

2021 LSBC 37
Decision Issued: September 21, 2021
Citations Issued: Citation #1 May 22, 2020,
Citation #2 May 22, 2020 and amended June 16, 2020,
Citation #3 June 8, 2020,
Citation #4 October 7, 2020,
Citation #5 November 10, 2020

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 PRESIDENT ON AN APPLICATION
FOR PRODUCTION OF DOCUMENTS**

Written materials: August 31, 2021

President: Dean Lawton, QC

Discipline Counsel: J. Kenneth McEwan, QC
Counsel for the Respondent: Craig Jones, QC

NATURE OF THE APPLICATION

[1] On May 20, 2021, Hong Guo, Respondent in the five citations set out in the style of cause above, collectively referred to as the “Five Citations”, applied to the President pursuant to Rule 4-37 and section 44(4) of the *Legal Profession Act*, SBC 1998 Ch. 9 (the “LPA”) for the following order:

That e-Forensic Services Inc. and its Director Laurie Windover produce to the Respondent all documents in its [*sic*] possession and control related to

- a. A Rule 4-55 order made April 13 2016 and naming Hong Guo;
- b. The Attendance by e-Forensic personnel at the Guo Law Corporation offices on April 14 to 16 and November 28, 2016,
- c. The examination and mirroring of hard drives and an iPhone on those dates; and
- d. All subsequent searches and other uses made of the data obtained in the period since [*sic*].

[2] The syntax of the application is such that, in my reading, there is ambiguity about whether the Respondent seeks an order that e-Forensic Services Ltd. (“EFS”) in its corporate capacity, and Laurie Windover in a personal capacity, are both the objects of the order. I say this because the application seeks “documents in *its* possession,” not “their” possession, and the modifier “its” before a singular noun can only logically refer to the corporate entity EFS. Nevertheless, discipline counsel has assumed in his response that the application is directed at both EFS and Laurie Windover, and I have received no submission from counsel for the Respondent in this context. Accordingly, in these reasons I will treat the application of the Respondent as directed to both.

HISTORY OF PROCEDURAL STEPS RELATING TO THE APPLICATION

- [3] Law Society discipline counsel provided a response to the application by letter dated July 7, 2021.
- [4] On July 8, 2021 counsel for the Respondent informed Michelle Robertson, the Hearing Administrator at the Law Society Tribunal, that he intended to provide a reply.
- [5] On August 30, 2021 counsel for the Respondent informed Ms. Robertson that he was content to have the application decided based on the existing submissions.

MATERIALS PROVIDED AND READ ON THE APPLICATION

- [6] I was provided and read the following materials in considering the Respondent’s application:
 - (a) Respondent’s Application for an Order to Compel the Production of Documents, dated May 20, 2021;

- (b) Respondent's Notice to Admit #1, dated May 20, 2021;
- (c) Respondent's Demand for Further Disclosure of Documents, dated May 20, 2021;
- (d) Law Society discipline counsel's Response to Respondent's Application, dated July 7, 2021;
- (e) Law Society's Response to Notice to Admit, dated June 18, 2021.

ANALYSIS

- [7] Section 44(4)(b) of the *LPA* provides a mechanism through which a tribunal may, among other things, make an order requiring a person,
- to produce for the tribunal or a party a document or other thing in the person's possession or control, as specified by the tribunal, that is admissible and relevant to an issue in the proceeding.
- [8] Rule 4-37 sets out a procedure in which an application to the President can be made to achieve the objective set out in s. 44(4)(b) of the *LPA*.
- [9] Additionally, Rule 4-34 establishes a process through which a respondent can demand in writing that discipline counsel disclose the evidence the Law Society intends to introduce at the hearing. On receipt of such a demand for disclosure, discipline counsel is required to produce a potentially broad spectrum of individual documents and classes of documents, including under Rule 4-34(2)(a), "a copy of every document that the Society intends to tender in evidence."
- [10] In this case, counsel for the Respondent triggered the operation of the Rule 4-34 document disclosure obligations upon the Law Society by issuing one or more demands for disclosure of documents.
- [11] In his July 7, 2021 letter responding to the Respondent's application, discipline counsel explicitly acknowledges the Law Society's document disclosure obligations under Rule 4-34. In particular discipline counsel states:
- The Law Society submits that Rule 4-34 applies in these circumstances because, ... pursuant to the operative agreements between the Law Society and EFS, the records obtained pursuant to and related to the Rule 4-55 order have always remained under the control of the Law Society.

[12] In my opinion these disclosure obligations upon the Law Society continue during the currency of the discipline proceedings, and absent special or unusual circumstances, no further application is required on the part of the Respondent for the production of documents by the Law Society.

[13] Importantly as well in his July 7, 2021 letter, discipline counsel states:

Now that the Respondent has framed her constitutional issues and delivered her disclosure demands, the Law Society will comply with its obligations under Rule 4-34 to review and disclose any further evidence, regardless of whether it intends to introduce that evidence in the eventual citation hearings.

This statement satisfies me that discipline counsel is aware of the continuing obligation on the part of the Law Society to disclose documents as required under Rule 4-34.

[14] Counsel for the Respondent states at paragraph 7 in the Application, “It is expected that documents in the possession of e-Forensic will reveal important information about the treatment of the data obtained in the seizures” While this may be so, the documents sought by the Respondent remain in the control of the Law Society, and the Law Society has an acknowledged obligation to produce them under Rule 4-34.

[15] In my opinion there is nothing in the Respondent’s Application material that raises a concern or reasonable apprehension the documents in the possession of EFS are without the control of the Law Society or that there is a risk of such control being lost or compromised. Likewise, there is no evidence before me to suggest that Laurie Windover, as a Director of EFS, has any individual documents or classes of documents other than those in the possession of EFS.

[16] In my opinion there is no need to order either EFS in its corporate capacity or its Director in a personal capacity to separately produce the records in their possession that have been, and continue to be, at all times in the control of the Law Society. To do so would be duplicative and contrary to reasonable principles of proportionality relating to cost and balance of convenience in discipline proceedings.

DETERMINATION

[17] The application of the Respondent is dismissed.