

2017 LSBC 33
Decision issued: September 18, 2017
Citation issued: May 5, 2016

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

LAWYER 17

RESPONDENT

**DECISION OF THE HEARING PANEL
ON AN APPLICATION FOR
AN ORAL HEARING ON COSTS**

Written submissions: July 11, 2017
August 4, 2017

Panel: Philip A. Riddell, Chair
Don Amos, Public representative
Shona A. Moore, QC, Lawyer

Discipline Counsel: Carolyn Gulabsingh
Counsel for the Respondent: Richard Gibbs, QC

INTRODUCTION

- [1] We dismissed the citation against the Respondent that was issued on May 5, 2016 by way of our reasons indexed as 2017 LSBC 10. In those reasons we invited the parties to make submissions on costs.
- [2] The usual practice in these matters is that quantum of costs is dealt with by way of written submissions. In this case, the Respondent has requested an oral hearing to make submissions regarding his entitlement to costs in excess of the tariff (“special costs”), and as to the quantum of those costs.

- [3] The issue of costs of hearings is governed by Rule 5-11 and in particular subrules (2) to (5), which 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.
 - (5) The cost of disbursements that are reasonably incurred may be added to costs payable under this Rule.
- [4] A panel must “have regard to the tariff” (Rule 5-11(3)) but may order costs in an amount other than the tariff if, “... in the judgment of the panel or review board, it is reasonable and appropriate to so order” (Rule 5-11(4)).
- [5] In his written submission, the Respondent suggests that the Panel make an order for special costs of about \$50,000 as “... [t]here are important costs issues to be determined.” The Respondent has not provided us with a clear basis, either for his claim that special costs should be awarded against the Law Society in this case or for his submission that \$50,000 would be reasonable and appropriate in the circumstances of this case.
- [6] Law Society counsel submits that the Tariff should be referred to, but as it was an atypical summary hearing, the Tariff should be applied as if it were a regular hearing.
- [7] The Respondent, in his submission of July 31, 2017, states that he does not intend to call *viva voce* evidence on the issue of costs, subject to the proviso that it is unknown to him if the Law Society wishes to call *viva voce* evidence. In the Law Society submission of August 4, 2017 there was no indication that the Law Society intends to call *viva voce* evidence.
- [8] There is not a great deal of authority dealing with the award of special costs in cases involving Law Society hearings. The leading case is *Malik v. Law Society of BC*, 2013 BCCA 337, where the court stated at para. 33:

I reject the proposition that the special costs regime of the Rules of Court is directly applicable to the Law Society. In this case, the Legislature authorized the Law Society to make rules governing the assessment of costs and it did so. In my view, the special costs provisions of the Rules of Court do not apply directly to proceedings before the Law Society. That is not to say that Law Society panels may not be assisted by considering costs jurisprudence when determining the level of indemnity that is appropriate in any given case and may order special costs when they consider it appropriate, but they are not obliged to do.

- [9] When looking at an award for special costs one of the issues to be considered is the level of indemnity that is appropriate.
- [10] The hearing of the citation consumed one and one-half days. It was a summary proceeding. The Respondent now asks that two hearing days be scheduled on the costs issue. The first day of the hearing to determine the issue of his entitlement to “special costs” and the second day to determine the quantum of costs be they “special” or tariff costs.
- [11] The panel has jurisdiction to manage the conduct of the hearing so that parties are given an opportunity to be heard, while ensuring that the hearing time scheduled is proportionate to the issues to be addressed. In this case, we find that an oral hearing is required to ensure that the Respondent has the ability to argue the “important cost issues”, but conclude that a two-day hearing is excessive as the issues are narrow ones and neither party intends to call *viva voce* evidence. We are ordering an oral hearing to deal with the Respondent’s entitlement to “special costs”, and the quantum of costs either “special” or tariff costs. Rather than granting the two days requested we are ordering a one day hearing to deal with both of these issues.
- [12] Accordingly, we have decided to schedule a one-day hearing to address the remaining issues:
- (a) Whether an order for costs above the tariff is reasonable and appropriate in all of the circumstances; and,
 - (b) If so, the quantum of costs that should be ordered.
- [13] Given the age of this proceeding, which was intended to be a summary hearing, we wish to have submissions completed in a timely fashion and avoid the risk of having to reconvene the Panel if the issues of entitlement and quantum are bifurcated.

[14] In order to ensure that the hearing time is used as efficiently as possible, we make the following procedural directions:

- (a) Within two weeks of this decision, the Law Society will confirm that it does not intend to call *viva voce* evidence;
- (b) The parties will exchange any documentary evidence that they intend to tender 45 days prior to the date set for the hearing;
- (c) If there are additional written submissions to be made, and since the Respondent seeks costs in excess of the Tariff, the submissions must be exchanged on the following schedule:
 - (i) The Respondents' submissions (if any) on entitlement and quantum 30 days before the hearing date;
 - (ii) The Law Society's submissions (if any) on entitlement and quantum 15 days before the hearing date;
 - (iii) The Respondent's reply, if any, seven days before the date set for hearing.

[15] The purpose of these directions is to ensure that the hearing time is used effectively, and to avoid having to fix another continuation date because one of the parties did not have sufficient time to respond to documentary evidence that was presented in the course of the hearing.

[16] We expect that counsel will cooperate in such a way as to ensure that all submissions with regard to entitlement to special costs and quantum will be completed by the dates set.