandably have need of the appropriate and suitable forty-five days to review and if applicable, respond to the Notice to Admit;
4. This matter should or would only be heard after my application under the *Protection of Public Participation Act* which is delayed by the Executive Director's delays in consenting to me using s. 87 *Legal Profession Act* materials in the PPPAct; Permitting the Citation hearing to continue will pre-judge the PPPAct hearing and would be an abuse of process;
5. This matter should only be heard after the Law Society provides the records requested under the *Freedom of Information and [Protection of] Privacy Act*, on January 4, 2024
6. 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.

[3] In his oral submissions the Respondent also suggested the matter was not ready to proceed because the Law Society would require expert evidence to prove some of the allegations in the Citation and none had yet been provided.

[4] The Law Society submitted that while there were two citations issued against the Respondent, the hearings of those citations were not being held simultaneously but in parallel. None of the hearing days in the two proceedings overlap.

[5] The hearing date of this Citation was set after an earlier date was adjourned by agreement and additional orders regarding setting a new date were made by a motions adjudicator on February 23, 2024. The hearing date of this Citation was set at a

prehearing conference on March 21, 2024 in conjunction with the Respondent's expressed intention to retain new counsel. This would have been the third counsel the Respondent retained to act for him on this proceeding.

[6] Since February 2024, Law Society counsel sought confirmation from the Respondent that he had in fact formally retained counsel. The proposed counsel had never confirmed to the Law Society that he was retained. That counsel confirmed in an email to the Law Society dated May 23, 2024 that he was not acting. In materials provided by the Respondent subsequently there was an email dated May 1, 2024 from the proposed counsel to the Respondent stating that he was unable to act.

[7] With respect to the *Protection of Public Participation Act* application, the *Freedom of Information and Protection of Privacy Act* application, and the proposed new legal regulator, the Law Society noted that the Respondent had relied unsuccessfully on those three points in two applications to adjourn in the other citation proceeding.

[8] The reasons of the motions adjudicator refusing the adjournment (*Law Society of BC v. Marriott*, 2024 LSBC 24 at paras. 16 to 18) stated:

[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.

[9] With respect to the need for an expert opinion to prove its case, Law Society counsel disagreed and advised that they planned to proceed without expert evidence.

[10] Granting or refusing an adjournment is a discretionary exercise. In *Law Society of British Columbia v. Hart*, 2019 LSBC 39, a hearing panel articulated the following non-exhaustive list of factors to be considered in an adjournment application. These factors, which have been accepted and applied in several subsequent adjournment decisions of the Tribunal, include:

- (a) the purpose of the adjournment (such as, relevance to the proceedings, or necessity for a fair hearing);
- (b) whether the participant seeking the adjournment has acted in good faith and reasonably in attempting to avoid the necessity of an adjournment;
- (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 the adjournment required);
- (f) whether there is any way to compensate for any harm identified;
- (g) how many adjournments the party requesting the adjournment has been granted in the past;
- (h) whether the hearing is peremptory, and if so, were the parties consulted in selecting the date and were they advised of its peremptory nature.

[11] The first adjournment was made necessary in part because the Respondent's second counsel ceased to act for him. The existing date was set in conjunction with the Respondent's desire to retain new counsel which did not happen. The Respondent has known since May 1, 2024 that his proposed new counsel would not act for him. He is representing himself in the other proceeding and is capable of representing himself in this matter.

[12] The Respondent has not acted diligently to retain new counsel. He has had since before the February 23, 2024 order adjourning the first hearing date to do so.

[13] No evidence concerning the status of his application under the *Protection of Public Participation Act* was provided. It seems to have not yet been commenced. The Respondent asserts he requires approval of the Executive Director to use certain materials, but has given no details as to why that is so. It is apparent that the hearing of any such application is months or even longer away. It is not reasonable to adjourn this

matter pending completion of such an application. He has had since the issuance of the Citation on December 13, 2022 to move that matter forward but has not done so.

[14] The Respondent has made an application under the *Freedom of Information and Privacy Act* (“FIPPA”) for records relating to matters beyond the Citation in this matter. The Law Society will be obliged to produce them by August 2024. The Respondent did not identify what documents, either by class or type, that he expected to be produced that would be relevant to the hearing of this Citation.

[15] The Law Society asserts that all relevant properly producible documents have been disclosed to the Respondent. He has not made an application for further production of relevant documents in this matter. Without demonstrating that there were likely relevant documents expected to be produced pursuant to the FIPPA request, there is no basis for an adjournment. It is also significant that the Respondent only made the FIPPA request in January 2024 more than a year after the issuance of the Citation.

[16] The Respondent asserts this Citation ought to be held in abeyance until the new regulatory body that is expected to be created to replace the Law Society “addresses any valid issues in relation to the Citation.”

[17] Section 240 (4) of the *Legal Professions Act* provides that for any citation issued under the *Legal Profession Act*, where a hearing has commenced before the date the new regulatory body is created, the tribunal may continue with the hearing and “must perform duties” under the old Act (*Legal Profession Act*, SBC 1998, c.9).

[18] Even under a new regulator this tribunal will continue to have jurisdiction over the Citation.

[19] The Law Society submits that an adjournment at this late date will cause harm as described below:

The harm identified, as in *Hart*: “is the damage to the Law Society’s public protection mandate, which requires that hearings into allegations of professional misconduct move forward in a timely and expeditious manner. The harm is also to the process of scheduling, in that a new panel will have to be found for a multi-day hearing, and the volunteer panel members, whose calendars will have been needlessly adjusted to accommodate the Respondent’s hearing if the adjournment is granted.”

The prejudice to scheduling is a prejudice to the effective administration of the Tribunal. The panel has set aside time to be at the hearing and if this last-minute

adjournment is allowed, that time will not be used for another matter and new dates will have to be scheduled to accommodate everyone.

Unlike *Hart*, in this case there are also several witnesses who will be inconvenienced. The Law Society's witnesses consist of three practicing lawyers, who have very busy schedules and have carefully arranged them to book these hearing dates several months in advance. The other two witnesses, not including the Respondent, are elderly and in particular [Ms. G] who is nearly 90 years of age. They will be caused needless anxiety and inconvenience as a result of the hearing being re-scheduled. There is also an increased risk that evidence will be lost with the passage of time.

[20] I agree. The public interest requires that these disciplinary hearings proceed expeditiously. Fairness to the Respondent cannot be ignored in pursuing that objective. In this case the Respondent has not identified any valid grounds to suggest that proceeding with this hearing as scheduled will be unfair to him.

[21] The application to adjourn is dismissed.