

THE LAW SOCIETY OF BRITISH COLUMBIA

In the matter of the *Legal Profession Act*, SBC 1998, c. 9

and section 47 review concerning

APPLICANT 6

APPLICANT

**DECISION OF THE BENCHERS ON
REVIEW ON COSTS**

Submissions received: October 2, 2014 and
October 21, 2014

Benchers: Herman Van Ommen, QC, Chair
Lynal Doerksen
Thomas Fellhauer
Craig Ferris
Benjimen Meisner
Phil Riddell
Elizabeth Rowbotham

Counsel for the Law Society: Jean P. Whittow, QC
Appearing on his own behalf: Applicant 6

[1] By reasons issued August 27, 2014 (2014 LSBC 37) we set aside the decision of the hearing panel (2013 LSBC 34) and rejected the Applicant's application for reinstatement.

- [2] The Law Society now seeks costs of the initial hearing in the amount of \$11,542.95 and of the review hearing in the amount of \$5,020 for a total of \$16,062.95.
- [3] The Benchers on review have the jurisdiction to assess costs for the initial hearing and the review in this case. (*Legal Profession Act*, s. 47(5) and Law Society Rule 5-9).
- [4] The Applicant does not dispute the quantum of costs claimed by the Law Society but asks the Benchers to award less than the amount claimed because of his impecuniosity and further asks for a reasonable period of time to pay any award of costs.
- [5] The purpose of an award of costs is to partially reimburse the Law Society for the costs incurred in conducting a proceeding. Costs not paid by an applicant in these situations are borne by the Law Society membership.
- [6] Rule 5-9 provides:
- ...
- (1.1) Subject to subrule (1.2), the panel or review board must have regard to the tariff of costs in Schedule 4 to these Rules in calculating the costs payable by an applicant, a respondent or the Society in respect of a hearing on an application or a citation or a review of a decision in a hearing on an application or a citation.
- (1.2) If, in the judgment of the panel or review board, it is reasonable and appropriate for the Society, an applicant or a respondent to recover no costs or costs in amount other than that permitted by the tariff in Schedule 4, the panel or review board may so order.
- [7] The Applicant asks us to consider his financial circumstances. The Applicant declared bankruptcy in November 2010 and was discharged in June 2012. He reports to us that his taxable income for 2012 was \$16,021 and for 2013 was \$19,178. He is currently a full-time cab driver with Sunshine Cabs.
- [8] An award of costs in the amount sought by the Law Society would impose a significant financial burden on him. However, the Benchers must balance the Applicant's financial circumstances against the interests of the members of the Law Society.
- [9] In *Re: Applicant 1*, 2006 LSBC 08, after an applicant's application for admission was rejected, the Law Society claimed costs in the approximate amount of \$28,000.

The panel found the costs were reasonable and properly incurred but considered whether to exercise its discretion to award a reduced amount in light of the applicant's financial circumstances. The panel awarded costs in the amount of \$9,000 and wrote as follows:

[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 case, costs of the initial hearing were not ordered, but have been calculated at \$11,542.95. This Review, with the additional cost of \$5,020, was made necessary because the hearing panel erred by admitting the Applicant. In this situation, and given the Applicant's financial situation, it is appropriate that the Applicant only pay the costs of the initial hearing. The parties will bear their own costs of the review.

[11] This Review panel does not intend to suggest that, as a rule, all applicants who are successful at the initial hearing and lose upon review avoid the cost of the review hearing. Each case must be decided based upon its own facts.

[12] The Applicant paid \$500 as security for costs. When applied to the costs claimed for the initial hearing of \$11,542.95 there is a balance of \$11,042.95.

[13] As a result, the Benchers order that:

- (a) the Applicant pay the sum of \$11,000 in costs; and
- (b) the costs must be paid within one (1) year of the date of the issuance of these reasons.