2010 LSBC 04
Report issued: March 02, 2010
Citation issued: August 12, 2009

The Law Society of British Columbia
In the matter of the *Legal Profession Act*, SBC 1998, c.9
and an application for an adjournment concerning

Douglas Warren Welder

Respondent

Decision of the Chambers Bencher

Application date: February 25, 2010

Bencher: Joost Blom, QC

Counsel for the Law Society: Maureen Boyd
Applying on his own behalf: Douglas Welder

[1] The Respondent, who practises in Kelowna, e-mailed Ms. Boyd, counsel for the Law Society, on Thursday, February 25, 2010, asking if a conference could be arranged to seek an adjournment of the hearing in respect of his citation. The hearing is scheduled for March 3 and 4, 2010. Ms. Boyd forwarded the request to Ms. Robertson, the Law Society Hearing Administrator on the same day. Ms. Boyd made written submissions dated Friday, February 26, 2010, opposing an adjournment. A copy of her submissions was forwarded to the Respondent. The Respondent was informed on Monday morning, March 1, 2010, that as " Chambers Bencher" appointed under Rule 4-29(3), I saw no reason why the adjournment could not be decided based upon written submissions, as Rule 4-29 permits. The Respondent was asked to provide Ms. Robertson with any submissions he wished to make by that afternoon, and he did so by e-mail.

[2] The citation, which was issued on August 12, 2009, alleged that the Respondent failed to respond, or provide a substantive response, to inquiries and request in Law Society communications sent in the course of an investigation, and contained in four letters ranging in date from December 8, 2008 to June 9, 2009. The Respondent was notified by letter of July 24, 2009 (served on July 28) that the citation would proceed by summary hearing pursuant to Rule 4-24.1 and proposed a hearing date of October 15, 2009. The Respondent did not indicate by the requested date (August 11, 2009) whether the hearing date was acceptable and so that date was fixed as October 15, 2009 according to Rule 4-24 and the Respondent was so notified by letter of August 12, 2009 (delivered on August 17).

[3] On October 7, 2009, Mr. Perry, whom the Respondent had retained as counsel in the matter, sought an adjournment because of a scheduling conflict and because he needed time to prepare. On October 13, 2009 the Chambers Bencher, Meg Shaw, QC, granted the adjournment to a date in December, subject to the availability of witnesses and a hearing panel. Mr. Perry advised on October 28, 2009 that he wished to cross-examine three persons who had provided affidavits on the issue of the Respondent's failure to respond to the Law Society's communications. One of the affiants was not available in December and so, upon the Law Society's application, the new hearing date was set by Ms. Shaw, QC, for March 3 and 4, 2010.

[4] I have considered the grounds the Respondent has given in support of his application for a further adjournment, and the Law Society's submissions opposing the adjournment.

[5] For the following reasons, I have concluded the adjournment should be denied.

[6] In his original e-mail of February 25 and his second submission of March 1, the Respondent relied on one reason for seeking the adjournment, namely, that counsel he had retained to represent him at the hearing, Mr. Perry, could not act on account of illness.

[7] The Law Society's position is that the Respondent has not shown why he could not have found replacement counsel in time. On February 2, 2010 Mr. Perry's office notified the Law Society that he was seriously ill and would be off work for several months. The Law Society's counsel wrote to the Respondent by faxed letter on February 3, 2010 confirming the hearing dates, asking whether he intended to represent himself or be represented by counsel, and advising that the Law Society " may oppose" any further application to adjourn the hearing. The information before me does not include any reply by the Respondent to this letter, apart from his e-mail of February 25 advising that he wished to seek an adjournment.

[8] On the issue of why he could not arrange for other counsel, the only submission that the Respondent makes in his e-mail of March 1, 2010 is that he was preparing for a continuation of a Master's hearing on February 4, 5 and 6, and conducted the hearing in Vancouver on February 9, 11 and 12.

[9] As the Ontario Division Court put it in *Howatt v. College of Physicians and Surgeons of Ontario*, [2003] OJ No. 138 at para. 31:

> There is no doubt that the right to an adjournment before an administrative tribunal, including a disciplinary body, is not an absolute right. In each case, whether or not the adjournment should be granted must be considered in the light of the circumstances, having regard to the right of the applicant to a fair hearing weighed against the obvious desirability of a speedy and expeditious hearing into charges of professional misconduct. When balancing these two factors, the right of the applicant to a fair hearing must be the paramount consideration.

[10] I do not think that for the hearing to proceed as scheduled is unfair to the Respondent in this case. The Respondent knew for more than three weeks that Mr. Perry could not act, before the Respondent contacted the Law Society. The Society, in its faxed letter of February 3, 2010, had specifically asked the Respondent whether he intended to represent himself or retain counsel, confirmed the hearing date, and indicated that it might oppose a further adjournment. The Respondent's current application was made with only three clear working days left before the hearing. The Respondent does not say what efforts he made in those three weeks to retain new counsel or, if he did, why those efforts were unsuccessful. His preoccupation with the Master's hearing took up only a fraction of this time. At this late stage it will obviously be difficult to arrange for counsel, but having to face a disciplinary hearing without one's counsel of choice is, by itself, no breach of the principles of fairness and natural justice. As D.M. Smith J. said in *Sharma v. British Columbia Veterinary Medical Association*, [2008] BCJ No. 329 at para. 73, " The unavailability of a lawyer of choice for a disciplinary hearing is not grounds for an adjournment, particularly in the absence of any evidence by the applicant of what attempts he had made to retain other counsel."

[11] I also take into account that the allegations made in the citation relate solely to the Respondent's failure to respond, or respond substantively, to requests from the Law Society made in the course of its regulatory function. The issues are not complex and have been known to the Respondent for many months. The Respondent was advised by a letter of August 25, 2009 (delivered to him on August 26) of the affidavit evidence on which the Law Society intended to rely, the Respondent's Professional Conduct Record, a

number of relevant cases, and the Society's penalty position in the event an adverse determination was made. The hearing is to be a summary one under Rule 4-24.1, the aim of which is to deal expeditiously with cases that are factually and legally straightforward. It has already been adjourned once on the Respondent's request. If there is any unfairness to the Respondent, which on the information before me I do not think there is, it is in any event so marginal as to be outweighed by the public interest in having the disciplinary process move with reasonable dispatch.

[12] The Respondent's application for an adjournment is therefore denied.