

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

DONALD FRANKLIN GURNEY

RESPONDENT

**DECISION OF THE HEARING PANEL
ON COSTS**

Written submissions received: November 8, 2017

Panel: Phil Riddell, Chair
Gillian M. Dougans, Lawyer

Discipline Counsel: J. Kenneth McEwen, QC
Counsel for the Respondent: Paul E. Jaffe

INTRODUCTION

- [1] The Respondent was found to have committed professional misconduct. The reasons of the Panel dealing with the Facts and Determination, 2017 LSBC 15, set out the basis for the factual background and the manner in which the Respondent committed professional misconduct.
- [2] The Panel's reasons for Disciplinary Action are found at 2017 LSBC 32. At the conclusion of the decision on Disciplinary Action, the Panel invited the parties to make written submissions on the issue of costs. These are our reasons on the issue of costs.
- [3] The Law Society proved all of the allegations set out in the citation, and the penalty imposed was a combination of conditions limiting the Respondent's practice sought by

both parties, and the sanctions sought by the Law Society. The Law Society was successful at both stages of the hearing.

- [4] The hearing took a number of days. The chronology is as follows:
- (a) Application brought by the Respondent on September 30, 2016 pursuant to Rule 4-35. This matter was heard by Nancy Merrill, QC, the President's designate, by way of written submissions with reasons issued dismissing the Respondent's application on November 23, 2016;
 - (b) Application to quash the citation brought by the Respondent on the first day scheduled for hearing, November 29, 2016. This application consumed all of the first day of hearing, and the application was dismissed;
 - (c) Three full days of hearing dealing with the Facts and Determination portion of the hearing: November 30, 2016, December 1, 2016 and January 20, 2017;
 - (d) One full day of hearing dealing with the Disciplinary Action portion of the hearing: July 11, 2017; and
 - (e) Written submissions with regard to the issue of costs.
- [5] The Law Society prepared a Notice to Admit comprising 184 paragraphs of admissions sought. The Respondent prepared a Notice to Admit comprising 24 paragraphs of admissions. The Law Society prepared a response to the Respondent's Notice to Admit.

ANALYSIS

- [6] Rule 5-11 deals with the issue of costs and disbursements arising from a hearing. The portions of the Rule that are applicable include:

Costs of hearings

- 5-11** (1) A panel may order that an applicant or respondent pay the costs of a hearing referred to in Rule 5-1 [*Application*], 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.

[7] We find that there is no basis to depart from the tariff of costs in Schedule 4 or to not award disbursements reasonably incurred.

[8] The Law Society has provided a draft Bill of Costs setting out a claim for 213 units at \$100 per units in costs and disbursements in the amount of \$4,314.98. The Respondent does not take issue with the disbursements claimed. The Respondent does take issue with the number of units claimed. The Items in dispute are:

- (a) Item 1 (Preparation/amendment of Citation, correspondence, conferences, instructions, investigations or negotiations after the authorization of the Citation to the completion of the discipline hearing, for which provision is not made elsewhere) — the Law Society claims 8 units. The Respondent states that 2 units are appropriate. We find that 7 units are appropriate;
- (b) Item 4 (Application for particulars under Rule 4-35) — the Law Society claims 5 units. The Respondent states that 3 units are appropriate. We find that 3 units are appropriate;
- (c) Item 8 (Preparation of affidavits) — the Law Society claims 5 units. The Respondents states that 0 units are appropriate, given that service was admitted. This does not account for the fact that the Law Society is required to prove service. We find 5 units appropriate;
- (d) Item 9 (Preparation of Notice to Admit) — the Law Society claims 20 units. The Respondent states that 10 units are appropriate. We find that 14 units are appropriate; and
- (e) Item 10 (Preparation of Response to Notice to Admit) — the Law Society claims 10 units. The Respondent states that 0 units are appropriate. The Respondent states that the Law Society response to the Notice to Admit was non-responsive. We find that many of the admissions sought by the Respondent were not properly matters to be dealt with in a Notice to Admit. We find that 10 units are appropriate.

[9] We have reduced the number of units claimed by the Law Society from 213 to 204. We set the costs payable by the Respondent at \$20,400 and disbursements at \$4,314.98. Total costs and disbursements payable by the Respondent to the Law Society are \$24,714.98.

[10] The Respondent has requested four months in which to pay the award of costs. We give the Respondent until March 31, 2018 to pay the costs and disbursements.