CITATION: Rogerson v. Law Society of Ontario, 2025 ONSC 4106
DIVISIONAL COURT FILE NO.: DC-25-00000162-0000
DATE: July 11, 2025

2025 ONSC 4106 (CanLII)

ONTARIO

SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

Coats, Matheson, and Nakatsuru JJ.

BETWEEN:	)	
	)	
Andrew Rogerson	)	*Self-Representing*, Appellant
	)	
	)	
	)	
Appellant	)	
	)	
– **and** –	)	
	)	
Law Society of Ontario	)	*S. McDunnough*, for the Respondent
	)	
	)	
	)	
Respondent	)	
	)	
	)	
	)	
	)	
	)	**HEARD at Toronto:** June 12, 2025

REASONS FOR JUDGMENT

Nature of Appeal:

[1] The appellant appeals from the decision of the Law Society Tribunal, Appeal Division, dated January 29, 2025 (the Appeal Panel Decision), which dismissed the appellant's appeal from the decisions of the Law Society Hearing Division dated September 29, 2023 (merits decision) and January 31, 2024 (penalty and costs decision). The appellant also appeals from the Appeal Division's decision on costs dated March 26, 2025.

[2] The Hearing Division found that the appellant engaged in professional misconduct in the following ways:

> Particular one: By engaging in sexual harassment and/or discriminatory conduct towards female employees, contrary to Rule 6.3-3 and Rule 6.3.1-1 of the *Rules of Professional Conduct (*"*Rules*");
>
> Particular two: By sending correspondence to Client A that was abusive, offensive or otherwise inconsistent with the proper tone of a professional communication from a lawyer, contrary to Rule 7.2-4 of the *Rules*; and
>
> Particular three: By sending correspondence to Client B and Client B's father that was otherwise inconsistent with the proper tone of a professional communication from a lawyer, contrary to Rule 7.2-4 of the *Rules*.

[3] The Hearing Division suspended the appellant from the practice of law for one month, ordered that the appellant comply fully with the terms of the Law Society's *Guidelines for Lawyers Who Are Suspended or Have Given an Undertaking Not to Practice*, and ordered that the appellant pay costs to the Law Society in the amount of $5000.00.

[4] The appellant appealed to the Law Society Tribunal, Appeal Division, regarding the Hearing Division's finding of professional misconduct as set out in particular three referenced above and in regard to the one-month suspension imposed. The Appeal Division dismissed the appeal and ordered that the appellant pay to the Law Society costs in the amount $14,293.50.

[5] For the reasons set out below, the appellant's appeal is dismissed.

Background:

[6] The appellant has practiced law for over 40 years. Prior to being licensed in Ontario in 2006, he practiced law in multiple jurisdictions.

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Hearing Panel Decision:

[7] The application before the Hearing Panel proceeded on an Agreed Statement of Facts ("ASF") and Joint Document Brief ("JDB"), which were made exhibits 1 and 2 respectively on consent. The appellant was represented by counsel. Before the Hearing Panel, the appellant admitted that the facts described in the ASF constituted professional misconduct in respect of the first two particulars, but not in respect of the third. As a result, the hearing focused on particular three, and whether the appellant's correspondence to Client B and her father was inconsistent with the proper tone of a professional communication.

[8] On particular three, the Hearing Panel had before it the ASF and a JDB containing what the Appeal Panel described as 257 emails between the appellant, the appellant's law firm staff, Client B, her husband, and her father, spanning over 800 pages.

[9] The Hearing Panel considered Rule 7.2-4. It also considered *Doré v. Barreau du Quebec*, 2012 SCC 12, [2012] 1 S.C.R. 395 in terms of the balancing of a lawyer's right to expression and their professional obligations. The Hearing Panel referenced para. 61 of *Doré*, wherein incivility was defined as "potent displays of disrespect for the participants in the justice system, beyond mere rudeness and discourtesy." The Hearing Panel also referenced para. 125 of *Groia v. The Law Society of Upper Canada*, 2016 ONCA 471, 131 O.R. (3d) 1, rev'd on other grounds, 2018 SCC 17, that the determination of whether incivility occurred is "highly contextual and fact-specific", which requires "affording the disciplinary body leeway in fashioning a test that is appropriate in the circumstances of a particular case."

[10] The Hearing Panel reviewed emails between the appellant and Client B and her father, referencing excerpts from same in the decision. The Hearing Panel found Client B to be in a vulnerable state.

[11] The Hearing Panel found that portions of three emails from the appellant (dated January 29, 2018; March 19, 2018; and April 26, 2018), viewed as a whole, rose to the level of a potent display of disrespect beyond mere rudeness or discourtesy. The Hearing Panel referred to specific excerpts from the three emails in their Decision.

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Hearing Panel Decision on Penalty and Costs:

[12] The Hearing Division's penalty and costs Decision is dated January 31, 2024. Before the Hearing Panel, the appellant sought a reprimand and the Law Society sought a suspension of one month. The parties jointly submitted that costs be fixed at $5000.

[13] The Hearing Panel considered the parties' submissions, the documents, the appellant's oral statement of remorse, the Law Society's Bill of Costs and the joint submission on costs.

[14] The Hearing Panel considered the objectives of penalty in cases of misconduct and the factors as established in *Law Society of Upper Canada v. Aguirre*, 2007 ONLSHP 46. The factors considered by the Hearing Panel included the nature, extent and duration of the misconduct and the potential impact on others, and the circumstances of the appellant, including consideration of several mitigating factors.

[15] The Hearing Panel concluded at para. 26 of its decision that a suspension was required:

> [26] We acknowledge the Licensee's remorse, his efforts at rehabilitation and his ongoing therapy such that we view specific deterrence as less relevant in the present case. We are of the view that general deterrence and confidence in professional regulation are of greater relevance. The seriousness of the misconduct, despite the extenuating and mitigating factors, is such that only a suspension will deter other legal professionals from similar misconduct and will maintain public confidence in the legal professions.

[16] The Hearing Panel ordered the appellant to pay the Law Society's costs fixed in the agreed upon amount of $5000.

The Appeal Division Decision:

[17] The appellant appealed the Hearing Panel's finding of professional misconduct on the third particular and the one-month suspension that was imposed.

[18] Regarding the third particular, the appellant raised for the first time at the Appeal Hearing, that the *Rules* do not impose liability for offensive communications to a person other than a client

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or legal professional. As a second argument he disputed the Hearing Panel's findings of fact that led the Panel to conclude that he had engaged in improper communications with Client B and her father.

[19] Regarding the penalty appeal, the appellant acknowledged before the Appeal Division that the one-month suspension imposed was within the range of penalties even if the third particular was dismissed either by the Hearing Panel or the Appeal Panel.

[20] The Appeal Panel reviewed the evidentiary findings of the Hearing Panel in regard to particular three, the three emails from the appellant to Client B and her father, and each of the nine factual conclusions of the Hearing Panel which were challenged on appeal by the appellant. The Appeal Panel determined that the Hearing Panel did not misapprehend the evidence or make palpable and overriding errors in their findings of fact or of mixed fact and law.

[21] The Appeal Panel considered the appellant's argument that Rule 7.2-4 does not capture his communication with Client B's father. The Appeal Division concluded that by considering the plain language of Rule 7.2-4 and the inclusion of the term "as any other person" meant that the Rule covered communications between the appellant and Client B's father.

[22] In terms of the penalty, the Appeal Division noted that penalty determinations are case specific and that aggravating and mitigating factors vary widely when looking at cases involving similar seriousness of misconduct. It was also noted that the Hearing Panel addressed much of the relevant jurisprudence.

[23] The Appeal Division dismissed the appellant's appeal regarding particular three and against the penalty.

The Appeal Division Decision on Costs:

[24] The Law Society requested costs in the amount of $14,293.50 for its costs of the appeal. The appellant submitted that there should be no order as to costs. The Appeal Division accepted the Law Society's position and gave detailed reasons.

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[25] The Appeal Division considered Rule 15.1(2) of the *Rules of Practice and Procedure* which provides that costs may be awarded against an appellant where the result of the appeal is adverse to the appellant. The Appeal Division referenced a non-exhaustive list of factors to be considered in determining an appropriate costs award and then proceeded to apply these factors.

[26] The Appeal Division determined that the Law Society's costs request was proportional and within the reasonable expectations of the parties.

Standard of Review:

[27] The standard of review for appeals from the Law Society Tribunal, Appeal Division, is set out at paras. 35-38 of *Barnwell v. Law Society of Ontario*, 2025 ONSC 1825:

> [35] The appellate standard of review applies, as set out in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235; per *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 at para. 37. The standard of review is correctness for questions of law and palpable and overriding error for questions of fact and of mixed fact and law: *Housen*, at paras. 8, 10, 19, 26-37; *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29, [2022] 2 S.C.R. 220, at para. 29. For issues of fact and law where there is an extricable legal issue, that issue is reviewed on the correctness standard. The appellant further submits that there are errors of fact that should be reviewed because they are based upon no evidence, however the ground of no evidence is not demonstrated on the record.
>
> [36] The decision under appeal is the Appeal Panel Decision. This appeal is therefore the second appeal, and it is particularly important to note the caution of the Supreme Court of Canada that this appeal is not a re-hearing and re-weighing of the evidence that was before the Hearing Panel: *Housen*, at para. 23.
>
> [37] On matters of penalty, courts should give considerable deference to penalties imposed by the disciplinary bodies of self-governing professions: *William Bishop v. Law Society of Upper Canada*, 2014 ONSC

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5057 (Div. Ct.), at para. 24. The court should not interfere unless the Panel made an error in principle or the penalty is clearly unfit: *Law Society of Ontario v. Schulz*, 2023 ONSC 3943 (Div. Ct,), at para. 18.

[38] For issues of procedural fairness, the standard of review is correctness: *Law Society of Saskatchewan v. Abrametz*, at para. 30.

[28] A decision on costs should only be set aside on appeal if the trier made an error in principle or if the costs award is plainly wrong: *Hamilton v. Open Window Bakery Ltd.*, 2004 SCC 9, [2004] 1 S.C.R. 303, at para. 27.

Issues on Appeal:

[29] The appellant focused on the following issues in the argument of his appeal:

a. He submits that he was denied procedural fairness by the filing of the ASF and JDB at the initial hearing, in circumstances where there were different inferences that could be drawn from the correspondence in the JDB.

b. He submits that the Appeal Decision was incorrect in its interpretation of Rule 7.2-4 to include communication by him to Client B's father.

c. He submits that the penalty imposed by the Hearing Panel was unfit.

d. He appeals the Appeal Division's determination of costs.

Analysis:

A. Procedural Fairness

[30] As set out above, for issues of procedural fairness, the standard of review is correctness.

[31] The appellant focuses on the Hearing Panel's use of the ASF and JDB. His position is that neither party intended inferences to be drawn from the documents contained in the JDB. He further submits that in circumstances where the parties were not *ad item* on the inferences to be drawn, the Hearing Panel had an obligation to come back to the parties if the Panel was going to draw negative inferences against the appellant from the documents. He suggested cross-examination

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should have taken place if it was unclear to the Hearing Panel what inferences were to be drawn. He did not suggest that the Hearing Panel could not draw inferences, rather, he argued that the procedural unfairness arose when the Hearing Panel did not come back to the parties before drawing negative inferences.

[32] I do not agree. The appellant was represented by experienced counsel at the Hearing Panel. There was an agreement that the hearing would proceed based on the ASF and the JDB. Counsel made submissions based on these two exhibits. The parties agreed to this process. There was no agreement to limit the evidence to the ASF, or to limit in any way the use of the documents in the JDB.

[33] The ASF did not in any way prohibit either side from arguing that inferences could be drawn from the documents in the JDB — positive or negative. The JDB was filed with the appellant's consent. There would have been no reason for the JDB to have been filed if not for the Hearing Panel to consider the contents of the JDB, together with the ASF, as they decided whether the misconduct allegation in particular three had been made out. The appellant had already agreed that misconduct had been made out for particulars one and two.

[34] There is no suggestion that the appellant was in any way restricted from calling other evidence before the Hearing Panel. He simply chose not to do so. He did not seek to call any other evidence. Instead, by agreement, the hearing proceeded with submissions based on the ASF and JDB.

[35] The appellant did not identify any inference that the Hearing Panel drew that contradicted the ASF nor did he identify any fact in the ASF that was not treated as a fact. He submitted that the documents portrayed a different perspective to the ASF. In my view, the Hearing Division was free to draw inferences from the documents that were not inconsistent with the ASF. There was no agreement that the Hearing Division could not make additional findings of fact from the documents absent agreement between the parties. The appellant did not identify any findings of fact that were not reasonably available to the Hearing Panel based on the evidence before them.

[36] The appellant refers to paragraphs 53 to 58 of the Appeal Division Decision in support of his position that there had been "a terrible mix up" on the use of the ASF and JDB. I disagree. Mr.

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Anand, the Chair of the Appeal Panel, did not identify any procedural unfairness to the appellant. He simply provided suggestions for future cases.

[37] There was no procedural unfairness.

B. Particular Three – Rule 7.2-4

[38] The appellant's primary argument is that the Appeal Division erred in their interpretation of this Rule. His secondary arguments include that the conduct he engaged in with respect to Client B and her father did not reach the level of incivility required for him to be found to have violated this Rule and that the Hearing Division made palpable and overriding errors in their findings of fact in this regard. I do not accept any of the appellant's arguments.

[39] The standard of review on the interpretation of Rule 7.2-4 is correctness. The Appeal Division correctly interpreted the Rule (this argument was not raised before the Hearing Panel).

[40] Rule 7.2-4 of the *Rules* provides:

> A lawyer shall not in the course of professional practice send correspondence or otherwise communicate to a client, another legal practitioner, or any other person in a manner that is abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from a lawyer.

[41] The definition of client found in Rule 1.1-1, together with the commentary directly under the definition, is as follows:

> "client" means a person who:
>
> (a) consults a lawyer and on whose behalf the lawyer renders or agrees to render legal services; or
>
> (b) having consulted the lawyer, reasonably concludes that the lawyer has agreed to render legal services on their behalf and includes a client of the

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law firm of which the lawyer is a partner or associate, whether or not the lawyer handles the client's work;

Commentary

[1] A solicitor and client relationship may be established without formality.

[2] When an individual consults a lawyer in a representative capacity, the client is the corporation, partnership, organization, or other legal entity that the individual is representing.

[3] For greater clarity, a client does not include a near-client, such as an affiliated entity, director, shareholder, employee or family member, unless there is objective evidence to demonstrate that such an individual had a reasonable expectation that a lawyer-client relationship would be established.

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[42] The appellant relies heavily on the statement in commentary (3) that a client does not include a family member. He imports this phrase to Rule 7.2-4, and claims that his communication with Client B's father are therefore not captured by Rule 7.2-4.

[43] The appellant's position is inconsistent with the plain language of Rule 7.2-4, which includes the phrase "or any other person." Client B's father is "any other person."

[44] The appellant argues that this interpretation violates his rights to free speech and restrains his liberty. He gave as an example that he is entitled to verbally respond as he wishes if a stranger spits on him in the street. This example is not helpful. The scope of Rule7.2-4, by its very wording, is limited to communications by a lawyer "in the course of professional practice". It does not purport to cover stranger encounters on the street. Client B's father was communicating with the appellant about the appellant's account to Client B (a fee dispute). It was communication in the course of the appellant's law practice.

[45] The appellant did not suggest that the Hearing Panel erred in describing the legal test for incivility**,** as set out in the Hearing Decision at para. 50.

[46] Rather, the appellant claims that his conduct in relation to Client B and her father did not rise to the level of incivility. This is a question of mixed fact and law, and the appellant must demonstrate a palpable and overriding error. He has not done so.

[47] The position taken by the appellant on this issue is related to his submission on procedural unfairness. The appellant claims that on the Hearing Panel's use of the documents in the JDB, to draw inferences against him lead to palpable and overriding errors. The appellant did not refer to any inferences drawn that were inconsistent with the ASF. As set out in *Groia,* the Hearing Panel was required to consider the context and factual circumstances of the communications. This is exactly what the Hearing Panel did. The Panel reviewed the documents in the JDB, which were emails between Client B, her husband, her father, the appellant and the appellant's law firm staff, to have context. The Hearing Panel, at para. 55 of the Decision, referred to specific and precise portions of three emails sent by the appellant that, taken collectively, rose to the level of a potent display of disrespect in the context. The inferences and conclusions drawn from them were all available to the Hearing Panel, based on the evidence before the Panel.

[48] Before the Appeal Panel, the appellant challenged nine factual conclusions of the Hearing Panel. In paras. 29-52 of the Appeal Decision, the Appeal Panel reviewed each of the nine factual conclusions of the Hearing Panel and considered whether there was reversible error. For each of the nine, the Appeal Panel referenced the evidence from which the Hearing Panel made its findings of fact, whether directly from the ASF or as an inference from the documents contained in the JDB. The Appeal Panel found no reversible error.

[49] The appellant submits that the Hearing Panel did not consider the context of his email communication with Client B's father. Client B's father came to the appellant's office to meet with the appellant over a fee dispute. At some point, Client B's father accused the appellant of forging Client B's signature. The father left and then came back. The appellant argues that at that point Client B's father was a "hostile trespasser," no longer within the ambit of "any other person," in Rule 7.2-4. It is clear from the Hearing Panel's decision that they considered this background and made findings of fact available to them on the evidence before the Panel. The Hearing Panel considered the time that elapsed between the appellant's meeting with Client B's father on April 20, 2018 and the appellant's email to the father on April 26, 2018. Further, the email to Client B's

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father was about their meeting and a fee dispute and, therefore, remained communication by him in the course of his professional practice.

[50] The appellant also appears to be taking the position that because the Appeal Panel stated that they would not engage in reviewing and recharacterizing the evidence, the Appeal Panel made a palpable and overriding error. I disagree. In accordance with *Vavilov*, at para. 125, the Appeal Panel was correct in not doing so and did not make a palpable and overriding error.

C. Penalty

[51] The appellant must demonstrate that the penalty was unfit. He has not done so.

[52] The basis for his claim that the penalty was unfit is in part related to his submission that the initial hearing was procedurally unfair, which caused the Hearing Panel to make palpable and overriding errors of fact. As set out above, I have concluded that there was no procedural unfairness and that there were no palpable and overring errors of fact in regard to particular three.

[53] The appellant also argues that the Hearing Panel should have considered the public nature of their decisions in determining an appropriate penalty – the impact on the lawyer of having many people view the decision and the resulting public humiliation. The appellant did not raise this at the Hearing Division or Appeal Division. The publication of the Hearing Division Decision is part of the process. Not considering the public nature of their decisions does not amount to an error of law or make the penalty imposed unfit. Publication of the decision also goes to the general deterrence objective of the penalty.

D. Costs

[54] Costs are in the discretion of the Appeal Division. The costs award should only be set aside if there is an error of principle or the award in plainly wrong.

[55] The basis for the appellant's claim that the costs awarded were excessive is twofold. First, he maintains the same argument that he did above under penalty — that procedural unfairness lead to palpable and overriding errors of fact. I disagree for the reasons above.

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[56] Secondly, the appellant claims that the public nature of the Appeal Division Decision should be a consideration on costs. I disagree. The publication of their decisions is part of the process.

[57] The appeal in regard to costs is dismissed. The appellant has not demonstrated that the award was based on an error of principle or is clearly wrong.

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Order:

[58] This appeal is dismissed, with costs to be paid by the appellant to the respondent Law Society, fixed at the agreed upon amount of $3000.00, all inclusive.

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Coats, J.

I agree

_____

Matheson J.

I agree

_____

Nakatsuru J.

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