

2017 LSBC 30
Decision issued: August 16, 2017
Citation issued: September 8, 2009

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a s. 47 Review concerning

ROBERT COLLINGWOOD STROTHER

APPLICANT

DECISION OF THE BENCHERS ON COSTS

Written submissions: July 31, 2017

Benchers: Philip Riddell, Chair
Pinder Cheema, QC
Craig Ferris, QC
Steven McKoen
Elizabeth Rowbotham
Sarah Westwood

Discipline Counsel: Henry C. Wood, QC
Counsel for the Applicant: Robert W. Grant, QC

INTRODUCTION

[1] The Review Panel dismissed the s. 47 Review of the Applicant in a decision indexed at 2017 LSBC 23. At the conclusion of those reasons we invited written submissions on the issue of costs within 30 days of the release of the reasons. Submissions were received on behalf of the Law Society, but none were received on behalf of the Applicant.

PRINCIPLES

- [2] Rule 5-11 of the Law Society Rules governs the issue of costs arising from a hearing or a review. The applicable rules state:
- (2) A review board may order that an applicant or respondent pay the costs of a review under section 47, and may set a time for payment.
 - (3) Subject to subrule (4), the panel or review board must have regard to the tariff of costs in Schedule 4 [*Tariff for hearing and review costs*] to these Rules in calculating the costs payable by an applicant, a respondent or the Society.
 - (4) A panel or review board may order that the Society, an applicant or a respondent recover no costs or costs in an amount other than that permitted by the tariff in Schedule 4 [*Tariff for hearing and review costs*] if, in the judgment of the panel or review board, it is reasonable and appropriate to so order.
- [3] In a discipline hearing or review, costs are normally payable to the successful party, and in the case of divided success, costs are apportioned between the parties.

ANALYSIS

- [4] The Applicant brought a preliminary application to expand the record under review. This application was dismissed.
- [5] The Applicant on the review raised three issues, he was successful on one of the three issues. The Applicant was successful in that the hearing panel was found to have erred in finding that the Applicant's failure to advise M Corp. of a favourable advance tax ruling constituted professional misconduct. The other two bases for the Applicant being found to have professional misconducted himself were sustained, and the disciplinary action imposed by the hearing panel was confirmed.
- [6] Although the Applicant was successful with respect to one of the issues raised on the Review, that success did not lead to the hearing panel's decision being overturned. The issue on which the Applicant was successful did not occupy a great deal of time on the hearing of the review. For this reason we would apportion the Applicant 25 per cent of the cost of the Review exclusive of the preliminary application.
- [7] We see no reason to depart from the tariff for costs in Schedule 4 of the Rules.

- [8] The disbursements claimed by the Law Society are reasonable, and there is no basis to reduce the claim for disbursements based upon the Applicant's success on the one issue on the review. All of the disbursements were necessary regardless of any divided success.
- [9] The Law Society has provided a draft Bill of Costs. The Law Society has claimed a total of 83 units. Of those, 15 units are under Item 22 with respect to submissions on Review, and 30 units are under Item 23, attendance at Review hearing. The re-apportionment should apply to those two items based upon the partial success of the Applicant; therefore the Law Society claim for total units is reduced to 71.75 units.

ORDER

- [10] We order that the Applicant pay to the Law Society \$8,807.24 in costs and disbursements by December 31, 2017, on the following basis:
- (a) 71.75 units at \$100 per unit for a total of \$7175.00; and
 - (b) Disbursements and taxes of \$1,632.24.