

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

Robert Bruce MacAdam

Applicant

**Decision of the Hearing Panel
on Costs**

Written submissions: October 17, 2005

Panel: John Hunter, QC, Single Bencher Panel

Counsel for the Law Society: Herman Van Ommen

Counsel for the Respondent: Robin N. McFee, QC

Background

[1] On August 8, 2005, sitting as a single Bencher Panel in a hearing on fitness ordered by the Credentials Committee, I made a decision reinstating the Applicant as a practising member of the Law Society on conditions. In accordance with the usual practice, the Applicant had deposited security for costs for the hearing of his reinstatement application. In this case, security for costs of \$3,000 was posted. The parties have been unable to agree upon the proper award of costs of the Applicant's hearing.

[2] The jurisdiction of the Panel to award costs for a credentials hearing is found in Rule 5-9(0.1), enacted pursuant to section 46 of the *Legal Profession Act*. This rule gives a Panel a broad discretion in the award of costs. I have also been directed to Rule 5-9(3), which appears to provide a basis for awarding costs in a fixed amount in certain circumstances. The interplay between subrule 5-9(0.1) and 5-9(3) is not obvious to me, but I infer from the submissions that I have received that the parties would prefer that, if I award costs, I award costs in a fixed amount, which seems to me sensible.

[3] The position of the Law Society is that, while the Applicant was ultimately reinstated, it was upon conditions reflecting the seriousness of the issues that had concerned the Credentials Committee. A hearing being appropriate and necessary, the Law Society takes the position that the cost of the hearing should not be borne by the membership. Counsel proposes that the Applicant pay the costs of the hearing in the amount of \$3,000, which is the amount that has been posted.

[4] Counsel for the Applicant observes that he was successful in meeting the onus upon him to satisfy the Panel that he was of good character and repute and fit to be reinstated, and that he had not opposed either of the conditions imposed upon him. Counsel proposes that at a minimum each party should bear its own costs with the result that the funds posted by the Applicant should be returned to him.

[5] Counsel for the Applicant also suggests that the outcome of the hearing and the Applicant's willingness to accept reasonable conditions upon his return to practice indicates that a hearing was "wholly unnecessary." I cannot accept that submission. There were significant issues arising from the Applicant's professional conduct record that more than justified the decision to order a hearing. It was only because I was satisfied that the Applicant had in recent years satisfactorily addressed the issues that had concerned the Credentials Committee that I approved his reinstatement application.

[6] I have not been directed to any instances in which a successful Applicant for reinstatement was not required to pay at least some of the costs of the credentials hearing. Since the onus of satisfying a Panel of the Applicant's fitness is on the Applicant, it seems unreasonable that the burden of the cost of the credentials hearing fall entirely on the Law Society unless it is clear to the Panel that a hearing was unnecessary and ought not to have been ordered. That is not the case here.

[7] The recent practice of Panels appears to have been either to direct that a successful Applicant for admission or reinstatement pay the costs of the Law Society in the amount posted for security for costs (see e.g. *Re Jodway*, [2005] LSBC 46 and *Re Davis*, [2005] LSBC 32) or to pay the costs in an amount equal to half the amount posted as security for costs (see e.g. *Re Cushner*, [2003] LSBC 18 and *Re Nigol*, [2006] LSBC 46). The cases I have cited do not contain any reasons for the costs determination, and I must assume the Panels in question considered the costs awards appropriate in the particular circumstances of their cases.

[8] In the circumstances of this case, it seems to me that the most appropriate disposition is to award costs to the Law Society in an amount equal to half the amount posted as security for costs. I take into account the fact that this was a reinstatement hearing not an initial admission hearing, that the Applicant was frank in acknowledging the issues that had led to the hearing and that the Applicant appeared to me to have made significant effort to overcome the problems that had concerned the Credentials Committee.

[9] This determination would require that the Law Society return the amount of \$1,500 to the Applicant, and I so direct.