

2022 LSBC 01  
Hearing File No.: HE20200033  
Decision Issued: January 11, 2022  
Citation Issued: May 25, 2020

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL  
HEARING DIVISION

BETWEEN:

**THE LAW SOCIETY OF BRITISH COLUMBIA**

AND:

**LEONIDES TUNGOHAN**

RESPONDENT

**DECISION OF THE PRESIDENT’S DESIGNATE  
ON AN APPLICATION PURSUANT TO RULE 4-38(10)**

Written submissions:	December 8, 2021
President’s Designate:	Geoffrey McDonald
Discipline Counsel:	Deborah K. Lovett, QC
Appearing on his own behalf:	Leonides Tungohan

- [1] Leonides Tungohan (the “Respondent”) is before the Law Society Tribunal pursuant to a citation issued on May 25, 2020 (the “Citation”). On April 15, 2021, the Respondent and counsel for the Law Society appeared before me at a prehearing conference. At that conference, the Respondent expressed concerns about receiving particulars and full disclosure. A schedule was arranged for the Respondent and the Law Society to exchange materials. I gave leave for the parties to come before me if there are outstanding issues with respect to particulars

or disclosure. In a letter dated September 23, 2021, the Respondent made a variety of complaints about the disclosure and particulars provided by the Law Society. The letter appears to be an application pursuant to Rule 4-38(10), and the leave I gave the parties at the prehearing conference to return before me.

- [2] The Respondent both complains that the Law Society disclosed irrelevant materials and that the Law Society has not disclosed materials from other files, which he speculates could possibly contain relevant evidence. The Respondent argues that Law Society staff may have incorrectly carried out their duties. He claims broadly that “The issues must be identified and simplified before trial on the merits.” The Respondent also asserts that “There are also issues generated by the Law Society’s Notice to admit [sic] and my Response and my Notice to Admit and the Law Society’s response [sic].” The Respondent does not clarify what those issues are in the September 23, 2021 letter.
- [3] The Law Society replied on November 19, 2021, opposing the application.
- [4] On December 8, 2021, the Respondent provided a sur-reply. The sur-reply demands that the Law Society provide detailed explanations of why the Practice Standards Committee, Discipline Committee and discipline counsel made various decisions before and after the Citation was issued. The Respondent requests disclosure of all materials that either committee or discipline counsel considered when carrying out their roles. The Respondent expresses concern that the Discipline Committee may have “violated natural justice” in coming to their decision to issue the Citation. The Respondent demands detailed explanations for any documents that the Law Society is claiming privilege over. He takes issue with the conduct of the Law Society committees and staff and that his matter has not been brought to the attention of the Law Society Executive Director for review. In essence, the Respondent is seeking a broad disclosure of Law Society materials and seeks to have an examination of the Law Society’s conduct rather than his own.
- [5] For the reasons set out below I am dismissing the Respondent’s application.
- [6] Before addressing the application, I must discuss the extent of my authority as a Bencher conducting a Rule 4-38 prehearing conference. The Law Society Tribunal is not a court and a citation is not an allegation that a crime, or even a regulatory offence, has occurred. Rather, a citation is an allegation that a lawyer has professionally misconducted themselves in a manner that, if proven, will require the Tribunal to take action to protect the public interest. Though the Tribunal uses processes that appear similar to criminal trials for expediency, it is an administrative process that the principles of criminal law have but limited application to (See *R. v. Sault Ste. Marie*, [1978] 2 SCR 1299 at page 1302 for

Dickson J.'s comments regarding the limited use of criminal law to regulatory offences which are more serious than the citations before the Law Society Tribunal). Prehearing conferences are a tool intended to assist the Law Society Tribunal in effectively and efficiently adjudicating matters before it. A Bencher designated by the President to preside over a prehearing conference may "... make any order that, in the judgment of the Bencher, will aid in the fair and expeditious disposition of the citation ..." (Rule 4-38(10)). Notably, I am restricted to "aiding" the matter to move forward. Accordingly, relevant to this application, I may order the disclosure of relevant, admissible, non-privileged materials and I can set timelines for exchanging materials and scheduling dates.

- [7] The Respondent seeks disclosure of a variety of materials that are clearly irrelevant. The Respondent appears to believe the way he was investigated is in some way relevant to an administrative hearing into whether he committed the acts alleged in the Citation and whether those acts amount to professional misconduct. The investigation and deliberations by Law Society committees, staff or counsel, are not relevant nor are they issues in the proceeding. Irrelevant materials do not have to be disclosed and should not be.
- [8] The Respondent's allegations that the Law Society has violated unspecified principles of natural justice or otherwise acted improperly does not make the investigation into the Respondent's conduct and the legal opinions of discipline counsel relevant to the proceeding. For these materials to become disclosable the Respondent must establish on clear, reliable evidence that the Law Society, Law Society staff, discipline counsel, and/or committee improperly carried out their duties in a manner akin to a malicious prosecution. Speculation and unsupported allegations of improper conduct are insufficient. The Respondent has not provided any evidence supporting a finding of improper conduct. The requested materials are irrelevant and should not be disclosed.
- [9] From the Respondent's materials, it is apparent that the Law Society has erred on the side of caution and disclosed more materials than were truly relevant so as to ensure they did not fail to provide all relevant materials. The Respondent speculates that there may be other relevant materials in the Law Society's possession. Absent compelling evidence that the Law Society has withheld relevant materials, I am not prepared to look behind the Law Society's representations. To do otherwise would shift the focus of this administrative process from the allegations that the Respondent misconducted himself in a specific instance to a broad investigation and examination of the Law Society generally. The Law Society's conduct is not at issue in this matter. Only the Respondent's alleged conduct is before the Tribunal. It is the Respondent who faces the burden

of establishing that evidence relevant to the Respondent's alleged misconduct has been withheld from him. He has not done so.

- [10] With respect to the privileged materials, the Law Society is entitled to rely on privilege when declining to provide specific materials. Absent the Respondent producing compelling evidence that the Law Society is claiming privilege where none exists on evidence relevant to the alleged misconduct, the materials cannot and should not be produced. Nor is the Law Society required to produce detailed descriptions of the materials and justifications for the privilege. Legal opinions provided to the Law Society and the Law Society's committees are both privileged documents and irrelevant. Discipline counsel's opinion alleging the Respondent misconducted himself is irrelevant to whether the Respondent actually misconducted himself.
- [11] The Respondent's complaints about the Citation and particulars are without merit. It is a very simple and straightforward citation. The Citation sets out a single clear allegation that the Respondent breached a hearing panel order. The allegation specifies that in one or more specific date ranges, the Respondent failed to submit reports from an accountant as required by the hearing panel order. The Law Society alleges that the Respondent's failure to submit those reports is professional misconduct. That allegation is clear and precise and sets out the parameters of the issues in the proceeding. It is apparent from the Respondent's materials that he understands the allegation against him. However, the application seeks to make this administrative process about the Law Society's conduct rather than the allegations in the Citation regarding the Respondent's conduct.
- [12] This matter has been delayed too long. The parties must set a date for hearing as soon as reasonably possible. The public expects and the public interest demands that allegations of professional misconduct by lawyers be quickly and efficiently brought to hearing on the merits. It must be remembered that this is an administrative hearing - not a criminal trial. All parties have an obligation to move matters forward. If the parties are unable to agree on appropriate hearing dates, they have leave to come back before the Tribunal Chair or designate for that purpose.