

2025 LSBC 11
Hearing File No.: HE20240011
Decision issued: April 23, 2025
Citation issued: May 31, 2024
Citation amended: October 23, 2024

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

RENE HENRI DAIGNAULT

RESPONDENT

**DECISION OF THE MOTIONS ADJUDICATOR ON AN
APPLICATION FOR THE MODE OF HEARING TO BE IN WRITING**

Hearing in writing: April 17, 2025

Motions Adjudicator: Nicole Byres, KC

Discipline Counsel: Ilana Teicher

No one appearing for the Respondent

INTRODUCTION

[1] By Notice of Motion filed April 10, 2025, the Law Society applied in writing for an order that the hearing on facts and determination (the “F&D Hearing”) scheduled for May 8 to 9, 2025 via Zoom be conducted on written materials only and without an oral hearing. For reasons that follow, this application is denied.

BACKGROUND TO THE MOTION

[2] The citation in this matter was authorized by the Discipline Committee on May 23, 2024 and issued on May 31, 2024. It was amended on October 23, 2024 (the “Citation”).

[3] The Respondent was served with the Citation on May 31, 2024 and October 24, 2024 after the amendment.

[4] The Respondent did not pay the January 1, 2024 installment of his Law Society of British Columbia membership fees. As a result, his membership with the Law Society lapsed. He is now a former member.

[5] The Respondent has not responded to the Law Society since the Citation was authorized in May 2024. The Respondent last corresponded with the Law Society during the course of the investigation, and prior to his becoming a former member in January 2024.

[6] The F&D Hearing, currently scheduled to proceed on May 8 and 9, 2025 via Zoom, was scheduled at a pre-hearing conference held on November 28, 2024, at which the Respondent did not attend despite being notified of same.

[7] On December 2, 2024, a hearing clerk of the LSBC Tribunal (the “Tribunal”) served a copy of the Notice of Hearing on the Respondent at his last known email address.

[8] The Law Society served a copy of a Notice to Admit dated October 24, 2024 (the “NTA”) on the Respondent by posting it on his Member Portal. The Respondent did not reply to the NTA within the prescribed time limits and is deemed to admit the truth of the facts and the authenticity of the documents set out in the NTA: Rule 5-4.8(7) of the Law Society Rules (the “Rules”). The Law Society is relying on the deemed admissions at the F&D Hearing, and the facts will be uncontested.

THE SOCIETY’S SUBMISSIONS

[9] The Law Society relies on Rule 5-5.1 which permits a motions adjudicator to make the orders sought.

[10] Rule 5-5.1(10) states: “The motions adjudicator may, on the application of a party or on the motions adjudicator’s own motion, make an order that, in the judgment of the motions adjudicator, will aid in the fair and expeditious disposition of the matter, ...”

[11] The Law Society also relies on Practice Direction 8.10 (Hearings in writing) and Practice Direction 7 (Motions) of the LSBC Tribunal Directions on Practice and Procedure (“Practice Directions”).

[12] The Law Society submits that because this matter will likely proceed uncontested and the only evidence submitted by the Law Society is contained in the deemed admissions to the NTA, it will save time and resources for the F&D Hearing to proceed on the written record.

[13] The Law Society recommends that the “written hearing should commence on the day currently scheduled that the Respondent already has notice of: May 8, 2025”, and then if the F&D Hearing does proceed in writing, the Respondent would still have the opportunity to provide written materials if he wishes to make written submissions on his own behalf by May 9, 2025 (the day the originally scheduled F&D Hearing was set to conclude), or by such other date as the motions adjudicator may order.

ANALYSIS

[14] In support of this application, the Law Society filed materials prescribed by Practice Direction 8.10(2) with the exception of proof of service of the application on the responding party. There was no affidavit of service of the Notice of Motion to demonstrate that the Respondent had notice of the application, nor any other indication (in the filed materials) that the Respondent was made aware of the application. Because the Law Society made this application in writing, there was no opportunity to ask whether the Respondent had been served or to give the Law Society the opportunity to provide evidence that he had been served.

[15] Consequently, the last information provided to the Respondent was that the F&D Hearing would proceed via Zoom on May 8 and 9, 2025.

[16] As set out in paragraphs 5 to 8 above, the Respondent has not responded to the Law Society since the Citation was authorized in May 2024, so while it is unlikely that the Respondent would respond to the Law Society’s Notice of Motion, the fact remains that the application does not include evidence showing the Respondent was served. Consequently, the Respondent may not have been given the opportunity to consent, oppose or comment on:

- (a) whether the F&D Hearing should proceed by way of written materials;
- (b) the Law Society’s written submissions; or

- (c) deadlines on when the Respondent must provide his written response to the Law Society's submissions.

Further, if the Respondent has not yet been provided with the Law Society's written submissions, he does not have all the information available to him to form an opinion.

[17] Practice Direction 1.1 sets out the purposes of the Practice Directions, which include establishing a fair, transparent process, that considers the interests of the public, legal professions and those appearing before the Tribunal. Practice Direction 8.10 (2)(a) requires proof of service of an application for a hearing in writing.

[18] Given the lack of evidence that the Respondent has been served with the application and supporting materials, I cannot at this time order that the F&D Hearing set for May 8 to 9, 2025 via Zoom proceed instead with written materials only and without an oral hearing.

[19] I note also that under Practice Direction 8.10(7) the commencement date of a Hearing in Writing is "the next business day after the date by which all materials were to be filed by the parties". The Law Society's proposal that the Respondent provide written materials on May 9, 2025, after the suggested May 8 commencement date, is not in accordance with this Practice Direction.

[20] Finally, I note the Citation involves serious allegations of misconduct involving multiple financial transactions and clients. The NTA is itself 1,591 pages in length. While the panel may have the opportunity to review the NTA in advance of the F&D Hearing under Rule 5-6.1(3)(c), in these circumstances it would be best to leave it to the discretion of the panel to determine the extent to which they want the parties to take the panel through the evidence and written submissions.