2020 LSBC 59
Decision issued: December 7, 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 concerning

NEAL BURTON WANG

RESPONDENT

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

Written submissions:	November 20, 2020 November 30, 2020 December 2, 2020
President:	Craig A.B. Ferris, QC
Discipline Counsel:	Ilana Teicher
Counsel for the Respondent:	Joven Narwal

INTRODUCTION

[1] This is the amended 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.

[2] The original application came before me and I issued a decision dated November 16, 2020 indexed as 2020 LSBC 55 (the "Original Decision"). In that decision, I noted that the Respondent did not provide any evidence of "extraordinary circumstances" required to justify anonymous publication of a citation. Instead, the Respondent requested any decision respecting publication be delayed for the various reasons outlined, including the reserved decision by the Court of Appeal in *Party A v. Law Society of British Columbia*, BCCA No. 46764 ("*Party A*"), which

concerns anonymous publication of a different and unrelated citation. He also seeks an oral hearing of this application.

[3] In the Original Decision, I decided at para. 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.
>
> [Emphasis added]

[4] The Respondent has not filed a proper amended application with a proper evidentiary basis. In fact, he has, again, failed to provide any indication whatsoever of the "extraordinary circumstances" required by the Rule that would allow me to exercise my jurisdiction to order anonymous publication of the Citation. The Respondent has chosen to re-argue the procedural issues he raised in his original application. As a result, there is no evidence upon which I can exercise my discretion, and I am dismissing this application.

THE RULE

[5] I set out the Rule in the Original Decision at paras. [1] and [2]:

> **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 Bencher to make a determination on an application under this rule.

(5) The President or other Bencher making a determination on an application under this rule must state in writing the specific reasons for that decision.

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.

[Emphasis added]

[6] In this application, the Respondent has not submitted evidence of any circumstance, extraordinary or otherwise, and has not engaged in any analysis of whether the extraordinary circumstance outweighs the public interest. He has failed to do so even though, out of fairness, I provided him with the opportunity to amend his application to disclose the extraordinary circumstances and allowed for anonymous publication of the citation while he did so.

[7] In his Reply, the Respondent submits that:

(a) *Party A* is of itself an "extraordinary circumstance"; and

(b) The decision in *Party A* may affect the legal test to be applied to what constitutes an "extraordinary circumstance."

[8] An extraordinary circumstance is a matter of evidence. An outstanding decision in an unrelated matter is not a matter of evidence, and it cannot constitute an extraordinary circumstance on the facts of this proceeding that could outweigh the public interest.

[9] Further, the fact that *Party A* may alter the legal test to be applied does not assist the Respondent because he has failed to provide evidence of any circumstance whatsoever, notwithstanding the Original Decision, which provided him the opportunity to do so. At this point, based on the record, it does not matter what the legal test is, the Respondent's application fails as there is no evidence of any circumstance at all.

[10] Accordingly, there is no basis for this application and it is dismissed.

THE REQUEST FOR AN ABEYANCE/ORAL HEARING

[11] Notwithstanding the fact that the Respondent was provided with two opportunities to provide evidence of extraordinary circumstance and has failed to do so, the Respondent asks for an abeyance for reasons that largely mirror the argument dismissed in the Original Decision. In my view, none of these reasons justified an abeyance at the time of the Original Decision, and they do not justify either an abeyance or an oral hearing now.

[12] First, the Respondent argues that determination of this application ought to be delayed until he is given the opportunity to review the rulings of the Executive Director, the chambers judge and the Court of Appeal in *Party A*. He argues that he ought to be able to review those legal authorities prior to proceeding with this application.

[13] This argument fails for a number of reasons. First, the Respondent has failed to disclose any circumstance whatsoever, extraordinary, or otherwise that could engage my discretion to order anonymous publication of the citation. Without any evidence of a "circumstance", the application must fail and a review of legal authorities is of no assistance. There is simply nothing to analyze.

[14] Second, the Respondent has again failed to disclose why he cannot refer to authorities on anonymous publication generally, or from other administrative tribunals.

[15] Third, *Party A* is an unrelated proceeding. As noted in the original decision, the nature of exceptional circumstances is situational and factually dependent. The Rule requires exceptional circumstances in this proceeding based on this Respondent, not the situation of some other lawyer.

[16] Finally, the Law Society has a public interest mandate as provided by section 3 of the *Legal Profession Act* ("LPA"). That mandate is well served by timely transparency with the public. At any given time, there will be citations issued in various proceedings, there will be various applications and there will be various court proceedings, many of which will engage similar legal issues. Other than in unique circumstances, this Tribunal cannot be frozen and restricted from acting in the public interest while it awaits other decisions to be issued.

[17] Had the Respondent provided *some* evidence of *any* circumstance that could arguably satisfy the "exceptional circumstances" threshold then there may have been some possible merit to awaiting the decision in *Party A*. However, having failed to lead any evidence whatsoever, there is simply no merit in doing so. Regardless of the outcome of *Party A*, this application (which the Respondent has now filed twice after being given the opportunity to file a proper evidentiary basis) cannot succeed under any legal test given the absence of any evidence of exceptional circumstances.

[18] In seeking the abeyance (as well as access to the various rulings and decisions) and the oral hearing, the Respondent cites *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, as support for his proposition that fairness requires the orders he seeks. In my view, *Baker* does not assist the Respondent. *Baker* provides that fairness is flexible and variable depending on the context, including the statute and the rights affected. It also allows Tribunals, such as this one, to have flexibility with respect to its procedures for administrative efficiency.

[19] Here the policy behind the Rule is to make timely and transparent disclosure of citations to the public absent extraordinary circumstances. No circumstances have been disclosed. Fairness does not require that this matter await any disclosure of previous decisions or rulings, nor does it require awaiting the decision in *Party A*. It also does not require an oral hearing. There is nothing that can be said orally or that is included in those decisions that can address the complete failure to provide any evidence of any circumstance whatsoever that could engage my discretion under the Rule.

DELAY

[20] Absent an application by the Respondent, the Rule provides for publication after 7 days of a citation identifying the Respondent. In the normal course, applications before this Tribunal are dealt with expeditiously. The clear policy intent of this Rule is to ensure timely and expeditious resolution of a request for anonymization of a citation to ensure the Law Society is acting transparently with the public and fulfilling its section 3 mandate under the LPA.

[21] While there may be occasions when a delay in consideration of anonymization would be appropriate, the policy behind the Rule suggests that it should be used sparingly and only in circumstances where there is some potential evidentiary justification for doing so. Again, in this circumstance, the Respondent has failed to file any evidence of any circumstance. As a result, there is no evidentiary basis to further delay a determination under the Rule.

[22] The Law Society is prohibited by Court Order from providing a copy of the Sealed Reasons referred to in *Party A*. There is no evidence that the Respondent has taken any steps before the British Columbia Supreme Court to obtain access to those reasons. Again, his request for them is simply a re-argument of the position I rejected in my original reasons.

DECISION

[23] The Respondent's application is dismissed and publication of the citation in question will now identify the Respondent.