Law Society Tribunal
Tribunal du Barreau

LAW SOCIETY TRIBUNAL
HEARING DIVISION

Citation: *Law Society of Ontario v. Masgras-Irshidat*, 2024 ONLSTH 56
Date: June 6, 2024
Tribunal File No.: 21H-014

BETWEEN:

Law Society of Ontario

Applicant

- and -

Georgiana Stefania Masgras-Irshidat

Respondent

Before: Frederika M. Rotter (chair), Cheryl Siran, Eric Whist

Heard: February 26-27, 2024, by videoconference

Appearances:
Joshua Elcombe, for the applicant
Gavin MacKenzie, for the respondent

Summary:
MASGRAS-IRSHIDAT – Professional Misconduct – Findings – Acting without Instructions, Misleading Affidavit, Inadequate Notice, Use of Altered Documents, Conflict of Interest – The Lawyer had represented a client in an automobile accident benefit claim but he later had a severe heart attack and was on life support – The Lawyer was alleged to have engaged in professional misconduct by bringing an application for an injunction to stop her client's family's decision to take the client off life support without instructions and against the family's wishes – She was found to have engaged in professional misconduct by bringing this application without instructions, filing a misleading affidavit, failing to provide adequate notice of the application, by her ongoing efforts to set aside court decisions that were not in her favour and by using altered documents – She was also found to have acted in a conflict of interest in relation to this and another client, who were both patients of her husband's medical clinics but had not provided consent to the conflict, and to have disclosed confidential information with respect to the second client – A penalty and costs hearing is to be scheduled.

REASONS FOR DECISION ON FINDINGS

BACKGROUND

[1] Frederika Rotter (for the panel):– The Law Society brought an application under s. 34(1) of the *Law Society Act*, RSO 1990, c. L.8 (the Act), for a determination whether the Lawyer, Georgiana Stefania Masgras-Irshidat, contravened s. 33 of the Act by engaging in professional misconduct and/or conduct unbecoming a licensee. She is alleged to have misconducted herself in connection with her actions on behalf of Clients A and B.

[2] The Lawyer has admitted the allegations regarding Client B and two allegations with respect to Client A. The Law Society dropped one allegation with respect to Client A, but the Lawyer has contested the remaining allegations concerning Client A, who she purported to represent, in the absence of any instructions or authorization to do so.

[3] These reasons first deal with those contested allegations. We then deal with the facts and findings for the uncontested allegations.

The Lawyer

[4] The Lawyer immigrated to Canada from Romania in 2006, with her then-husband. She was legally trained in Romania but decided to pursue further legal education in Ontario and was called to the bar in this province in June 2012.

[5] From her testimony it is apparent that the Lawyer is a very active, energetic and ambitious individual. She was working while studying law and pregnant with her oldest child. She gave birth to her son and had an exam just one week later.

She started articling when the child was about three-and-a-half months old. After her articles she worked for the second principal of the firm where she articled.

[6] She worked at the firm for about one year and in 2014 started her own practice, Masgras Professional Corporation, as a sole practitioner, with an office in Kitchener. She practises primarily in plaintiffs' personal injury and statutory accident benefits law.

[7] She said she was always at work – spending many hours at the office and sometimes sleeping there – and her marriage deteriorated. She divorced her first husband.

[8] She married Omar Irshidat in July 2015. At the time she was a sole practitioner employing one paralegal. Currently, her professional corporation has two offices in Toronto as well as offices in Kitchener, Mississauga, and Peterborough.

[9] Masgras Professional Corporation began hiring other lawyers in 2018, and the Lawyer now employs 10 lawyers and approximately 25 non-lawyer staff. The firm has a busy practice, with over 1800 open files. The Lawyer is the managing lawyer at the firm and testified that she is always trying to grow the firm.

[10] The Lawyer's husband, Mr. Irshidat, is a chiropractor who owns two businesses in Kitchener: Meditecs Independent Medical Examinations (Meditecs), a medical assessment clinic, and Spinetec Health Care Solutions (Spinetec), providing rehabilitation services.

THE CONTESTED ALLEGATIONS

[11] The hearing ran for two days, during which we heard testimony and legal argument which deal with the litigation with respect to the Lawyer's late client, Client A.

[12] The contested allegations concern the Lawyer's conduct in seeking to overturn a decision by Client A's family to have life support removed, after Client A suffered a heart attack resulting in an anoxic brain injury (lack of oxygen to the brain).

Attempts to prevent removal from life support

[13] Client A retained the Lawyer after a motor vehicle accident (MVA) which occurred on December 17, 2016. Client A was seeking statutory accident benefits and wished to launch a tort claim.

[14] Client A suffered a very serious heart attack on July 3, 2017. The doctors attending Client A indicated to his family that, as there appeared to be no

prospect of recovery, he should be removed from life support. Client A's family, including his spouse, children and siblings agreed.

[15] The Lawyer strongly objected to this decision and sought a court order to have life support extended. The court order was initially issued, but later set aside. The Lawyer unsuccessfully appealed to the Ontario Court of Appeal and was denied leave to appeal by the Supreme Court of Canada. The allegations concern the propriety of the Lawyer's conduct in this matter.

<u>The motor vehicle accident</u>

[16] Immediately after the MVA of December 2016, Client A was transported by ambulance to St. Mary's Hospital in Kitchener. He had been receiving Workplace Safety and Insurance Board (WSIB) benefits for approximately 20 years prior to the accident, according to a physician who subsequently examined him at the request of the Lawyer.

[17] At the hospital, Client A's major complaint was of low back pain. He was examined by the emergency room doctor, and x-rays and a CT scan were ordered. He was diagnosed with soft-tissue injuries, told there were no fractures and was discharged home the same day. He was advised to use Advil and his own supply of painkillers, according to the emergency record.

[18] Client A retained the Lawyer to seek statutory accident benefits and commence a tort claim against the driver of the other vehicle in the accident. On December 22, 2016, Client A provided the Lawyer with a signed Authorization and Direction (A&D) to obtain his health records in connection with his claims. Client A received outpatient treatment from Spinetec for the injuries caused by the accident. He had a lengthy history of heavy smoking, with shortness of breath and wheezing on minimal exertion.

[19] In a report dated February 17, 2017, the evaluating doctor described Client A's various injuries and complaints, and his depressed mood. Client A felt angry and anxious after the accident. His family members (wife and two children) were performing most of the daily household tasks which Client A formerly did. Client A was suffering from chronic pain syndrome and could not engage in many aspects of normal life and daily activities as before the accident.

[20] A psychological report dated March 2017 relates that the relationship between Client A and his spouse deteriorated post-accident. He had difficulty controlling his emotions: "I yell a lot with the pain, even when I'm relaxing." He stopped functioning in social, recreational, and family activities, and household chores. He suffered from a major depressive disorder, with anxious distress.

[21] On April 5, 2017, Client A attended at St. Mary's Hospital after an episode of vomiting. He described periodic chest pain related to leg pain. He was

discharged from hospital on April 16, 2017 after a full investigation, which showed some degenerative changes but no acute pathology.

<u>Heart attack</u>

[22] On July 3, 2017, at 53 years of age, Client A experienced a severe heart attack which led to a serious brain injury due to lack of blood flow to the brain. He was brought to St. Mary's Hospital and placed on life support in the Intensive Care Unit (ICU). He required multiple forms of life support to keep him alive, and the prognosis was guarded. His family understood this and approximately 25 family members gathered at the hospital.

[23] The Lawyer first heard about Client A's hospitalization on July 4, 2017, when her husband Mr. Irshidat was advised that Client A could not attend for his appointment at Spinetec because he had been admitted to hospital. In the next few days, the Lawyer sought to obtain information. She spoke to Client A's spouse, who told her that Client A was "likely not going to make it".

[24] On Thursday, July 6, 2017, after conferring with the attending doctors, the family decided to withdraw Client A from life support, so that his organs might be donated. Together with the family, Client A's wife decided that her husband would not want extensive or prolonged life support. A donor match had been identified for his kidneys. As a result, a transplant team was scheduled to attend at the hospital on July 8, 2017.

[25] The Lawyer heard about the plans to remove Client A from life support in the afternoon or evening of July 7. She contacted Client A's spouse to discuss the situation and urged her to reconsider. She testified that the spouse's responses were "not appropriate" and there was something "not right" about the situation. The Lawyer and her husband also contacted other family members to urge reconsideration. Notwithstanding these efforts, the family did not change its decision.

[26] The Lawyer then applied *ex parte* before a judge of the Superior Court on the night of July 7, 2017, for an order prohibiting the withdrawal of life support. The application was supported by an affidavit from her spouse, Mr. Irshidat, stating that the application arose from the MVA. His affidavit indicated that Client A was a patient at his multidisciplinary clinic, where he was being treated for his injuries from the MVA.

[27] At around 3:00 a.m., July 8, 2017, the Lawyer served the application materials on a nurse at the hospital ICU. The materials were then emailed to the court. Ms. Masgras did not advise or serve Client A's wife or family with notice of the application to prohibit the withdrawal of life support.

[28] On the morning of Saturday, July 8, 2017, after reviewing the materials filed, including a supplementary affidavit concerning service sworn by Mr. Irshidat, Regional Senior Justice Arrell of the Ontario Superior Court granted an interim injunction, to prevent the hospital and Client A's doctors from withdrawing life support. He ordered that the matter return before him on Monday, July 10, 2017. The doctors and the hospital immediately challenged this order.

[29] Dr. Chris Hinkewich, the doctor most responsible for Client A's care, together with counsel for the hospital, sought to bring this matter back to the court to vary the order, on an urgent basis. According to Dr. Hinkewich, Client A might suffer further brain damage which would substantially increase the likelihood of brain death. Were Client A to suffer brain death, he would likely suffer another cardiac arrest and organ failure. As a result, the donor recipients matched to receive Client A's kidneys might not receive them.

[30] As Justice Arrell was not available, Associate Chief Justice Marocco of the Superior Court, heard the motion to vary on very short notice. On Sunday, July 9, 2017, he ordered that the interim injunction be varied and set aside, based on the information provided by Dr. Hinkewich and the hospital. The variation of the order was immediately communicated to the respondents. As it happened Client A had been declared brain dead just as the hearing commenced, although the parties were not aware of this at the time. In any event, Client A was removed from life support, and the organ donation was accomplished.

[31] In a decision dated November 28, 2017, Justice Arrell ordered the Lawyer to pay Dr. Hinkewich's and the hospital's costs related to her *ex parte* application, noting that his original order had been correctly set aside, based on the new information provided.

[32] The Lawyer appealed Justice Marocco's order of July 9, 2017 (reversing the initial order), and Justice Arrell's costs order of November 28, 2017 to the Ontario Court of Appeal. On March 14, 2018, the Court of Appeal dismissed the Lawyer's appeal and ordered her to pay further costs.

[33] The Lawyer then applied to the Supreme Court Canada for leave to appeal the Court of Appeal's decision. The SCC leave application was dismissed with costs in October 2018.

ISSUES AND ANALYSIS

[34] The contested issues and allegations before us with respect to this matter are as follows:

[35] The Law Society alleges that by bringing an application to prevent Client A from being removed from life support the Lawyer acted without authority and contrary to the wishes of Client A's family.

- The application materials she drafted and filed included an affidavit with misleading information.
- She obtained an interim injunction after having given no notice, or inadequate notice, to Client A’s family, physician, and/or hospital. She opposed efforts to set aside the interim injunction.

The Lawyer thereby:

(a) contravened Rule 2.1-1 of the *Rules of Professional Conduct*;

(b) contravened Rule 5.6-1 of the *Rules of Professional Conduct*; and/or

(c) engaged in conduct that is prejudicial to the administration of justice, or that otherwise tends to bring discredit upon the legal profession, and that therefore constituted professional misconduct.

[36] In deciding these issues, we adopt the principles articulated in *Toronto (City) v. Canadian Union of Public Employees (C.U.P.E.), Local 79*,[1] in which it was held that it would be improper and an abuse of process to relitigate issues already decided by a competent court or tribunal. Once all the proper appeal mechanisms have been exhausted or abandoned, it is not permissible (except under exceptional circumstances, which do not exist here) to attempt to impeach a judicial finding by relitigation in a different forum.

[37] The *C.U.P.E* principle has been affirmed by this Tribunal in *Law Society of Ontario v. Piersanti*,[2] where the appeal panel applied the abuse of process analysis to prevent duplicative litigation that amounted to collateral attacks on prior decisions.

[38] Counsel for the Lawyer did not challenge the *C.U.P.E.* principle, but suggested that we could nevertheless make findings in favour of his client, based on other jurisprudence.

[39] Therefore, many of our conclusions in this matter rely on the three previously decided court cases in this matter, where the issues before the courts were the same or similar: the Marrocco decision[3] (overturning the initial prohibition), the Arrell decision on costs,[4] and the Ontario Court of Appeal ruling.[5]

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1 2003 SCC 63.
2 2018 ONLSTA 10 at paras. 57 & 58.
3 2017 ONSC 4243.
4 2017 ONSC 6631.
5 2018 ONCA 247.

Issue #1: Acting without instructions, and against wishes of family

[40] The Law Society takes the position that the Lawyer violated Rules 2.1-1 and 5.6-1 of the *Rules of Professional Conduct* and otherwise engaged in conduct that, contrary to Rule 1-1, “tends to bring discredit upon the legal profession including … engaging in conduct that is prejudicial to the administration of justice.”

[41] Rule 2.1-1 requires a lawyer to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity. Rule 5.6-1 provides that a lawyer shall “encourage public respect for and try to improve the administration of justice.”

Factual Background

[42] On July 7, 2017, the Lawyer and her husband made several telephone calls to Client A’s spouse and other family member, to attempt to persuade them not to cut off Client A’s life support. The Lawyer testified that she spoke with Client A’s spouse, who reiterated the family’s decision. The Lawyer stated that she was disturbed by some of the spouse’s comments and questions. For example, the spouse had asked the Lawyer about Client A’s WISB benefits. Client A’s wife also mentioned that Client A (in his current condition) would be “too difficult” to care for.

[43] The Lawyer called the spouse again several times, without receiving a response. She felt that the spouse’s remarks were “not appropriate” and, in general, the situation was “not right”. She said, as a result, she felt “an obligation to do something”.

[44] She testified that she had a “real concern” that Client A’s life should be preserved, and she stated several times that Client A did not want to die. She denied knowing that Client A was comatose, although she said she knew he was “unconscious” and on life support. She testified she sought legal advice and ended up contacting the office of the Duty Judge. She was instructed to file an application with appropriate supporting materials if she wished to pursue the matter, which she did. She said, “to me it was an emergency – I need to do something”.

Acting without instruction

[45] The Lawyer confirmed she had never received instructions from Client A to prevent his removal from life support. She also had had no instructions from his spouse, who, she knew, was the legal substitute decision maker. The Lawyer testified that she knew she had no instructions to act on behalf of Client A, but felt she had to do something to preserve his life. She stated that she felt this

would be consistent with his wishes and that it was “the right thing to do”. She frequently repeated that “he did not want to die.”

[46] The Lawyer said she wished to make sure that the decision to end Client A’s life was “considered properly.” She stated that the court should make the decision, considering her “valid concerns”.

[47] As set out above, the initial decision granting the Lawyer’s application was set aside by Associate Chief Justice Marrocco, who stated:[6]

> [Client A]’s wife is a substitute decision-maker. No other person has claimed to be a substitute decision-maker nor has anyone produced a power of attorney to that effect or claimed to be a guardian for personal care. Dr. Hinkewich indicates that no member of the medical staff thinks that withdrawing ventilation is the wrong thing to do.
>
> In addition to his wife, [Client A] has children and a large extended family. Apparently, some family members present when the decision to withdraw ventilation was made had come from the United States, because they knew his death was expected. Dr. Hinkewich’s affidavit indicates that all agree with discontinuing mechanical ventilation and allowing [Client A] to pass as peacefully as possible.
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> While I have not addressed Ms. Masgras’ standing to bring this application, my silence should not be interpreted as an acceptance of the fact that she has standing in this matter.

[48] In his costs decision (in the application) Arell J. wrote:[7]

> The record is now clear that Ms. Masgras did not have instructions on behalf of [Client A] or his family to bring the application that she did.
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> …
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> I have concluded that this application was brought without instructions. It was also brought for relief that [Client A’s] family did not want….

[49] The Lawyer appealed both the decision to reverse the application as well as the costs decision. The Court of Appeal in its appeal decision said:

> … Ms. Masgras had no instructions to bring this appeal. Indeed, she had no instructions to bring the underlying application. Further, the underlying application was stayed as a result of [Client A’s] death by virtue of r. 11.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, unless and until an order to continue is granted under r. 11.02. No such

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6 At paras. 13-15.
7 At paras. 12 & 23.

order has ever been obtained. Once death occurred, the right to bring this appeal vested in the estate trustee. Consequently, this appeal is improperly constituted as it has not been brought by the estate trustee nor has it been assigned by the estate trustee to Ms. Masgras. As a result, the appeal must be quashed. Alternatively, the underlying application must be dismissed pursuant to r. 15.02(4) as it was commenced without [Client A's] authorization.[8]

[50] All three courts considering this matter unreservedly concluded that the Lawyer had acted without instructions and contrary to the wishes of Client A's family. We respectfully agree. The Lawyer herself acknowledged that she had no instructions to proceed as she did.

<u>The Lawyer's submissions</u>

[51] The Lawyer does not dispute the facts and legal judgements but submits that we cannot find professional misconduct in the absence of a concomitant intention to engage in the misconduct. The Lawyer submitted that she had no such intention. She argues that what is most important is her state of mind: she honestly did not believe that she was violating any rules and felt compelled to act to protect the life of her client.

[52] She said she felt an "obligation to do something" in the face of the imminent removal of her client's life supports. She expressed that she had "real concerns" and indicated that some of these concerns sprang from her perceptions about the relationships between Client A, his spouse, and other family members, which she claimed were "bad". She believed her concerns were "valid" and that the family had failed to give sufficient consideration to prolonging Client A's life supports, and the possibility that he might survive.

[53] She claimed that despite having no instructions and no authority, she acted in a way that she understood was consistent with her client's wishes, since he had never told her that he wanted to die. She believed it was "the right thing to do", and something she "had to do". She claimed that she did not "knowingly" engage in misconduct.

[54] The Lawyer says she did not intentionally engage in professional misconduct, based on her knowledge and understanding at the relevant time. The Lawyer relies on the decision in *Groia*,[9] which she argues supports her position that professional misconduct should not be found where a lawyer's actions result from a wrong or mistaken but sincerely held belief. She submitted that the word

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8 At para. 20.
9 *Groia v. Law Society of Upper Canada*, 2018 SCC 27.

"knowingly" should be read into the Rules, as the Lawyer honestly thought she was doing the right thing. Her poor judgment should not amount to misconduct.

<u>Submissions of LSO</u>

[55] In response to the *Groia* argument, the Law Society submits that the reasoning in that case is not applicable here. *Groia* was a case where a properly retained defence lawyer, in a criminal matter, had been criticized by the courts for incivility. It was held that these criticisms, where Mr. Groia was engaged in a case where he had been retained as counsel, could not be relied on to prove incivility on his part. Also, the incivility allegations did not extend to any generalized allegations of professional misconduct.

[56] In *Groia*, the discussion was about the need in criminal proceedings to balance civility against the lawyer's duty of resolute advocacy. The test for assessing and finding incivility, in a criminal context, is very different than the test for finding professional misconduct generally. *Groia* does not stand for adopting a new standard of proof in misconduct cases, nor for reading the word "intentional" into the Rules. Many of the Rules incorporate the word "knowingly" (e.g. Rule 3.2-7),[10] but otherwise, a finding that Rules have been breached does not ordinarily require any proof of intention or subjective knowledge.

[57] The Law Society submits that rather, what is required, in the case of professional misconduct, is a finding that the impugned conduct tends to bring discredit on the profession. No level of subjective knowledge is required – rather what is important is that the conduct tends to bring discredit on the profession.

[58] We find that the reasoning in *Groia* does not assist the Lawyer.

[59] Justice Moldaver, writing for the majority in *Groia*, at para. 81 examined the approach to be taken to determining whether "prosecutorial misconduct allegations, or other challenges to opposing counsel's integrity cross the line into professional misconduct". In *Groia* the issue was alleged incivility, due to Mr. Groia's allegations of prosecutorial misconduct against another lawyer.

[60] At para. 86, Justice Moldaver observed that " Maintaining a reputation for practicing with integrity is a lifelong challenge. Once sullied, a lawyer's reputation may never be fully restored. As such, allegations of prosecutorial misconduct must have a reasonable foundation."

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[10] A lawyer shall not
(a) knowingly assist in or encourage any dishonesty, fraud, crime, or illegal conduct;
(b) do or omit to do anything that the lawyer ought to know assists in, encourages or facilitates any dishonesty, fraud, crime, or illegal conduct by a client or any other person; or
(c) advise a client or any other person on how to violate the law and avoid punishment.

[61] Justice Moldaver then discussed whether a reasonable foundation could be found if the alleged prosecutorial misconduct was based on an error of law. At para. 90, Justice Moldaver concluded that “law societies cannot use a lawyer’s legal errors to conclude that his or her allegations lack a reasonable basis”.

[62] At paras. 93 to 94 of his reasons, Justice Moldaver considered the potential relevance of mistake of law to good faith, as opposed to reasonable foundation, writing that

> I pause here to note that there is good reason why a law society can look to the reasonableness of a legal mistake when assessing whether allegations of impropriety are made in good faith, but not when assessing whether they are reasonably based.

[63] Finally, Justice Moldaver made clear at para. 96 of his reasons that:

> … A lawyer who bases allegations on “outrageous” or “egregious” legal errors may be incompetent. My point is simply that he or she should not be punished for *incivility* on that basis alone..

[64] In *Groia*, Justice Moldaver addressed incivility by way of allegations of prosecutorial impropriety or other challenge to integrity. He concluded, in that context, that an error of law should not be part of the assessment of whether the allegation had a reasonable basis but could be considered with respect to whether the allegation was made in good faith. In any event, Justice Moldaver made clear that the approach taken to incivility was specific, and not general in effect.

[65] We do not accept that the reasoning in *Groia* applies here.

<u>Analysis</u>

[66] The Lawyer does not dispute that she had no authority to bring an *ex parte* application for an order prohibiting the withdrawal of life support to Client A. As noted by Justice Marocco, Client A’s spouse was the substitute decision-maker. The spouse’s decision to terminate life support was agreed to by Client A’s extended family (all present at the hospital) as well as by the attending physicians.

[67] The Ontario Court of Appeal stated that in acting as she did, the Lawyer appeared not to understand the fundamental principle that:

> … lawyers must act in accordance with the instructions of their clients. Lawyers do not have a *carte blanche* to take steps of their own volition under the guise of furthering the client’s perceived cause. In particular,

> lawyers do not have the right to institute proceedings without being armed with instructions from their clients to do so.[11]

[68] Her actions "seriously interfered with the administration of justice." She acted:

> … without instructions … in a manner that was directly contrary to the wishes of [Client A's] family. And she did so when one of the most difficult, emotional, and personal of decisions was being undertaken by them. Further, Ms. Masgras' actions potentially interfered with the ability of another individual to receive what well might have been a life-saving organ transplant. Ms. Masgras misused the court process and, in doing so, she brought the integrity of the administration of justice into disrepute.[12]

[69] The Court concluded that in taking these unauthorized steps, the Lawyer breached the basic principles that apply to the conduct of lawyers, particularly their duty to act honourably.

[70] We accept and rely on these conclusions, as well as the on the reasons of Arrell J. and Marrocco J., and find that the allegation of acting without instructions has been proven.

[71] We also find that, by acting without instructions, the Lawyer engaged in conduct that misused the court process, and so brought the administration of justice into disrepute, and her actions failed to demonstrate or encourage respect for the law and the administration of justice.

Issue #2: Misleading Affidavit

[72] The Law Society alleges that the Mr. Irshidat's affidavit, filed in support of the Lawyer's application, contained misleading information. The costs judgement of Arrell J. stated that a number of the facts related in the application were inaccurate and found that the affidavit misleadingly stated that the Lawyer's application arose from the MVA, rather than from Client A's heart attack.

[73] In the affidavit, Mr. Irshidat affirmed that Client A had been admitted to the ICU due to "excessive and convulsive body shaking." He also affirmed that Client A's family had decided that he should be removed from life support "considering that he lost his memory". We have no record of "convulsive body shaking" other than in the affidavit.

[74] Most significantly, Mr. Irshidat's affidavit did not disclose that Client A had suffered a severe heart attack and had not regained consciousness. It did not

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[11] At para. 30.
[12] At para. 35.

indicate that Client A had sustained serious brain damage due to a lack of oxygen to his brain. It did not reveal that Client A was receiving various forms of life support. Neither did the affidavit reveal the relationship between Mr. Irshidat and the Lawyer, who was simply referred to as Client A's lawyer.

[75] Arrell J. confirmed that there was no evidence that the heart attack was related to the MVA.[13]

[76] The medical information provided in Mr. Irshidat's affidavit predated Client A's heart attack and dealt only with his accident injuries. It made little reference to Client A's actual health status. It suggested that Client A was being removed from life support because of memory issues: e.g. "Client A's wife stated that 'the family' decided that they will not allow [Client A] to continue living considering that he lost his memory."

[77] The information in the supporting affidavit of July 8, 2017 described the service of the application on the hospital. Even though by then both the Lawyer and Mr. Irshidat had personally visited and seen Client A, the affidavit did not accurately describe Client A's situation, which was that he was unconscious and on life supports in the ICU.

[78] The Lawyer claimed that she did not know that Client A was on multiple forms of life support. She stated that at the relevant time she had no access to the medical records and so she was unaware of the heart attack and the hypoxic result.

[79] Mr. Irshidat also stated in the affidavit, "I verily believe that the decision to withdraw [Client A's] life support was not carefully considered by [his] family".

[80] This statement may fairly be characterized as irresponsible and misleading speculation, since neither Mr. Irshidat nor the Lawyer had had substantive discussions with the family of Client A, or insight into the family's decision-making process. The Lawyer said she did not know that the extended family had engaged in careful and extensive discussions of Client A's options; therefore, she believed she was acting as the client would have wished.

[81] As Arrell J. found:

> … the decision of the family was indeed carefully considered by some 25 members, most of whom were well aware of [Client A's] desire to not live in a vegetative state, and if possible, to donate his organs. As well, there

[13] At para. 10(a).

> appears to have been an extensive consultation by the family with the various doctors and specifically the treating physician.[14]

[82] We find that the affidavit contained misleading statements, as alleged by the Law Society.

[83] As held by Arrell, J.:

> It is trite law to state that an *ex parte* application is a very serious matter. The court relies upon full and proper disclosure of all relevant facts in the supporting affidavit. There is a heavy onus on counsel to make sure that all relevant facts are before the court.[15]

[84] We find that by filing a misleading affidavit, the Lawyer acted dishonourably and without integrity. She engaged in conduct prejudicial to the administration of justice, and that therefore tends to bring discredit upon the legal profession.

<u>Inadequate notice of application for injunction</u>

[85] The Lawyer did not provide notice of her application to set aside the decision to withdraw life support to the most interested parties: Client A's family and his treating physicians. She and Mr. Irshidat served the application on a nurse in the ICU at 1:40 a.m. on July 8, 2017. Her application was heard *ex parte* later that same day. The Lawyer made no effort to serve the application on Client A's spouse, family, or treating physician. The family only received the application record later on July 8, 2017 after Arrell J. had made the order requested by the Lawyer.

[86] The Lawyer explains this failure by her urgent concern that Client A's life support would be removed on July 8, 2017 and also by her considerable fatigue after having worked through the night to prepare and serve the application materials.

[87] We do not accept this explanation; the Lawyer was not required to personally serve the notices herself and could have arranged for notice to be served on the interested parties had she wished to do so.

[88] We find it is more likely that the family and treating physicians were not served because the Lawyer did not wish to have her application contested. She was aware that she had no authority or standing to bring the application, and wished to prevent the removal of life support, by any means available to her. She

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[14] At para. 10(e).
[15] At para. 21.

admitted she knew that Client A's spouse was the legal decision-maker, but indicated that she was concerned and felt she was doing "the right thing".

[89] We conclude that the Lawyer knowingly failed to serve notice on the appropriate respondents. Again, by so doing, she acted dishonourably and without integrity. She engaged in conduct prejudicial to the administration of justice, and that tends to bring discredit upon the legal profession. This constitutes professional misconduct.

Opposing efforts to set aside injunction

[90] At the hearing before Justice Marrocco on July 9, 2017 the Lawyer was not granted standing, but she was present. She claimed, without providing evidence, that some of medical information provided by the attending physician was wrong. She claimed that she had wished to preserve her client's chances of staying alive and wanted the best decision to be made in his case.

[91] While the hearing before Marrocco J. was taking place, it emerged that Client A had died, five minutes or so before the hearing started. Nevertheless, the Lawyer testified, she disagreed with the outcome of the case. She immediately declared her intention to appeal the decision overturning the injunctive order.

[92] The Lawyer said she also decided to appeal Arrell J.'s decision on costs because she felt that her "valid concerns" had not been properly addressed. She disagreed that the family had carefully considered Client A's situation and best interests. She also complained that she was given no opportunity to make submissions at the hearing before Marrocco J., as he had indicated that she had no standing. Therefore, she chose to appeal that decision.

[93] After receiving the courts' judgments, the Lawyer consulted with a colleague who advised her that Arrell J.'s reasons for awarding costs against her personally could damage her reputation. He provided her with a written opinion stating: "The criticism goes to the root of your conduct as a lawyer." Moreover, he warned the Lawyer that the prospect for success in her appeal was zero. He advised the Lawyer to apologize to the other counsel for her conduct.

[94] The Lawyer stated that she did not agree with her colleague's assessment, and did not wish to apologize, as she felt she had done nothing wrong.

[95] We do not accept the Lawyer's purported explanations and justifications for her conduct. The Lawyer disagreed with the family's decision, but should have understood, after her initial exertions on behalf of her former client, that she had neither legal nor moral authority to involve herself further in a private family matter. She should not have persisted after Marrocco J. reversed the decision of Justice Arrell. In any event, it was not appropriate for the Lawyer to second-guess the family and then refuse to accept the courts' decisions.

[96] The Lawyer persisted in opposing the advice of her colleague and judgments of the courts, and in appealing a case where the outcome was moot[16] – since her client had already died – and where she had little to no prospects of success, as advised by her colleague.

[97] Those actions were neither urgent, proper, or useful. They were not helpful to her deceased client. They reflect only the Lawyer's entrenched interest in justifying and maintaining her own position.

[98] We find that these continuing actions constitute professional misconduct.

[99] The Lawyer's refusal to accept the judicial decisions shows disregard for the respondents and Client A's family, and disrespect for the legal process. She was more interested in pursuing her own cause than in actually advancing justice. She engaged in conduct prejudicial to the administration of justice, and in conduct that tends to bring discredit upon the legal profession and fails to encourage respect for the profession.

Credibility

[100] As the question of credibility was addressed by both parties, we will briefly make findings.

[101] On behalf of the Lawyer, it was argued that she was a credible witness, and we were urged to come to this conclusion based on *Ortiz*.[17] In *Ortiz* the Lawyer had appeared before the Tribunal to respond to allegations that she, along with two other licensees, had acted without integrity, knowingly misrepresented facts, and failed to be candid in preparing and submitting written representations The hearing panel in that case exonerated the Lawyer and concluded that she was an honest and credible witness. The panel held, at para. 23 of that case:

> Ms. Masgras testified at the hearing. She gave evidence in a direct manner and made admissions where they were justified. The impression she gave was that of a prodigious worker and a multi-tasker with her finger in many pies. She gave full answers to questions asked, sometimes with digressions mid-answer. Ms. Masgras co-operated with the Law Society throughout this process.

[102] We do not find the Ortiz decision helpful given the evidence before us. We have discussed, above, the misrepresentations and omissions contained in Mr. Irshidat's affidavits. It is not disputed that the Lawyer drafted the affidavits.

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[16] OCA decision at para. 21.
[17] *Law Society of Ontario v. Ortiz*, 2023 ONLSTH 60.

These misleading and deceptive documents cast serious doubt on the Lawyer's honesty and integrity, and the veracity of her testimony.

[103] We also find her credibility and honesty is impeached by the fact that, as discussed below, she admits she deliberately falsified or caused to be falsified the A&D documents signed by Client A. Regardless of the bona fides of her wish to keep Client A alive on life supports, she acted dishonestly in altering the documents.

[104] The Lawyer defends her actions by her repeated assertions that she believed that her client wanted to "remain alive" and that she believed her actions were consistent with this putative wish. We have doubts about the honesty of those beliefs, as we have no evidence of the client's actual wishes. The client's family believed that the client would not wish to remain on of life support, in a vegetative state. We find the client's family would have a better understanding of the client's wishes than would the Lawyer.

[105] We find that the Lawyer's assertions about her objectives and motivations in this matter generally lack an air of credibility. For example, we question the Lawyer's assertions that she believed she was "doing the right thing" for her client after the client had passed away. In short, we do not accept the Lawyer's explanations for her conduct and her assertions that she was right to behave as she did.

Summary of findings on contested issues

[106] The Lawyer sought to justify her conduct based on the urgent need to take immediate action to preserve the life of her client. Even if we accept that this is true, her conduct was not acceptable.

[107] She maintained that what she was doing was correct and proper, long after she should have realized that she was engaging in professional misconduct.

[108] The Ontario Court of Appeal found she acted without instructions in a manner contrary to the wishes of the family, who were the legitimate decision-makers, in a difficult emotional and personal situation. Further, her actions potentially interfered with the ability of another individual to receive a life-saving organ transplant. By misusing the court process, she brought the integrity of the administration of justice into disrepute.

[109] On this point, the Court also commented that the Lawyer's objective, of ensuring that an independent party could review and consider all the relevant information, had been accomplished once the matter was put before a reviewing judge.[18] Yet the Lawyer opposed and appealed the reviewing judge's decision.

[18] OCA decision at para. 36.

The Court itself concluded that the Lawyer was not interested in an independent review – rather she wished to pursue her own personal objectives.

[110] We do not accept the Lawyer's assertions that ignorance or obliviousness to the Rules, her conviction that she was "doing the right thing", and/or her intention not to misconduct herself nor breach the Rules, means she did not engage in misconduct.

[111] In *Law Society of Ontario v. Diamond*,[19] it was alleged that the respondent lawyer had hampered and delayed an investigation, and thereby failed to act in good faith. The lawyer argued that his actions were all taken in good faith, and he did not intend to disrupt or delay the investigation process.

[112] The Divisional Court held, quoting the Appeal Panel, "To establish a breach of the Rule the Law Society 'it is not required to establish an intention to frustrate or hamper an investigation. In most circumstances, the panel can draw an inference from the delay itself."[20]

[113] Similarly, in *Purewal*[21] the appeal panel (in the context of a case about mortgage fraud) held:

> Sometimes, there is a mistaken impression that if the Society fails to prove knowledge, willful blindness or recklessness, there can be no professional misconduct. This is not so. What it means is that the most serious professional misconduct has not been proven. The Hearing Panel may still find that a licensee's participation or assistance in a dishonest scheme constitutes professional misconduct because it was blameworthy to a lesser, though significant, degree. For example, the licensee's conduct may have fallen below the standards of a reasonable practitioner to a point that justifies its characterization as professional misconduct. Hence, the fact that a licensee "ought to have known" that he/she was participating or assisting in a mortgage fraud may figure prominently in a finding of professional misconduct, but not based on knowledge, willful blindness or recklessness.

[114] Here the Lawyer engaged in conduct that was objectively blameworthy. She wrongfully opposed the decision of the authorized decision maker. She misrepresented and falsified information before the courts. She misguidedly and persistently continued to litigate a matter where she had no possibility of success, thereby misusing the court process.

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[19] 2019 ONSC 3228.
[20] At para. 32(iv).
[21] *Purewal v. Law Society of Upper Canada*, 2009 ONLSAP 10 at para. 34.

[115] The Lawyer was not ignorant of the rules and standards requiring instructions from clients and interfering with the administration of justice. Even if she had been, such ignorance cannot be condoned or excused.

[116] Considering the jurisprudence, we conclude that we need not find that the Lawyer intentionally breached the Rules, to find that she engaged in professional misconduct, failed to act honourably and with integrity and failed to encourage respect for the administration of justice. She may have acted recklessly or negligently.

[117] The Lawyer's refusal to accept the judicial verdict shows disregard for the respondents and Client A's family, and disrespect for the legal process. She was more interested in pursuing her own cause than in actually advancing justice. She engaged in conduct prejudicial to the administration of justice, and in conduct that tends to bring discredit upon the legal profession and fails to encourage respect for the profession.

UNCONTESTED ALLEGATIONS

Client A

[118] The uncontested allegations with respect to Client A concern the Lawyer's use of altered documents to improperly obtain Client's A's heath records. and the Lawyer's conflict of interest in representing Client A.

<u>Use of altered document</u>

[119] In the revised ASF, the Lawyer admits that she engaged in misconduct by using Client A's Authorization and Direction for purposes other than the purposes for which it had been given by the client.

[120] According to the ASF on July 7, 2017, the Lawyer had urgently directed her legal assistant to write to the hospital for copies of Client A's medical records from July 3, 2017 onward. The assistant did so and enclosed an altered version of the A&D so that it would cover all records from July 1, 2017 onward. The covering letter dated July 9, 2017, sent with the altered A&D, indicated that the request was in relation to the client's "Bodily Injury claim for the motor vehicle accident on December 17, 2016". Copies of the relevant documents are included in the joint document book.

[121] On July 17, 2017, either the Lawyer or Mr. Irshidat (at the Lawyer's request) attended at the hospital's Release of Information Office to request Client A's health records from July 3, 2017 onward, using a copy of the altered A&D. As the client had died, the hospital would not provide the records without authorization from the estate trustee.

[122] The parties agreed that in requesting the health records on July 9, 2017, the Lawyer was seeking information to support her application to prevent Client A from being removed from life support. Further, in requesting the health records on July 17, 2017, the Lawyer was seeking information to support her position in the hospital's claim for costs against her.

[123] We find that the falsification of the A&D shows a deliberate course of dishonest conduct. The document was manipulated in order to assist in the litigation of this matter, and not as a result of an impulsive and emotional need to take action. Such conduct is clearly prejudicial to the administration of justice – documents wrongfully obtained might well taint or prejudice the outcome of a legal proceeding. The conduct tends to bring discredit on the legal profession.

Conflict of interest

[124] In the revised agreed statement of facts (ASF), the Lawyer admits that she contravened Rules 3.4-1 and 3.4-2 of the Rules in representing Client A with respect to his accident benefits claim and/or tort action, despite a conflict of interest and without obtaining Client A's consent.

[125] Rules 3-4.1 and 3.4-2 prohibit acting for clients where there is a conflict of interest, which is defined as "a substantial risk that a lawyer's loyalty to or representation of a client would be materially and adversely affected by the lawyer's own interest". The commentary to the Rule explains that a conflict would be obvious where a lawyer is asked to advise a client in respect of a matter in which the lawyer, the lawyer's partner or associate or a family member has a material direct or indirect financial interest.

[126] The Rule may be avoided if the client signs a fully informed, voluntary consent.

[127] Client A had been receiving services from Spinetec and Meditecs while a client of the Lawyer. Client A's statutory accident benefits proceeding involved claims for services provided by Mr. Irshidat's clinics. Client A did not provide written consent that the Lawyer act for him despite the potential conflict of interest arising from her relationship with Mr. Irshidat. Nor did the Lawyer record any oral consent in writing.

[128] The ASF indicates that Lawyer and her husband had many mutual clients (as of June 2020 they had about 150 to 200.) The Lawyer's role was to assist her clients in obtaining statutory accident benefits, so that medical treatment or assessment services would be paid for by the client's insurer. As counsel, the Lawyer was required to provide an opinion whether the treatments and services claimed were reasonable and necessary. If the insurer refused to pay for the services, the refusal could be contested at the Licensing Appeal Tribunal (LAT)

but if the refusal was ultimately upheld, the client could be held responsible for payment for the services.

[129] A similar process played out in tort proceedings – if the client was not successful, the client alone would be responsible for payments for the services. This situation could clearly create a conflict of interest, as acknowledged by the Lawyer.

[130] The Lawyer was aware of the conflict of interest rules, as is evidenced in the *Ortiz* case above. We find that the Lawyer has contravened the conflict of interest rules, as alleged and admitted.

Client B

<u>Conflict of interest</u>

[131] While she was a client of the Lawyer, Client B was also receiving services from Spinetec provided by Mr. Irshidat's clinics. Her claims for statutory benefits included claims for these services. The Lawyer did not obtain Client B's written consent for the Lawyer to act for her despite a potential conflict of interest arising from her relationship with Mr. Irshidat. Nor did the Lawyer record any oral consent in writing.

<u>Disclosure of confidential information</u>

[132] On or about January 19, 2019, Client B submitted a complaint against the Lawyer to the Law Society. The Law Society initiated an investigation of the complaint. Among other issues, the Law Society investigated the Lawyer's email to Client B dated January 4, 2019, stating, "For the purposes of the report that was done for [Client B], J [Client B's psychiatrist] was a subcontractor of Meditecs".

[133] The Law Society had received a letter dated April 15, 2019, from Client B's psychiatrist stating that he had never acted as a subcontractor for Meditecs or Spinetec.

[134] In responding to Client B's complaint, the Lawyer attempted to a retain an expert to verify the psychiatrist's signature. The Lawyer contacted a company called DocuFraud Canada and e-mailed the company attaching complete, unredacted copies of letters containing Client B's medical information, from September 2016 through January 2018. The Lawyer had received the letters during her representation of Client B. The Lawyer also attempted to retain a private investigation firm to look into Client B's family background and the background of the psychiatrist.

[135] The Lawyer subsequently contacted a company called Ace Locators and sent a number of emails to that company. She also attempted to contact a company called Golden Triangle Investigations, as well as a company called Larrek Investigations.

[136] The Lawyer forwarded to the Law Society's investigator copies of her e-mails to DocuFraud Canada; Ace Locators; [an email address] (connected with Ace); Golden Triangle Investigations, Inc.; and Larrek Investigations. On July 10, 2020, the Law Society's investigator cautioned the Lawyer that she might be disclosing confidential information contrary to Rule 3.3-1 of the Rules. The Lawyer replied to say that she disagreed because under Rule 3.3-3, she was permitted to disclose information to prevent serious bodily harm (which, in certain contexts, includes psychological harm). However, she agreed that she would not proceed with her enquiries at that time. She also contacted Larrek Investigations and Ace Locators and asked that they delete the information that she had sent them.

[137] The parties agree that the Lawyer was entitled to disclose confidential information to defend herself but that she disclosed more information than was required. By so doing, the Lawyer contravened Rules 3.3-1 and 3.3-4 of the Rules.

CONCLUSION

[138] We find the Lawyer has engaged in professional misconduct as admitted and alleged. We direct the Tribunal office to schedule a hearing for penalty and costs.