

**THE LAW SOCIETY OF BRITISH COLUMBIA**  
**In the matter of the *Legal Profession Act*, SBC 1998, c. 9**  
**and a hearing concerning**  
**PAMELA SUZANNE BOLES**  
**RESPONDENT**

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**DECISION OF THE HEARING PANEL**  
**ON COSTS**

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Written submissions: April 24, 2018  
May 14, 2018  
June 24, 2018

Panel: Bruce LeRose, QC, Chair  
Ralston S. Alexander, QC

Discipline Counsel: Mark D. Andrews, QC and Gavin Cameron  
Counsel for the Respondent: Richard C. Gibbs, QC

**BACKGROUND**

- [1] The Panel decision on Disciplinary Action was released on January 24, 2018. In that decision we advised that, if the parties were unable to agree on costs, the matter could be returned to the Panel for determination.
- [2] The parties are unable to agree on costs and have made written submissions to the Panel.

**POSITION OF THE LAW SOCIETY**

- [3] The Law Society did not seek an order of costs against the Respondent.

- [4] In respect of the Respondent's claim for costs against it, the Law Society offered three arguments in descending order of its preference. Its first position was that the Panel had no jurisdiction to order costs against the Law Society because the Law Society Rules narrowly confine panels to several specific circumstances not found in this hearing.
- [5] The second (alternative) position of the Law Society was that, because there was divided success in the final analysis, no costs should be awarded to either party.
- [6] Finally, and in the third alternative, if the Panel was inclined to order costs against the Law Society, the costs awarded should not be in the inordinate amount requested by the Respondent, and specifically should not provide a full indemnity to the Respondent.

### **POSITION OF THE RESPONDENT**

- [7] In his initial submission, counsel for the Respondent provided a careful analysis of the history of "costs" in Law Society matters. He correctly noted that there was very little jurisprudence in situations where costs were ordered against the Law Society.
- [8] His argument discussed the development of the case law dealing with situations where full indemnity (usually to the Law Society) was or should be ordered. The argument then considered the cases where a departure from the more recently published tariff of costs was appropriate.
- [9] Respondent's counsel next advanced a series of considerations in support of his argument that a departure from the Tariff would be appropriate in this case. He argued the complexity and duration of the hearing, the number of written submissions required and the fact that the Law Society had been entirely unsuccessful in its attempt to have the admitted rule breach elevated to professional misconduct.
- [10] The Respondent then advanced an analysis based upon the expected fair market payment for the quality and experience of counsel appearing for the Respondent. The figure advanced was \$5,000 per day, not including disbursements and taxes. A total of 25 days was mooted to include ten hearing days and 15 preparation days for the hearing days, with a resulting total of \$125,000.
- [11] Counsel finally advanced the unique argument that the Respondent was equally qualified and experienced and should also be entitled to recover for the time lost to

this hearing, thereby adding a further \$125,000 to the bill of costs for an aggregate total of \$250,000.

- [12] In response to the “no jurisdiction” argument, the Respondent suggested a factual scenario where a notional respondent could face a dozen-allegation citation, successfully defend all but one of the allegations and yet, on a narrow reading of Rule 5-11, have no recourse to the Law Society for any cost recovery. The Respondent stated that that result “cannot be right; it cannot be what the Benchers meant in passing the costs rule.”

## DISCUSSION

- [13] Law Society Rule 5-11 is reproduced here:

### 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.
- (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.
- (6) In the tariff in Schedule 4 *[Tariff for hearing and review costs]*,
- (a) one day of hearing includes a day in which the hearing or proceeding takes 2 and one-half hours or more, and
- (b) for a day that includes less than 2 and one-half hours of hearing, one-half the number of units or amount payable applies.
- (7) If no adverse finding is made against the applicant, the panel or review board has the discretion to direct that the applicant be awarded costs.

- (8) If the citation is dismissed or rescinded after the hearing has begun, the panel or review board has the discretion to direct that the respondent be awarded costs in accordance with subrules (3) to (6).
- (9) Costs deposited under Rule 2-92 [*Security for costs*] must be applied to costs ordered under this Rule.
- (10) An applicant must not be enrolled, called and admitted or reinstated until the costs ordered under this Rule or the Act are paid in full.
- (11) As an exception to subrule (10), the Credentials Committee may direct that an applicant be enrolled, called and admitted or reinstated even though costs ordered under this rule have not been paid in full and may make the direction subject to any conditions that the Committee finds appropriate.

- [14] The structure of the Rule appears clear. It is a codification of the “costs” issues in Law Society discipline and credentials matters. It deals with both applicants for call and admission and respondents subject to discipline proceedings following a citation. It states that, in circumstances where the citation is dismissed or rescinded, costs may be awarded against the Law Society.
- [15] Respondent’s counsel suggested in written argument that the Law Society thesis that the Panel has no jurisdiction to award costs against the Law Society requires the addition to Rule 5-11(8) of the additional highlighted words as follows; “If, *and only if*, the citation is dismissed *in its entirety* or rescinded ....” He noted that those additional words are not present in the Rule.
- [16] We do not agree that the additional words are necessary, nor do we think that those additional words would add any scope to the Rule as presently constituted. The Rule provides a basis upon which a respondent in the circumstances described is enabled to recover costs against the Law Society.
- [17] The Benchers are mostly trained legal professionals, with the exception being the six representatives of the public appointed by the Provincial Government to assist the elected Benchers in their deliberations and to bring a public oversight to those deliberations. We find it not credible that the Benchers did not intend the plain meaning outcome of Rule 5-11(8).
- [18] Our interpretation of this Rule is supported by the fact that there are no reported decisions where costs have been awarded against the Law Society except when the citation as a whole is dismissed or rescinded.

## **CONCLUSION**

[19] We find that we are bound by the language of Rule 5-11(8) and, since the citation in this matter was neither dismissed nor rescinded, we have no jurisdiction to order costs against the Law Society. The Law Society did not seek costs against the Respondent, and accordingly, neither party is responsible for nor entitled to recover, costs.