

2021

## NOVA SCOTIA BARRISTERS' SOCIETY

**IN THE MATTER OF:**                    The *Legal Profession Act*, S.N.S. 2004, c. 28 and the  
Regulations of the Nova Scotia Barristers' Society, as  
amended

**BETWEEN:**                            The Nova Scotia Barrister' Society (the "Society")

- and -

**Christopher Ian Robinson** of Halifax, Nova Scotia

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### DECISION

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Heard before:                    Harvey Morrison, Q.C. Panel Chair  
Sarah Kirby, Panel Member  
Dr. Ian Reid, Public Representative, Panel Member

Date of Hearing:                    November 9, 2021

Method of Hearing:                Zoom

Date of Decision:                November 23, 2021

Legal Counsel                    Bernadine MacAulay, for the Nova Scotia Barristers' Society  
Christopher Ian Robinson for himself

Please Note the Existence of a Publication Ban as set out on page 4.

## DECISION

### **Introduction**

This Panel of the Hearing Committee of the Nova Scotia Barristers' Society was initially convened to hear two preliminary motions arising from the complaint (the "Complaint") of the Nova Scotia Barristers' Society (the "Society") against Christopher Ian Robinson (the "Member"). The two initial preliminary motions were as follows:

- (a) The motion of the Society that the findings of fact made by Moir, J. in his decision on costs in *Gallagher Holdings Limited v. Unison Resources Incorporated*, 2019 NSSC 104 (the "Costs Decision") should be admitted as evidence of the misconduct alleged in the Complaint and those findings may not be re-litigated in the hearing of the Complaint on the merits. I will refer to this motion as the "re-litigation Motion"; and
- (b) The Member's motion for severance. The Complaint is founded on two complaints made to the Society. The first relates to the *Gallagher Holdings* matter; the second is based on a complaint made to the Society by a member of the Society. The Member asserted that the *Gallagher Holdings* complaint should be heard by one hearing panel and the X complaint by a different hearing panel. I will refer to that motion as the "severance motion".

In the course of a pre-hearing conference with counsel, the Member advised that he would be making a motion that the hearing of the re-litigation motion and the severance be held *in camera*. The Society posted a notice on its website that the Member was seeking a publication ban. The notice advised that the Member was "seeking a private hearing and a complete ban on public participation at the Hearing." The notice further advised that in the event that public participation were to be permitted, the Society would seek a publication ban on the disclosure of "any information that identifies or may tend to identify clients, complainants, and independent third party witnesses." The Notice was also provided directly to those individuals who had registered to listen to the hearing.

Before the hearing which took place on November 9, 2001, via Zoom, written submissions were made by the editor of AllNovaScotia.com, Devin Stevens, and Dr. Charles Lienaux, a member of the Society. At the hearing, Ms. Eva Hoare, the legal affairs reporters for AllNova Scotia.com read a prepared statement. All of these submissions opposed the granting of a publication ban that would allow the hearing of the two motions to proceed in private.

### In Camera Motion

The Member's motion that the hearing of the re-litigation motion and the severance motion be heard in camera was based on the obligation imposed on the Hearing Panel by the *Legal Profession Act* to protect solicitor-client information. He also referred to some of the many cases in which the Supreme Court of Canada has held that solicitor-client privilege is a privilege of superordinate importance which must remain as close to absolute as possible. Particular reliance was placed on *Alberta (Information and Privacy Commissioner) v. University of Calgary*, 2016 SCC 53. The Society did not take issue with these propositions.

The Member's principal submission was that if the hearing of the two motions were not held in camera, he would have to be constantly vigilant to prevent the inadvertent disclosure of his client's privileged information. This need to be vigilant would impair his ability to make his submissions and thus adversely affect the fairness of the proceedings.

Counsel for the Society, while not questioning either the importance of the solicitor-client privilege or the duty of the Hearing Panel to protect against the disclosure of privileged information, pointed out that in the two decades in which the Society has had public hearings, there has never been a complete publication ban that excluded members of the public from a hearing. She also noted that the Complaint was grounded on conduct that occurred in public: in the *Gallagher Holdings* complaint, the events occurred to a large extent in a courtroom; in the X matter the events occurred in a case management conference and in a public area of the Devonshire Court House. Consequently, in Society's counsel's submission whatever occurred between solicitor and client would not be relevant to the determination of the two preliminary motions.

After hearing counsel, the Hearing Panel conferred in private and then announced its decision in the open hearing. The Hearing Panel unanimously concluded that the Member's motion should be

refused. The two preliminary motions were, as acknowledged by the Member, were technical and legal in nature. There as no need, in those circumstances, to exclude the public from the hearing. The need to protect solicitor-client privilege would not be impaired by recognizing the public interest in open hearings.

The Hearing Panel was of the view that if the Member considered it necessary to advert to specific solicitor-client privileged information in the course of his submissions, the Hearing Panel would hear that specific privileged information in camera. That procedure was followed during the Member's submissions in the re-litigation motion. The Member advised the Hearing Panel in the course of his submissions that he was about to refer to solicitor-client privileged information, the Hearing Panel heard those submissions in camera and then resumed the open hearing.

The Hearing Panel granted the Society's motion for a publication ban in the following terms:

No person shall publish, broadcast, or otherwise disclose any information that identifies or may tend to identify clients, complainants, and independent third-party witnesses.

#### The Re-Litigation Motion

The Society's re-litigation motion seeks a determination that certain findings of fact made by Moir, J. in the Costs Decision constitute evidence of the matters found. The Society argues that those findings should be considered as final and beyond challenge by the Member. In other words, the Member should not be permitted to lead evidence that Moir, J's findings were wrong.

The precise findings of fact that the Society contends are final are set out in paragraph 21 of the Society's Brief dated October 18, 2021. Those findings are as follows:

- (a) Obstructed the discovery process on several occasions as described by Justice Moir in the Decision on Costs.
- (b) Evaded disclosure relating to telephone records, withheld an email until after Cyril Muise testified, refused to set new deadlines after initially not making the first deadline, agreed to a deadline only after the applicants prepared a motion, and made excuses for his clients' failure to provide financial records.

- (c) Disobeyed a Court order that he personally review telephone records and provide relevant records to the Plaintiffs' counsel.
- (d) Filed two pretended affidavits with the Court.
- (e) Knowingly filed and used an incomplete affidavit of a critical witness, Bruce Hall.
- (f) Encouraged waste by coming up with a far-fetched interpretation of a settlement agreement and making up stories to explain the delay in payment under a settlement agreement and caused costs associated with the Plaintiffs having to prove it was a settlement agreement.
- (g) Demonstrated a pervasive disrespect for counsel opposite, the court, and ultimately the process.

The Society argued, based on the Supreme Court's judgment in *City of Toronto v. C.U.P.E. (Local 79)*, 2003 SCC 63, that it would be an abuse of process to allow the Member to re-litigate these specific findings. Of the three circumstances which the Supreme Court recognized could justify re-litigation, the Society submitted that only fairness was relevant here. It would not be unfair to preclude the re-litigation of Moir, J's findings in this case because the Member had the opportunity to, and did in fact, defend his conduct from the allegations advanced against him in the hearing before Moir, J. The Member's conduct addressed in the Costs Decision is the same conduct that is the basis of the Complaint. There is no unfairness because in both cases, the issues relate to the propriety of the Member's conduct which is one of the two based under the *Civil Procedure Rules* on which a costs order against counsel personally may be grounded.

The Member's submission focused on the assertion that as Moir, J looked at the Member's conduct through a "costs lens", the findings should not be binding on the Panel which must look at his conduct through the "professional misconduct or professional responsibility lens." During his submissions the Member said that all he wanted was an opportunity to advance "fulsome evidence" that what Moir, J. found did not constitute professional misconduct. One of the Panel members, Dr. Reid noted that given the Society accepted that the Member could argue that the conduct which was the subject of Moir, J's findings did not constitute professional misconduct, there seemed to

be a consensus between Society's counsel and the Member. Whether that consensus actually existed was discussed in detail with the Member. In the end, the Member accepted that he did not argue with Moir, J's findings or characterization of his conduct. He did not accept that Moir, J's findings automatically and necessarily would lead to a finding by a Hearing Panel that he was guilty of professional misconduct.

The Hearing Panel considers that a consensus was reached and it was a consensus justified by the principles of the law of abuse of process and that it is, therefore, unnecessary to embark on a lengthy discussion of those principles. At the merits hearing, the Member will not be permitted to lead evidence or make argument that the specific findings of Moir, J. were wrong or should not have been made. The Member shall be entitled to lead evidence and make submissions that in the particular circumstances that the conduct which is the subject of these findings does not constitute professional misconduct. Accordingly the Panel unanimously concludes that the motion of the Society should be granted: the findings of fact made by Moir, J. set out above are to be considered final and shall not be challenged by the Member.

#### Severance Motion

The Member asks in his motion for severance that the two matters on which the Complaint is based, the *Gallagher Holdings* matter and the X matter, be heard separately. In his submission the case law was clear that there was a presumption that the two matters should be heard separately. It was a matter of fairness: the professional was owed the kind of fairness that separate hearings ensures.

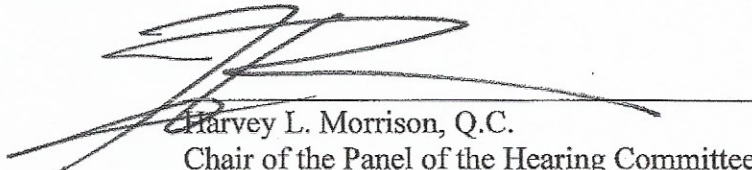
Ms. MacAulay for the Society pointed out that there was no presumption that separate hearings were required. There was no dearth of case law on the point and the cases demonstrate that the fact there may be more than one allegation of misconduct does not necessarily mean that one hearing as opposed to two is unfair. In the Society's review there was a temporal connection and factual nexus between the two circumstances. The critical issue in both circumstances is integrity in the Member's dealings with those who were not his clients.

The Member's argument in favour of separate hearings was based, at bottom, on the belief that if one Hearing Panel heard the Complaint at one hearing, its members would become biased or would

conflate or confuse the evidence with respect to one circumstance with the evidence pertaining to the other.

The Hearing Panel was not persuaded by the Member's arguments. The evidence with respect to the two circumstances will relate to propriety of the Member's conduct, but the circumstances are such that there will be no difficulty in keeping them separate. Each charge will be evaluated based on evidence relating to that charge and no other. There is, with respect no doubt that the Member will get a fair hearing. It therefore follows that the Hearing Panel must deny the Member's motion for severance.

**DATED** at Halifax, Nova Scotia, this 23rd day of November, 2021



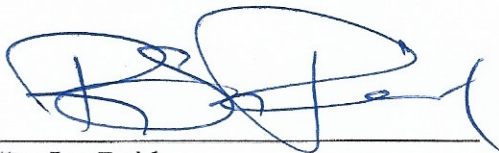
Harvey L. Morrison, Q.C.  
Chair of the Panel of the Hearing Committee  
of the Nova Scotia Barristers' Society

I agree:



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Sarah Kirby



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Dr. Ian Reid