2019 LSBC 40
Decision issued: November 20, 2019
Citation issued: April 16, 2019

THE LAW SOCIETY OF BRITISH COLUMBIA

In the matter of the *Legal Profession Act*, SBC 1998, c. 9

and a hearing concerning

ANDREW JAMES LIGGETT

RESPONDENT

DECISION OF THE PRESIDENT'S DESIGNATE ON AN APPLICATON FOR ADJOURNMENT

Written Materials:	November 18, 2019
President's Designate:	Craig A.B. Ferris, QC
Discipline Counsel:	Sarah Conroy
Counsel for the Respondent:	Kieron G. Grady

[1] On November 18, 2019, an application was referred to me as the President's designate, and Chair of the Tribunal, for an adjournment of a hearing concerning Andrew James Liggett (the "Respondent"). The hearing is scheduled to commence on November 27, 2019. I considered the application that day and, in the interests of time, advised that the application to adjourn was dismissed and that my reasons would follow. These are those reasons.

[2] This is a somewhat novel application. The adjournment application is not based on an assertion that there is some form of prejudice with respect to the hearing that requires an adjournment to ensure a fair hearing. For example, there is no allegation of a need for further evidence or that a witness is unavailable. Rather, the application is based on the assertion that the Respondent has made a Rule 4-30 proposal and that the Discipline Committee, who is charged with the responsibility to consider such a proposal, will not meet to consider it until after the currently set hearing date. In the main, the Law Society opposed the application for the adjournment on the basis that an adjournment should not be granted due to the potential for a settlement. The Law Society also says that the facts

underlying a Rule 4-30 proposal have not been agreed. The parties have also engaged on an issue of settlement privilege and whether it was proper to disclose an exchange of proposals between the parties on this application. I do not consider it necessary to determine these last two issues on this application.

[3] In my view, given that the fairness of the hearing proceeding on November 27 is not in issue, the only issue is whether the making of a Rule 4-30 proposal by a respondent compels an adjournment of a hearing, in this case, a hearing that has been set for approximately four months. I find that the Rule does not compel such a result and that there is, therefore, no good reason to exercise my discretion in favour of an adjournment in these circumstances.

[4] The Respondent's core argument is that, because Rule 4-30 allows a respondent to tender a proposal at the latest 14 days prior to a hearing, this must mean that a respondent who does so is entitled to an adjournment of the hearing date so that the Discipline Committee can consider such a proposal.

[5] However, the Rule does not say that. The Rule says nothing whatsoever about adjourning the hearing date. I read the Rule to mean that this is the latest date upon which a Rule 4-30 proposal can be made, but that a respondent waiting until such a late date does so at their peril in the sense that there is no guarantee that the hearing will not go ahead if the Discipline Committee cannot consider the proposal before the hearing. In my view, the onus is on a respondent who is considering making a Rule 4-30 proposal to inquire when the Discipline Committee is meeting prior to the scheduled hearing date and to ensure they make the proposal prior to the date of such meeting. If a respondent waits until the latest date upon which a Rule 4-30 proposal can be made under the Rule, without knowing whether or not it can be considered by the Discipline Committee prior to the hearing date, the respondent must accept that the Law Society may, as here, refuse to agree to an adjournment and that the hearing will proceed without consideration of the Rule 4-30 proposal.

[6] I find that this is the proper result in this application. There is no allegation of unfairness in the hearing itself, and the Rule does not require an adjournment. In the result, I find that there is no basis upon which to exercise my discretion to grant an adjournment. I also confirm that it has been unnecessary for me to determine whether the Respondent's proposal is compliant with Rule 4-30 or whether settlement privilege has been breached and whether such disclosure was appropriate on this application.