

2020 LSBC 60
Decision issued: December 14, 2020
Citation issued: November 5, 2019

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 ON AN APPLICATION
FOR PRODUCTION OF DOCUMENTS**

Hearing date:	December 7, 2020
President:	Craig A.B. Ferris, QC
Discipline Counsel:	Michael D. Shirreff and Jessie I. Meikle-Kahs
Appearing on their own behalf:	Troy John Dungate Trevor Scott Dungate

[1] This is the application of the Respondents for production of:

(a) LSBC Investigation File Nos. 2010662, 20140115 and 20140116 (the “Investigation Files”); and

(b) Trust Assurance Department File #083895-00.

[2] Trust Assurance Department File #083895-00 is a file locator number within the Trust Assurance Department of the Law Society. I am advised that under this file locator number there are the following Compliance Audit files: CA20070071, CA20130171, CA20160384

and CA20190151 (the “Trust Assurance Files”) (collectively with the Investigation Files as the “Files”).

- [3] The Respondent makes this application under Rule 4-34 and submits that the Law Society is subject to the standard of disclosure set out in *R. v. Stinchombe*, [1991] 3 SCR 326, 1991 CanLII 45. The Law Society does not accept this standard and argues the standard for its disclosure is set by Rule 4-34. The Law Society submits that this Rule is administrative in nature and thereby sets a more contextually appropriate standard to be applied to disclosure made by the Law Society in citation proceedings.
- [4] Based on my review, while an interesting issue, the standard of disclosure does not influence my decision on this application, and I therefore will not answer this question. Under either standard, my decision is the same.
- [5] The background of this proceeding is relatively simple as is the divide between the parties.
- [6] 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”).
- [7] 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”).
- [8] 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.
- [9] The Respondents say that their communications to AB were correct and there is no obligation to advise AB of the closure of investigation as there remains ongoing prejudice. They go further to say that they require the Investigation files and the Trust Assurance Files to show the ongoing prejudice.
- [10] In my view, the Law Society has drawn too narrow a band of relevance. While it appears clear that the Files are not relevant to the Law Society position, the Investigation Files may be very relevant to the Respondent’s position, with respect to both the nature of the

Undertaking and whether it was breached. In order to argue about whether an investigation is complete, or whether there remains prejudice, the Investigation Files may contain relevant information. While I do not decide this point, I note the Closure Letter does contain language that some may suggest contains the potential for further repercussions arising from the allegations that were under investigation.

- [11] In short, in order for the Respondents to be in a position to know if the Law Society investigation was in fact “concluded”, or if there remains prejudice (and I do not decide whether this is or is not part of the Undertaking), they ought to be able to see what the Law Society was investigating. While there may in fact be no relevant information, I cannot make that determination on the record before me.
- [12] I do note that the Law Society has argued that there is no relevant information in either set of Files because the Respondents has received disclosure under the *Freedom of Information and Protection of Privacy Act* (“FOI”) and has put forward no document from that disclosure to show there was a failure by the Law Society to produce relevant information. While this does reduce the likelihood that the Files do in fact contain relevant information, they do not foreclose the reasonable potential that they do, especially in light of the redactions made as part of the FOI disclosure and the different position of the parties on the relevant issues in this proceeding. Accordingly, I cannot accept this argument.
- [13] The position is different with respect to the Trust Assurance Files. Any allegations arising from a trust audit would lead to and be contained in the Investigation Files. I do not think that there is a reasonable argument that the Respondents need to go behind the Investigation Files to locate relevant information based on suspicions that the trust auditors were investigating similar questions. This request, in my view, is akin to a fishing expedition, and I will not allow it.
- [14] Accordingly, I order the Investigation Files be produced on or before January 15, 2021. I earlier set the dates for the hearing of this Citation. Based on the materials before me, I do not see any reason why this production ought to impact those hearing dates. If the parties wish to address that issue, I am not seized of that or any further applications in this proceeding.