

2024 LSBC 10
Hearing File Nos.: HE20210010, HE20210081
Decision Issued: February 23, 2024
Citations Issued: June 3, 2021, December 13, 2021

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

WILLIAM CAREY LINDE

RESPONDENT

**DECISION OF THE HEARING PANEL
ON PRELIMINARY APPLICATIONS**

Hearing date: December 21, 2023

Panel: Thomas L. Spraggs, Chair
Brian Dybwad, Bencher
Guangbin Yan, Public representative

Discipline Counsel: Peter Senkpiel, KC
Kayla Strong

Appearing on his own behalf: William Carey Linde

INTRODUCTION

- [1] William Carey Linde (the “Respondent”) brought preliminary applications seeking various orders prior to the determination of the disciplinary action phase of this proceeding.
- [2] In his Notice of Motion, the Respondent seeks the following orders:
1. LSBC counsel Peter Senkpiel be removed as counsel for the LSBC in this matter on the grounds of violating the principles of prosecutorial impartiality as outlined in *Boucher v. The Queen*, [[1955] SCR 16,] para. 23 & 24.
 2. A direction that future hearings of this matter be open to the public.
 3. An order that the two citations issued by the Law Society of British Columbia against the Respondent:

File number HE 20210010 Citation #1 issued June 3, 2021

File number HE 20210081 Citation #2 issued December 13, 2021

be quashed and set aside and the decision flowing therefrom issued April 13, 2023 (*sic*) be vacated on the grounds of abuse of process based on both the primary and secondary grounds as set out in [*R v. Babos*, 2014 SCC 16] in the Supreme Court of Canada.

4. The Respondent’s video and transcript from the May 12, 2023 (*sic*), pre-hearing conference be admitted into evidence.

BACKGROUND

- [3] Two citations against the Respondent were heard together (the “Citations”) in the facts and determination phase of the hearing. On May 12, 2022 Benchers LeBlanc heard applications by the parties, including the Law Society’s application to have the facts and determination hearing closed to the public. On May 13, 2022 Benchers LeBlanc’s decision on the applications was issued and included an order that the fact and determination hearing be closed to the public (*Law Society of BC v. Linde*, 2022 LSBC 15). The facts and determination hearing took place on May 13 and 14, 2022 and the Panel’s reasons were issued on April 3, 2023 (*Law Society of BC v. Linde*, 2023 LSBC 13).

- [4] On October 6, 2023, a scheduled pre-hearing conference was attended by counsel for the Law Society. The Respondent did not attend. Directions were provided as set out below for an orderly exchange of information relating to any preliminary matters that could affect the disciplinary action phase of the hearing.
- [5] On October 6, 2023 the Panel ordered the following:
- (a) the disciplinary action hearing is scheduled for December 21 and 22, 2023 and will proceed virtually;
 - (b) The Respondent shall provide any preliminary applications and accompanying materials to the Law Society on or before October 31, 2023;
 - (c) The Law Society shall provide their response to the preliminary applications on or before November 30, 2023; and
 - (d) The parties are at liberty to apply for a further case management conference to deal with any preliminary issues that may arise.
- [6] On October 31, 2023 the Respondent filed the Notice of Motion with respect to the preliminary applications.
- [7] On December 21, 2023, the Panel convened in person to hear submissions relating to the preliminary applications.
- [8] Counsel for the Law Society seeks a determination of the applications brought by the Respondent before proceeding with submissions pertaining to disciplinary action relating to the Panel's findings in the facts and determination stage.

RESPONDENT'S APPLICATIONS AND THE DECEMBER 21, 2023 HEARING

- [9] The Respondent provided the Panel with lengthy affidavits and seeks to re-argue many of the earlier submissions fully considered in the facts and determination phase of this proceeding.
- [10] The Panel invited the Respondent to focus submissions on issues relating to considerations for the disciplinary action phase of this process, and the Panel was advised that "it's all in there."
- [11] In the submissions and materials filed is a non-exhaustive list of materials that relate to much of what was considered by the Panel from the Respondent already. In effect, the same arguments or similar arguments that relate to treatment of issues

dating back to 1971. The Respondent frames the issues for the Panel to consider as “freedom of speech” issues. Respectfully, the focus of these proceedings is exclusively on the admitted breaches and breaches found by the Panel of the court orders.

OPENING HEARING TO PUBLIC

- [12] Further information was provided that satisfied the Panel that there were sufficient safeguards to provide public in-person access to the proceeding as requested by the Respondent. The earlier orders relating to anonymity and confidentiality remained, and the public who attended in person on December 21, 2023, were reminded about the earlier orders, which included no recording.
- [13] An official reporter was present for the in-person proceeding on December 21, 2023.
- [14] The Citations arose out of the Respondent’s breaches of various court orders. Those court orders provided for the anonymity and confidentiality for the parties to those court proceedings. The Panel has ruled that so long as the confidentiality and anonymity of the parties in the underlying court proceedings are protected, the proceedings in the disciplinary action phase of the hearing may proceed publicly as is the standard practice and presumption for the LSBC Tribunal. Under the LSBC Tribunal Practice Directions, the default proceeding is virtual, but the Panel found that in all the circumstances, an in-person, open process balances the competing interests.
- [15] Accordingly, the issue of public access to proceedings has been resolved. For the following reasons, the remaining applications of the Respondent are dismissed.
- [16] Bencher LeBlanc's earlier orders did not foreclose the possibility of future proceedings being open to the public. To that extent, the Panel has considered all of the current circumstances and determined that the proceedings in the disciplinary action phase will be open to the public. However, the issues have already been considered and resolved by the Panel for all other orders sought by the Respondent. Even if the Panel were to consider the evidence and arguments again, the application would not be granted. The Respondent has failed to introduce any, or sufficient, evidence to support his argument that the prior closing of the hearing was an abuse of process or that Law Society counsel failed to be impartial.

REMOVAL OF COUNSEL FOR THE LAW SOCIETY

- [17] In dealing with the application to have counsel for the Law Society removed, the Panel understands that the primary submission of the Respondent is that counsel for the Law Society acted as an intervenor for an organization in the same proceeding that gave rise to the court order breaches. Further, the Respondent submits that counsel for the Law Society was counsel for an intervenor who was “ideologically gender biased.”
- [18] Counsel for the Law Society submits that the role of an intervenor is to assist the court in resolving an issue. Counsel for the Law Society also argues that it should not be considered to preclude counsel for the Law Society from acting in a capacity in the present proceedings. The Panel agrees with counsel for the Law Society.
- [19] One of the critical attributes of lawyers is that the representation of a party does not equate to agreement with a party's position.
- [20] The Respondent relies on Supreme Court of Canada jurisprudence in *Boucher v. The Queen*, [1955] SCR 16, specifically pages 23 and 24. This case arises on appeal from a criminal jury process from 1955 in Quebec. The authority provided does not support the Respondent’s proposition that counsel for the Law Society is acting in conflict in this proceeding.

QUASHING OF THE CITATIONS

- [21] The Respondent submits that the proceedings to date constitute an abuse of process, and, in effect, the Respondent submits that he has been treated more harshly than other licensees of the Law Society who might have also made inadvertent breaches of court orders as a function of the controversial nature of the subject matter of the proceedings and the orders that resulted in the breaches.
- [22] In dealing with the application to have the Citations quashed, the Panel has no jurisdiction in these circumstances to reconsider earlier findings or direct the Citations to be quashed. Further, even if the Panel had jurisdiction to revisit findings from the facts and determination stage in these circumstances, the Panel would decline the motion to quash the citations sought by the Respondent. The Respondent has failed to establish on the evidence that the Law Society is biased against him or that the proceedings to date constitute an abuse of process.

ADMISSION INTO EVIDENCE OF THE MAY 12, 2023 PRE-HEARING CONFERENCE

- [23] The Respondent brings an application for a video and transcript of the May 12, 2023 pre-hearing conference (the correct date of the pre-hearing was May 12, 2022) to be admitted into evidence. The video was recorded in contravention of Rule 5-8(4) of the Law Society Rules. The Respondent argues that the Panel may revisit the Panel's order at the hearing excluding the evidence, similarly to the Panel revisiting the ruling with respect to opening the hearing to the public. The Panel's modification of the hearing process allowed, subject to limitations, members of the public to attend the hearing.
- [24] As noted above, the reasons of Bencher LeBlanc are set out at *Law Society of BC v. Linde*, 2022 LSBC 15. The analysis of the open court principle and where it might be necessary to limit public access was succinctly articulated in those reasons in paragraphs 34 to 46. The import of the order to close the proceeding was that it does not explicitly preclude all future proceedings from being closed.
- [25] The Panel considered the nature of the orders to date. The new phase of the proceeding gave limited jurisdiction to reconsider the same test, which allowed for different risk management considerations of the privacy interests considered in the earlier proceedings.
- [26] As all the evidence of the earlier relevant issues were dealt with in the facts and determination phase with specific ongoing privacy orders, and the Panel has now ruled that the hearing will be open to the public, the Panel finds no basis or necessity for the video and transcript to be admitted into evidence as sought.
- [27] Accordingly, the Panel orders that the hearing be open to the public for the disciplinary action phase of the hearing as set out in our reasons above. The Panel denies the remainder of the orders sought by the Respondent set out in paragraphs 1, 3 and 4 of his Notice of Motion. The hearing dates may now be set for the remainder of the disciplinary action proceedings.