

**THE LAW SOCIETY OF BRITISH COLUMBIA**

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

**and a hearing concerning**

**DONALD FRANKLIN GURNEY**

**RESPONDENT**

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**DECISION OF THE PRESIDENT  
ON APPLICATION FOR AN EXTENSION OF  
TIME TO INITIATE A REVIEW**

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Written materials:	June 29, 2020 July 2, 2020
President:	Craig A.B. Ferris, QC
Discipline Counsel:	J. Kenneth McEwan, QC
Appearing on his own behalf:	Donald Franklin Gurney

- [1] This is the Law Society's application, pursuant to Rule 5-19, for an extension of time to initiate a review of an order made by a hearing panel on January 20, 2017. The effect of this order was to seal certain materials so that they were not publicly available.
- [2] Given the time that has passed, which is approximately three and one-half years, this is an extraordinary application. I say this notwithstanding the fact that the Law Society's purpose in seeking to review this order is submitted to be limited to allowing hearing materials to be disclosed in the same manner as was applied to the hearing decision made May 18, 2017 (2017 LSBC 15).
- [3] The Law Society submits that the extension of time is in the interests of justice in that the review will:

- (a) maintain the values of openness and transparency in disciplinary proceedings by bringing consistency to the redactions on the record;
- (b) build confidence in the disciplinary process;
- (c) be successful; and
- (d) will not prejudice any party.

[4] The Respondent opposes the order. He submits that the application be adjourned so that the Law Society can provide him with particulars of the order the Law Society proposes would result from a successful review, with a view of arriving at an agreed order, by consent. He does not allege prejudice but does note the delay in the initiation of the review.

[5] I agree with the Law Society that there is great value in the openness and transparency of its disciplinary process. The public must have the means to know that the Law Society's disciplinary processes are effective and fair and promote the public interest of ensuring lawyers are ethical and competent. On the other hand, the tools given to the Law Society to investigate lawyers often involve the Law Society being given access to privileged or confidential information, which cannot be publically disclosed. The balance between these interests is fundamental to the proper functioning of the Law Society and the public's ability to assess the Law Society's performance of its mandate. It is therefore imperative that the proper balance be achieved.

[6] Given the fundamental importance of this issue, and the lack of any prejudice to the Respondent caused by the passage of time, and notwithstanding the extraordinary length of time between the order and this application, I grant the application to extend the time to initiate a review of the January 20, 2017 order on the following conditions:

- (a) A notice of review, pursuant to Rule 5-21, must be filed within seven days of this decision;
- (b) The record for the review must be limited to the citation, the sealing order and any of the exhibits, or portions of the transcript sought to be affected in whole or in part by the Law Society in the review;
- (c) The record for the review must be delivered within 30 days of this decision; and

(d) A pre-review conference must be held after the delivery of the record, but no later than 60 days after this decision, to set the hearing of this review expeditiously.

[7] An application to extend the time for a review after three and one-half years is extraordinary, and it is an extremely rare occurrence that it would be granted. It would not have been ordered other than in a situation where the issue is of great significance and where there is an absence of prejudice. Given the delay to date, this matter must be resolved expeditiously, which is the reason I have made the order on the conditions listed.