COURT OF APPEAL FOR ONTARIO

CITATION: Afolabi v. Law Society of Ontario, 2025 ONCA 641
DATE: 20250915
DOCKET: M56177 (COA-24-CV-0542)

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Sossin J.A. (Motion Judge)

BETWEEN

Korede Afolabi, Alson Alfred, Azhar Imdad Ali, Poonam Bhurani, Gargi Singh, Gurveer Singh, Harjeet Kaur, Haleema Kiani, Faiqa Mirza, Qamar Naeem, Justice Nwabuwe, Jacinta Obinugwu, Nneoma Diana Okoro, Muhammad Qazi, Syed Safdar, Natasha Stewart, Subajanany Subramaniam*, Ishu Talwar, Ali Usman Virk and Faisal Zama

Applicants
(Moving Party*/Respondents)

and

Law Society of Ontario

Respondent
(Responding Party/Appellant)

Jeffrey Haylock, for the moving party Subajanany Subramaniam

Tim Gleason, for the responding party Law Society of Ontario

Heard: September 10, 2025

REASONS FOR DECISION

[1] The moving party, Ms. Subramaniam, seeks an extension of time to perfect a cross-appeal against a decision of the Divisional Court, which was appealed successfully by the Law Society of Ontario (LSO): see this court's decision

reported at 2025 ONCA 257, with a motion to reconsider the decision rejected in a decision reported at 2025 ONCA 464.

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[2] The facts giving rise to this dispute are uncontested and canvassed in detail in this court's two prior decisions on the matter. I address them only as necessary to respond to the parties' submissions. In short, following a security breach in the LSO's licensing exams, numerous candidates were told that their exam results were deemed to be void and that their registrations in the LSO's lawyer licensing process were also void. This meant they had to start the entire process again, which meant rewriting all prior exams and repeating articles of clerkship or other experiential training. The moving party's tainted barrister exam result was voided, but unlike the other applicants, her registration in the licensing program was not deemed to be void and she did not have to re-start the process.

[3] In the main appeal, this court concluded that the LSO's decision to cancel the candidates' licensing applications was administrative in nature. This meant that fewer procedural guarantees were required under the framework established in *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 S.C.R. 817 than if the decision was adjudicative in nature. Accordingly, this court held that the Divisional Court erred in concluding that the candidates were entitled to an oral hearing, and concluded that LSO's decision to void the candidates' licensing applications without one was procedurally fair: 2025 ONCA 257, at paras. 102-6.

[4] The test on a motion seeking an extension of time is not in dispute and ultimately turns on what is in "the justice of the case": *Enbridge Gas Distribution Inc. v. Froese*, 2013 ONCA 131, 114 O.R. (3d) 636, at para. 15. Each case depends on its own circumstances, but the court is to take into account all relevant considerations, including:

(a) whether the moving party formed a bona fide intention to appeal within the relevant time period;

(b) the length of, and explanation for, the delay in filing;

(c) any prejudice to the responding parties caused, perpetuated or exacerbated by the delay; and

(d) the merits of the proposed appeal.

[5] In my view, the proposed cross-appeal lacks merit and the justice of the case weighs against granting an extension of time. I would accordingly dismiss the motion.

Position of the Parties

[6] The moving party wishes to argue in her proposed cross-appeal that the LSO's decision to void her barrister exam was procedurally unfair. The Divisional Court's decision on this matter found that the LSO's decision to void the candidates' exam results was procedurally fair, while its decision to void their registration was not: *Mirza et al. v. Law Society of Ontario*, 2023 ONSC 6727, 169

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O.R. (3d) 352, at para. 10. As a result, issues relating to the voiding of the exam results was not before the Court of Appeal when it allowed the LSO's appeal. This includes the argument the moving party wishes to make in her proposed cross-appeal that the LSO improperly failed to disclose a key statistical report (the "Caveon Report") on which she claims the LSO relied in voiding her exam result, and her consequent lack of an opportunity to file an expert report to counter the Caveon Report. In the moving party's view, this non-disclosure deprived her of a fair process.

[7] The moving party submits that her failure to cross-appeal within the appeal period was a result of poor legal advice suggesting that a cross-appeal would not be appropriate at the time the LSO's notice of appeal was filed. Technically, the moving party could have sought to cross-appeal at the hearing itself, but this would have been a limited opportunity and in the moving party's submission, would have amounted to improperly adding new issues to an appeal already perfected.

[8] Some additional post-hearing delay between March and May 2025 was the result of ongoing correspondence between the parties to address or resolve the dispute. I note on this point that the LSO stated its willingness to accommodate the moving party, in part, by extending her licensing eligibility into 2026, thus permitting her to rewrite the barrister's exam within the same licensing cycle.

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[9] According to the moving party, the motion to reopen this court's decision also warranted some additional delay to see if the main appeal was to continue.

[10] The moving party also alleges she is suffering from significant health problems that prevent her from rewriting the barrister exam. In her submission, permitting the cross-appeal to go forward is the only pathway that can enable her to fulfil her hope of becoming a lawyer.

[11] The LSO takes issue with whether the moving party has sufficiently explained the delay in seeking to file her notice of cross-appeal, particularly in the period since January 2025, when the hearing of the appeal took place.

[12] The LSO opposes this motion, largely on the basis that it represents a further attempt to reopen the issues decided by the Divisional Court and then by this court, particularly with respect to the fairness of the LSO process.

[13] The LSO argues that because this court found the LSO's registration decisions to be administrative in nature, meaning that no oral hearing was required prior to voiding the candidates' registrations, this court would not come to a different conclusion in the context of voiding exams – a less serious decision than the voiding of registrations. Further, the provision governing the voiding of registrations (LSO By-Law 4, s. 18(2)) is substantially similar to the provision governing the voiding of exams (LSO By-Law 4, s. 14(2)), which suggests a similar, if not identical, fairness analysis would apply.

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[14] The moving party highlights that the question of whether she was entitled to greater disclosure than she was given is an important issue that has yet to be canvassed by this court.

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Analysis

[15] I would accept that the moving party may not have been aware of the availability of a cross-appeal at the time the LSO brought its appeal of the Divisional Court decision.

[16] The moving party's explanation for the additional delay in bringing this motion is more difficult to accept as sufficient. Waiting until this court's decision on the appeal and its subsequent reconsideration decision before seeking an extension of time for a cross-appeal creates the impression that this motion represents an attempt to achieve indirectly what was denied directly. That is, reopening the question of the fairness of the LSO's actions in relation to the moving party and other affected students.

[17] That said, the moving party's illness must also be considered in assessing her explanation for the delay, particularly in light of her correspondence with the LSO between March 2025 and May 2025 with respect to potential accommodations that would have permitted her to rewrite the barrister exam.

[18] In light of the above, the *Enbridge Gas* factors relating to the moving party's intention to cross-appeal and her delay in taking steps to do so would not be a sufficient basis on their own to dismiss the motion.

[19] Further, while a successful cross-appeal at this point would raise logistical challenges for the LSO, I am not persuaded that it would suffer any real prejudice were the cross-appeal to be permitted to proceed.

[20] The most significant barrier for the moving party, in my view, relates to the merits threshold.

[21] While the specific finding of the Divisional Court relating to the voiding of exams was not addressed by this court in its decision on the appeal, the analysis provided with respect to the fairness of the voiding of registrations addresses the arguments the moving party hopes to make in her cross-appeal. For the moving party to succeed in arguing she was entitled to additional disclosure rights, this court would have to come to a different conclusion on the procedural fairness analysis with respect to the voiding of exams than it did on the voiding of registrations, and find that a higher degree of fairness applied to the voiding of exams. That scenario simply is not plausible. This is especially because the consequences to a candidate of voiding their entire licensing process are more severe than voiding their examination results, which is merely a component of licensing. It is difficult to see how a decision with less serious consequences, taken

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under a nearly identical regulatory scheme, could attract a higher degree of fairness.

[22] I also agree with the LSO that if this motion were granted, the cross-appeal at this stage could represent yet a further opportunity for the moving party to challenge the court's analysis on the appeal. I note in this regard as well that this court's decision denying the motion to reconsider the appeal specifically noted that the Divisional Court upheld the voiding of the exams of the affected students, and the fact that this finding was not appealed: 2025 ONCA 464, at paras. 5, 22. Allowing the moving party to bring her cross-appeal would give rise to a piece-meal approach to challenging the overall fairness of the LSO's decision, when this court has already determined that it was fair.

[23] Accordingly, the cross-appeal does not meet the merits threshold of giving rise to an "arguable" case as required by *Enbridge Gas*. Further, the concern that the cross-appeal could reopen issues decided on the appeal also supports the conclusion that the justice of the case does not favour granting the motion.

Disposition

[24] For these reasons, the motion is dismissed.

[25] The LSO is entitled to costs in the amount of $1,000 all-inclusive.

[26] I wish to thank both counsel for their helpful submissions.

"L. Sossin J.A."

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