

2025 LSBC 09  
Hearing File No.: HE20180041  
Decision Issued: April 2, 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 APPLICATION  
TO EXCLUDE A MEMBER OF THE PUBLIC FROM THE HEARING**

Hearing date: March 11, 2025

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

Discipline Counsel: Angela R. Westmacott, KC  
Alandra Harlinton

Counsel for the Respondent: Richard G. Gibbs, KC

**INTRODUCTION**

[1] On March 11, 2025, the Panel ruled that Brandon Leudke, a member of the public, will be excluded from the remainder of the Facts and Determination hearing. Rule 5-8(5) of the Law Society Rules (the “Rules”) requires the Panel to give written reasons for this order. These are the Panel’s reasons.

## BACKGROUND

[2] The Citation against the Respondent alleges that on various occasions, 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. The hearing of the Citation commenced in 2020 and continued March 10, 2025 (“Continuation”), pursuant to the decision in *Law Society of BC v. Hemminger*, 2024 LSBC 34. The purpose of the Continuation is for the Panel to hear evidence from the Respondent and other witnesses about the Respondent’s mental health at the time of the events at issue in the Citation.

[3] On November 28, 2024, Mr. Leudke applied to the Tribunal for permission to record the proceedings in the Continuation. The Panel denied Mr. Leudke’s application and held that, subject to any order that might be made to exclude members of the public from the hearing, Mr. Leudke could attend and observe the Continuation: *Law Society of BC v. Hemminger*, 2024 LSBC 46.

[4] On March 11, 2025, Mr. Leudke attended to observe the Continuation. The Respondent then applied for an order to exclude Mr. Leudke from the Continuation hearing. The Law Society consented to that order. The parties and Mr. Leudke made oral submissions regarding the order sought. Mr. Leudke opposed the proposed order.

## SUBMISSIONS

[5] The Respondent’s application was made pursuant to Rules 5-8(1) and (1.1), which 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.

[6] The Respondent argued that, taking into account the principles set out in *Sherman Estate v. Donovan*, 2021 SCC 25, it would be appropriate for the Panel to grant an order to exclude Mr. Leudke from the hearing. The Respondent contended that *Sherman Estate*

recognizes that privacy is an important public interest. When an open hearing would impinge upon privacy in a way that strikes at an individual's biographical core, openness will yield to the protection of privacy. The Respondent submitted that the evidence to be canvassed in the Continuation is intimate in the most extreme sense and strikes at her biographical core.

[7] The Respondent also submitted that the evidence contained in her affidavit of December 4, 2024, which was filed in response to Mr. Leudke's application to record the proceedings, explains why an order to exclude him from the Continuation is necessary. The affidavit evidence shows that Mr. Leudke was a self-represented litigant in long-running family law proceedings in which the Respondent represented the opposing party. The Respondent submitted that the affidavit shows that since those proceedings, Mr. Leudke has cast the Respondent as his nemesis and has relentlessly posted about her on social media.

[8] The Respondent submitted that an order short of one excluding Mr. Leudke from the Continuation would not be adequate because the evidence to be heard by the Panel cannot be compartmentalized in a way that would allow for Mr. Leudke to attend parts of the Continuation. The Respondent also argued that the order sought is a proportionate response to the threat to her privacy posed by Mr. Leudke being able to attend the Continuation.

[9] The Law Society argued that while hearings of the Tribunal are routinely open to the public, Rules 5-8(1) and (1.1) permit the Panel to exclude a member of the public from the Continuation. The Law Society agreed with the Respondent that the principles set out in *Sherman Estate* should guide the Panel's decision-making. The Law Society argued that it is in the public interest in this case to protect the Respondent's privacy interests by excluding Mr. Leudke from attending the Continuation.

[10] The Law Society highlighted that the Panel must consider the *Charter* rights and values engaged by the application and proportionately balance them with the Tribunal's statutory objectives. The Law Society submitted that freedom of expression, dignity, autonomy, equality and the enhancement of democracy are implicated in the application to exclude Mr. Leudke from the Continuation; see *Sherman Estate*, at para. 30. The relevant statutory objects are those set out in s. 3 of the *Legal Profession Act*, SBC 1998, c. 9 (the "*Act*"). Section 3 of the *Act* provides that it is the object and duty of the Law Society to uphold and protect the public interest in the administration of justice by:

- (a) preserving and protecting the rights and freedoms of all persons,
- (b) ensuring the independence, integrity, honour and competence of lawyers,

- (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,
- (d) regulating the practice of law, and
- (e) supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.

[11] The Law Society argued that these objectives are fundamentally aimed at maintaining public trust in lawyers. The Law Society invoked *Groia v. Law Society of Upper Canada*, 2018 SCC 27, at para. 114, for the proposition that Tribunal proceedings are an integral component of the Law Society's duty to advance the public interest, the cause of justice and the rule of law, by regulating the legal profession and setting and enforcing professional standards of conduct.

[12] Relying on paras. 75 to 77 of *Sherman Estate*, the Law Society argued that privacy interests may legitimately supersede the open hearing principle when the dissemination of intimate personal details would threaten individual dignity. Information which reveals something intimate and personal about the individual, their lifestyle or their experiences qualifies as sensitive personal information: *Sherman Estate*, at para. 77. The Law Society said that the mental health information to be canvassed during the Continuation falls within this category of sensitive personal information.

[13] Finally, the Law Society argued that an order to exclude Mr. Leudke from the hearing of the Continuation represents a proportionate balance of the *Charter* values and the Law Society's statutory objects because the biographical information sought to be protected by the order is of little value to the public's understanding of the issues at stake in the Citation.

[14] Mr. Leudke submitted that the application is unfair and took him by surprise. He stated that an order barring him from the Continuation will not allow justice to be seen or served, and that the public interest in an open hearing supersedes privacy concerns. He said, further, that the Respondent has claimed victimhood when she is really a perpetrator of sharp practice and that her behaviour has caused more concerns than the Panel may realize. Mr. Leudke argued that the material canvassed in the Continuation will not go out into the public domain but that he should be able to publish his opinions about it.

## ANALYSIS

[15] We begin by addressing Mr. Leudke’s argument that the hearing of the application was unfair to him. We cannot accede to the argument. Mr. Leudke is not a party to the proceedings. He does not have standing before the Tribunal generally. He has limited standing before the Tribunal for the purposes of this application: *Canadian Broadcasting Corp. v. Manitoba*, 2021 SCC 33, at para. 47. In balancing the competing *Charter* interests of the parties, the Panel is also cognizant of the need to also balance the interests of the public, as represented by Mr. Leudke, in maintaining an open hearing and Mr. Leudke’s interest in publishing his opinions. The Panel provided Mr. Leudke with the form of procedural fairness appropriate in the circumstances: he heard the parties’ submissions, had the evidence relied on by the Respondent and had the opportunity to make submissions to the Panel.

[16] We move next to the merits of the application.

[17] Pursuant to Rule 5-8(1), the Tribunal’s hearings are presumptively open to the public but hearing panels have discretion to make orders excluding members of the public, where the public interest or the interests of an individual so demand.

[18] A panel’s discretion to close a hearing in whole or part must be exercised on proper principles and, to quote from a venerable legal chestnut, “based upon a weighing of considerations pertinent to the object[s]” of the Tribunal: *Roncarelli v. Duplessis*, [1959] S.C.R. 121, at p. 140.

[19] The presumption of an open hearing in Rule 5-8 signals that weight is to be afforded to the open hearing principle as a usual feature of the Tribunal process. The requirement, in Rule 5-8(5), for written reasons for making or denying an order to exclude a member of the public underlines the importance of the open hearing principle.

[20] Taken together, Rules 5-8(1), (1.1) and (5) suggest that an application for an order to close a hearing to one or more members of the public should be approached with analytic rigour. The Supreme Court in *Sherman Estate* developed a test for orders that limit the open court principle that, in our view, is apposite to the application to exclude a member of the public from the Continuation. Pursuant to the *Sherman Estate* test (adapted to the Tribunal context), the Respondent bears the onus of showing 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.

**A hearing open to Brandon Leudke would pose a serious risk to an important, competing public interest**

[21] The law acknowledges that control over fundamental and sensitive personal information about oneself is integral to human dignity and that there is a public interest in protecting such information from dissemination: *Sherman Estate*, at paras. 71, 81, 82 and 85. The first part of the test in *Sherman Estate* thus calls on us to determine whether having a fully open hearing would meaningfully risk eroding the Respondent's dignity by exposing information going to her "biographical core": *Sherman Estate*, at paras. 75, 76 and 79. This is information that would reveal "something intimate and personal about the individual, their lifestyle or their experiences": *Sherman Estate*, at para. 77.

[22] The Respondent has discharged her burden on the first leg of the *Sherman Estate* test. The evidence to be heard during the Continuation will include not only sensitive information about the Respondent's mental health (going beyond information already in the public domain) but also information about her personal life and family circumstances at the times at issue in the Citation. These categories of information are core biographical information about the Respondent.

**The order sought is necessary**

[23] The question on the second part of the test is whether the order sought to exclude Mr. Leudke is necessary to prevent this serious risk or whether reasonably alternative measures would suffice.

[24] The Panel is persuaded by the affidavit evidence presented in the application that permitting Mr. Leudke to attend the Continuation would pose a serious risk to the Respondent's privacy interests and dignity. In particular, we conclude that, if permitted to attend the Continuation, Mr. Leudke likely would weaponize sensitive personal information about the Respondent to target her on social media.

[25] The affidavit evidence shows that Mr. Leudke has, and has acted on, an animus towards the Respondent. Mr. Leudke has, from time to time, used social media posts to vilify, troll and demean the Respondent. These posts include portrayals of the Respondent as a devil and tagging and commenting on a social media post about the Respondent's

child (posted by someone other than the Respondent), to direct innuendo at the Respondent.

[26] In our view, an order fully excluding Mr. Leudke from the Continuation is necessary to protect against the risks of undue exposure and misuse of the sensitive personal information that will be in evidence.

[27] There are no reasonably alternative measures that would prevent the risk of misuse of information gathered in the hearing. We reach this conclusion for two reasons.

[28] First, we agree with the parties that sensitive personal information about the Respondent is bound to be interwoven with other evidence and argument during the Continuation. An order that would permit Mr. Leudke to attend some parts of the Continuation, but not others, is unworkable.

[29] Second, the evidence and submissions in this application and Mr. Leudke's earlier application to record the proceedings satisfy us that if he is not excluded from the Continuation, there is a serious risk that he will capitalize on personal information exposed during the hearing to create abusive or humiliating social media posts under the guise of opinion.

#### **The benefits of the order outweigh its negative effects**

[30] Finally, we have considered, as a matter of proportionality, whether the benefits of the order outweigh its negative effects. We appreciate that an order excluding Mr. Leudke from the Continuation is an order which should not be granted lightly.

[31] In our view, the order represents a proportionate balancing of the public interest in an open hearing and the Respondent's dignity and privacy interests. We are satisfied that there is a serious risk that Mr. Leudke would exploit sensitive personal information about the Respondent on social media. It would be a misuse of the legal process to permit "core biographical" information to be weaponized for these purposes. Moreover, we agree with the Law Society that the detailed biographical information sought to be protected by the order is of little value to the public's understanding of the issues at stake in the Citation. Mr. Leudke's interest in attending the hearing in order to express an opinion on the Respondent's medical information is outweighed by the Respondent's interest in protecting her dignity. Freedom of expression will not be unduly limited by excluding Mr. Leudke from the hearing.

**ORDER:**

[32] The Panel grants the Respondent's application and makes an order excluding Mr. Leudke as a member of the public from the Continuation.