2019 LSBC 38
Decision issued: October 10, 2019
Oral decision: August 30, 2019
Citations issued: October 30, 2018 and May 28, 2019

**THE LAW SOCIETY OF BRITISH COLUMBIA**

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

**and a hearing concerning**

**GLEN CAMERON TEDHAM**

**RESPONDENT**

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**DECISION OF THE PRESIDENT'S DESIGNATE**

**ON APPLICATION FOR JOINDER**

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| Written submissions: | August 28, 2019 |
| President's Designate: | Sarah Westwood |
| Discipline Counsel: | Robert W. Cooper, QC, Heather E. Doi |
| Counsel for the Respondent: | Wallace T. Oppal, QC |

[1] On August 30, 2019, the Respondent brought an application pursuant to Rule 4-22 that the two citations issued October 30, 2018 and May 28, 2019 (amended May 29, 2019) (the "Citations"), be joined and heard in one hearing.

[2] On August 30, 2019, acting as the President's Designate, I granted the application with reasons to follow. These are those reasons.

## BACKGROUND

[3] In 2013, when first applying to the Law Society for enrolment as an articled student, the Respondent disclosed a history of alcohol and chemical dependency, a

prior assignment into bankruptcy, and convictions under the *Criminal Code*, the *Customs Act* and the *Motor Vehicle Act.*

[4] Following a credentials hearing in 2014, the panel found the Respondent fit to be an articled student, but also imposed limitations and conditions on his practice. The conditions included, *inter alia*, that the Respondent:

(a) article and practise only in a law firm or other business setting in which the Respondent is supervised by at least one lawyer with a minimum of eight years of call who is in active practice;

(b) not be a signatory on a trust account; and

(c) comply with the recommendations of his doctor regarding sobriety and recovery, including but not limited to abstinence from alcohol, illicit drugs and other addictive medications

(together, the "Conditions").

[5] The Respondent completed his articles, and the Credentials Committee approved his application for admission to the Bar in 2015, on the condition that the Respondent would continue to be subject to the Conditions for a three-year period of practice or until August 18, 2018. Accordingly, the Respondent was called to the bar in August, 2015, and started practising as a lawyer in September, 2015.

[6] On December 8, 2016, the Credentials Committee varied the Conditions to permit the Respondent to practise under the supervision of a lawyer with seven years of call, rather than at least eight. The remaining Conditions were not changed.

[7] Between July and August, 2017, the Respondent changed law firms, remaining employed as a lawyer.

[8] The Law Society opened an investigation regarding the Respondent in August, 2017 (the "First Investigation").

[9] Effective February 9, 2018, the Respondent was administratively suspended from the practice of law pursuant to Rule 3-6 of the Law Society Rules (the "Rules"), for failure to produce requested documents and information during the course of the First Investigation.

[10] On April 24, 2018, the Respondent signed an undertaking and consent not to engage in the practice of law.

[11] On May 16, 2018, during an interview conducted in the course of the First Investigation, the Respondent self-reported a relapse in alcohol and cocaine use that started in November 2017 and continued until about May 3, 2018.

[12] In August 2018, the Law Society opened a second investigation regarding the Respondent (the "Second Investigation") to investigate matters similar in nature to those at issue in the First Investigation.

[13] Since January 2019, the Respondent has been a former member of the Law Society due to non-payment of fees.

## THE CITATIONS

[14] The Citations allege serious misconduct on behalf of the Respondent relating to matters including misappropriation, fraud, misrepresentation, mishandling of client funds, and engaging in the practice of law while suspended.

[15] The first citation, issued October 30, 2018 (the "First Citation"), includes eight allegations relating to the Respondent's conduct in respect of seven clients and two third-party loan companies between October 2015, and March 2018.

[16] The second citation, issued May 28, 2019, and amended May 29, 2019 (the "Second Citation"), includes four allegations relating to the Respondent's conduct in respect of three additional clients, although the allegations are similar to those in the First Citation.

## PROCEDURAL HISTORY

[17] The First Citation is further advanced than the Second Citation and was originally scheduled for hearing on September 12, 2019.

[18] The Respondent expressed the intention to make a proposal under Rule 4-29 (Conditional Admissions) to the Discipline Committee (the "Proposal") and, accordingly, to seek an adjournment of the September 12, 2019 hearing to allow the Proposal to proceed.

[19] As part of the Proposal, the Law Society expected the Respondent to tender medical evidence relating to the misconduct alleged in the Citations and in support of the Proposal.

[20] The Law Society served the Respondent with a Notice to Admit in respect of the First Citation on July 29, 2019.

[21] On August 13, 2019, the Respondent's counsel advised, in writing, that the Respondent was prepared to admit the whole of the Law Society's case in respect of the Citations. In the August 13, 2019 letter, the Respondent's counsel also advised that he and his client consented to the Citations being joined in one hearing.

[22] Under Rule 4-28, a response to the Notice to Admit was required by August 19, 2019. Consistent with the intention to admit the entirety of the Law Society's case, and by not submitting a response to the Notice to Admit by the deadline, the Respondent is deemed by Rule 4-28 to have admitted the truth of the facts and authenticity of the documents listed in the Notice to Admit for the First Citation.

[23] A hearing has not yet been set for the Second Citation.

[24] While both the Respondent and the Law Society consent to the application for joinder, I am not bound by that consent, and find that I still must exercise my discretion and consider whether, on a principled basis, the Citations should be determined in one hearing.

## ANALYSIS

[25] Rule 4-22 of the Rules states:

### Severance and joinder

**4-22** (1) Before a hearing begins, the respondent or discipline counsel may apply in writing to the President for an order that

(a) one or more allegations in a citation be determined in a separate hearing from other allegations in the same citation, or

(b) two or more citations be determined in one hearing.

(2) An application under subrule (1) must

(a) be copied to the party not making the application, and

(b) state the grounds for the order sought.

(3) [rescinded]

(4) The President may

(a) allow the application with or without conditions,

(b) designate another Bencher to make a determination, or

(c) refer the application to a pre-hearing conference.

[26] Counsel for the Law Society refers me to *Law Society of BC v. Nejat*, 2019 LSBC 16, and the cases cited therein, for authority that the Citations may be joined.

[27] This case bears similarities to that of *Nejat*, in that both this Respondent and Mr. Nejat allege that addiction concerns are the underlying cause of the Citations and that medical evidence will be required in relation to any hearing.

[28] Unlike the respondent in *Nejat*, however, this Respondent has stated his intention to admit the entirety of the Law Society's case against him.

[29] As set out in *Nejat* and the cases cited therein, matters should not be joined if it would be prejudicial or unfair to the Respondent to do so, and in general, disparate matters should not be heard together. Further, mere procedural convenience or efficiency is insufficient grounds to justify joining matters.

[30] Quoting *Robak Industries v. Gardner*, 2006 BCSC 1628 at para. 24, the Bencher in *Nejat* set out the principles to be considered on an application to joinder as follows:

> … the decision is a discretionary one to be exercised after weighing the facts set out in [*Merritt v. Imasco Enterprises Inc.* (1992), 2 CPC (3d) 275, where] Master Kirkpatrick, as she then was, set out these two tests to be met for separate actions to be heard together:
>
> 1. Do the pleadings disclose common claims, disputes and relationships between the parties?
>
> 2. Having regard to matters outside the pleadings, are the claims so interwoven as to make separate trials at different times before different judges undesirable and fraught with problems and economic expense?
>
> If the first test is passed then I must go on to consider the second test and specifically whether:
>
> 1. the order sought will create a saving in pre-trial procedures;
>
> 2. there will be a real reduction in the number of trial days taken up by the trials being heard at the same time;
>
> 3. there is a potential for a party to be seriously inconvenienced by being required to attend a trial in which that party may have only a marginal interest;
>
> 4. there will be a real savings in experts' time and witness fees;
>
> 5. one of the actions is at a more advanced stage than the other;

6. the order will result in a delay of the trial of one of the actions and, if so, whether any prejudice which a party may suffer as a result of that delay outweighs the potential benefits which a combined trial might otherwise have; and

7. there is a substantial risk that separate trials will result in inconsistent findings on identical issues.

[31] In applying these questions in the instant application, it appears that joining the Citations is warranted.

[32] Here, although the Citations involve different complainants, the allegations contained in both citations are similar, and the Respondent submits (and for the purposes of this application, at least, the Law Society accepts), that his addiction is a significant unifying feature throughout. Moreover, it is the Respondent's intent to admit the entirety of the Law Society's case and simply proceed under the Proposal with respect to both Citations. The threshold outlined above is therefore met.

[33] In light of the remaining considerations, the fact of the Respondent's intended admission means that joining the matters will result in minimizing the hearing dates, resulting in only one hearing under the Proposal. It is clearly more efficient, and a significant saving of both hearing time, pre-trial procedures, convenience, and consistency of outcomes, for the Citations to be considered globally.

[34] I am satisfied that joining the Citations in one hearing is therefore neither prejudicial nor unfair to the Respondent and that the public interest will be served by an expeditious and efficient disposition of the Citations in one hearing.

[35] The Respondent's application to have the Citations determined in one hearing is therefore granted.