

2021 LSBC 09
Decision issued: March 9, 2021
Citation issued: September 4, 2018

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

HONG GUO

RESPONDENT

**DECISION OF THE HEARING PANEL
ON AN APPLICATION TO ADJOURN**

Written materials: February 24, 2021

Panel: Jennifer Chow, QC, Chair
Ralston Alexander, QC, Lawyer
John Lane, Public representative

Discipline Counsel: Alison Kirby
Counsel for the Respondent: Gerald Cuttler, QC

BACKGROUND

- [1] The Panel's decision on Facts and Determination was issued on November 4, 2020 (2020 LSBC 52). The hearing of the Disciplinary Action phase of the citation was scheduled for March 3 and 4, 2021. On February 19, 2021 Counsel for the Respondent submitted a request for an adjournment of the Disciplinary Action hearing. The Law Society opposed the request.
- [2] On February 25, 2021 the Panel considered the written materials submitted and adjourned the Discipline Action hearing generally, with reasons to follow. These are those reasons.

- [3] Shortly after the publication of the Facts and Determination decision, the Law Society advised counsel for the Respondent that the Law Society would likely be seeking disbarment as the penalty for the identified misconduct. Following an unsuccessful attempt by the parties to agree to an appropriate penalty, the Law Society confirmed that it would seek disbarment for the proven misconduct.
- [4] In view of the proposed penalty, on December 14, 2020, counsel for the Respondent requested that the Law Society provide its submissions on penalty by January 22, 2021 as counsel expected he would require at least 30 days to prepare his response.
- [5] Law Society counsel was away from her office from December 11, 2020 to January 11, 2021. Law Society staff advised counsel for the Respondent of her absence and suggested that the request would be brought to the attention of Law Society counsel upon her return on January 11, 2021. Counsel for the Respondent repeated his request for a 30-day response time in an email to Law Society Counsel on January 7, 2021.
- [6] Law Society counsel responded on January 11, 2021 advising that her submissions would not be available until after February 9, 2021. She also stated her belief that counsel for the Respondent was aware of all appropriate authorities dealing with disbarment as a penalty and that in the case of misappropriation, except in unusual circumstances, disbarment is the normally expected penalty.
- [7] Counsel for the Respondent's position was that procedural fairness required that he be afforded the additional time requested because of the serious penalty sought by the Law Society. Law Society counsel responded to this position by requesting information on whether the Respondent was intending to call evidence and to testify at the Disciplinary Action hearing.
- [8] Counsel for the Respondent proposed a schedule to exchange submissions and new dates for the Disciplinary Action hearing. Counsel for the Law Society continued to oppose any adjournment.
- [9] Counsel for the Respondent then applied to the Chair of the Panel to seek an adjournment, pursuant to Rule 4-40 (5), which provides:

After a hearing has begun, the chair of the panel may adjourn the hearing, with or without conditions, generally or to a specified date, time and place.

ANALYSIS

[10] The principles governing an adjournment application are canvassed in *Law Society of BC v. Hart*, 2019 LSBC 39. In that decision the following helpful analysis appears at paras. 12 and 13:

The two cases provided by the Law Society, *Howatt v. College of Physicians and Surgeons of Ontario*, 2003 CanLII 29563, [2003] OJ No. 138 (Ont. Div. Ct.), and *Law Society of Upper Canada v. Abrahams*, 2014 ONLSTH 64, emphasize that the decision to grant or deny an adjournment requires a balancing of the Respondent's right to a fair hearing against the public protection consideration of having the administration of justice move forward in a timely and expeditious matter [*sic*].

In this context, as stated in Macaulay & Sprague, *Practice and Procedure Before Administrative Tribunals*, (Toronto: Thomson Carswell, 2004), the following non-exhaustive list of factors are to be considered:

- (a) the purpose of the adjournment (relevance to the proceedings, necessary for a fair hearing);
- (b) has the participant seeking the adjournment acted in good faith and reasonably in attempting to avoid the necessity of adjourning;
- (c) the position of other participants and the reasonableness of their actions;
- (d) the seriousness of the harm resulting if the adjournment is not granted;
- (e) the seriousness of the harm resulting if the adjournment is granted (to the other participants, etc., including the length of adjournment required);
- (f) is there any way to compensate for any harm identified;
- (g) how many adjournments has the party requesting the adjournment been granted in the past; and
- (h) was the hearing to be peremptory, and if so, were the parties consulted in selecting the date and were they advised of its peremptory nature.

[11] The application of these considerations to our facts results in the following answers;

- (a) Given the seriousness of the possible penalty outcome, the foundation for the requested adjournment is solid;
- (b) The Respondent acted in good faith and gave early notice of the request for 30 days' preparation time well in advance of the Disciplinary Action Hearing dates;
- (c) The potential for serious harm may not be ameliorated by granting the requested adjournment; however, on balance, the need to ensure that the Respondent receives a fair hearing will be advanced by the requested adjournment;
- (d) Any potential harm to the Law Society is not seriously exacerbated by granting this adjournment. There is some irony in the fact that the hearing will be delayed for a longer period by reason of this contested adjournment request than would have been the case if the parties had agreed to a short adjournment as originally requested;
- (e) There is no significant harm that needs to be compensated with this adjournment request;
- (f) This is the first adjournment request of which the Hearing Panel is aware; and
- (g) The hearing date previously established was by agreement of counsel.

[12] The Panel accepts that the requirements of procedural fairness outweigh the need to press on with the Disciplinary Action hearing dates. Given the threat of disbarment, pressing forward with an expeditious hearing at this time would not in our view result in a fair hearing.

DIRECTION

[13] The Panel provides the following direction. Following the receipt of these reasons, the Law Society is to provide its submissions on Disciplinary Action to the Respondent within 21 days. This time period is considered reasonable since counsel for the Law Society has advised counsel for the Respondent that the submissions have been drafted and are nearly completed.

- [14] Counsel for the Respondent will have 21 days following his receipt of the Law Society submissions to provide the Respondent's written submissions to the Law Society. Law Society counsel will then have ten days to provide reply submissions, if needed.
- [15] Counsel are also directed to promptly seek two days for the Disciplinary Action hearing.
- [16] If Counsel cannot agree on the Panel's directions, a schedule or hearing dates, they are to promptly advise the Hearing Administrator of the nature of the dispute so that any issues may be addressed.

DECISION

- [17] For the reasons provided in this decision, we grant the Respondent's request to adjourn the Disciplinary Action hearing currently scheduled for March 3 and 4, 2021. The parties are directed to exchange submissions and to promptly seek new dates for the Disciplinary Action hearing.