

IN THE MATTER OF THE *VETERINARIANS ACT*, S.B.C. 2010, c. 15

and

IN THE MATTER OF
THE COLLEGE OF VETERINARIANS OF BRITISH COLUMBIA
and a
hearing before a DISCIPLINE PANEL
of the COLLEGE DISCIPLINE COMMITTEE

and

DR. PAVITAR BAJWA

Ruling on Application for In-Person Hearing

Panel	Carol Baird Ellan K.C., Chair Dr. Allan Runnells Dr. Ian Welch
Counsel for the Respondent	Clea Parfitt
Counsel for the College	Elizabeth Allen

[1] The Citation in this matter alleges breaches of the *Bylaws* and *Standards* of the College of Veterinarians of British Columbia (“the College”). The discipline hearing is set to be heard by

videoconference over five days, from August 19 – 23, 2024. The Respondent applies to have the hearing proceed in person.

Background and Process Direction

[2] At a prehearing conference on May 10, 2024, Respondent’s counsel indicated that the Respondent wished to have the hearing held in person. The panel issued directions at the prehearing conference that the hearing would proceed virtually, but that the Respondent could file an application for an in-person hearing on or before June 7, 2024. The College was given until June 21, 2024 to file a response, and the Respondent’s reply was due on June 28, 2024.

[3] The process that is followed in filing such materials is that counsel submits them to the Executive Assistant of the College, who forwards them to the panel members. The Respondent filed a Notice of Motion on June 7, 2024, at 5:34 p.m. The College responded on June 20, 2024. The Respondent filed a reply on June 28, 2024 at 7:07 p.m.

[4] The panel observes that the timing of the Respondent’s two submissions, in both cases coming after business hours on Friday afternoons, meant that the panel did not receive those materials until after the respective weekends. In the case of the reply, the Executive Assistant kindly forwarded it on July 1, the statutory holiday, but the next business day was July 2, 2024.

[5] The panel did not specify a time for the delivery of the submissions in its directions. In other cases, in the panel’s experience, panels have extended the times for short notice submissions beyond business hours, by specifying a later time in the order. In this matter, however, we note that the Respondent overlooked another deadline provided at the same prehearing conference, and counsel made the point that she did not receive the minutes of the prehearing conference before that deadline.

[6] The panel’s view is that counsel should assume that dates directed for filing of materials contemplate their delivery before the close of business on the deadlines. The immediacy of email is sometimes a convenience, but it should not be taken to imply that professionals will be “in office” when materials come in after hours. Nor should counsel overlook a direction for which they were present because a written version has not been produced before the deadline passes.

[7] The panel is not aware at this time whether the Respondent intends to make other applications, but if so, we are directing that any deadlines provided in a direction be taken to mean before 4:30 p.m. on the deadline date, unless otherwise specified. This will provide time for the Executive Assistant to ensure the delivery of the materials to the panel upon receipt, and by the deadline provided in the direction.

[8] The late delivery of the Respondent's materials in this application does not incline the panel to decline to receive them. The application raises an important issue of when a hearing should proceed in person, and little ground has been lost by the passage of the respective weekends. The panel would prefer it if counsel was more attentive to its directions as to times and deadlines, moving forward. The next prehearing videoconference is scheduled for July 5, 2024 at 4:00 p.m., and the panel has taken care to ensure that this ruling precedes that, so that the matter may proceed on track to the hearing dates.

Submissions

[9] The Respondent's position is that to hold the hearing virtually will be unfair to him, for the following reasons:

- a. The standard for procedural fairness is high in matters dealing with professional licensure, and the *Veterinarians Act* and the CVBC *Bylaws and Practice Standards* import the requirements of natural justice, transparency, objectivity and impartiality into that standard: *Kane v. Bd. of Governors of U.B.C.*¹;
- b. The duty of fairness includes the right to a fair hearing: *Bailey et al. v. The Saskatchewan Registered Nurses Association*²;
- c. The Respondent says that the use of videoconferencing may contribute to difficulty in making himself understood "due to language";
- d. The Respondent says he is not proficient with technology and would need assistance in navigating a videoconferencing platform;

¹ [1980], 1 S.C.R. 1105, p. 1113

² 1996 CanLII 6670 (SK KB)

- e. The Respondent is concerned that videoconferencing will interfere with his ability to communicate fully and readily with his lawyer;
- f. The Respondent anticipates that certain members of the public with interests adverse to his are more likely to attend the hearing if it is held virtually, and that these individuals will be able to: i) attend without revealing their identities or turning on their screens; ii) view documents that are shared through the platform; and iii) make surreptitious recordings or copies of the evidence which cannot be safeguarded by directions because they may not be detectable and orders may not be enforceable.
- g. The Respondent's submissions include a link to a *YouTube* episode pertaining to a veterinarian hospital, and examples from other hearings where some of the difficulties he is concerned about have arisen.

[10] The College opposes the application on the basis that more recent authorities arising out of the pandemic within the sphere of professional licensure establish that there is no right to a hearing in person, if a fair hearing can be achieved through videoconferencing, and that “videoconferencing is here to stay.”³

[11] The Colleges says the following factors favour proceeding virtually:

- a. Costs in relation to travel and accommodation and facilities rental are reduced or eliminated;
- b. Participants are protected from possible illness;
- c. Proceedings are not cancelled due to travel or weather delays;
- d. Witnesses, some of whom may be out of town and/or may only be required for minimal evidence, are not required to travel; and
- e. Attendance by interested persons is more convenient.

[12] The College says that the concerns of the Respondent pertaining to the individual who created the *YouTube* episode are not persuasive because the focus of that episode was a different clinic than the one that is the focus of this proceeding, and because the panel may utilize the provisions of the *Act* and *Bylaws* pertaining to exclusion of members of the public,

³ Law Society of Ontario v. Regan, 2020 ONLSTA 15; (May) Re, 2020 LSBC 53

if needed. The College also takes the position that to hold an in-person hearing for the purpose of making it less convenient for members of the public to attend, as suggested by the Respondent, is inconsistent with the presumption that hearings are intended to be open to the public. To the contrary, as noted above, the College says that attendance by members of the public should be encouraged and facilitated and that it may be easier to do this through virtual proceedings.

[13] In Reply, the Respondent's counsel outlines recent experiences with the Respondent and in other hearings in which some of the concerns expressed in the application were experienced. Counsel suggests awaiting the production of transcript from a prior proceeding with the Respondent to ensure that he was accurately recorded. Counsel states, in relation to public access, proceeding by videoconference "is resulting in far greater apparent attendance than for in-person hearings." Counsel submits that the gravity and respect for the process are diminished and that directions pertaining to recordings may not be enforceable.

Analysis

[14] The panel observes that the various law society authorities cited by the College arose out of the pandemic, where the question was whether a particular matter could proceed in the face of social distancing rules that prevented public gatherings. The overriding question in each of those cases was whether fairness dictated that the administration of justice should be required to outwait the restrictions. The courts weighed the disadvantages of proceeding virtually against the effect of delay to await an in-person forum. Delay in those cases was inherent, so the question was slightly different than a choice between two forums that may be equally available.

[15] Many levels of court that had already started down the path of virtual appearances embraced the opportunity afforded by the pandemic restrictions to expand the use of videoconferencing for legal proceedings. In the years since the restrictions have been lifted, there may have been a tendency to continue with remote proceedings as a matter of convenience, expedience, and perhaps, presumption, particularly in administrative tribunals.

[16] The panel's view is that there should be no presumption that a discipline hearing will be held virtually, but we also do not go as far as stating the opposite. The cases arising from the pandemic have made it clear that there is no "right" to an in-person hearing. The question in each case is how the ends of justice and a fair hearing might best be achieved.

[17] The panel is of the view that the following factors play into whether this proceeding should be in person:

- a. The location of the Respondent, witnesses, counsel and the panel members, and whether some or all of these individuals are unable to attend in person for any reason: The panel is not aware that any individual is unable to attend in person such that an adjournment would be necessary.
- b. The cost to the public of holding a matter in person: As pointed out by the College, there will be some travel and accommodation associated with having the panel convene in person. At least one of the panel members will need to travel a distance, and all will need to have overnight accommodation. That is not always the case and would not apply, for instance, to panels where all members reside in the Lower Mainland.
- c. Any potential technical impediments to holding the matter virtually, including the technological incapacity of a party or a witness: In this case, the Respondent indicates that he is not proficient with technology, and his counsel confirms some prior difficulty, but the panel notes that he has apparently now had some experience participating in a virtual hearing, and that, as observed below, he could benefit from the assistance of his counsel if they attend from the same location.
- d. The level of public interest in the matter, if known, and whether it is likely that members of the public, including those adverse in interest to the Respondent or the College, will attend, or will be unable to attend, in a particular forum: While members of the public appear to have taken an interest in a clinic with which the Respondent is not associated, it is not clear whether that interest overlaps into this matter. In addition, as College counsel points out, the fact that it is easier for the public to attend one or the other type of hearing may actually be a factor in favour of that forum.

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- e. The need to identify and control non-participant attendees and to enforce directions not to record or share any part of the proceedings: The panel observes that in court proceedings, observers are not required to identify themselves, although their faces are observable. In order to observe virtual proceedings, in the panel's experience, it has been the practice to have persons identified before they attend. If counsel wish to discuss protocols pertaining to the use of screens to observe the faces of attendees, that is something that can be raised at a prehearing conference. As for the ability to enforce directions not to record, the panel does not see this as a factor weighing particularly in either direction, as discussed further below.
 - f. The degree to which the evidence will consist of documentation; in particular, any private or sensitive documentation, which will need to be shared within a videoconference: The panel is not aware at this time if sensitive documentation will need to be viewed by witnesses, but there are ways to accommodate that without screen sharing. The panel will presumably have copies of the documents, and providing the witness with a hard copy of the same document would overcome the need to share it on a screen, if members of the public are present. It should also be noted that, to the extent that such materials are filed in a proceeding, they are part of the record in any event.
 - g. The existence of any prior breaches of directions of a panel designed to safeguard the privacy interests and confidentiality of any shared documentation or to restrict unauthorized publication of the proceedings or portions of them: None have been raised in this matter.
 - h. The possibility of travel, health or other issues affecting the ability to proceed in-person, and the consequent inconvenience and expense that would arise should the matter be convened in person and unable to proceed: The distance and cost of a particular panel's travel requirements must be weighed with the possibility of a last-minute adjournment. As a matter of administration, the panel is aware that other proceedings in recent matters have been convened in person only to be adjourned on the hearing date due to unforeseen illness or personal circumstances.

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- [18] As stated, the panel is of the view that the model of in-person hearings is contemplated by the structure of the *Act* and *Bylaws*, but not presumed. Panels consist of three people, making it somewhat more difficult to find a convenient date and forum than a matter involving one adjudicator. Allowing proceedings to be heard virtually aids in administration by enhancing the capacity of the Discipline Committee to appoint panel members. On the other hand, we agree with Respondent's counsel that financial considerations to the College or convenience of the panel members or Discipline Committee should not be determinative, if fairness dictates an in-person hearing. We have arrived at the view, however, that fairness can be achieved in this matter without convening in person, and that the interests of justice favour a virtual hearing, when the above factors are considered.
- [19] Some of the concerns raised by the Respondent are anecdotal or issues that in the panel's view may be easily addressed without the need for an in-person hearing. Firstly, Counsel for the Respondent has raised the issue of access to counsel during the hearing, submitting that in-person attendance makes communication easier. The panel observes that might be easily rectified by having counsel and the Respondent attend from the same location. Rules may need to be provided for cross-examination in that case, but it would facilitate communication, and would also obviate the issue of technological challenges.
- [20] With respect to concerns about surreptitious recording, the panel does not believe those are more likely to arise in virtual proceedings than in person. Participants may not record through the videoconferencing platform and would have to employ other equipment if so inclined. In person, recording devices may equally go undetected. Enforcement of restrictions may pose difficulties after the proceedings are done in either case, but any identified public attempt to share illicitly obtained material would be subject to appropriate sanction. The panel is not persuaded that the risk is exacerbated by the interposition of a virtual medium. As indicated, counsel may raise the issue of directions that should be provided to members of the public at the prehearing conference.
- [21] As far as problems with language and audio are concerned, in the panel's experience, the court recorders are skilled at intervening when sound or intelligibility issues arise, and the transcripts that the panel has seen in such matters are remarkably accurate. There is no

reason, or basis, to assume that a language barrier will be any different virtually than in person, and if there are audio issues, participants who experience them will be as free to say so as when they occur in live proceedings.

[22] For the above reasons, the panel's ruling is that this matter will proceed by videoconference on the scheduled dates.

Dated this 4th day of July, 2024.

Carol Baird Ellan

Carol Baird Ellan, KC

Al Runnells

Dr. Al Runnells

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Dr. Ian Welch