COURT OF APPEAL FOR ONTARIO

CITATION: Afolabi v. Law Society of Ontario, 2025 ONCA 464
DATE: 20250627
DOCKET: M56010 (COA-24-CV-0542)

Gillese, Roberts and Coroza JJ.A.

BETWEEN

Korede Afolabi, Alson Harold Alfred*, Azhar Imdad Ali*, Poonam Bhurani*, Gargi Singh, Gurveer Singh*, Harjeet Kaur*, Haleema Zeeshan Kiani, Faiqa Mirza, Qamar Naeem*, Justice Agboramaka Nwabuwe, Jacinta Nkemdilim Obinugwu, Nneoma Diana Okoro*, Muhammad Asad Rehan Qazi*, Syed Hassan Raza Safdar*, Natasha Eleen Stewart, Subajanany Subramaniam*, Ishu Talwar*, Ali Usman Virk* and Faisal Zaman*

Applicants (Respondents/ Moving Parties*)

and

Law Society of Ontario

Respondent (Appellant/ Responding Party)

Allen Rouben, for the respondents/moving parties Ali Usman Virk, Syed Hassan Raza Safdar, Muhammad Asad Rehan Qazi, Qamar Naeem, Gurveer Singh, Poonam Bhurani and Alson Harold Alfred

Gregory Ko and Frank Nasca, for the respondents/moving parties Azhar Imdad Ali, Harjeet Kaur, Nneoma Diana Okoro, Ishu Talwar and Faisal Zaman

Jeffrey Haylock, for the respondent/moving party Subajanany Subramaniam

Sean Dewart and Tim Gleason, for the appellant/responding party

Heard: in writing

REASONS FOR DECISION

[1] This is a motion by 13 of the respondents in this proceeding (the “Moving Parties”) in which they ask this court to re-open the appeal (the “Motion”).

Background

[2] The Law Society of Ontario (the “LSO”) administered approximately 1700 barrister and solicitor licensing examinations to candidates in November 2021 (the “November exams”). It later learned that the integrity of the November exams was compromised. As a result, the LSO undertook two initiatives, one of which was to direct its Licensing & Accreditation Department (the “Licensing Department”) to review the November exams because of the threat posed to the integrity of the licensing examinations and the licensure process.

[3] The Licensing Department’s work led to anomalies being identified in approximately 10% of the November exams. The anomalies suggested the candidate in question, whether intentionally or inadvertently, had advance access to a cheating key that duplicated the exam questions and provided answers. The Licensing Department ultimately deemed void the identified candidates’ November exams of (the “Exam Decision”) and voided their registrations in the LSO licensing process (the “Registration Decision”). Both decisions were made pursuant to the LSO licensing by-law, rules, and protocols.

[4] Twenty of the identified candidates brought applications for judicial review (the “Applicants”). The Divisional Court heard the judicial review applications together. It concluded that the Exam Decision was reasonable. However, it also determined that in making the Registration Decision, the LSO breached the Applicants’ rights to procedural fairness because it made that decision without holding hearings and without making findings as to whether the Applicants had engaged in intentional misconduct.

[5] No appeal was taken from the Divisional Court determination that the Exam Decision was reasonable. However, the LSO appealed the Divisional Court determination in respect of the Registration Decision.

[6] On April 7, 2025, this court released its reasons allowing the appeal (the “April 2025 Reasons”). The primary reason for allowing the appeal was this court’s determination that there had been no procedural unfairness on the part of the LSO in making the Registration Decision.

The Moving Parties’ claim to have the appeal re-opened

[7] On this Motion, the Moving Parties submit they have been deprived of their right to have the Registration Decision judicially reviewed. Their submission is based on the assertion that neither the Divisional Court nor this court judicially reviewed the Registration Decision on a reasonableness standard.

[8] In relation to this court, the Moving Parties rely on the following sentence at para. 60 of the April 2025 Reasons: “The Divisional Court correctly rejected the reasonableness standard of review in respect of the Registration Decision because the challenge to its validity was based on alleged breaches of procedural fairness” (the “impugned sentence”).

[9] The Moving Parties say the impugned sentence demonstrates this court concluded it was only required to review the Registration Decision for breaches of procedural fairness.

[10] Accordingly, the Moving Parties ask that the appeal be re-opened or the matter remitted to the Divisional Court for redetermination.

The legal principles governing a motion to re-open

[11] The party seeking to re-open an appeal after the appeal decision is rendered faces a high hurdle. The court will re-open an appeal prior to the entering of the order only in “rare circumstances” and where it is in the interests of justice to withdraw the reasons of the court and re-hear the appeal on the merits: *McGrath v. Joy*, 2023 ONCA 46, 166 O.R. (3d) 302, at para. 15; *Meridian Credit Union v. Baig*, 2016 ONCA 942, at para. 7, leave to appeal refused, [2016] S.C.C.A. No. 173. Something akin to overlooked or misapprehended evidence, or a clear and compelling case in law on the point, plus the prospect of a very serious injustice

absent reconsideration, are required: *First Elgin Mills Developments Inc. v. Romandale Farms Limited*, 2015 ONCA 54, 381 D.L.R. (4th) 114, at para. 8.

Analysis

[12] In our view, the claim of the Moving Parties does not amount to a "rare circumstance" nor do the interests of justice require the court to withdraw its reasons and rehear the appeal. We say this for three reasons.

1. *No denial of the right to judicial review*

[13] First, we reject the Moving Parties' submission that they have been denied their right to judicial review. They fully argued the issue of the reasonableness of the Registration Decision before the Divisional Court, both in writing and in oral submissions. The fact that the Divisional Court heard and decided their judicial review applications is a full answer to this submission. Accordingly, they have not been denied their right to judicial review of the Registration Decision.

[14] The Moving Parties also argue they were denied the "core constitutional minimum" of judicial review because both levels of court failed to address their reasonableness argument. As we explain below, this court addressed the Moving Parties' reasonableness arguments in the April 2025 reasons so this argument also fails.

2. *The real complaint is the adequacy of this court's reasons*

[15] Second, the essence of the Moving Parties' complaint about this court's treatment of the reasonableness of the Registration Decision is the adequacy of its reasons. As noted above, a rare circumstance in the context of re-opening an appeal includes such things as overlooking or misapplying evidence or a clear and compelling legal case on point. The alleged inadequacy of reasons is not akin to either and, in our view, does not rise to the level of a "rare circumstance" justifying the re-opening of an appeal. Indeed, as this court stated at para. 8 of *Meridian Credit Union*, a losing party's disagreement with the court's reasons is not a "rare circumstance" in appellate litigation.

[16] The normal and proper recourse for a party who wishes to challenge a decision of this court, including on the grounds of inadequacy of reasons, is an application for leave to appeal to the Supreme Court of Canada: *Meridian Credit Union*, at para. 8. In this regard, we note para. 21 of the LSO factum which indicates that one of the Moving Parties has already filed such an application and the other 12 have filed applications to extend the time for the filing of their leave applications until proceedings in this court are concluded.

3. *It is not in the interests of justice to re-open the appeal*

[17] Third, and in any event, it is not in the interests of justice to withdraw the April 2025 Reasons and rehear the appeal on the merits because this court

addressed the Moving Parties' submissions on a reasonableness review of the Registration Decision. Consequently, there is no prospect of "a very serious injustice absent reconsideration".

[18] On this matter, we begin by noting that the impugned sentence in para. 60 does not say that this court would consider nothing beyond the alleged breaches of procedural fairness. Read in context, the impugned sentence simply states this court's view that the Divisional Court was correct to reject the reasonableness standard of review when it reviewed the Registration Decision on the grounds of alleged breaches of procedural fairness.

[19] We turn now to address the Moving Parties' reasonableness submissions, which can be summarized as follows. They contended that the Registration Decision was unreasonable because it was made "without any finding with respect to knowledge or intention" on the part of the Applicants and it lay "outside the range of possible or acceptable outcomes considering the totality of the evidence" (para. 14 of the Moving Parties' factum on the Motion).

[20] The Moving Parties are correct in their assertion that the Registration Decision was made without any findings about the Applicants' knowledge or intention. This court accepts that proposition in its April 2025 Reasons: see para. 72 of those reasons, for example, where this court rejects the contention the

Registration Decision was made because of LSO concerns about the Applicants' good character.

[21] Significantly, the court explains at para. 82 of the April 2025 reasons why the Licensing Department made no such findings. The task for the Licensing Department was to determine whether the Applicants had engaged in "prohibited actions" within the meaning of the licensing by-law and rules. Prohibited actions are defined to include obtaining or using licensing examination questions or answers from any other candidate, potential candidate, entity, or person, before, during or after a licensing examination. It was sufficient that the Licensing Department found the Applicants had engaged in prohibited actions in respect of the November exams. As such, there was no need for the Licensing Department to make findings on the Applicants' knowledge or intention in engaging in the prohibited actions.

[22] Having found that the Applicants had engaged in prohibited actions, the Licensing Department voided their November exams as mandated by s. 14(2) of By-law 4. (A decision which the Divisional Court found to be reasonable and was not appealed.)

[23] The Licensing Department then had to address the consequences of having voided the Applicants' November exams on their registrations with the LSO. At para. 69 of the April 2025 Reasons, this court explains that s. 18(2) of By-law 4

governs in such a situation. It provides that the person's registration is void and, among other things, so too is any service under articles of clerkship. Thus, it can be seen, far from being outside the range of possible or acceptable outcomes, as the Moving Parties submit, the Registration Decision is that prescribed by s. 18(2).

Disposition

[24] For these reasons, the Motion is dismissed with costs to the LSO. If the parties are unable to agree on the amount of costs, they may file written submissions to a maximum of three pages, no later than seven days from the date of the release of these reasons, to which they shall attach their bills of costs for the Motion.

"E.E. Gillese J.A."
"L.B. Roberts J.A."
"S. Coroza J.A."