

The Law Society of British Columbia
In the matter of the *Legal Profession Act*, SBC 1998, c.9
and a hearing concerning

Re: Applicant 1

Applicant

**Decision of the Hearing Panel
on Publication and Costs**

Panel: Anne K. Wallace, Q.C., Chair, Terence La Liberte, Q.C., Art Vertlieb, Q.C.

Counsel for the Law Society: Herman Van Ommen

Appearing on his own behalf: The Applicant

Publication

[1] The Panel carefully reviewed the submissions of the Applicant and Counsel for the Law Society. Rule 2-69.2(2) of the Rules of the Law Society provides that if an Applicant is not successful, publication must not identify the Applicant. Accordingly, the Panel will use "the Applicant" when referring to the subject of the hearing so as not to identify his name. With respect to publication of the decision generally, that matter is within the discretion of the Executive Director pursuant to Rule 2-69.1 and not within the jurisdiction of the Panel. Accordingly, the Applicant must deal with the Executive Director in that regard.

Amendment to the Decision

[2] The Applicant takes issue with the facts set out in Paragraph 5 of the decision, specifically with respect to when the Applicant moved to British Columbia. That paragraph will be amended as follows:

" Having been found guilty of professional misconduct and the hearing into penalty having been held, the Applicant moved to BC before the penalty was decided."

[3] The Applicant takes issue with the facts as set out in Paragraph 28 of the decision, regarding the Applicant's dealing with an ICBC settlement cheque. That paragraph shall be amended as follows:

" The Applicant then had the settlement cheque made out to his business. He in turn issued a cheque to V.R. which was not honoured."

Costs

[4] This Panel rendered its decision regarding the application for admission to the Law Society of BC on July 26, 2005. The Applicant was not accepted for call in British Columbia. The purpose of this decision

is to decide the costs, if any, to be awarded against the Applicant.

[5] Counsel for the Law Society has submitted a Bill of Costs as follows:

Court reporters fees	\$ 3,973.98
Hearing fees of \$750 per day x 5 days	\$ 3,750.00
Counsel fees of \$175 per hour x 117.8 hr.	<u>\$20,615.00</u>
Total:	
\$28,338.98	

[6] The Applicant has made submissions as to why the total amount of the Bill of Costs claimed by the Law Society should not be ordered against him.

[7] The Applicant has rightly pointed out that the Panel must decide whether the Bill of Costs is reasonable and that, regardless of the amount of the Bill of Costs, it remains within the Panel's discretion to determine the amount of costs to be awarded. Given these basic principles, the Applicant submits that the full amount of the Bill of Costs should not be awarded against him for the following reasons:

(a) The counsel fee is prima facie unreasonable.

As pointed out by Counsel for the Law Society, there no longer exists a discrepancy between outside counsel's billable rate and Law Society staff lawyers' billable rates, both of those being \$175.00 per hour. The Panel does not find that amount to be an unreasonable rate for billing.

(b) A hearing was a very costly way to proceed and less costly options should have been sought. This caused a greater potential cost to the Applicant than needed to be incurred.

The jurisdiction of the Law Society of British Columbia, with respect to credentials hearings, is governed by section 19 of the *Legal Profession Act*. As a result, where there is a concern by the Credentials Committee the Section **requires** that a hearing be held. No alternative is permitted.

(c) The Credentials Committee improperly referred this application for hearing.

The Law Society of British Columbia, of which the Credentials Committee is a part, has two primary duties pursuant to the *Legal Profession Act*. The first is to protect the public interest, which means that it is the duty of the Law Society to protect the interests of the public who put their trust in its members. The very right of the Law Society to maintain self-governance of the legal profession rests on the Law Society properly exercising this responsibility. As well, the Law Society of British Columbia has a responsibility to its members, which includes a duty to ensure that the integrity of the legal profession is protected.

To uphold both these responsibilities, the Law Society must be diligent in assessing which applicants for admission are appropriate, whether that be articling students applying for admission or any other lawyer applying for admission.

This obligation encompasses a responsibility to independently assess suitability for enrolment in B.C., regardless of the decisions of other jurisdictions. The way in which the National Mobility Agreement is drafted demonstrates this.

(d) The Applicant likens the Credentials hearing to a discipline hearing for a citation and, on that basis, submits that he "won" on some points and not on others and therefore should only be responsible, on a pro rata basis, for those points on which he "lost".

The Applicant misunderstands the fundamental difference between these two types of hearings. The matter heard by this Panel was in the nature of an inquiry. It is not adversarial as between the Law Society and the Applicant. It is an opportunity for the Law Society to inquire as to the character of the Applicant in order to decide his qualifications and whether they meet the standard for call to the Law Society of British Columbia. Accordingly, the Applicant applied, an inquiry was held and the Applicant is being asked to pay for the cost of that inquiry.

A discipline hearing is adversarial in nature because it is the Law Society itself that is charging one of its own members with allegations of wrongdoing. The Law Society initiates the hearing by approving the citation. As a result, where the member proves that he has not committed the wrongful conduct with which he was charged, the Law Society does not seek costs against the member for that particular charge.

The Applicant in this matter has submitted that there are no Law Society precedents respecting costs following Credentials hearings. As Counsel for the Law Society has shown in his reply, there have been many such instances (Tab C of Counsel for the Law Society's Submissions on Costs).

Conclusion

[8] The Panel finds that the costs set out by Counsel for the Law Society are reasonable and properly incurred in the course of the inquiry into the Applicant's request for admission.

[9] The Panel must now consider how to exercise its discretion in awarding of those costs. The Applicant rightly pointed out that a lawyer's financial situation is a factor to be taken into account in this regard. The Applicant had declared bankruptcy in 2002. During the course of the hearing, especially concerning the last complaint, the Panel heard that the Applicant had been facing very difficult financial pressures, which were what led him to act as inappropriately as he did. If the Applicant's financial situation were the only consideration, the Panel could make an order for little or no costs. However, the Panel must balance the Applicant's situation against the interests of the members of the Law Society who must pay whatever costs are not paid by the Applicant.

[10] In this matter, the hearing was lengthened somewhat due to the requests by the Panel for further information from another jurisdiction, which the Panel agrees warrants a reduction of costs. As well, the Panel accepts the Applicant's evidence that he is facing very challenging financial circumstances. Accordingly, the Panel orders that the costs payable by the Applicant be that amount which has been posted as security for costs when the hearing was set, that being \$9,000.00.