

**IN THE MATTER OF PART 3 OF THE
LEGAL PROFESSION ACT, RSA 2000, c. L-8**

AND

**IN THE MATTER OF AN APPEAL
REGARDING NAVDEEP VIRK
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Appeal to the Benchers Panel

Ken Warren, QC – Chair
Ryan Anderson, QC – Bencher
Bill Hendsbee, QC – Bencher
Jim Lutz, QC – Bencher
Walter Pavlic, QC – Bencher
Lou Pesta, QC – Bencher
Cora Voyageur – Public Bencher

Appearances

Karen Hansen - Counsel for the Law Society of Alberta (LSA)
Navdeep Virk – Self-represented

Hearing Date

July 22, 2020 and November 23, 2020

Hearing Location

Virtual Hearing

APPEAL PANEL DECISION - COSTS

(Reasons for the majority, Ken Warren, QC; Ryan Anderson, QC, Bill Hendsbee, QC, Walter Pavlic, QC, and Lou Pesta, QC concurring)

Overview

1. In the Sanction Decision, the Hearing Committee (Committee) considered an estimated statement of costs from the LSA in the amount of \$98,497.69 including disbursements. The Committee fixed costs in the sum of \$82,500.00, payable forthwith by Mr. Virk. It noted that Mr. Virk had been acquitted on 4 of the 19 citations considered by the Committee. It also noted that not a great deal of hearing time was devoted to the citations that were dismissed and that the absence of those citations would not have significantly shortened the hearing.

2. The Appeal Panel in the reasons of the majority (the Majority) issued June 1, 2021 awarded costs of the appeal to the LSA, payable within three months of the reasons for decision. LSA counsel provided a statement of costs in the amount of \$12,711.83 on June 7, 2021 that was approved by the Chair of the Appeal Panel on June 11, 2021. The Majority's reasons also invited Mr. Virk and LSA counsel to make any submissions on costs within 30 days of the decision.

Submissions of the Parties

3. Mr. Virk submitted that evidence for citations 19 and 20 consumed a full day of hearing time on June 25, 2019. As the Committee had set costs in the amount of \$82,500.00, he submitted that each day of hearing represented costs of \$10,312.50. He submitted that the Bill of Costs "for the Appeal" be discounted to reflect that the hearing day of June 25, 2019 was unnecessary as both citations 19 and 20 were dismissed. Citation 20 was dismissed by the Committee and citation 19 was dismissed by the Appeal Panel.
4. Mr. Virk also sought a reduction with respect to the travel costs for the witness who attended from Vancouver to testify before the Committee with respect to citations 19 and 20.
5. Mr. Virk also advised that he has appealed the decision of the Appeal Panel to the Alberta Court of Appeal and asked that costs of the appeal be payable two weeks after the disposition of the appeal by the Alberta Court of Appeal.
6. LSA counsel did not object to some reduction of the costs awarded by the Committee due to the dismissal of citation 19 by the Appeal Panel. However, the Committee had already taken into account its dismissal of citation 20 in reducing the costs payable to the LSA from over \$98,000.00 to \$82,500.00. LSA counsel submitted that hearing costs might be reduced by a further half day, amounting to \$5,156.25, and be further discounted by half of the required witness's travel expenses, amounting to \$550.00. The total reduction put forward was \$5,706.25.
7. LSA counsel did not object to Mr. Virk's request that costs of the appeal to the Appeal Panel be payable two weeks after the disposition of Mr. Virk's further appeal to the Alberta Court of Appeal.

Decision Regarding Costs

8. Allocating costs between parties when there has been divided success is not capable of any arithmetic precision. The Committee reduced the hearing costs payable by Mr. Virk by a significant amount. The Committee's reasons suggest that it felt the reduction was a generous one. Citations 19 and 20 were from the same complaint and necessarily involved similar evidence and submissions. A dismissal of citation 19 by the Committee may not have resulted in any additional discount to the hearing costs. Nonetheless, having regard to the submissions of Mr. Virk and LSA counsel, we have reduced the

hearing costs by an additional \$3,000.00, resulting in total hearing costs payable by Mr. Virk in the amount of \$79,500.00.

9. With respect to the costs of the appeal before the Appeal Panel, the Majority sees no need for any adjustment. The Statement of Costs submitted by the LSA included the time of only one counsel even though two senior counsel were involved, one within the LSA and one external counsel. The hearing costs included the Fresh Evidence Application with respect to which Mr. Virk was completely unsuccessful. Mr. Virk appealed the findings of guilt on six citations and was successful on only one, perhaps the most straightforward of the six citations. Mr. Virk also unsuccessfully appealed the disbarment sanction. The Majority finds that the Statement of Costs previously approved is a fair allocation of costs having regard to the total costs of the appeal and the divided success that weighed heavily in favour of the LSA.
10. The Majority agrees to the costs of the appeal to the Appeal Panel to be payable two weeks after the disposition of Mr. Virk's further appeal to the Alberta Court of Appeal.

Dated at Calgary, Alberta, August 17, 2021.

Ken Warren, QC

Ryan Anderson, QC

Bill Hendsbee, QC

Walter Pavlic, QC

Lou Pesta, QC

Costs – Dissent Decision

(Reasons for the dissent, Jim Lutz, QC; Cora Voyageur concurring)

Overview

11. In the Sanction Decision, the Committee considered an estimated statement of costs from the LSA in the amount of \$98,497.69 including disbursements. The Committee noted that Mr. Virk had been acquitted of 4 of the 19 citations and fixed costs in the sum of \$82,500.00, payable forthwith by Mr. Virk.
12. At the Appeal, while the Majority decided that the finding of guilt on citation 19 should be overturned, the dissenting members of the Appeal Panel (Dissent) decided that Mr. Virk should have been acquitted of three additional citations, including citation 19. The Dissent also found that a suspension was the appropriate remedy.
13. The Majority awarded costs payable within three months of the written decision. LSA Counsel provided a statement of costs in the amount of \$12,711.83 on June 7, 2021 that was approved by the Chair of the Appeal Panel on June 11, 2021. Given the Dissent Decision, it would be appropriate to consider costs in light of the additional citations where the appeal was allowed and the success in the sanction portion of the decision.

Submissions of the Parties

14. Mr. Virk submitted that he accepts that costs are payable to the LSA and that his costs be further reduced in recognition of his success on citation 19. Mr. Virk does not seek a further reduction based upon the Dissent Decision and the success on the sanction. Moreover, he seeks costs payable “two weeks” after the disposition of the Appeal before the Court of Appeal.
15. LSA Counsel does not object to Mr. Virk’s request for a further reduction in costs due to his success on citation 19. In sum, LSA Counsel adopts the Majority Decision noting the costs have been reduced appropriately. The LSA does not object to the payment of costs being payable two weeks after the Court of Appeal renders a decision on the Appeal.

Decision Regarding Costs

16. A further reduction of \$5,706.25 as set out in the submissions of LSA counsel fairly reflects the success on citation 19 and we agree this would be reasonable based on the Majority Decision.
17. In the circumstances given Mr. Virk’s success on appeal, especially on the sanction phase, we do not wish the costs order to be a barrier for readmission should he so

choose. As such, a further reduction would be warranted in the amount of \$5,000.00 thus making a total reduction to the original bill of costs of \$10,706.25.

18. We agree with the Majority that allocating costs between parties when there has been divided success is not capable of “arithmetic precision.” We agree the costs shall be payable two weeks after the Court of Appeal renders its decision on the appeal of this matter.

Dated at Calgary, Alberta, August 17, 2021.

Jim Lutz, QC

Cora Voyageur