

IN THE MATTER OF

The *Health Professions Act* RSBC 1996 c. 183

BETWEEN:

THE COLLEGE OF DENTAL SURGEONS OF BRITISH COLUMBIA

AND:

DR. SUZANNE E. CZIRAKI

DECISION ON PRE-HEARING CONFERENCE

MEMBERS OF THE PANEL: Dr. Myrna Halpenny, chair
Dr. David Speirs
Martin Gifford
Catharine Herb-Kelly Q.C.,
counsel to the Panel

DATE: October 26, 2017

APPEARING: Thom Lutes, counsel for the College of Dental
Surgeons of British Columbia
David Church Q.C., counsel for the registrant,
Dr. Cziraki.

I. Introduction

1. The parties in the above noted matter have brought applications regarding certain procedural issues. The Panel convened to consider them in a pre-hearing conference on October 26, 2017. After reviewing the materials, hearing counsel and considering written material submitted following the conference, the Panel has decided to issue the directions set out below.
2. There were 5 matters to consider:

- a) The dates by which the parties would disclose their expert reports;
 - b) The dates by which the parties would disclose the names of their witnesses and summaries of their anticipated evidence;
 - c) Whether the registrant may lead evidence from her expert(s) by way of videoconference;
 - d) Whether that part of the hearing currently scheduled to take place in Cranbrook should be moved to Vancouver; and
 - e) An application to amend the Citation.
3. The Panel notes counsel for Dr. Cziraki brought an application for particulars, but this matter was resolved by agreement prior to the conference.

II. Disclosure of Expert Reports, Witness Names and Summaries of Evidence

4. During the conference after the submissions on disclosure dates had concluded, there was a discussion between the Panel and counsel resulting in agreement about disclosure dates. These dates are set out below and are endorsed by the Panel:
- a) Mr. Lutes will provide Mr. Church with a summary of Dr. Barer's anticipated evidence by December 15, 2017;
 - b) Mr. Lutes will provide Mr. Church with the names of the witnesses the CDSBC intends to call by December 15, 2017;
 - c) Mr. Lutes will provide Mr. Church with the CDSBC's expert report by December 15, 2017;
 - d) Mr. Lutes will provide Mr. Church with a summary of anticipated evidence from the CDSBC witnesses by January 5, 2018;
 - e) Mr. Church will provide Mr. Lutes with Dr. Cziraki's expert report by January 15, 2018;
 - f) Mr. Church will provide Mr. Lutes with the names of Dr. Cziraki's witnesses by January 15, 2018;
 - g) Mr. Church will provide Mr. Lutes with a summary of anticipated evidence from Dr. Cziraki's witnesses by January 22, 2018; and
 - h) Mr. Church will provide copies of any documents his client intends to rely upon at the hearing by November 30, 2017, if Mr. Lutes does not already have them.

5. If either party is unable to meet one or more of these deadlines and counsel are unable to resolve the problem, they may seek further directions from the Panel.

III. Change of Venue

6. This case arises out of complaints regarding dentistry services provided by Dr. Cziraki to patients attending the clinic she owned at the time in Cranbrook B.C. The CDSBC has decided to hold part of the hearing in Cranbrook so these patients will have an opportunity to be heard from their community.
7. The registrant has applied to the Panel to have the venue changed from Cranbrook to Vancouver. Her counsel argues these witnesses may testify using videoconferencing technology if their evidence is relevant. He points out his client is involved in legal proceedings against the dentist who purchased her practice after these events and it will be stressful and expensive for her to incur travel and accommodation costs for herself and her counsel and that these costs will not be recoverable. He also raises concerns about inclement weather.
8. Mr. Church further argues these witnesses will not have material evidence on the issue of competence, their evidence may be inadmissible on various grounds and he is concerned they will “vent”, which will be prejudicial to Dr. Cziraki. He further states the allegations in respect of failure to obtain informed consent from these patients are addressed in the documentary evidence.
9. Mr. Lutes on behalf of the CDSBC opposes a change in venue on the basis the CDSBC regulates dentistry across the Province and it is appropriate to hold that part of the hearing in the community where the patients live and work. In this way the CDSBC will fulfill its mandate to act in the public interest wherever the “public” may be within the province. He disagrees with Mr. Church’s position that the Cranbrook witnesses do not have relevant or admissible evidence to provide and suggests that videoconferencing is unsuitable for anxious lay witnesses.
10. The Panel has considered the submissions of counsel and has decided the hearing currently scheduled to take place in Cranbrook will proceed in that location as planned. At this stage, it is unable to make informed judgments regarding the materiality of or objections to witnesses’ evidence. Such rulings should be made if appropriate, during the hearing when a particular witness is testifying.
11. The Panel agrees with the CDSBC’s submission that it regulates the practice of dentistry throughout the province. This means that in

appropriate cases the CDSBC should hold hearings in the location where the events occurred and the patients reside. In this case, the Panel understands all of the patients reside in Cranbrook. They have jobs and families there. It further understands that as lay witnesses the idea of videoconferencing will be uncomfortable for them. While this method of testifying may be appropriate for experts and others who are familiar with hearings, it is generally not a suitable medium for lay witnesses.

12. Accordingly, while it is mindful of the expense and inconvenience to the parties, the panel and counsel; on balance, the Panel has decided it is in the public interest to accommodate the patients and hold part of the hearing in Cranbrook where they reside.

IV. Videoconferencing for Mr. Church's Expert

13. This issue was not addressed during the preconference hearing as a result of oversight. Counsel for both parties submitted written materials afterwards and it was briefly addressed in the materials.
14. Mr. Church has applied to call his expert evidence using videoconference technology. Mr. Lutes takes no position but in his email correspondence dated October 26, 2017 pointed out that if the Panel accedes to the request, Mr. Church's client should pay for it, and he (Mr. Church) should organize it in accordance with a number of factors identified in the email. Mr. Lutes further asked the Panel to limit the number of experts that may testify in this fashion.
15. Given that Mr. Lutes takes no position, the Panel directs that Mr. Church may call his expert evidence using videoconferencing technology, provided he makes the arrangements and any costs associated will be at his or his client's expense.
16. The Panel does not think it is appropriate to limit the number of witnesses that may testify using this technology without knowing whether in fact it is proposed to lead more than one witness, who the witness(es) is and the subject matter of their testimony. It is confident Mr. Church will ensure the technology works properly and expeditiously so no further direction is required.
17. Should issues arise that can not be resolved between counsel, either party may seek further direction from the Panel.

V. Amendment of the Citation

18. Mr. Lutes applied to amend the citation to account for a minor naming error. Mr. Church does not object to this amendment.

19. Accordingly, the Panel directs that the Citation be amended as requested in paragraph 2.2 of Mr. Lutes' materials dated October 23, 2017.



Dr. Myrna Halpenny, chair

Oct. 31/17

Date

Dr. David Speirs

Date

Martin Gifford

Date

19. Accordingly, the Panel directs that the Citation be amended as requested in paragraph 2.2 of Mr. Lutes' materials dated October 23, 2017.

Dr. Myrna Halpenny, chair

Dr. David Speirs

Martin Gifford

Date

October 31st 2017

Date

Date

19. Accordingly, the Panel directs that the Citation be amended as requested in paragraph 2.2 of Mr. Lutes' materials dated October 23, 2017.

Dr. Myrna Halpenny, chair

Date

Dr. David Speirs

M Martin Gifford

Martin Gifford

Date

31 - 10 - 17

Date