2025 LSBC 27
Hearing File No.: HE20220012
Decision Issued: December12, 2025
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THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL

HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

LAWYER 21

RESPONDENT

DECISION OF THE HEARING PANEL ON COSTS

Hearing date:	November 24, 2025
Panel:	Michael F. Welsh, KC, Chair Karen Kesteloo, Public representative
Discipline Counsel:	Alina Morrissey
Counsel for the Respondent:	Richard C. Gibbs, KC

INTRODUCTION

[1] It is rare that a citation against a lawyer is completely dismissed by a hearing panel. This is one of those rare cases. The further rare issue that then arises is whether costs should be ordered in the lawyer's favour, and if so, the nature of those costs.

[2] As costs can be awarded to a lawyer only if the citation is completely dismissed, there is little guidance on the question of how potential costs in favour of the lawyer should be addressed. The Panel, in embarking on answering that question in the circumstances of this case, is thus largely entering uncharted territory. We begin with a review of the relevant Law Society Rules (the "Rules") and the few hearing panel and review board decisions of relevance.

PRELIMINARY POINT ON PANEL COMPOSITION

[3] As a preliminary point, following the facts and determination (F&D) decision,[1] panel member Kate Saunders, KC, was appointed a judge of the Supreme Court of British Columbia. Exercising the authority granted by, Rule 5-3(1), the Tribunal Chair ordered that this costs matter be heard and determined by the remaining two Panel members.

THE LAW RESPECTING COSTS UNDER THE *LEGAL PROFESSION ACT*

[4] In addressing this issue, we focus only on the Rules as they deal with costs payable by the Law Society to a respondent lawyer. We also only focus on costs at the hearing panel level, and not the review board level.

[5] Under Rule 5-11(8), a panel has the discretion to award costs to a respondent lawyer only if the citation is dismissed or rescinded after the hearing has begun. In those circumstances, the panel has the discretion to direct that the respondent lawyer be awarded costs in accordance with subrules (3) to (6). Under Rule 5-11(3), the panel must have regard to Schedule 4 of the Rules, the Tariff for hearing and review costs (the "Tariff"), in calculating the costs payable by the Law Society. However, under Rule 5-11(4), a panel may order the respondent lawyer recover no costs, or recover costs in an amount other than that provided in the Tariff, if in the judgment of the panel it is reasonable and appropriate to do so.

[6] Under Rule 5-11(5), the cost of disbursements that are reasonably incurred may be added to costs payable.

[1] *Law Society of BC v. Lawyer 21*, 2025 LSBC 24.

[7] Beyond this direction under the Rules that the panel may award costs as it judges to be reasonable and appropriate, there is little to be found as to how this discretion is to be exercised.

[8] The LSBC Tribunal's Directions on Practice and Procedure (the "Practice Directions") came into effect in July 2022. They largely mirror the Rules with respect to costs. Under Practice Direction 13.2(2), the Tribunal has the discretion to direct that the respondent be awarded costs if the citation is dismissed or rescinded after the hearing has begun. Under Practice Direction 13.4(2) and (3), the Tribunal must have regard to the Tariff in calculating the costs payable by a respondent, and the Tribunal may order that a respondent recover no costs or costs in an amount other than that permitted by the Tariff if, in the judgment of the Tribunal, it is reasonable and appropriate to so order.

[9] However, the Practice Direction also provides:

> 13.2(3) In exercising its discretion, the Tribunal will consider that costs will not ordinarily follow the event given the Law Society's obligation to discharge its responsibilities as a regulator of the profession but that costs may be imposed where the citation was improperly brought or costs were incurred or wasted by undue delay, negligence or other default.

[10] As both the Law Society and the Respondent pointed out, this direction is not binding on a panel, and to simply follow it without question would fetter a panel's discretion. (See Rule 5-1.4(2)) However, it raises an important point about the role of a regulator and under what circumstances it should pay costs to a respondent, for unlike civil legal proceedings in our courts, costs do not simply "follow the event".

[11] As the parties note, in the past decade and a half, there have only been three other cases where citations were completely dismissed. They are *Law Society of BC v. Lawyer 11*[2] , *Law Society of BC v. Lawyer 17*[3] and *Law Society of BC v. Lawyer 20*[4] . The Law Society is currently taking *Lawyer 20* to a review board, and the panel in that case has not addressed the issue of costs.

[12] In *Lawyer 11*, a decision that predates the current rules on costs and the Tariff, a review board dismissed all allegations against the lawyer, and both parties agreed that "… costs will follow the event",[5] which limits its relevance in light of the present Rules otherwise. In his application for costs, the lawyer sought special costs, alleging that the Law Society had acted improperly and incompetently in making the allegations and

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[2] *Law Society of BC v. Lawyer 11*, 2011 LSBC 10.
[3] *Law Society of BC v. Lawyer 17*, 2018 LSBC 12.
[4] *Law Society of BC v. Lawyer 20*, 2025 LSBC 19.
[5] *Lawyer 11* at para. 28.

undertaking the prosecution of the citation against him. The Law Society opposed and instead suggested costs between 30 percent and 40 percent of the lawyer's actual legal fees (which is roughly akin to Schedule B party and party costs under the BC Supreme Court Rules).

[13] The review board in *Lawyer 11* noted the regulatory function of the Law Society and described its objectives and duties when issuing a citation:

> [33] Counsel for the Law Society refers to *Law Society of BC v. Jeletzky*, 2005 LSBC 2:
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> > It is of great importance to the public of British Columbia that incidents of professional misconduct by lawyers should be thoroughly investigated and vigorously prosecuted by the Law Society. …
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> [34] The Law Society also relies on the fact that it is the body duly constituted for the purpose of regulation of the legal profession. It says that, in this case, it discharged its duties entirely in keeping with its statutory obligations.
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> …
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> [37] It is clear that the primary duty of the Law Society is to protect the public interest. The self-regulation of the profession makes the discipline of its members imperative in ensuring that the public is protected from breaches of the *Act*, the Rules and the *Professional Conduct Handbook*.
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> [38] In this case, the complaint and investigation stemmed from the statements of a Supreme Court Justice in a very public case who made highly critical comments on the behaviour of the Applicant [lawyer]. In these circumstances it should not occasion any surprise that the Law Society initiated an investigation and decided that the facts warranted the issuance of a citation. In our view, the Law Society did neither more nor less than perform its duties under the *Act* and Rules. We found no evidence in the material before us of improper motives or behaviour by the Law Society that would justify an order that it should pay special costs.

[14] Ultimately, while the review board did not order special costs against the Law Society, it ordered costs and disbursements in the amount of $61,523.97, which included 35 percent of counsel's fees, and reasonable disbursements and taxes incurred.

[15] In *Lawyer 17*, the present Rules and Tariff were in place. With respect to Rule 5-11(4) the hearing panel stated:

> [11] The parties also agree that we may award costs in an amount in excess of the tariff if we determine that it is "reasonable and appropriate" to do so.

[16] The respondent lawyer sought special costs, and the Law Society did not argue the panel's ability under Rule 5-11(4) to award them, only that there was no proper basis for such an award in the circumstances of the case.[6]

[17] The panel decided that the appropriate award of costs should be higher than the Tariff provided, (about $6,600), but that special costs were not warranted, and ordered $10,000 be payable to the respondent lawyer.[7] In doing so it said, "We are not, however, prepared to order 'special costs' on the basis sought by the Respondent. In the case before us, we are not satisfied that the conduct of the Law Society was such as to require rebuke or reproof."[8]

[18] *Law Society of BC v. Yen*,[9] is a more recent review board decision, referenced by the parties here, where the board found it had no jurisdiction to order costs to the respondent lawyer in a case of divided success. In what is thus *obiter dicta*, the board stated:

> [32] As submitted by the Law Society, the Practice Directions go further in restricting the circumstances, by specifying that costs should not simply be in the cause. Practice Direction 13.2(3) indicates that, given the important mandate of the Law Society to regulate the profession, the Tribunal should only do so in exceptional circumstances:
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> > 13.2(3) In exercising its discretion, the Tribunal will consider that costs will not ordinarily follow the event given the Law Society's obligation to discharge its responsibilities as a regulator of the profession but that costs may be imposed where the citation was improperly brought or costs were incurred or wasted by undue delay, negligence or other default.
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> [33] While not bound by the Practice Direction, this Review Board finds that a very limited discretion to order costs against the Law Society is consistent with the key purpose of the Tribunal, which is to uphold the public interest in the administration of justice by managing, considering and deciding disciplinary cases.

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[6] *Lawyer 17* at para. 24.
[7] *Lawyer 17* at paras. 27 to 32.
[8] *Lawyer 17* at para. 31.
[9] *Law Society of BC v. Yen*, 2023 LSBC 34.

> [34] The Law Society is the only party that can bring a disciplinary case before the Tribunal. The Law Society is tasked under section 3 of the *LPA* with protecting the public by ensuring the integrity and competence of lawyers and regulating the practice of law. In that regard, it is sensible that the Law Society should not be unduly hindered with significant risk of costs in bringing a disciplinary case against a lawyer unless the Law Society brought the citation improperly or otherwise acted with undue delay, waste, negligence or other default.

[19] Similarly, in *Law Society of BC v. Guo*,[10] the review board, again in statements made in *obiter*, as it also found no jurisdiction to order costs where success was divided, said:

> [22] However, the Respondent's submissions on this asymmetry between the Law Society and lawyers presumes a Law Society proceeding is equivalent to a civil action. It is not. The Law Society has obligations and responsibilities as a professional regulatory body and in prosecuting citations, acts in the public interest: *Act*, s. 3. In this way, it is not equivalent to a party in a civil case. Thus, even where the Law Society is unsuccessful in a disciplinary action, if it properly exercises its regulatory function in the public interest, it makes sense that an order for costs will not ordinarily be made against it …

[20] The Law Society submitted a couple of other cases that set out the considerations when a respondent lawyer is ordered to pay costs to the Law Society. They include ability to pay, the seriousness of the misconduct, the overall effect of the penalty, and the lawyer's professional conduct record; all matters that are not applicable here. The only consideration that may have relevance is "… the extent to which the conduct of each of the parties has resulted in costs accumulating, or conversely, being saved".[11]

[21] The Respondent referenced the recent case of *Samarakoone v. Law Society of British Columbia*,[12] where the BC Supreme Court ordered special costs against the Law Society that were assessed at $5,000. However, that decision is currently under appeal, including on the issue of costs, and the Panel finds it of limited assistance. The court does note that, generally, costs will not be ordered against a tribunal even if the lawyer succeeds and that it should only be in rare cases.[13] However, the court ordered special costs based on its finding that the administrative penalty process and the position taken by the Law Society counsel at the hearing were procedurally unfair to the lawyer, and the

[10] *Law Society of BC v. Guo*, 2023 LSBC 26.
[11] *Law Society of BC v. Racette*, 2006 LSBC 29 at para. 13.
[12] *Samarakoone v. Law Society of British Columbia*, 2025 BCSC 492.
[13] *Samarakoone* at para. 91.

decision made under the administrative penalty process was clearly unreasonable. For reasons further articulated below neither of those situations applies here.

ANALYSIS OF APPLICABLE LEGAL PRINCIPLES

[22] The Respondent seeks special costs, although what that means, in the context of a Tribunal hearing, is not made clear by Respondent counsel. The Law Society submits that there should be no recovery of costs.

[23] In support of its position that a costs order is inappropriate, the Law Society refers to comments from *Law Society of BC v. Huculak*,[14] where the hearing panel enumerated factors going to the amount of costs to be payable by the respondent where the respondent was found to have committed serious professional misconduct. One of the factors the panel considered was that "[t]he profession should not bear the full amount of costs involved in having the adverse decision made against Respondent."

[24] This statement seems patently obvious where a citation is proved, but not so apparent where it is dismissed, and so again is not particularly helpful to us.

[25] The Respondent's counsel, in oral submissions, suggested the Panel should count the Respondent, given the subject citation was dismissed, as being amongst the 14,000 plus "innocent" members of the profession in BC who should not bear costs, and then decide whether it is fairer to have the Respondent bear all the legal costs incurred to dispute the citation (estimated by counsel at over $100,000) or to spread the load of the Respondent's costs across the profession as a whole.

[26] The Panel does not find this particular debate of assistance in developing a principled basis to address this issue. At best it might be a factor in some cases, but it will not be in others, depending on the citation itself, the reasons the citation was dismissed, and how the parties conducted themselves before and in the tribunal hearing.

[27] In the hearing, counsel for the Law Society and the Respondent were both asked by the Panel to make submissions on the potential applicability of the case law relating to costs being assessed against the Crown in criminal and administrative offence dismissals on appeal.

[28] The reason for the questioning is that the Crown, receiving the results of the investigation, approves charges and prosecutes offences where it is in the public interest, just as the Discipline Committee of the Law Society, receiving the results of an investigation, approves citations and has counsel "prosecute" (which is used in this

[14] *Law Society of BC v. Huculak*, 2023 LSBC 5 at para. 66.

decision in the widest sense of the term, namely of advancing the case underlying the citation) in the public interest.

[29] Both counsel had little to say in response, other than to note that the Law Society discipline and hearing process is administrative rather than criminal. Neither asked for more time to consider any parallels there might be that could assist this Panel. The Panel finds that there are.

[30] The principles applicable to costs being ordered against the crown are well set out in *R v. Khakh*[15]:

> [23] In *R. v. Neustaedter*, 2003 BCSC 39, the appellant successfully appealed against his conviction for speeding. In addition to having his conviction overturned, Mr. Neustaedter sought an award of costs against the Crown. In reasons that neatly summarize a summary conviction appeal court's ability to award costs to a successful appellant, Stromberg-Stein J. (as she then was) explained:
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> > [3] A superior court hearing an appeal of a summary conviction has a broad discretion under s. 826 of the *Criminal Code* to award costs that it considers "just and reasonable", including costs against the Crown [*citation removed*].
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> > [4] Section 112 of the *Offence Act* is similarly worded, and should be constructed in the same manner as the *Criminal Code* provision on account of their "long parallel history" [*citations removed*].
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> > [5] Costs may also be awarded as a remedy for a *Charter* breach under s. 24(1) of *the Charter* [*citation removed*].
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> > [6] While s. 826 provides a broad discretion to an appeal court to award costs, a defendant in a criminal case is generally not entitled to costs, regardless of if he or she is successful on the merits of the case: *R. v. M.(C.A.)*, [1996] 1 S.C.R. 500. In *M.(C.A.),* costs were denied to the appellant as it was found there was nothing "remarkable" about the circumstances of the case, nor any "oppressive or improper conduct" alleged against the Crown, that would justify an award of costs.
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> > [7] In *R. v. King* (1986), 26 C.C.C. (3d) 349 (B.C.C.A.), the Court recognized three classes of cases where costs might properly be awarded against the Crown:

[15] *R v. Khakh*, 2013 BCSC 1658.

> 1. Where the prosecution by the Crown has been frivolous;
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> 2. Where the prosecution has been conducted for an oblique motive; or
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> 3. Where the case has been taken by the Crown as a test case.
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> [8] In addition, there may be other classes of cases where costs may be awarded, but any new class must be "some special category like the three categories" listed above: *King* at 351.

[24] In *R. v. Taylor*, 2007 BCCA 250, Mr. Justice Hall examined the question of awarding costs to successful appellants in summary conviction appeals. In confirming that the ordinary rule is that successful appellants generally do not get an award of costs, Hall J.A. provided the following helpful guidance:

> [22] In my opinion, judges in summary conviction proceedings who are entertaining an application for costs against the Crown must be cautious in awarding such costs. … Summary conviction proceedings are now usually brought by and on behalf of the state and as noted by Lamer C.J. in *R. v. M.(C.A.)*, *supra*, the general rule is that costs are not routinely awarded in criminal cases in this country.
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> [23] Madam Justice McFadyen said in *R. v. Robinson* (1999), 142 C.C.C. (3d) 303 at 315, 1999 ABCA 367 that a reason to limit costs awards is because the Crown is not an ordinary litigant and does not win or lose but rather conducts prosecutions and makes decisions about prosecutions in the public interest.

[31] While recognizing that these statements arise in the context of when government, in its capacity as the body that enforces the criminal law, could be subject to paying costs, there is a parallel as the Law Society also is not an ordinary litigant and does not win or lose, but rather issues citations and conducts their prosecution and makes decisions about those citations and their prosecutions in the public interest.

[32] Further, section 112(1) of the *Offence Act* states in part:

> (1) If an appeal is heard and determined, or is abandoned or is dismissed for-want of prosecution, the appeal court may make any order with respect to costs *that it considers just and reasonable*. [*Emphasis added*]

[33] This wording is loosely echoed in Rule 5-11(4) where a panel may order the respondent lawyer recover no costs, or recover costs in an amount other than that

provided in the tariff, if in the judgment of the panel, it is *reasonable and appropriate* to do so. [*Emphasis added*]

[34] While, as noted at the start of this decision, situations where panels must address whether to order costs to a lawyer will likely continue to be rare, this Panel looks at the following principles that it takes from the Rules and decisions just reviewed. In doing so, it is mindful of comments from the very recent decision, *Cole v. Law Society of British Columbia*[16] where our Court of Appeal noted that Tribunal decisions are not binding precedents and cannot be used to fetter discretion. Instead, a hearing panel or review board may refer to and take guidance from its earlier decisions, although they cannot dictate the outcome of future cases.[17]

[35] Similarly in *Law Society of British Columbia v. May*[18], the court endorsed the statement that a tribunal "… may not fetter the exercise of its statutory discretion, or its duty to interpret and apply the provisions of its enabling statute, by mechanically applying a rule that it had previously formulated, other than where it is properly enacted pursuant to a statutory power to make subordinate legislation".[19]

[36] In the case before us, we note the Rules to be followed, and certain principles from Tribunal and court decisions that we find helpful, in reaching our decision tailored to the circumstances of this case. They are as follows:

1. A respondent lawyer cannot be awarded costs unless a citation is completely dismissed by a hearing panel or review board. This is a matter of the jurisdiction to award costs to a lawyer under the Rules.

2. Costs do not follow the event as in civil cases, and instead must be adjudged as reasonable and appropriate to order to a respondent lawyer.

3. The Law Society in disciplinary proceedings does not "win or lose", but rather conducts its case and makes decisions about its case and how it conducts that case in the public interest. For this reason, it should not generally be liable in costs if it does so on a good faith basis in fulfilling its regulatory role.

4. Costs are more likely to be awarded when:

    (a) The basis for the citation is frivolous or brought for an oblique motive or other improper basis, or its prosecution is improperly conducted, or both.

[16] 2025 BCCA 423
[17] *Cole* at para. 30.
[18] 2023 BCCA 218
[19] *May* at para. 79

(b) If a panel finds that there has otherwise been improper conduct by the Law Society or its counsel. That can include that the counsel acted with undue delay, waste, negligence or otherwise improperly given counsel's public interest role on behalf of a professional regulator.

5. In addition, if the matter is in the nature of a test case, then costs may be appropriate.

6. If costs are adjudged as appropriate, then under the Rules, the default basis for awarding them is pursuant to the Schedule 4 Tariff of Costs. That Tariff sets out two scales, Scale A for matters of ordinary difficulty and Scale B for matters of more than ordinary difficulty. Scale B thus allows for situations where a case is difficult to defend in terms of such matters as volume of documents, or number of witnesses, or length of hearing, and so it should be unusual to depart from the Tariff simply due to complexity of the case.

7. A panel may order a respondent lawyer recover no costs, or recover costs in an amount other than that provided in the Tariff, if in the judgment of the panel, it is reasonable and appropriate to do so: in other words, if one or more appropriate reasons is found to order costs on a basis that varies from the Tariff. What that may be will be case dependent.

8. Those costs outside the Tariff can include costs that are increased or reduced from the tariff amounts. The Rules do not speak to special costs, but the level of increased costs is solely within the purview of the panel or review board. As possible factors to address when calculating increased costs under the Law Society Rules are not set out, a hearing panel that considers ordering them does so with no guidance. It may be that the factors set out in *Supreme Court Civil Rule* 14-1(3) on assessing special costs may be of assistance, but given our conclusion stated later, the Panel leaves that determination for another panel in the future.

9. Costs akin to special costs will likely only be ordered for the most egregious violations of the Law Society public interest role, as ordering of any costs against the Law Society is an unusual circumstance. Again, what those may be and when they might be ordered is a matter that is not before this Panel and left for an appropriate case, which one hopes will never arise.

APPLICATION OF LEGAL PRINCIPLES TO THE FACTS OF THIS CASE

[37] The Respondent submits that this case was improperly brought from the issuance of the citation through the conduct of the hearing. Counsel submits that in buying the home for her mother and family in Nanjing the Respondent did nothing wrong and that this should have been obvious to the Law Society investigators, presumably the Discipline Committee that approved the citation, and to Law Society counsel. All the money involved was the Respondent's and it was not a misuse of her trust account to use it to accumulate those purchase funds and pay them out in exchange for RMB in China for the purchase.

[38] As the Panel found, based on the conclusions in the *Law Society of BC v. Wang*[20] review board case, it is correct that under the Rules as they existed at the time, it was not misusing her trust account in the circumstances. Whether that would be so under the present Rules is questionable.

[39] Respondent counsel relies on a discussion relating to special costs in the Court of Appeal decision, *Garcia v. Crestbrook Forest Industries Ltd.*[21] where the court, particularly quoting the late Chief Justice Esson, said:

> 17 Having regard to the terminology adopted by Madam Justice McLachlin in *Young v. Young*, to the terminology adopted by Mr. Justice Cumming in *Fullerton v. Matsqui*, and to the application of the standard of "reprehensible conduct" by Chief Justice Esson in *Leung v. Leung* in awarding special costs in circumstances where he had explicitly found that the conduct in question was neither scandalous nor outrageous, but could only be categorized as one of the "milder forms of misconduct" which could simply be said to be "deserving of reproof or rebuke", it is my opinion that the single standard for the awarding of special costs is that the conduct in question properly be categorized as "reprehensible". *As Chief Justice Esson said in Leung v. Leung, the word reprehensible is a word of wide meaning. It encompasses scandalous or outrageous conduct but it also encompasses milder forms of misconduct deserving of reproof or rebuke.* Accordingly, the standard represented by the word reprehensible, taken in that sense, must represent a general and all encompassing expression of the applicable standard for the award of special costs.
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> [*Emphasis added*]

[20] *Law Society v. Wang*, 2024 LSBC 42.
[21] *Garcia v. Crestbrook Forest Industries Ltd*, 1994 CanLII 2570 (BCCA).

[40] Counsel submits that this milder form of reproof or rebuke is appropriate here. Counsel reinforces this argument by noting what he categorized as the "insurance" allegation; that the Respondent maintained more than $300 in her trust account when she accumulated her purchase funds in that account. Counsel suggests that the Law Society included this allegation in the event that the more serious allegations failed; in other words, to use the vernacular employed by Respondent's counsel, as a "gotcha" to ensure at least partial success and thus avoid costs against it.

[41] The Panel in the F&D decision found this allegation was based on a misreading of the section of the Rules and their purpose and dismissed it.[22] It was no "gotcha".

[42] The Law Society submits that there is nothing exceptional in its bringing of the citation and how the hearing was conducted that would merit an award of costs. It states that there need not be a *prima facie* case in order to issue a citation; it is enough for there to be reasonable grounds, based on the available information, for a citation to be issued.[23] It says that was present here.

[43] Given the amounts that passed through the trust account to and from third parties, not related to legal services provided, totalling some $3.139 million dollars, it submits that it was reasonable for the investigation to be made and the citation to be issued and the case to be brought to the Panel for determination. It also submits that the hearing of the citation proceeded expeditiously with no undue delay, waste, negligence or other default attributable to the Law Society. To this latter point the Respondent's counsel agreed.

[44] Finally, it submits that while the Panel ultimately rejected the Law Society's evidence and arguments in support of the citation, the Law Society's case was reasonably founded on the available evidence it had when the citation was issued and the hearing commenced.

[45] Ultimately the Panel determined that the Law Society's case was ill-founded on two bases.

[46] The first, relating to whether funds in the Respondent's trust account had to be related to provision of legal services, it relied on a Rule that did not exist at the time of those funds passing through that trust account. This was found by *Wang* and was persuasive on this Panel that reached a consistent conclusion.

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[22] *Law Society of BC v. Lawyer 21*, 2025 LSBC 24 at paras. 72 to 76.
[23] *Pierce v. Law Society of British Columbia*, (1993) 103 D.L.R. (4th) 233, 1993 CanLII 765 (BCSC), p. 32 to 33.

[47] However, the *Wang* decision was issued after the conclusion of evidence and submissions in this case, but before the decision was rendered. As soon as the *Wang* decision was published, Law Society counsel withdrew this first untenable allegation in the citation.

[48] This left the Panel to determine the situation of the Respondent taking in and disbursing one million dollars through her trust account from one third party to another, neither of which were her clients at the time, and secondly whether she breached Rule 3-60(5) in maintaining over $300 of her own funds in her trust account.

[49] As noted earlier, the Panel concluded the latter Rule was not breached, and this is the second aspect of where the Law Society case was ill-founded.

[50] The funds that the Respondent took into her trust account were from the same corporate party (V) to which she had paid out of trust the Canadian funds she earlier put in that account in exchange for V giving her RMB in China for the Nanjing purchase. What was not clear until the last day of evidence before the Panel was the source of those funds, and whether the Respondent knew that source.

[51] To quote from the F&D decision:

> [60] As the Law Society notes in its submissions, it is troubling that in her evidence at the hearing, the Respondent referenced inquiries into the source of funds that she apparently forgot or overlooked when the Law Society interviewed her, and that were only recalled by the Respondent while she was under cross-examination at the hearing. It is also of some concern that her former bookkeeper, JH, according to his affidavit, only recalled making the inquiries on the Respondent's behalf when the subject was raised with him during that overnight period during the hearing.

[52] In what was late-breaking evidence, the Respondent through her counsel (as she was in China during the hearing and testified from there), during the Respondent's case in the hearing, submitted an affidavit with banking records. Counsel for the Law Society saw it concurrently with the Panel. As the Law Society notes in its submissions, this evidence, with some hesitation, was accepted by the Panel and turned the tide for the Respondent, leading to the dismissal of that allegation against her.

[53] The Panel therefore looks at the following factors to reach its conclusion, which is that the parties should bear their own costs:

1. The Law Society, in its initial audit and subsequent investigation of the Respondent's trust account, saw unusual and significant sums of money coming in and going out.

2. The Respondent in her interviews admitted that she was perhaps close to the line ("little bit far away from the legal service in BC") in how she used the account.

3. The Law Society did not correctly analyze the issue of the Rule at play at the time for a lawyer taking in funds not related to legal services, something that was only later determined by a review board in *Wang* although clearly it was a legal conclusion that could have been reached earlier.

4. Once it had the decision the Law Society withdrew the allegation that was clearly contrary to that finding of the *Wang* review board. It did not, unlike the finding in *Samarakoone*, advance arguments that were both unfair to the lawyer and legally untenable.

5. Only with the disclosure in the Respondent's case that her firm had in fact checked and verified the source of the funds for the one million dollars, later returned to her trust account from V, could the Panel find the evidence to dismiss that allegation.

6. The Law Society, in approving the allegation under Rule 3-60(5) of maintaining over $300 in the Respondent's trust account clearly misread and misapplied that Rule, but there is no evidence it was done in bad faith, and the Panel finds it was instead an error in interpretation of its own Rule.

[54] Based on the principles set out earlier, the Panel finds that:

1. The citation was not improperly brought on the facts as the Law Society had them at the time of its issuance.

2. While the Law Society misinterpreted its own Rules applicable here, it was not done in bad faith or for an improper motive. Again, unlike the findings in *Samarakoone*, there is nothing to reprove or rebuke.

3. The case obviously took time and some skill to defend but was not usually complex in the context of many that this Tribunal hears. The hearing moved reasonably expeditiously and any delays were not occasioned by Law Society counsel.

4. As soon as the law was clarified by *Wang*, the Law Society properly withdrew the allegation that was clearly unsustainable. The remaining allegation of substance was only dismissed due to last minute evidence of the Respondent who clearly could have located and given it to the investigators years before.

[55] In all these circumstances there is no basis to order costs to the Respondent.

DISPOSITION

[56] The Panel orders that the parties will each bear their own costs of this matter.