2013 LSBC 12
Report issued: May 24, 2013

The Law Society of British Columbia
In the matter of the *Legal Profession Act*, SBC 1998, c.9
and a section 47 review concerning

Arun Mohan

Applicant

Decision of the Benchers on Costs and Time for Re-application

Written submissions: March 5, 2013, March 11, 2013, March 19, 2013, March 25, 2013, April 8, 2013, April 12, 2013 and April 21, 2013
Benchers: Art Vertlieb, QC, Chair, Kathryn Berge, QC, Thomas Fellhauer, Miriam Kresivo, QC, Jan Lindsay, QC, Bill Maclagan, Claude Richmond

Counsel for the Law Society: Jason Twa
Counsel for the Applicant: Henry Wood, QC

[1] Following the review panel's decision of February 7, 2013, both parties made full submissions on costs and an abridgement of the time for re-application.

I. Abridgment of time

> In these circumstances, the review panel is the appropriate decision maker. Mr. Wood, on behalf of his client, suggests that the two year disqualification period be reduced by seven months. This is not opposed and we agree this is reasonable in the circumstances.

II. Costs

> Both counsel suggest that the recently amended rules concerning costs are applicable. Specifically, Rule 5-9(1.1) as amended in January 2013 should govern the matter of costs of the proceedings.

Under that rule, the question becomes the following: do we simply apply the Tariff of costs or do we exercise a discretion to order something other than the Tariff as outlined in Rule 5-9(1.2). The Rule requires us to apply the Tariff unless, in our judgment, it is "reasonable and appropriate" for the Law Society to recover costs in some other amount.

[2] The Applicant relies on *Law Society of BC v. Racette*, 2006 LSBC 29. We note that that was a discipline case and not a credentials hearing. It is clear that the onus is on an applicant in a credentials hearing, whereas that onus is on the Law Society and not on a respondent in a disciplinary hearing. We are of the view that that onus would also apply when seeking to have a panel, or the Benchers on a review, exercise a discretion to reduce costs.

[3] However, noting the significant differences between credentials and discipline hearings, we have analyzed the four principles set out in *Racette* as follows:

1. The seriousness of the event: Mr. Wood suggests the events are historical. The evidence of the Applicant under oath at the hearing is clearly not historical.

2. Financial circumstances: The Applicant has not disclosed his complete financial circumstances.

3. The effect of the outcome: Unlike a disciplinary hearing, there is no range of outcomes in a credentials hearing. The Applicant is either successful or not, and therefore the calamitous result as suggested by Mr. Wood could probably be said to be the same for any applicant when the application is rejected. In other words, this is no reason in an application of this nature to vary from the normal Tariff application.

4. Conduct of party: While we agree that the conduct of the parties may be a factor, there is nothing in the conduct of either party to justify departing from the Tariff application.

CONCLUSION

[4] We find that the Applicant has not fulfilled the onus of showing that the Law Society recover costs in the amount different from that prescribed by the Tariff as required under Rule 5-9. The Applicant must pay the costs of the hearing both below and on review pursuant to the Tariff. The Applicant has not disputed the figures submitted by Mr. Twa on behalf of the Law Society: $3,672 with respect to the hearing and $7,099.12 with respect to the review. The Applicant is entitled to credit for the $2,500 that he posted as security for costs. The difference is $8,271.12.

ORDER

[5] In the result,

(a) We abridge the time for re-application by seven months, and

(b) The Applicant must pay $8,271.12 in costs to the Law Society by July 1, 2014.