

2023 LSBC 26
Hearing File No.: HE20210062
Decision Issued: June 28, 2023
Citation Issued: September 4, 2018

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
REVIEW BOARD

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

HONG GUO

RESPONDENT

DECISION OF THE REVIEW BOARD ON COSTS

Review dates: June 29 and 30, 2022

Written submissions on costs: June 19, 2023

Review Board: Thomas L. Spraggs, Chair
Paul Barnett, Public representative
Kim Carter, Benchler
Maia Tsurumi, Lawyer
William R. Younie, KC, Lawyer

Discipline Counsel: William B. Smart, KC

Counsel for the Respondent: David E. Gruber

Written reasons of the Review Board by: Review Board

INTRODUCTION

- [1] This is a Review involving Hong Guo (the “Respondent”) under section 47 of the *Legal Profession Act*, SBC 1998 c. 9 (the “*Act*”).
- [2] In *Law Society of BC v. Guo*, 2023 LSBC 06, we varied the hearing panel’s decision on disciplinary action and costs by adding the requirement of a practice supervision agreement.
- [3] The parties have not been able to agree on costs and made supplementary submissions on this issue, including at our request, submissions on the applicability, if any, of *Law Society of BC v. Boles*, 2018 LSBC 24.
- [4] The Law Society says both sides should bear their own costs. The Respondent says she was substantially successful on review so is entitled to costs.

RULE 5-11

- [5] Rule 5-11 of the Law Society Rules governs costs in review board decisions, as well as for hearings of citations and applications for enrolment, call and admission or reinstatement. The Rule provides:

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 [*Review on the record*], 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.

- [6] According to the Law Society, we have no jurisdiction to award costs to the Respondent. It says Rule 5-11 is a complete code governing our discretion to order costs and Rule 5-11(8) says that only where a citation is dismissed or rescinded after a hearing has begun can a panel or review board award costs against the Law Society. Thus, like the panel in *Boles*, we cannot award costs to the Respondent.
- [7] In *Boles*, the hearing panel found Rule 5-11(8) means costs can only be awarded against the Law Society if a citation is dismissed or rescinded after a hearing has begun. The *Boles* panel found this interpretation consistent with the absence of any reported decisions awarding costs against the Law Society except where the citation was dismissed or rescinded: *Boles*, at para. 18.

- [8] The Respondent says *Boles* does not apply to her situation because her claim for costs falls under Rule 5-11(2) and not Rule 5-11(8). Rule 5-11(2) says a review board may order an applicant or respondent pay the costs of a review. The Respondent says an “applicant” in Rule 5-11(2) can be whoever brought the review and in this case, it was the Law Society.

ANALYSIS

- [9] Section 46 of the *Act* and Rule 5-11 give a review board jurisdiction over the matter of costs.
- [10] We have considered Rule 5-11 and the parties’ submissions on costs and under Rules 5-11(4) and (8), we award no costs to either party.
- [11] Like the hearing panel in *Boles*, we conclude that, under Rule 5-11, we have no jurisdiction to award costs against the Law Society unless the conditions in Rule 5-11(8) are met.
- [12] First, under the Rules, the Law Society is never an applicant. An “applicant” and “respondent” are defined terms and refer to people involved in two types of hearings under the Rules: (1) credentials hearings; and (2) disciplinary hearings. Thus, Rule 1 defines an “applicant” as: “a person who has applied under Part 2 [*Membership and Authority to Practise Law*] for enrolment as an articled student, for call and admission or for reinstatement” and “respondent” as a person whose conduct or competence is the subject of a citation or is under review by a review board.
- [13] Second, a plain reading of Rule 5-11 indicates the Law Society is never an “applicant” under Part 5 even though it may have initiated a section 47 review. Those terms are used in Rule 5-11 as defined in Rule 1 and differentiate between a person who is the subject of a credentials matter and a person who is the subject of a disciplinary matter:
- (a) Rule 5-11(1) says that in either a credentials hearing or a disciplinary hearing, a panel may award costs against the person seeking enrolment, admission or reinstatement (an applicant) or the person subject to a disciplinary proceeding (a respondent). It does not allow costs against the Law Society;

- (b) Rule 5-11(2) says a review board may order costs against an applicant in a credentials hearing or against a respondent in a disciplinary hearing. It does not allow costs against the Law Society;
- (c) Rule 5-11(4) expressly references the Law Society separately from applicants and respondents;
- (d) Rule 5-11(7) refers to the very limited circumstances when costs can be awarded to applicants in a credentials matter and Rule 5-11(8) refers to the very limited circumstances when costs can be awarded to respondents in a disciplinary matter; and
- (e) Rules 5-11(10) and (11) use the term “applicant” in reference to a person involved in a credentials matter.

- [14] Rule 5-11(2) does not assist the Respondent. It states a review board may order an applicant or respondent pay the costs of a review under section 47. Under the Rules, and under Rule 5-11 specifically, as explained above, an “applicant” is not whichever party has brought a review or an application. An applicant is someone who has applied under Part 2 (Membership and Authority to Practise Law) for enrolment as an articulated student, for call and admission or for reinstatement.
- [15] Third, the broader context of Part 5 indicates the Law Society is never an “applicant.”
- [16] Rule 5-1(1) says Part 5 applies to: (1) a hearing of an application for enrolment, call and admission or reinstatement; (2) a hearing of a citation; and (3) a review of a hearing decision. Like Rule 5-11, the rest of Part 5 uses the defined term “applicant” in relation to the type of hearing described in (1) above (enrolment, call and admission, reinstatement) and the defined term “respondent” in relation to the types of hearings described in (2) and (3) above (citation or a review).
- [17] For example, Rule 5-19, which refers to initiating a review, is clear that “applicant” only refers to the subject of a credentials hearing and “respondent” only refers to the subject of a disciplinary action or costs. Rule 5-19 specifically provides for reviews initiated by the Law Society’s Credentials Committee (Rule 5-19(3)) and Discipline Committee (Rule 5-19(4)). The Law Society is not called an “applicant” in Rules 5-19(3) or (4) but the term “applicant” is used in relation to a person subject to a credentials hearing in Rule 5-19(1).
- [18] See also, for example, the use of “applicant” and “respondent” in Rule 5-6 (Procedure).

- [19] Our conclusion is supported by *Boles* and other LSBC Tribunal decisions. For example, in a decision cited by the Respondent, *Law Society of BC v. Adelaar*, 2009 LSBC 01, the panel considered Rule 5-9(3), which was a previous version of Rules 5-11(7) and (8). The panel found there may be situations where Rule 5-9(3) [now 5-11(7) and (8)] is unfair to a lawyer, but nevertheless, a panel has no jurisdiction to award costs to a respondent unless the citation is dismissed or rescinded. A panel has no jurisdiction to award costs to the respondent unless the conditions in Rule 5-11(8) are met. The panel went on to say the Benchers could consider a rule change to address any unfairness. Since *Adelaar*, the Benchers have made changes to Rule 5-11, but not to the principle that no costs are awarded against the Law Society in a disciplinary action unless a citation is dismissed or rescinded after a hearing begins.
- [20] The Respondent says *Boles* does not apply to her situation because it was a decision of a hearing panel in relation to a citation and was not decided by a review board. We do not agree. Rule 5-11 clearly applies to both hearing panel and review board proceedings and Rule 5-11(8), considered and applied in *Boles*, applies to both panels and review boards equally.
- [21] The Respondent says the costs rule is unfair if interpreted to mean respondents can only be awarded costs in the limited circumstances set out in Rule 5-11(8).
- [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: see e.g. *Baxendale-Walker v. Law Society*, [2007] EWCA Civ 233 (CA), at para. 40; Law Society of British Columbia Tribunal, "Practice Direction 13: Costs of Hearings and Reviews," s. 13.2(3).
- [23] Thus, in summary, Rule 5-11 contains no power to award costs against the Law Society except in accordance with Rules 5-11(7) and (8). As the Respondent's citation was not dismissed or rescinded after the hearing began, we have no jurisdiction to award her costs of the section 47 review.
- [24] In the result, we conclude each party should bear its own costs. Rule 5-11(4) provides that a review board may award costs to neither party. The Law Society does not seek costs against the Respondent and the Law Society was largely

unsuccessful on review. In these circumstances, it is appropriate not to award the Law Society costs.

ORDER

[25] We order the parties to bear their own costs.