

2021 LSBC 17
Decision issued: May 14, 2021
Citations issued: Citation #1 June 1, 2020,
Citation #2 June 1, 2020 and
Citation #3 December 1, 2020

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

AARON MURRAY LESSING

RESPONDENT

**DECISION OF THE PRESIDENT’S DESIGNATE
ON AN APPLICATION FOR JOINDER AND
HEARING DATES**

Application date: April 14, 2021

President’s Designate: Christopher McPherson, QC

Discipline Counsel: Mandana Namazi
No-one appearing on behalf of the Respondent

INTRODUCTION

- [1] The Law Society applies pursuant to Rule 4-22 of the Law Society Rules (the “Rules”) for an order that three citations issued to Aaron Murray Lessing (the “Respondent”) be joined and determined at one hearing and for an order pursuant to Rule 4-32 of the Rules that the joint Facts and Determination hearing be set for four days in September 2021 or as soon as possible after that date.
- [2] The Respondent has failed to reply to any of the Law Society’s communications about any of the citations. The Respondent had been served with the citation and

notice has been provided to the Respondent as required. The Respondent took no part in the hearing of this Application.

THE CITATIONS

- [3] Citation CI20200024 (“Citation #1”) was issued on June 1, 2020 and amended on October 14, 2020. It contains five allegations of failing to provide full and substantive response to communications from the Law Society, contrary to Rule 3-5(7) and (11) and rule 7.1-1 of the *Code of Professional Conduct for British Columbia* (the “Code”) constituting professional misconduct pursuant to section 38(4) of the *Legal Profession Act* (the “Act”).¹
- [4] Citation CI20200025 (“Citation #2”) was issued on June 1, 2020 and amended on June 12, 2020. It contains three allegation of disclosing confidential information contrary to rule 3.3-1 of the Code and one allegation of failing to act with honour, integrity, courtesy, and civility, by swearing and filing an affidavit with the court, upon which the Respondent relied, for which the Respondent had no factual basis, all of which constitute professional misconduct pursuant to section 38(4) of the Act.² The underlying complaint that led to Citation #2 is one of the files that forms the subject matter of failing to respond to the Law Society as referred to in Citation #1.
- [5] Citation CI20200048 (“Citation #3”) was issued on December 1, 2020. It contains one allegation of failing to provide the quality of service expected of a competent lawyer while serving as an executor of an estate, contrary to one or more of rules 3.1-1, 3.1-2, and 3.2-1 of the Code, and one allegation of failing to respond to communications that required a reply, all of which constitute professional misconduct pursuant to section 38(4) of the Act.³ The underlying complaint that led to Citation #3 is one of the files that forms the subject matter of failing to respond to the Law Society as referred to in Citation #1.

GOVERNING LEGAL FRAMEWORK

- [6] Rule 4-22 governs joinder of citations. It permits the respondent or discipline counsel to apply in writing to the President (or the President’s Designate, as here)

¹ Affidavit Leanne LaCoste, sworn April 7, 2021, page 53, Exhibit “N”

² Affidavit Leanne LaCoste, sworn April 7, 2021, page 88, Exhibit “Y”

³ Affidavit Leanne LaCoste, sworn April 7, 2021, page 100, Exhibit “EE”

for an order that two or more citations be determined in one hearing. The President's Designate can allow the application with or without conditions.⁴

- [7] The Rules provide no guidance as to the principles to be applied, but the case law tells us the principles are the same as in an application for joinder in civil proceedings.⁵
- [8] Joinder ought not to be granted where the hearing of two or more citations at once would be prejudicial or unfair to the Respondent, and in general, widely disparate matters should not be heard together.⁶
- [9] Rule 4-32 allows the President's Designate to set the date, time and place for a hearing to begin, on the application of a party.⁷ Rule 4-38 permits the President's Designate to consider any matters that may aid in the fair and expeditious disposition of the citation, and to make an appropriate order, including for joinder,⁸ and to set the set a date for the hearing to begin and to specify the number of days to be scheduled for the hearing.⁹

FACTUAL BACKGROUND

The Respondent

- [10] The Respondent was called and admitted as a member of the Law Society of BC in May 1991. The Respondent's practising status has been suspended since December 2, 2019 because he failed to respond to communications from the Law Society on three separate complaint files.
- [11] In January 2020, the Respondent, through his then counsel, told the Law Society that he intended to resign his membership. On May 5, 2020, the Respondent emailed the Law Society requesting permission to resign his membership. There has been no communication from the Respondent to the Law Society since, other than he updated his contact details in his member profile on the Law Society Information System as of May 7, 2020.

⁴ Rules 4-22 (1)(b), and 4-22(4)(b)

⁵ See, for example, *Law Society of Manitoba v. Luk*, 2009 MBL 11

⁶ *Law Society of BC v. Nejat*, 2019 LSBC 11

⁷ Rule 4-32 (1)(b)

⁸ Rule 4-38 (9)(d)

⁹ Rule 4-38 (10)(b)(c)(d)

The proceedings

- [12] All three citations are at the same procedural stage. The citations have all been served on the Respondent and full disclosure has been provided to him. The next step for each of the citations is to set dates for the hearings on Facts and Determination.
- [13] The Law Society has made repeated attempts to engage with the Respondent concerning the three citations. The Respondent has not engaged with the Law Society at all since he updated his contact information. He has ignored all correspondence with the Law Society and has not accessed any of the documents posted to its web portal concerning the citations. The Law Society has repeatedly notified the Respondent that these proceedings may continue in his absence and without any input from him.

Position of the parties

- [14] The Law Society submits that the three citations allege similar and overlapping wrongdoing, including failing to respond to communications from the Law Society *or* from clients. It further submits that the citations allege that the Respondent exhibits a cavalier attitude towards client confidentiality, fulfillment of obligations towards clients, and uncivil behaviour connected to a lack of separation between the Respondent's professional and personal life.
- [15] The Law Society further points out that the behaviour overlaps in time.
- [16] As can be garnered from the above recitation of the facts, since the Respondent has ignored all communications from the Law Society, I am left without any input from him and have no indication regarding his position on this application by the Law Society.

ANALYSIS

- [17] The determination of when, in civil proceedings, multiple actions ought to be joined involves a two-part test. First, do the pleadings disclose common claims, disputes and relationships among the parties and, second, are the claims so interwoven to make separate trials undesirable?¹⁰
- [18] In an administrative hearing such as this, it is also necessary to consider whether joining multiple citations carries the danger of unfairness or prejudice to the

¹⁰ *Robak Industries et al. v. Gardner et al.*, 2006 BCSC 1628, paragraph 2

Respondent, which is closely related to whether the citations disclose common claims against the Respondent.¹¹

- [19] All the cases provided by the Law Society involve applications for joinder by *consent*, from which the President or the Designate could conclude that joinder would *not* be unfair or prejudicial to the respondent on those matters. Here, of course, the Respondent has not consented, or for that matter been involved in the proceedings at all.
- [20] In determining whether there should be joinder, it is more than asking if the underlying facts are similar, or whether they took place over a similar time frame. It is a question of whether the *gravamen* of the various claims are similar.¹²
- [21] Citation #1 is entirely concerned with the failure of the Respondent to respond to communications with the Law Society as required by the Rules and the Code. Citation #2 focuses on the disclosure of confidential information of clients and failing to act with honour, integrity, courtesy, and civility by filing and relying on an affidavit that lacked factual basis. Citation #3 alleges that the Respondent failed to provide the expected quality of service, including, among other things, failing to respond to communications from the beneficiaries of an estate and from a bank.
- [22] While two of the citations (#1 and #3) do involve failure to communicate, Citation #1 regards communications with the Law Society. The Rules and the Code specifically outline the obligations of lawyers regarding communicating with the Law Society. Whereas Citation #3, in contrast, involves communications with other persons. While both demonstrate a failure to respond to others, in my view the nature of each is wholly disparate from the other. The relationship between a lawyer and the regulating body is clearly different than the relationship between a lawyer acting as an executor and other parties, here, beneficiaries of a former client's estate and a bank.
- [23] Citation #2 involves a completely different set of obligations, including failing to safeguard client confidentiality and filing and relying upon an affidavit with no factual basis.
- [24] While, as suggested by the Law Society, the allegations may all suggest a "cavalier" attitude towards the Respondent's duties as a lawyer, they have no other apparent connection to each other, apart from taking place, in part, over the same time period.

¹¹ *LSBC v. Tedham*, 2019 LSBC 38, paragraph 29

¹² *Robak*, paragraph 4

- [25] In my view, there is a considerable risk that, given the disparate nature of the allegations, it would be unfair or prejudicial to the Respondent for them to be determined at one hearing. When a panel, for example, considers whether the Respondent's disclosure of confidential information amounts to professional misconduct (Citation #2), allegations of failing to respond to the beneficiaries of a former client's estate (Citation #3) have no relevance to that determination, other than to suggest that the Respondent is the "type" of lawyer who is likely to disclose confidential information. This sort of reasoning would, in my view, operate unfairly against the Respondent.
- [26] While it is likely that the Respondent will continue to ignore communications with the Law Society and play no role in these proceedings going forward, that does not obviate the potential unfairness and prejudice to him. The Respondent is still entitled to a separate determination on each of the three citations.
- [27] It may well be that hearing the citations together would create a saving in pre-trial procedures and a reduction of the total number of hearing days. It would also mean there would be no need to arrange for three different panels to hear the matters and would no doubt save scarce resources. However, this added convenience cannot be at the cost of unfairness or prejudice to the Respondent.
- [28] Accordingly, the application by the Law Society for Joinder is denied.
- [29] Given this decision, I am not able, at this time, to resolve the issue of setting the date, time and place for each of the three hearings. If the Law Society wishes to obtain orders concerning these issues, it is, of course, free to bring on further applications.

CONCLUSION

- [30] The application by the Law Society for joinder is denied, as the gravamen of each of these three citations is widely disparate from the others. The Law Society is free to make further applications concerning setting the date, time and place for the hearings of these citations.