

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

TROY JOHN DUNGATE

AND

TREVOR SCOTT DUNGATE

RESPONDENTS

**DECISION OF THE PRESIDENT’S DESIGNATE ON AN
APPLICATION TO ADJOURN AND FOR PRODUCTION OF DOCUMENTS**

Hearing date (by telephone):	February 23, 2021
President’s Designate:	Michael F. Welsh, QC
Discipline Counsel:	Michael D. Shirreff Jessie I. Meikle-Kahs
Appearing on their own behalf:	Troy John Dungate Trevor Scott Dungate

[1] The Respondents, brothers who practise law together in Prince George, British Columbia, have applied under Rule 4-40 to adjourn a Facts and Determination hearing (“F&D Hearing”) set for March 29 to 31, 2021, and for the Law Society to “comply” with an order of the President for production of documents made December 14, 2020. I made orders on both applications on the hearing date with reasons to follow. These are the reasons.

[2] The history of this Citation is set out in the order and decision of the President issued December 14, 2020 (2020 LSBC 60). That order determined an application of the Respondents under Rule 4-34 for disclosure of certain Law Society files. I will not repeat the historical background in detail, but do quote from paras. 6 to 8 of the President’s decision:

The Respondents, along with their father, who is now deceased, were the subject of an investigation by the Law Society with respect to the manner in which they charged disbursements. They retained a lawyer (“AB”) to represent them. A fee dispute arose and AB was discharged. AB sought to tax the account for services. As a result, the Respondents entered into an agreement with AB whereby they paid an agreed portion of the disputed fees. They also gave AB an undertaking that was to lead to AB being able to pursue the remaining amount of the disputed fees (the “Undertaking”).

It is this Undertaking that is at the root of the Citation and of this application for disclosure. The Law Society submits that the undertaking was to advise AB when the Law Society had closed its investigation. They say the Law Society closed its file by way of letter to the Respondents dated on February 2, 2016 (the “Closure Letter”).

On the other hand, the Respondents say that the Undertaking was to advise of the conclusion of the investigation “such that the prejudice you claim would no longer be a factor.” They say that the Investigation Files and Trust Assurance Files may assist them to show that the prejudice of the investigation is ongoing notwithstanding the Closure Letter.

- [3] The President ordered the Law Society to produce its three Investigation Files but not the Trust Assurance Files. Production was to occur on or before January 15, 2021. Based on that disclosure date, the President opined that there was no reason the F&D Hearing should not proceed as scheduled.
- [4] However, the President also left it open for the parties to apply to adjourn the F&D Hearing if it did present problems.
- [5] In an earlier prehearing conference on October 27, 2020, the President ordered that the F&D Hearing be set for March 1, 2 and 4, 2021, with back-up dates of March 29 to 31, 2021. The parties were to confirm the hearing dates with the Hearing Administrator within seven days of the prehearing conference.
- [6] Somewhat surprisingly, neither party confirmed the hearing dates and the matter was referred to me as the President’s Designate on January 27, 2021. The Law Society sought to set the hearing date, but the Respondents did not. By that time, the March 1, 2 and 4 dates were no longer available. I directed that a Notice of Hearing be issued for March 29 to 31, 2021 and stated that if the Respondents believed they need additional time, they would need to apply to adjourn. As I stated to the parties “the President’s order cannot just be ignored.”

- [7] A Notice of Hearing was issued on January 29, 2021 for these March dates.
- [8] Again, somewhat surprisingly, the Law Society did not provide its files by the disclosure date of Friday, January 15, 2021. According to discipline counsel, there was an oversight in his office and the overnight courier package containing a DVD of the Investigation Files was not sent. He only discovered this the following Monday, January 18, 2021. The courier package with the disclosure was delivered to the Respondents on January 19, 2021, and the password to open the DVD of disclosed files was provided the next day.
- [9] The next somewhat surprising development is that the disclosure contained redactions, to which the Respondents have objected as the President's order did not provide for the Law Society to redact its files. Discipline counsel advised me there were only about ten redactions to protect privacy or other investigations. But, as the Respondents noted in argument, "... the order and decision do not permit the Law Society to make redactions and the Law Society never asked the President for liberty to make any redactions." The Respondents also advised me that there were more than ten redactions.
- [10] As neither party provided any documentation or other details respecting the redactions, I do not know what number there are or the reasons for them.
- [11] According to the Respondents, the documents disclosed run to 6,628 pages.
- [12] In the application before me, the Respondents renewed and expanded on their Rule 4-34 application to request:
- (a) immediate compliance with the President's order and a list of all redacted documents and redactions made and an explanation of the reasons for redaction;
 - (b) the names, contact information and "will-say" statements of any Law Society witnesses within 30 days and a copy of any statement made by a person whom the Law Society intends to call as a witness;
 - (c) a copy of every document that the Law Society intends to tender in evidence and if the documents provided do not provide enough information, a summary of the evidence that the Law Society intends to introduce; and
 - (d) a summary of any other relevant evidence in discipline counsel's possession or in a Law Society file available to discipline counsel, whether or not counsel intends to introduce that evidence at the hearing.

- [13] Finally, they sought another prehearing conference within 60 days.
- [14] Discipline counsel did not object to any of these requests, but submitted that they should be dealt with at a further prehearing conference that could be held between the application date and the F&D Hearing date. He stated that a letter had already been sent to the Respondents explaining the ten-odd redactions. Discipline counsel also advised that, as the Respondents have refused to admit any document authenticity to date, the Law Society intends to call AB, the lawyer, and perhaps an employee of the Law Society, to prove documents.
- [15] As noted, the Respondents advised that, from their review of the disclosure, there are more than the 10-odd redactions. They also stated that they may seek legal advice to assist in the presentation of their case, but that the volume of material they must review does not give sufficient time to the late March hearing dates.
- [16] Given the lapses that have occurred to date on the part of both parties, the relatively short time frame to the hearing dates set, and mostly in order to ensure a fair hearing with adequate preparation time, I have ordered an adjournment of the F&D Hearing and further disclosure on the following terms:
- (a) The F&D Hearing is adjourned to a date to be set;
 - (b) A further prehearing conference is to be held within 45 days of the application date (that is, on or before April 9, 2021) and I am seized of that prehearing conference. Amongst other matters it will address:
 - (i) admissions, in particular as to the authenticity of documents;
 - (ii) the status and potential of any Notices to Admit;
 - (iii) witnesses; and
 - (iv) the length of the F&D Hearing and prospective hearing dates.
 - (c) Discipline counsel will, within 21 days of the application (that is, by March 16, 2021), provide the Respondents with:
 - (i) a list of all redactions and reasons for those redactions from its disclosure;
 - (ii) a list of its intended witnesses, together with a “will say” statement or affidavit from each witness, and any statement that has already been made by each witness; and

- (iii) a list of all documents on which the Law Society intends to rely;
- (d) Discipline counsel will, before the prehearing conference, provide a list of any legal authorities on which the Law Society presently relies, and if discipline counsel subsequently decides to rely on any additional legal authorities, discipline counsel will provide reasonable notice;
- (e) The Respondents will provide reasonable notice to discipline counsel of any legal authorities on which they rely; and
- (f) The parties will contact the Hearing Administrator prior to the prehearing conference to determine potential hearing dates within their respective availability.