2020 LSBC 39
Decision issued: August 21, 2020
Citation issued: May 24, 2019

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 ON AN APPLICATION TO ADJOURN

Written materials:	August 10, 13 and 14, 2020
President:	Craig Ferris, QC
Discipline Counsel:	Mandana Namazi, Ilana Teicher
Counsel for the Respondent:	Peter Firestone

[1] This is the application of Peter Hart (the "Respondent") to adjourn hearing of a citation issued May 24, 2019. That hearing is presently scheduled for five days commencing on September 14, 2020. The Respondent also applies for an in-person hearing of this citation. The Law Society opposes the adjournment application and takes no position on the application for an in-person hearing.

[2] I have reviewed the written application dated August 10, 2020, as well as the responding submissions of the Law Society dated August 13, 2020 (with the supporting affidavit of Leanne LaCoste), and the Respondent's reply submissions dated August 14, 2020 (with an attached email dated June 29, 2020). At my request, the parties were asked whether they wished to make oral submissions. I am advised that the parties declined an oral hearing and have requested that this decision be made on the written record.

Adjournment

[3] As President, I am provided with the jurisdiction to adjourn this hearing pursuant to Rule 4-40. In exercising this jurisdiction, I am to exercise my discretion in light of the circumstances "having regard to the right of the applicant to a fair hearing weighed against the desirability of a speedy and expeditious hearing into charges of professional misconduct."[1] Factors to be considered include the importance of the issue to the respondent lawyer, but also the timely and expeditious resolution of public protection issues along with the effective administration of the Tribunal.[2] Both parties agree that this is the applicable law to be applied on this application.

[4] Having considered the submissions of the parties, I dismiss the application for the adjournment.

[5] Counsel for the Respondent has made a number of submissions, but none, in my view, is sufficient to tip the scale of fairness in favour of an adjournment. First, he submits that his "plan" was to proceed with the hearing of this citation after the completion of a hearing of an earlier citation against the Respondent. He provides no submissions as to why this is required other than it was his plan to do so and the COVID pandemic interrupted his plan because it led to the hearing of the earlier citation being moved from March to July of this year.

[6] On this point, absent some evidence or a compelling reason why the citations must proceed serially, there is no reason they cannot proceed in parallel. I agree with the submission of the Law Society that the inevitable result of the Respondent's submission would be to delay the resolution of a series of citations against a lawyer, which cannot be in the public interest.

[7] Counsel for the Respondent also submits that he cannot be ready for this hearing. With respect, this hearing was set at a prehearing conference on January 28, 2020. It does not matter if counsel was of the view that he was focusing on the earlier citation hearing. There was a set date and a duty to prepare for the hearing. No valid reason has been given for failing to do so, and counsel has not identified any prehearing tasks that cannot be completed in advance of the scheduled hearing date. The COVID pandemic has not ceased counsel's ability to prepare for this hearing. This is clear from the fact that he completed the hearing of the earlier citation in July 2020.

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[1] *Howatt v. College of Physicians and Surgeons of Ontario*, 2003 CanLII 29563, OJ No. 138 (Ont. Div. Ct.) at para. 31

[2] *Law Society of Upper Canada v. Abrahams*, 2014 ONLSTH 64 at para 22 to 24.

[8] The Respondent also complains about the volume of a Notice to Admit delivered on July 28, 2020. There is no allegation that the Notice to Admit was delivered outside of the time limits specified in the Law Society Rules or any particulars as to why a response to it cannot be given. I understand all of the documents attached to the Notice to Admit has been previously delivered to the Respondent by letter dated August 2, 2019 and that Respondent's counsel was retained on this matter in October 2019, approximately 11 months prior to the scheduled hearing date.

[9] The public interest requires a speedy and expeditious hearing. I have been provided with no indication that any issue raised by the Respondent goes to the fairness of the hearing – there is no indication of witness unavailability, reduced time limits under the Rules, a lack of time to prepare, etc. The submissions of counsel have focused almost exclusively on his plan as to the timing of these hearings and his apparent lack of attention to this case. In my view, neither of those considerations override the public interest in a speedy and expeditious determination of this citation.

Application for an in-person hearing

[10] I am also dismissing the application for an in-person hearing. Ultimately, the conduct of the hearing is within the panel's jurisdiction, so this matter can be brought to their attention at the hearing should the Respondent ask them to revisit the procedure employed for the hearing of this citation.

[11] I understand that the Law Society takes no position on this application. Nevertheless, the April 27, 2020 Practice Directive titled "Alternative to in-person hearings" provides that that all hearings will proceed virtually unless otherwise ordered. Accordingly, there must be a valid reason to order an in-person hearing.

[12] In this case, the Respondent has submitted that credibility is in issue and that the video hearing does not provide an adequate context for assessing credibility. In my view, this submission is not persuasive of the need for an in-person hearing and appears to mirror a submission made by counsel on the earlier citation. That submission was rejected.[3]

[13] There is now a long list of cases that reject the argument that the use of video technology is insufficient to assess credibility.[4] That being said, there may be cases

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[4] *Elementary Teachers' Federation of Ontario v. The Crown in Right of Ontario*, 2020 CanLII 31991 (Ont. LRB); *Rovi Guides, Inc. v. Videotron Ltd.*, 2020 FC 596; *Arconti v. Smith*, 2020 ONSC 2782*; Natco Pharma (Canada) v. Canada (Health)*, 2020 FC 618; *De Caravalho v. Watson* (2000) 264 AR 83, 2000 CanLII 28217 (QB); *R. v. Mitchell*, 2020 NLPC 0819A00177

where video technology is, for some reason, inadequate. However, the position that *any* case where credibility is in issue requires an in-person hearing is simply wrong. In order to justify an application for an in-person hearing something more must be offered; something more than preference or general statements about credibility. Counsel needs to address why the particular case is different such that an in-person hearing is required. In this case, the Respondent has offered no specifics whatsoever, and certainly nothing to suggest any unique aspect of this hearing that would require an in-person hearing.

[14] Accordingly, there is no basis at this point to require an in-person hearing. As I noted above, the panel can revisit this during the hearing and, if it is of the view that an in-person hearing is necessary, it can be ordered.

CONCLUSION

[15] I thank counsel for their submissions and the applications are dismissed.