

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

PETER DARREN STEVEN HART

RESPONDENT

**DECISION OF THE PRESIDENT'S DESIGNATE
ON AN APPLICATION FOR AN IN-PERSON HEARING
AND TO ADJOURN HEARING DATES**

Written submissions:	July 6, 2020
President's Designate:	Jennifer Chow, QC
Discipline Counsel:	Ilana Teicher
Counsel for the Respondent:	J.M. Peter Firestone

THE APPLICATION

- [1] The Respondent's disciplinary hearing is currently set to be heard over three days from July 29 to 31, 2020. On June 29, 2020, the Respondent applied, pursuant to Rule 4-40, to: (a) hold an in-person disciplinary hearing in place of a hearing by Zoom videoconference; and (b) adjourn the hearing dates.
- [2] The Law Society (a) consents to an in-person disciplinary hearing; but (b) opposes any adjournment. The July 2020 hearing dates were set on a peremptory basis in November 2019.

BACKGROUND

- [3] At this time, disciplinary hearings are generally held by Zoom videoconferencing due to the health and welfare concerns arising from the COVID-19 pandemic and

the provincial requirements for social distancing. The Law Society building has been closed to the public since March 17, 2020. In order to ensure that the Tribunal's work continues in the public interest and with fairness to the parties, the Practice Direction of April 27, 2020 was issued to provide alternative options to in-person hearings.

- [4] The Practice Direction generally requires parties to attend disciplinary hearings by videoconferencing, teleconferencing or by filing written submissions. Counsel are encouraged to discuss, well in advance of a hearing, their choice of format for the hearing. One or both parties are to bring an application under Rule 4-36 to proceed with their chosen format. The Practice Direction also provides that an adjournment of a hearing is to be avoided where it can be conducted expeditiously and fairly under an alternative format. The Practice Direction remains in effect until further notice.

APPLICATION FOR AN IN-PERSON HEARING

- [5] As Rule 4-40 only governs adjournments, I will treat the Respondent's request for an in-person hearing as a Rule 4-36 application as suggested by the Practice Direction.
- [6] The Law Society consents to an in-person disciplinary hearing. Based on that consent, I hereby order that the Respondent's upcoming disciplinary hearing be held in person. This order is subject to Rule 5-6, which provides that the hearing panel may determine the practice and procedure to be followed at the hearing. I expect that that will include appropriate measures to ensure that the hearing can be conducted safely in the conditions that prevail at the time of the hearing and to comply with legal requirements and best health practices.
- [7] If the Law Society had not consented, I would have dismissed the Respondent's application for an in-person hearing. The Respondent's submissions were not persuasive and, in my view, did not respect the goals of the Practice Direction or the realities of a global COVID-19 pandemic.
- [8] The Respondent's submissions focused on the overriding dislike and inconvenience of Zoom videoconferencing. The submissions argued that the use of videoconferencing is a miscarriage of justice, a breach of natural justice and a breach of procedural fairness and only an in-person hearing could resolve all those issues.

- [9] It is clear from the submissions that counsel for the Respondent, rather than the Respondent, is driving this application. Here are some excerpts from the submissions:

When I agreed to be counsel last fall I did so based upon the rules that have existed since I started doing these type of hearings [sic] in 1982 as an articling student ... I would not have agreed to be counsel to become a computer advocate ...

As a professional lawyer since the pandemic hit our justice system I have had to compromise my professionalism, I have had to make submissions to a telephone to Courts ... I consider the move to zoom hearings for disciplinary hearing to be a considerable change in the rules and not something which permits me as counsel to do the proper professional job for the client.

- [10] It was disappointing to read these submissions. COVID-19 has inconvenienced us all. We must adapt and change, but most importantly, we must do so in a manner that protects our clients' health and safety as well as the health and safety of those who participate in the administration of justice, including court reporters, staff, visitors, witnesses, lawyers and panel members. In my view, it is not a miscarriage of justice, a breach of natural justice or a breach of procedural fairness to require that all parties attend a disciplinary hearing by videoconferencing during a global pandemic with no vaccine in sight.

APPLICATION FOR AN ADJOURNMENT

- [11] On November 4, 2019, the President's Designate granted the Respondent an adjournment of his hearing date set for five days from November 18 to 22, 2019. That adjournment was granted on the basis that the new hearing date would be set on a peremptory basis.
- [12] In addition to the application that I have granted, the Respondent requested that, "in the alternative a brief adjournment be granted to permit an in person hearing." In light of my decision on the first application, I need not consider the alternative adjournment application. The hearing will proceed as scheduled.