

2022 LSBC 09
Hearing File No.: HE20200061
Decision Issued: March 7, 2022
Citation Issued: July 23, 2020

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

ROWAN MACKENZIE DAVISON

RESPONDENT

**DECISION OF THE MOTIONS
ADJUDICATOR ON AN APPLICATION
FOR JOINDER
(RULE 5-4.4)**

Written materials: February 15, March 2 and
March 4, 2022

Motions Adjudicator: Lindsay R. LeBlanc

Discipline Counsel: Jordanna Cytrynbaum, Savannah Hamilton
Counsel for the Respondent: Henry C. Wood, QC

INTRODUCTION

[1] The Respondent applies pursuant to Rule 5-4.4(1)(b) for an order that two citations issued against the Respondent be joined to be determined together at one hearing.

- [2] The parties have agreed to have this application determined by way of written submissions. At a prehearing conference conducted on February 17, 2022, I set out a schedule for receiving written submissions and advised the parties that I would render a decision by March 8, 2022.
- [3] I also directed that the parties schedule a subsequent prehearing conference on March 10, 2022 to address any additional matters that may arise following my decision on this application.

PROCEDURAL HISTORY

- [4] In August, 2019 and September, 2019 two complaints of sexual harassment were received by the Law Society from two former employees of the Respondent's law firm. After an investigation by the Law Society, the first citation was issued against the Respondent on July 23, 2020 ("Citation #1").
- [5] In or about January 2021, the Law Society received a new complaint of sexual harassment from an employee of the Respondent's law firm. A new investigation was conducted by the Law Society and the second citation was issued against the Respondent on November 8, 2021 ("Citation #2").
- [6] A prehearing conference was held on October 5, 2021 before Bencher Geoffrey McDonald in relation to Citation #1. Citation #2 had not been issued at this time.
- [7] Following the prehearing conference, a Notice of Hearing was issued on October 19, 2021 setting the hearing of Citation #1 to begin on April 4, 2022 for five days.
- [8] On February 8, 2022, the Law Society issued a notice of motion seeking directions respecting the conduct of the hearing of Citation #1 and a schedule for submissions for any proposed joinder application.
- [9] On February 15, 2022, the Respondent issued a notice of motion and on February 16, 2022, amended the notice of motion. The amended notice of motion is the subject of this application.

RESPONDENT'S POSITION

- [10] The Respondent submits that the issue of joinder was first raised during the investigation of the second complaint in anticipation of a second citation and at the prehearing conference held on October 5, 2021, and that the Respondent ought to

be able to rely on those exchanges as an agreement with the Law Society for joinder.

- [11] The Respondent further submits that joinder of the two citations will enhance the economy of the citation process while also promoting consistency of outcome in related matters and that the Respondent will be spared the additional expense, anxiety and prolongation that is involved with separate hearings.
- [12] The Respondent relies on *Law Society of BC v. Lessing*, 2013 LSBC 29 and *Law Society of BC v. Lowe*, 2019 LSBC 37 and the principles of global sanction applied in those cases.

LAW SOCIETY'S POSITION

- [13] The Law Society submits that the decision of *Law Society of BC v. Lessing*, 2021 LSBC 17 ("*Lessing* 2021") provides guidance on the principles to be applied in assessing whether joinder is appropriate.
- [14] The Law Society further submits that if the citations are joined, the hearing process will inevitably be prolonged and that the April 4, 2022 hearing date for Citation #1 would likely have to be adjourned to add additional hearing time and ensure that Citation #2 is ready for hearing.
- [15] The Law Society has indicated that witnesses have been advised of the April 4, 2022 hearing date and that Citation #1 is ready to proceed.

DECISION

- [16] With respect to the Respondent's submission that the prior exchanges ought to be taken as an agreement for joinder, I do not agree. I have reviewed the transcripts and other materials submitted to me in this regard and while there were discussions of the possibility of joinder, there was not an agreement to that effect. It is clear to me that the parties were discussing the possibility of joinder down the road if a second citation was issued and that an application would be required should a party seek joinder at a later time. The parties are encouraged to have such preliminary procedural discussions as it generally assists with a more efficient proceeding but those discussions cannot be taken as binding.
- [17] The Respondent relies on the authorities that discuss the principles of global sanction. If the citations were joined, these principles would be applicable;

however, such principles do not assist with the determination of whether Citation #1 and Citation #2 should be joined.

[18] *Lessing 2021* provides the following principles in assessing whether joinder ought to be granted:

- (a) 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.
- (b) 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 the separate trial undesirable?
- (c) In an administrative hearing, it is also necessary to consider whether joining multiple citations carries unfairness or prejudice to the Respondent, which is closely related to whether the citations disclose common claims against the Respondent.
- (d) In determining whether there should be joinder, it is more than asking if the underlying facts are similar, or whether the gravamen of the various claims are similar.

[19] I would add the following additional principle to those noted above:

- (e) In an administrative hearing before the Law Society Tribunal, consideration of any additional factors that would undermine the public's confidence in the integrity of the profession.

[20] While Citation #1 and Citation #2 both involve allegations of sexual harassment, the allegations involve different complainants at different times. The facts of Citation #1 and Citation #2 are not so interwoven as to make separate hearings undesirable. The Respondent's application for joinder fails on this ground.

[21] As joinder will result in an adjournment of the April 4, 2022 hearing and result in an overall longer hearing, I am not convinced that there is any actual prejudice to the Respondent in having Citation #1 heard as presently scheduled with Citation #2 to be subsequently scheduled.

[22] Citation #1 was issued on July 23, 2020. Witnesses, including vulnerable witnesses, have arranged their schedules to be available at the April 4, 2022 hearing

for Citation #1. Adjourning the hearing at this late stage to permit joinder could have a negative impact on the public's confidence in the integrity of the profession.

[23] For the reasons stated above, I decline the relief sought by the Respondent and dismiss the Respondent's application for joinder of Citation #1 and Citation #2.