

2014 LSBC 36  
Decision issued: August 25, 2014  
Oral reasons: July 2, 2014  
Citation issued: May 29, 2013

**THE LAW SOCIETY OF BRITISH COLUMBIA**

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

**and a hearing concerning**

**JENNIFER EILEEN MCCORMICK**

**RESPONDENT**

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**DECISION OF THE HEARING PANEL ON  
PRELIMINARY MATTERS INCLUDING  
RULE 5-6(2) APPLICATION**

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Hearing Date: July 2, 2014

Panel: Miriam Kresivo, Q.C., Chair  
Shona A. Moore, Q.C., Lawyer  
June Preston, Public Representative

Counsel for the Law Society: Susan M. Coristine

Counsel for the Respondent: William G. MacLeod

[1] Prior to the commencement of the hearing, the Law Society and the Respondent were advised that this Panel would hear three preliminary applications.

[2] This Panel dealt with three applications:

(a) By notice dated June 20, 2014 the Law Society brought an application for an extension of an Order made April 7, 2014 by another pre-hearing panel (“the Lindsay Panel”) set out at paragraph 40 of the reasons for decision issued April 23, 2014 as 2014 LSBC 19 (Decision No. 1).

(b) The Respondent raised two preliminary matters: the first, an application characterized as a request for particulars and, the second, an application

for an order or a declaration that section 45.1 of the *Legal Profession Act* infringes on section 7 of the *Canadian Charter of Rights and Freedoms* (“*Charter*”) and breaches the principles of natural justice.

- [3] After hearing the submissions of the parties, this Panel declined to hear the *Charter* and natural justice application on the grounds that this application was best heard by the Panel constituted to hear the merits.

### **Respondent’s Preliminary Application for Particulars**

- [4] The Respondent sought an order that the Law Society provide particulars of the confidential client information alleged to have been disclosed during the interview given by the Respondent to CBC Television on or about November 30, 2011 and identify the statements made in that interview that are alleged to constitute a breach of the Respondent’s duty of loyalty to her client.
- [5] During the course of making submissions, counsel for the Law Society stated that she had no objection to identifying the portions of the interview that are alleged to constitute a breach of confidential client information or breach of the Respondent’s duty of loyalty. The only difference between the parties was whether such further disclosure or clarification ought to be described as “particulars” for the purposes of these proceedings.
- [6] The Panel asked the parties whether they could reach an agreement on this point.
- [7] After a brief adjournment, counsel for the Law Society and for the Respondent advised the Panel that they had reached an agreement that counsel for the Law Society would prepare a copy of the transcript of the CBC interview and highlight the portions of the transcript that are alleged to constitute a breach of confidential information and also identify those portions of the transcript where the Respondent is alleged to have breached her duty of loyalty to her client. The Panel was satisfied with this agreement. Counsel for the Law Society agreed to provide the highlighted transcript as described above to the Respondent on or before July 14, 2014.

### **Law Society Application for an Extension of the April 7 Order Pursuant to 5-6(2)**

- [8] The Law Society sought an extension of the April 7, 2014 Order of the Lindsay Panel made pursuant to Rule 5-6(2). That Order is set out at paragraph 40 of Decision No. 1:
- [40] Pursuant to Rule 5-6(2) we make the following order, which is to remain in effect until the resumption of the hearing in this matter:
- (a) The DVD of the Respondent’s November 30, 2011 CBC Television interview and the transcript thereof contained in the tribunal’s file, included as Exhibits I and J to the affidavit of the Respondent affirmed March 18, 2014 and Exhibit B to the affidavit of Kevin Woodall sworn

March 19, 2014, must be sealed and not made available to the public;  
and

(b) Any reference to the contents of the DVD and transcript made at the April 7, 2014 hearing must not be disclosed or published except for the purposes of the proceeding. (“April 7 Order”)

- [9] The Law Society sought an extension of the April 7 Order because it might be construed as ending on the commencement of the date of this pre-hearing application, thus permitting the disclosure and publication of the material ordered to be sealed.
- [10] The Respondent resisted an extension of the April 7 Order, or in the alternative, sought amendments to the April 7 Order on the grounds that the April 7 Order has interfered, and will continue to interfere with the Respondent’s ability to properly prepare her defence.
- [11] After hearing submissions, this Panel advised the parties that it may be persuaded to extend the April 7 Order and invited counsel to explore whether they could agree to the terms of such an amended Order so that confidential client information could be protected from further disclosure or publication while preserving the Respondent’s ability to prepare her case.
- [12] After a brief adjournment counsel advised this Panel they had reached an agreement and now made a joint request that the April 7 Order pursuant to Rule 5-6(2) be extended to a date on which the hearing of the citation is resumed for the purpose of calling evidence. The parties further agreed to the wording of an amended April 7 Order, which, they suggested, would preclude any improper interference with the Respondent’s ability to prepare her case.
- [13] After considering the submissions of the parties and for the reasons set out in the April 23, 2014 Decision of the Lindsay Panel, this Panel hereby makes the following Order pursuant to Rule 5-6(2):

That the terms of the April 7 Order be amended as follows:

- (a) the DVD of the Respondent’s November 30, 2011 CBC Television interview and the transcript thereof contained in the tribunal’s file, included as Exhibits I and J to the Affidavit of the Respondent affirmed March 19, 2014 and Exhibit “B” to the Affidavit of Kevin Woodall sworn March 19, 2014, and now marked as Exhibits 3 and 4 in this proceeding (the “Sealed Material”) continue to be sealed and not made available to the public until the hearing of the citation is resumed for the purpose of calling evidence and dealing with the merits of the case; and

- (b) the Sealed Material not be disclosed or published, except for the purposes of this proceeding, which include discussion with witnesses, potential witnesses or their counsel.