

In the matter of an appeal to the Commissioner under the
Private Training Act, [S.B.C. 2015], c.5 (*PTA*)

By

Canadian Health Care Academy [CHCA]

Ruling on Costs

I dismissed the appeal filed by CHCA on April 29, 2021 and awarded costs to the Registrar. I directed timelines to the parties in respect to submissions on the issue of quantum. On May 21, 2021, the Registrar submitted her position. CHCA had until June 7, 2021 to make submissions but has failed to do so.

The ability to award costs is found in section 51 of the *PTA* which states:

Power to award costs

51 (1) In addition to any order under section 50, the commissioner may make an order requiring an institution to pay all or part of the costs of an appeal if the commissioner considers the conduct of the institution in relation to the appeal to have been improper, vexatious, frivolous or abusive.

(2) The commissioner may file with the Supreme Court a certified copy of the order under subsection (1) and, on being filed, the order has the same force and effect, and all proceedings may be taken on the order as if it were a judgment of that court.

As noted by the Registrar, there is no applicable policy, rule or practice directive guiding the assessment of costs and as this appeal is the first instance where costs have been awarded, there are no precedents available for guidance.

Accordingly, the Registrar reviewed the practice of other administrative tribunals which have similar costs provisions in their enabling legislation. Apart from the B.C. Human Rights Tribunal which has a significant body of jurisprudence on the issue of costs, there are few reported cases.

The Registrar urges me to adopt an approach similar to that taken by the B.C. Human Rights Tribunal (the Tribunal) in respect to this issue of costs. The Human Rights Code, s. 37(4)(a) authorizes an award of costs against a party who has engaged in improper conduct during the course of a human rights complaint.

The Tribunal has consistently held that the primary purpose of a costs award is punitive, not compensatory. It is meant to deter future participants from misconduct and to signal the Tribunal's condemnation of the conduct. The amount of the award will depend upon

the nature and severity of the (mis)conduct and the impact that it had on the integrity of the process: see *Kelly v. Insurance Corp. of British Columbia*, 2007 BCHRTD No. 382.

This contrasts with the compensatory purpose found in Appendix B of the Supreme Court Civil Rules. The Tribunal assesses the quantum of costs without reference to the actual costs incurred, see *Wells v. UBC and others (No. 5)*, 2011 BCHRT 176 at para. 29.

Insofar as the quantum that should be assessed, I was referred to two cases by the Tribunal. In *Ma v. Cleator*, 2014 BCHRT 180 the Tribunal considered the types of misconduct which would attract a punitive award. It determined “where issues such as threatening conduct, contempt, destruction of evidence of the record, or attempts to derail the hearing are involved, awards range from \$5,000 and above. Where the conduct is of a nature of unfounded allegations, untruthfulness and/or ulterior motivation for filing a complaint, then the awards reviewed are in the range of \$1,000 to \$5,000” (para. 315)

In *Stoppes v. Just ladies Fitness (Metrotown) Ltd.* 2007 BCHRT 125, the Tribunal awarded \$3,000 to the respondent, finding the complainant made serious, unfounded allegations against the respondents, made veiled threats against the respondents; and was rude to the respondents’ lawyer and his staff.

The Registrar then quoted from my judgment dismissing the appeal which characterized the (mis)conduct of CHCA in its submissions on the appeal. These are set out as follows:

1. CHCA’s submissions are replete with allegations of bad faith and conspiratorial conduct on the part of the Registrar, PTIB staff, BCCNP/BCCNM staff and others, without any credible evidentiary support for those allegations (para 21)
2. Generally, the submission launches blistering personal attacks and wild, completely unfounded accusations of misconduct. For the most part, the submissions made by Mr. Khan on behalf of CHCA are: disgraceful rants; nonsensical; and completely miss the issues that should be addressed in the appeal (para. 23)
3. Since this appeal was initiated, CHCA has sent to me thousands of pages of unsolicited correspondence on matters largely irrelevant to the merits of this appeal. The substance of which is much the same as its submissions made to me on this appeal itself, being vague and convoluted. That correspondence includes unfounded and highly prejudicial personal allegations against the Registrar, unreasonable demands, and threats of legal action for failure to respond. (para 30)
4. Mr. Khan, on behalf of CHCA, preferred to argue, dispute and defame, sending copies of his personal views to many institutions and persons having nothing whatsoever to do with the appeal. (para. 31)

The Registrar submitted that the manner in which CHCA conducted its appeal demanded “significant resources on the part of the Registrar and PTIB staff over a period of six months, to properly respond to CHCA’s voluminous, vague and convoluted and largely unfounded allegations . . . [which included] a number of meritless applications which unnecessarily protracted the process . . .”.

I accept the Registrar's submission that while the manner in which CHCA conducted the appeal created considerable work on the part of the Registrar, the more significant aspect of its approach was the unfounded, highly prejudicial allegations against the Registrar when she was merely discharging her statutory duties. It is my view that this deserves rebuke and condemnation and an award of costs should reflect this.

In all of the circumstances, I award costs of \$4,000.

Dated at Vancouver, B.C. this 9th day of June, 2021

Ronald A McKinnon
Commissioner