

2020 LSBC 55

Decision issued: November 16, 2020

Citation issued: November 4, 2020

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing review concerning

NEAL BURTON WANG

RESPONDENT

**DECISION OF THE PRESIDENT
ON AN APPLICATION FOR ANONYMOUS
PUBLICATION OF THE CITATION**

Written materials:

November 6, 2020

President:

Craig Ferris, QC

Discipline Counsel:

Ilana Teicher

Counsel for the Respondent:

Joven Narwal

- [1] This is the application of the Respondent, Neal B. Wang (the “Respondent”), pursuant to Rule 4-20.1 for an order that publication of the citation in this matter not identify the Respondent. Rule 4-20.1 is a recent amendment to the Law Society Rules (the “Rules”). It provides as follows:

Anonymous publication of citation

- 4-20.1** (1) A party or an individual affected may apply to the President for an order that publication under Rule 4-20 [*Publication of citation*] not identify the respondent.

- (2) When an application is made under this rule before publication under Rule 4-20, the publication must not identify the respondent until a decision on the application is issued.
 - (3) On an application under this rule, where, in the judgment of the President, there are extraordinary circumstances that outweigh the public interest in the publication of the citation, the President may
 - (a) grant the order, or
 - (b) order limitations on the content, means or timing of the publication.
 - (4) The President may designate another Benchler to make a determination on an application under this rule.
 - (5) The President or other Benchler making a determination on an application under this rule must state in writing the specific reasons for that decision.
- [2] The Executive Director is required under Rule 4-20(1) to publish “the fact of the direction to issue the citation, the content of the citation and the status of the citation” after seven days from the respondent’s notification of the citation. Absent an application under Rule 4-20.1, that publication must identify the respondent to the citation.
- [3] I understand this is the first application under Rule 4-20.1(1).
- [4] In this case, the Respondent argues that the “extraordinary circumstances that outweigh the public interest in the publication of the citation” required in order for me to exercise my discretion to order anonymous publication are present. However, the Respondent does not identify the alleged extraordinary circumstances. Instead, the Respondent suggests that the Law Society must be ordered to provide him with a copy of a ruling of the Executive Director, under the previous Rule that was replaced by Rule 4-20.1(1) and the related court file or court file number with respect to that ruling. He also seeks full disclosure of the Law Society’s evidence that it intends to lead at the hearing of this citation prior to making the application. The Respondent argues that the new Rule is “novel” and, as a result, it would be procedurally unfair to require him to make this application without the benefit of the review of the relevant authorities, or complete disclosure.
- [5] I am not persuaded that the Law Society is required to provide the Respondent with previous rulings on anonymization of citations. Those rulings were under a previous rule by a different decision maker using a different threshold. Moreover, in my view, they are not helpful in any event. What the Respondent is required to prove in order to provide a basis for the exercise of discretion (I note under the Rule, even if this test is met, the President “may” exercise the discretion but is not

required to) are extraordinary circumstances *in this proceeding* that outweigh the public interest. Both the circumstances of this citation as well as the public interest may be different at different times and in different circumstances. Accordingly, these previous rulings do not provide anything near a sufficient basis to support a delay of the determination of this issue.

- [6] The Respondent does not say why he is unable to research the law with respect to anonymous publication by administrative bodies or why this one decision and court file, of which he has no knowledge, are so central to his position that he cannot make this application without benefit of access to those materials.
- [7] Moreover, the Respondent appears to be requesting that the Law Society breach a court order and provide to him sealed reasons for judgment in the unrelated court proceeding. As the Law Society has informed the Respondent, the reasons for judgment in the unrelated matter are subject to a sealing order. Even if I were of the view that they ought to be provided, which I am not, I could not order the Law Society to breach the sealing order by requiring production.
- [8] Finally, the Respondent seeks full disclosure of all evidence that the Law Society intends to introduce at the hearing before this application is heard. A hearing that is not set and which may be months away. Again, this is not the process envisioned by the Rules that do not refer to this form of disclosure being made prior to this type of application. In any event, I see no basis for how the Law Society's disclosure would shed any light on either the extraordinary circumstances or public interest questions that are relevant on this application.
- [9] Importantly, the Respondent also does not address the issue of delay. The Rules are clear – publication is to be made after seven days from notification, identifying the respondent unless an application is made. The Respondent's application, his demand for disclosure of a file unrelated to this citation and his request for a further delay to make a further application, do not accord with the time frames set out by the Rules and their clear intention to provide for a timely publication of the citation, identifying the respondent unless extraordinary circumstances are shown to exist. The Rules do not envision a discovery process for this type of application.
- [10] At this point, there is no evidence of extraordinary circumstances. Normally, I would dismiss this application. However, given that Rule 4-20.1(1) is new, in fairness:
- (a) Publication of the citation in question will be made as required under Rule 4-20(1), but without identifying the Respondent;

- (b) I will provide the Respondent the opportunity to file a proper amended application with a proper evidentiary basis by November 23, 2020;
- (c) If no such application is filed, this application will be dismissed and the publication will be amended to identify the Respondent;
- (d) If an amended application is filed, the Law Society will have until November 30, 2020 to file a response, and the Respondent may file a reply by December 2, 2020; and
- (e) If there is an amended application, I will hear it for a maximum of two hours in the week of December 7, 2020.