

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

MARK ALAN HOPKINSON

RESPONDENT

**DECISION OF THE HEARING PANEL
ON AN APPLICATION TO CONDUCT THE HEARING ON
DISCIPLINARY ACTION ON THE WRITTEN RECORD**

Written materials: July 31, 2020

Panel: Dean P.J. Lawton, QC, Chair
Lindsay R. LeBlanc, Lawyer
Lance Ollenberger, Public representative

Discipline Counsel: Kathleen Bradley
No-one appearing on behalf of the Respondent

BACKGROUND

- [1] The Law Society brings an application dated July 30, 2020 pursuant to Rule 4-36 of the Law Society Rules and pursuant to the Law Society Practice Direction dated April 27, 2020 (“Practice Direction”) for an order that the disciplinary action phase of the Respondent’s hearing proceed on written submissions only.
- [2] The application materials of the Law Society were delivered to the Respondent by email and regular mail.
- [3] The Respondent did not attend his facts and determination hearing on February 10, 2020.
- [4] On April 6, 2020 the hearing panel released its decision on Facts and Determination.

- [5] On April 6, 2020 the Hearing Administrator emailed a copy of the panel’s decision to Law Society counsel and the Respondent and asked for the parties’ available dates for a disciplinary action phase hearing.
- [6] On May 5, 2020 Law Society counsel sent the Hearing Administrator an email, copied to the Respondent, asking that the disciplinary action phase of the hearing be scheduled promptly. In that email Law Society counsel stated she expected to apply for an order that the hearing proceed on the written record.
- [7] On May 7, 2020 the Respondent left a voice mail message with Kathy Copak, Coordinator of Conduct Reviews and Meetings. We have read the transcript of the voice mail, and are satisfied it does not respond to the request of Law Society counsel about scheduling the disciplinary action phase of the hearing.
- [8] On May 11, 2020 Law Society counsel sent a letter by regular mail to the Respondent inviting him to contact her, or the Director of Discipline at the Law Society, to arrange scheduling of the disciplinary action phase of the hearing. The Respondent did not respond to that letter.
- [9] On June 25, 2020 Law Society counsel wrote again to the Respondent by email and regular mail asking him to contact her or the Director to arrange scheduling of the disciplinary action phase of the hearing. The Respondent did not respond to that letter.
- [10] In helpful reasons found in *Law Society of BC v. Lebedovich*, 2018 LSBC 17, at paragraphs 4 to 5, the panel set out a test recommended in considering if a hearing in writing should be ordered. The panel in *Lebedovich* stated on this question, “[A] panel ought to ask itself whether there is any fact or legal issue arising from the written materials on which the panel requires oral submissions or testimony in order to do justice between the parties.”
- [11] In its materials on this application, the Law Society stated it has prepared written submissions for the hearing panel, and will file the Respondent’s Professional Conduct Record in the hearing, together with a draft bill of costs, draft order, and a link to authorities to be relied upon in submissions.
- [12] The Respondent has not responded to the application or the pre-application correspondence from Law Society counsel; accordingly his position on the application is unknown. Despite not hearing from the Respondent, the Panel is alert to the rules of natural justice requiring us to ensure the discipline hearing under s. 38 of the *Legal Profession Act* is fair to the Respondent, including whether it is fair to him that we direct that the disciplinary action phase of the hearing

proceed by written submissions only. We do not have any basis to conclude that the disciplinary action phase of the hearing will be unfair to the Respondent if it proceeds on the written record.

[13] Additionally, given the history of communications from the Law Society to the Respondent in attempting to schedule the disciplinary action phase of the hearing, and the submissions of the Law Society on this application, we are satisfied there is no factual or legal issue on which the Panel requires an oral hearing. Accordingly, in that context, and in light of the Practice Direction, and in the absence of any discernable element of unfairness to the Respondent in doing so, we grant the application of the Law Society.

[14] We hereby order that the disciplinary action phase of the hearing proceed on written submissions only. The parties will have until September 15, 2020 to provide their submissions. Each will be allowed until September 30 to make any reply.