IN THE COURT OF APPEAL
OF NEWFOUNDLAND AND LABRADOR

Citation: *Oleynik v. Law Society of Newfoundland and Labrador*, 2026 NLCA 15
Date: April 30, 2026
Docket Number: 202201H0067

BETWEEN:

ANTON OLEYNIK

APPELLANT

AND:

LAW SOCIETY OF NEWFOUNDLAND AND LABRADOR

RESPONDENT

Coram: W.H. Goodridge, F.J. Knickle and K.J. O'Brien JJ.A

Court Appealed From:	Supreme Court of Newfoundland and Labrador, General Division 202101G6424 (2022 NLSC 151; 2022 NLSC 166)
Appeal Heard:	December 9, 2025
Judgment Rendered:	April 30, 2026
Reasons for Judgment by:	F.J. Knickle J.A.
Concurred in by:	W.H. Goodridge and K.J. O'Brien JJ.A.
Counsel for the Appellant:	Self-Represented
Counsel for the Respondent:	Aimee N. Rowe

Authorities Cited:

CASES CITED: *Oleynik v. Law Society of Newfoundland and Labrador*, 2022 NLSC 151; *Oleynik v. Law Society of Newfoundland and Labrador*, 2022 NLSC 166; *Gulliver v. Law Society of Newfoundland and Labrador*, 2024 NLCA 23; *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235; *Mission Institution v. Khela*, 2014 SCC 24, [2014] 1 S.C.R. 502; *T.R. v. Newfoundland and Labrador* (*Child, Youth and Family Services)*, 2014 NLCA 19; *Seraj v. Memorial University of Newfoundland*, 2022 NLCA 42; *Baker v. Canada (Minister of Citizenship and Immigration*), [1999] 2 S.C.R. 817; *Palmer v. The Queen*, [1980] 1 S.C.R. 759; *M. B.-W. v. R.Q.*, 2015 NLCA 28; *Tilley v. Law Society of Newfoundland & Labrador*, 2010 NLTD(G) 187; *McLean v. Carr Estate*, 1996 CanLII 11078 (NFCA), leave to appeal to SCC refused, 25570 (27 February 1997); *Oleynik v. Memorial University of Newfoundland*, 2023 NLSC 86, aff'd 2024 NLCA 44, leave to appeal to SCC refused, 41632 (5 June 2025); *Fishery Products International Ltd. v. Rose*, 2018 NLCA 65.

STATUTES CONSIDERED: *Law Society Act, 1999*, SNL 1999, c. L-9.1, section 50(1); *Judicature Act*, RSNL 1990, c. J-4, section 3.

RULES CONSIDERED: *Court of Appeal Civil Rules, 2025*, NLR 44/25, rule 37; *Rules of the Supreme Court, 1986*, SNL 1986, c. 42, Schedule D, rules 18A, 58, 32.05, 32.01, 15.07, 15.09.

F.J. Knickle J.A.:

INTRODUCTION

[1] This appeal addresses a complaint made by the appellant, Anton Oleynik, to the Law Society of Newfoundland and Labrador (the "Law Society") respecting a lawyer's conduct. The lawyer represents Memorial University of Newfoundland and Labrador ("MUN"), which is involved in ongoing litigation with Mr. Oleynik. Mr. Oleynik alleged that, during the course of this litigation, the lawyer engaged in unprofessional conduct that was deserving of sanction.

[2] There were nine allegations of misconduct; however, they can be summarized as allegations that the lawyer made false, incorrect or invalid statements to the court or her client, misled the court, or failed to act in good faith towards Mr. Oleynik.

[3] All of the complaints were investigated by the complaints authorization committee established by the Law Society (the "committee"). According to the governing legislation, the *Law Society Act, 1999*, SNL 1999, c. L-9.1, the purpose of the committee's investigation was to determine whether or not there were reasonable grounds to believe that the lawyer engaged in conduct that was deserving of sanction (s. 50(1)). If the committee determined that there were reasonable grounds to so believe, the matter could then proceed to a hearing before the disciplinary panel to determine whether the conduct was deserving of sanction. In such a hearing, both Mr. Oleynik and the lawyer would be able to present their positions.

[4] In the course of their investigation, the committee received documentation from both Mr. Oleynik and the lawyer. After their review, the committee concluded that there were no reasonable grounds to believe that the lawyer engaged in any kind of misconduct. That decision was communicated to both parties in a letter dated November 17, 2021 (the "Decision Letter"). In that letter, the committee stated:

> Following a consideration of all of the information in the file, the Committee has opined that there are no reasonable grounds to believe [the lawyer] has engaged in conduct deserving of sanction as alleged and has dismissed the allegations.

[5] Mr. Oleynik appealed the committee's decision to the Supreme Court General Division. The judge who heard the appeal (the "appeal judge") dismissed the appeal and provided written reasons (*Oleynik v. Law Society of Newfoundland and Labrador*, 2022 NLSC 151). After an application by Mr. Oleynik, the appeal judge made amendments to the decision prior to its public release, and provided reasons for those amendments (*Oleynik v. Law Society of Newfoundland and Labrador*, 2022 NLSC 166).

[6] Mr. Oleynik now appeals both decisions of the appeal judge to this Court, asserting that the appeal judge made several errors in dismissing his appeal. Mr. Oleynik asks this Court to set aside the appeal judge's decision and substitute its own decision. In the alternative, Mr. Oleynik asks that the matter be remitted to the Supreme Court General Division.

[7] For the reasons that follow, I would dismiss the appeal. I would award costs under Column 3 payable by Mr. Oleynik to the Law Society.

ISSUES

[8] The issues on appeal can be framed as follows:

1) Did the appeal judge err in concluding that Mr. Oleynik was not denied procedural fairness when case management was ordered by the court without hearing oral argument from him?

2) Did the appeal judge err by failing to consider whether the lawyer failed in her duty of good faith to him as a member of the public?

3) Did the appeal judge err in refusing to allow Mr. Oleynik to inspect documents of the Law Society?

4) Did the appeal judge err in his treatment of Mr. Oleynik's application to amend the appeal judge's written reasons dismissing the appeal?

5) Did the appeal judge make errors of mixed fact and law in analyzing the record prepared by the Law Society?

6) Did the appeal judge commit palpable and overriding errors?

Standard of Review

[9] As a statutory appeal, the appellate standards of review apply (*Gulliver v. Law Society of Newfoundland and Labrador*, 2024 NLCA 23, at paras. 42-46). To determine whether there were errors in law, the standard is correctness. For questions of errors in fact, or mixed fact and law, the standard is palpable and overriding error (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at paras. 19-36). Finally, whether there was a duty of procedural fairness owed to Mr. Oleynik or whether there was a denial of procedural fairness is also assessed on the standard of correctness (*Mission Institution v. Khela*, 2014 SCC 24, [2014] 1 S.C.R. 502, at para. 79; *T.R. v. Newfoundland and Labrador* (*Child, Youth and Family Services)*, 2014 NLCA 19, at para. 18; and *Seraj v. Memorial University of Newfoundland*, 2022 NLCA 42, at paras. 47-52).

The principles governing the duty of procedural fairness

[10] The principles governing whether there has been a breach of the duty of procedural fairness are well established. The scope or content of that duty will depend on several considerations: the nature of the decision made, the legitimate expectation of the parties, the statutory scheme under which the decision was made, the importance of the decision to those affected, and the choices made by the decision-maker about the procedures to be used, especially where the governing legislation allows for discretion on the part of the decision-maker as to what procedures they will use (*Baker v. Canada (Minister of Citizenship and Immigration*), [1999] 2 S.C.R. 817, at paras. 23-27).

[11] The list of considerations is not exhaustive. All of the circumstances must be taken into account and the analysis of the circumstances must recognize that the duty of fairness is "flexible and variable" and "depends on an appreciation of the context of the particular statute and the rights affected" (*Baker*, at para. 22). An open and fair procedure will be a procedure that is "appropriate to the decision being made" (*Baker*, at para. 22).

[12] The greater the impact of the decision on the individual, the greater the extent of the duty of procedural fairness (*Baker*, at para. 25). For example, what may be required to ensure fairness in the context of deciding whether someone should be issued a building permit may not require the same extent of procedural fairness as in the context of a potential deportation, as was the issue in *Baker*.

[13] The above principles must be applied to determine whether the procedures employed in the course of addressing Mr. Oleynik's complaints, either by the committee or the appeal judge, were in keeping with the duty of procedural fairness.

The additional evidence applications and the Form 20 Request

[14] Before addressing the substantive issues on appeal, I will address Mr. Oleynik's applications for additional evidence.

[15] Mr. Oleynik brought three additional evidence applications under Rule 37 of the *Court of Appeal Civil Rules, 2025*, NLR 44/25, as well as a Request in writing, using Form 20 of the Rules. Form 20 Requests facilitate a request in writing to the Court related to an appeal, as an alternative to an application, where the request is straightforward or not contested.

[16] In determining whether to admit the proffered additional evidence, Rule 37 requires the Court to consider the following factors:

- Whether, by due diligence, the evidence could have been brought in the court appealed from;

- The relevance of the evidence in the sense that it bears upon a decisive or potentially decisive issue in the appeal;

- The credibility of the evidence;

- Whether the evidence, if believed, could reasonably have affected the result; and

- Any other relevant factor.

[17] These considerations in the Rules are a codification of the common law approach to such evidence as stated in *Palmer v. The Queen*, [1980] 1 S.C.R. 759. Applying these principles to the circumstances of each of the applications, it is not in the interests of justice to admit any of this evidence as part of the appeal. None of the proffered evidence is relevant nor could its admission reasonably affect the result of the appeal that was before the appeal judge in the Supreme Court General Division.

Additional Evidence Application #1

[18] The first application seeks to introduce documents. Mr. Oleynik submits this material is relevant to his assertion that he was denied procedural fairness, and that this additional evidence shows that the appeal record provided by the Law Society is either incomplete or inaccurate.

[19] The issue arose because in the course of pursuing his appeal in this Court, Mr. Oleynik requested and received from the Law Society an electronic version of the appeal record that had been filed with the Supreme Court. Although Mr. Oleynik was already in possession of the paper version of the record, as a courtesy upon his request, the Law Society forwarded to him the electronic version. Upon review of the electronic version, Mr. Oleynik raised with the Law Society that there were differences between the paper and electronic versions of the record. In particular, Mr. Oleynik expressed concern that the electronic versions of the document titled

Summary and Determination, and the Decision Letter, did not match the same documents in the paper version of the appeal record.

[20] Mr. Oleynik now seeks to tender as evidence in this appeal, printed copies of those parts of the electronic version of the Summary and Determination and the Decision Letter that he submits do not match the printed record. He also seeks to tender several emails between him and the Law Society. He submits that this documentation establishes that there is a discrepancy between the two forms of the records and that the discrepancy means that this Court should be concerned as to whether or not the record that Law Society filed with the lower court for the initial appeal accurately represents the record of the committee investigation and proceedings, including the Decision Letter and the Summary and Determination.

[21] He further submits that the fact that there is both a Summary and Determination document and a Decision Letter makes it unclear as to what part of the record constitutes the "decision" of the committee for the purposes of an appeal. This lack of clarity as to what constitutes the decision by the committee, he submits, undermines his right to procedural fairness.

[22] I would not admit the evidence. It is irrelevant. Any purported difference between the electronic and paper versions of the record is irrelevant to the issues on appeal. The record filed with the Court is the record for the purposes of the appeal. The electronic version of the record forwarded to Mr. Oleynik, upon his request and as a courtesy by the Law Society, is just that, an unofficial electronic version. There is also no question that the Decision Letter constitutes the "decision" that was under appeal before the appeal judge.

[23] That the electronic copy requested by Mr. Oleynik differs from what was filed with the court does not mean that the record that was filed with the court is incomplete or inaccurate. The Law Society has attested to the completeness of the record that was filed for the initial appeal and there is nothing before this Court to undermine the veracity of that attestation.

[24] Lori Chafe, the Director of Professional Responsibility for the Law Society, in her affidavit in response to Mr. Oleynik's application to admit the evidence, explained why there is a discrepancy between the paper and electronic versions of the Summary and Determination document. According to Ms. Chafe, when the Law Society filed its record with the Supreme Court, as it was required to do for the initial appeal, it was filed as a paper document only, not electronically. Ms. Chafe explains

that the paper copy of the Summary and Determination as filed with the court for the initial appeal reflected the completed investigation and decision by the committee. However, the electronic version of the Summary and Determination provided as a courtesy to Mr. Oleynik was not complete. Although typically electronic versions of the record were to be updated according to Ms. Chafe, for some reason, the electronic version of the Summary and Determination was not updated to include the full running record as was present in the paper version. Ms. Chafe states that this is why there is a difference between the electronic version provided to Mr. Oleynik, and the paper version filed with the Supreme Court for the initial appeal. Ms. Chafe confirms in her affidavit that the Supreme Court was provided the complete record of the committee's investigation and decision on paper.

[25] As stated, there is also no question as to what constitutes the "decision" of the committee. While the Summary and Determination document provides details of the committee's investigation and conclusions regarding the complaints, Ms. Chafe explained in her affidavit at paragraph 4 that the Summary and Determination is not the decision. She explained that as a running record of a committee's investigation updated after each meeting, it includes similar content to the Decision Letter sent to Mr. Oleynik, but that the Decision Letter sent to Mr. Oleynik, dated November 17, 2021, is the decision of the committee. According to Ms. Chafe, the Decision Letter "reflects the updated Summary and Determination" and is "based on the Summary and Determination."

[26] Mr. Oleynik also submitted to the appeal judge that the record was incomplete. However, the appeal judge, after review of the matter, dismissed this argument. At paragraph 52 of his reasons for judgment the appeal judge stated:

> The Record that the Law Society filed is voluminous consisting of 877 pages in total. The Record is complete, and the Committee had before it all necessary and material documents to consider the allegations.

[27] I see no basis to disturb this conclusion by the appeal judge.

[28] I would dismiss this application.

Additional Evidence Application #2

[29] In this application, Mr. Oleynik alleged that one of the committee members was in a conflict of interest in investigating his complaints because she had been retained by MUN on previous occasions.

[30] Mr. Oleynik also suggests that she is a friend of Scott Worsfold, who was on the Executive Committee of the Law Society and was the Chair of the Complaints Authorization Committee. Mr. Worsfold, according to the appeal judge, was also MUN's general counsel. Mr. Worsfold had no involvement in the investigation of Mr. Oleynik's complaint except to establish the committee.

[31] Mr. Oleynik alleges that this information respecting the lawyer who was on the committee is relevant to his appeal and should be admitted. He argues that this evidence illustrates that there may have been procedural unfairness. As I understand his argument, because this lawyer has been retained by MUN on occasion, she was in a conflict of interest with respect to his complaint and that conflict of interest created a reasonable apprehension that she would not be impartial in adjudicating his complaint, and that this committee member would be more favourably inclined towards the lawyer under investigation because both the lawyer and the committee member had been retained by MUN. Mr. Oleynik says he was unaware of this information at the time the complaint was adjudicated and so could not have raised this with either the committee or the appeal judge.

[32] I would not admit this evidence. The evidence is irrelevant to the issues that need to be resolved on this appeal. While I take no issue that whether a member of the committee responsible for screening Mr. Oleynik's complaint was in a potential conflict of interest could be relevant to issues respecting an apprehension of bias and procedural fairness, there is nothing in the material filed in this application that raises the spectre of a conflict of interest or a reasonable apprehension of bias. That one of the lawyers on the committee had been retained by MUN from time to time to provide legal services raises no issue of a conflict of interest or procedural fairness that needs to be addressed by the Court.

[33] Mr. Oleynik's complaints were not against MUN, but against a lawyer who was retained by MUN for the purposes of the litigation with Mr. Oleynik. This lawyer is a member of a private law firm. There is no evidence whatsoever of any connection with the lawyer on the committee, except that the two lawyers have on occasion been retained by MUN. This is not surprising. MUN is a large university

rendering services to thousands of students and with many departments and programmes. MUN might be reasonably expected to require legal services in myriad capacities and so require the services of multiple external lawyers. In my view, this does not create a conflict of interest. I would dismiss the application.

Additional Evidence Application #3

[34] Mr. Oleynik's third application for additional evidence is to admit evidence from the Department of Justice and Public Safety for the Province. He asserts that this evidence illustrates the timing of when decisions from the Supreme Court General Division, including the decision under appeal, are recorded in the Province's data management system.

[35] Mr. Oleynik argues that the timing of the Department's entry in their system of such judgments, including the decision under appeal, suggests that the Department received a copy of the judgment under appeal prior to anyone else. Mr. Oleynik is unclear about how this information is relevant, but I understand his argument to be that the timing of recording judgments in the data management system at the Department suggests that they are receiving copies of court decisions prior to the parties or the members of the public, and that this is a kind of favoritism by the court to the Department. Mr. Oleynik suggests that this favoritism undermines the separation of powers between the judiciary and the executive arms of government.

[36] I would dismiss the application. There is no evidence that the Department of Justice and Public Safety receives notice of decisions from the court in any manner different than anyone else; whether as parties or members of the public. How the Department records receipt of decisions from the court is irrelevant to the issues that need to be decided in this appeal.

The Form 20 Request, dated December 2, 2025

[37] Apart from his applications for additional evidence, Mr. Oleynik also made several written requests to the Court. Such written requests are permitted under this Court's Rules, in what is known as a Form 20 Request. These written requests were addressed prior to the hearing of the appeal, except for one filed with the Court just prior to the hearing, on December 2, 2025.

[38] In that Request, Mr. Oleynik queried whether one of the judges sitting on the panel for this appeal should properly be sitting, because he presided on a panel in a previous hearing before this Court involving Mr. Oleynik. At the earlier appeal hearing, Mr. Oleynik raised that the judge should recuse himself from that hearing. That request was denied by the head of the panel of judges presiding over the appeal. In his Form 20 Request to the Court on this appeal, Mr. Oleynik advised that he has taken steps in another forum to have that denial of a recusal addressed.

[39] In his Form 20 Request, Mr. Oleynik did not ask that the judge recuse himself from this hearing, but advised that he only wished to alert the Court to the fact that because he has taken steps to have the denial of a recusal in the earlier appeal hearing addressed, that the Court may wish to consider whether the judge should sit on this panel.

[40] In the absence of a request that the judge be recused, and the Court being of the view there was no need for a recusal, the Court took no further steps in relation to this request, and no more need be said.

[41] I now turn to Mr. Oleynik's arguments that are the substance of his appeal.

ISSUE 1 Did the appeal judge err in concluding that Mr. Oleynik was not denied procedural fairness when case management was ordered by the court without hearing oral argument from the parties?

[42] When Mr. Oleynik filed his notice of appeal in relation to the dismissal of his complaint, he stated in the notice that he did not wish the matter to be subject to case management. The relevant portion of the notice of appeal states:

> The Court and the Respondent are advised that the Appellant respectfully requests that this appeal be perfected without being case managed under Rule **18A** of the *Rules of the Supreme Court*, SNL 1986, c42, Schedule D (the **'Rules**') and/or consolidated with several ongoing proceedings in which the Appellant is a party under Rule **18**. In contrast to the other outstanding proceedings in which the Appellant is a party, this appeal is commenced neither under the *Access to Information and Protection of Privacy Act*, SNL 2015, Chapter A-1.2 nor pursuant to the *Management of Information Act*, SNL 2005, Chapter M-1.01. It does not involve the same parties (Dr. Vianne Timmons in her capacity of the President and Vice-Chancellor of Memorial University of Newfoundland and Labrador and Mr. Michael Harvey in his capacity of the Information and Privacy Commissioner of Newfoundland and Labrador) either.

> Since the matters that gave rise to the Allegation interfere with the Appellant's employment putting security of his job in jeopardy, he respectfully requests that this appeal be considered expeditiously.
>
> (Appellant's Appeal Book, at 358-359)

[43] Notwithstanding this request in the notice of appeal, case management of the proceedings was ordered by a judge who initially reviewed the matter (not the judge whose decision is under appeal), and the parties were so notified by the court.

[44] Before the appeal judge, Mr. Oleynik submitted that the judge who ordered case management acted contrary to the *Rules of the Supreme Court, 1986*, SNL 1986, c. 42, Schedule D, because the rule governing case management at the time, Rule 18A.03(3), stated that a judge may order case management upon request of the parties, or on that judge's "own motion after hearing from the parties".

[45] Mr. Oleynik argued that this wording of the Rule meant that not only was the judge obliged to hear submissions from the parties before case management could be ordered, but in not so doing the judge denied him procedural fairness.

[46] The appeal judge did not accept Mr. Oleynik's arguments, pointing out that a Supreme Court judge always has inherent jurisdiction to control proceedings in their court by virtue of section 3 of the *Judicature Act*, RSNL 1990 c. J-4. In the appeal judge's view, the judge had the authority to order that proceedings be case managed as a facet of that inherent jurisdiction notwithstanding the wording of the Rule. The judge further noted that the wording of the Rule has been amended and no longer includes "after hearing from the parties".

[47] Mr. Oleynik now argues before this Court that the appeal judge erred in his conclusion.

[48] I would dismiss this ground of appeal. I agree with the appeal judge that it was within the inherent jurisdiction of the initial judge to order case management upon review of the file (*M. B.-W. v. R.Q.*, 2015 NLCA 28, at paras. 22-23). Mr. Oleynik was not denied procedural fairness.

[49] I am also satisfied that the order for case management was within the Rules. While the Order was made pursuant to Rule 18A, I note that Rule 58, which governs

civil appeals in the Supreme Court, permits a judge to order a case management meeting without hearing from the parties (Rule 58.02(3)).

[50] In my view, the combination of these Rules provides ample flexibility to the court in managing civil appeals, including providing for case management as deemed necessary.

[51] Further, the fact that the judge did not hear "oral" submissions from Mr. Oleynik does not mean Mr. Oleynik was denied the opportunity to be heard on whether there should be case management of the appeal. Mr. Oleynik explicitly requested in the notice of appeal that he did not want the matter to be case managed and this request would have been before the judge who ordered the case management.

[52] Finally, Mr. Oleynik has not shown that he has been prejudiced in any way by the use of the case management tool or why case management was inappropriate in the circumstances. As noted by the appeal judge at paragraph 19 of his decision:

> Oleynik took full advantage of the case management process to raise and discuss preliminary issues that ultimately facilitated the hearing proceeding as scheduled without unnecessary interlocutory applications and delays.

[53] Given that the decision to invoke case management is for the very purpose of ensuring that the resolution of a dispute between the parties is orderly, efficient and fair to both sides, and that Mr. Oleynik benefitted from the use of case management, it is difficult to see how ordering case management resulted in procedural unfairness to Mr. Oleynik.

[54] I would dismiss this ground of appeal.

ISSUE 2 Did the appeal judge err by failing to consider whether the lawyer failed in her duty of good faith to him as a member of the public?

[55] Mr. Oleynik submitted to the appeal judge that the committee erred by not considering that the lawyer failed to uphold her duty of good faith towards him as a member of the public, relying on *Tilley v. Law Society of Newfoundland & Labrador*, 2010 NLTD(G) 187. In *Tilley*, the complaint was that the lawyer acted unethically by serving as the solicitor for a vendor in a transaction in which the lawyer had a personal interest in the outcome. The complaint had been dismissed on the basis that

the lawyer had fulfilled his duty to his client, the vendor. However, on appeal, the court returned the matter for a rehearing on the basis that the committee failed to address whether the lawyer's personal interest in the matter had an impact on the lawyer's duty to the purchaser, the complainant, as a member of the public (*Tilley*, at para. 22).

[56] Mr. Oleynik now relies on *Tilley* to support his argument that the committee and the appeal judge ought to have considered the lawyer's conduct as it related to him as a member of the public. This argument cannot succeed.

[57] Firstly, that the appeal judge did not specifically allude to *Tilley* in his written reasons does not mean that he was unaware of the reasoning in *Tilley*. Secondly, while the Court does not take issue that a lawyer's duty of good faith includes members of the public as stated in *Tilley*, the complaint in *Tilley* involved different circumstances than complained of by Mr. Oleynik against this lawyer. There is no suggestion anywhere in these circumstances that the lawyer had a personal interest in the outcome of any transactions or litigation between MUN and Mr. Oleynik.

[58] Finally, given that the committee found that the lawyer acted courteously and professionally in her dealings with Mr. Oleynik (Committee Decision, Appellant's Appeal Book, at 111), it is implicit that this conclusion includes the context of the lawyer's duty to him not only as an opposing party, but as a member of the public.

[59] I would dismiss this ground of appeal.

ISSUE 3 Did the appeal judge err in refusing to allow Mr. Oleynik to inspect documents of the Law Society?

[60] Mr. Oleynik submits that the appeal judge erred by refusing to allow him to inspect the record in the possession of the Law Society. This argument is related to the concern raised in his Additional Evidence Application #1 regarding whether the record filed by the Law Society with the lower court was accurate or complete. Mr. Oleynik relied on Rule 32.05 of the Supreme Court's Civil Rules for his request to inspect the Law Society's record. Rule 32.05 permits a party to make an application to inspect a document in the list of documents that must be filed by the opposing party under Rule 32.01.

[61] The Law Society objected to the request on the basis that the Rule did not apply to appeals, and that the record was complete. The appeal judge agreed and denied the request. I see no error in the appeal judge's decision to deny the request.

[62] As discussed earlier, civil appeals to the Supreme Court General Division are governed by Rule 58. Rule 58.09 required the Law Society to file the complete record, of which the appeal judge was satisfied the Law Society had done. Given this, there would be no need to permit Mr. Oleynik an opportunity to inspect the documents, because Mr. Oleynik had access to the complete file by virtue of it having been filed by the Law Society with the court.

[63] Additionally, if the appeal judge were not satisfied that the record was complete, the remedy would not be to permit a party to inspect documents, but would be to order the Law Society to produce the documents in question to the court.

[64] I would dismiss this ground of appeal.

ISSUE 4 Did the appeal judge err in his treatment of Mr. Oleynik's application to amend the appeal judge's written reasons in dismissing the appeal?

[65] On October 21, 2022, the appeal judge released to the parties his written judgment and reasons for dismissing the appeal. As of that date, the appeal judge was no longer seized with the matter as the issues on appeal had been decided and was now concluded. This principle is often referred to as *functus officio*.

[66] However, after receiving a copy of the judgment, Mr. Oleynik brought an application under Rule 15.07 of the Supreme Court's Civil Rules, to have the decision amended or revisited for what he asserted were errors. Notwithstanding that the appeal judge was now *functus officio*, Rule 15.07 permits a judge to amend a decision or order for what are commonly referred to as clerical errors. Rule 15.07 states:

> 15.07. Clerical mistakes in decisions or orders, or errors arising therein from any accidental mistake or omission, or an amendment to provide for any matter which should have but was not adjudicated upon, may at any time be corrected or granted by the Court, without appeal.

[67] The Rule applies to appeals conducted in the court by virtue of Rule 15.09:

> 15.09. In appeals brought before it, the Court shall have all the powers and duties in reference to amendments that are conferred on the Court under Rule 15.

[68] The authority to amend a decision or order under Rule 15.07 is a codification of the exception to the common law principle that although a judge who has decided the issues at dispute between the parties is *functus officio*, it is open to the judge to correct minor or clerical errors in a decision.

[69] The authority to amend an order or decision is narrow. It is not open to a court or judge to amend an order or a decision or order for errors that are substantive or relate to the issues that were decided. Such matters are properly for an appeal. This Court in *McLean v. Carr Estate*, 1996 CanLII 11078 (NFCA), leave to appeal to SCC refused, 25570 (27 February 1997), explained the nature of *functus officio*, at paragraph 16:

> Functus officio means, literally, having discharged his duty. Determining whether a judge is functus officio involves, in light of rule 15.07, drawing a line between an omission by the trial judge - a failure to do something which should have been done - and the discharge of the duty but failing to consider some argument which had someone, whether counsel or judge, thought about it might have had an impact on the result. The line is not easily drawn. If a court was required to answer four questions, but determined only three, clearly, it would not have done something it was required to do. The judge would not be functus officio, at least, in respect of the fourth question. The cases noted above indicate that the courts have interpreted rules like rule 15.07 to permit a reexamination of issues where something, which the law required be considered in determining an issue, was not brought to the attention of the judge as for example the regulation which limited the quantum of damages in **Roy.**
>
> (Emphasis in original.)

[70] Upon review of Mr. Oleynik's application, and after hearing further from Mr. Oleynik, the appeal judge made four amendments to the judgment (*Oleynik v. Law Society of Newfoundland and Labrador,* 2022 NLSC 166, at para. 4). He removed the word "former", deleted paragraph 3, removed certain wording in paragraph 10, and reordered paragraphs 17 and 18, and removed the word "further" from paragraph 18.

[71] These amendments were clerical and made no difference to the substance of the judge's reasoning or conclusions. Other amendments requested by Mr. Oleynik were denied by the appeal judge on the grounds that they were beyond the scope of his authority, being *functus officio,* and were more properly the subject of an appeal.

[72] Upon review of the appeal judge's decision and reasons, I see no error in his determination as to what he could and could not amend given that he was *functus officio*. There were no issues on appeal left to be decided, and the amendments were made properly within the ambit of his authority to correct minor or clerical errors or to accurately reflect the decision of the Court.

[73] I would dismiss this ground of appeal.

ISSUE 5 Did the appeal judge make errors of mixed fact and law in analyzing the record prepared by the Law Society?

[74] Mr. Oleynik alleged that the appeal judge made the following errors of mixed fact and law (Appellant's Factum, at para. 97):

1) Holding that the record was complete;

2) Concluding that the committee had considered all of the evidence before it in adjudicating Mr. Oleynik's complaints;

3) Concluding that there was no law to support Mr. Oleynik's assertion that the Law Society was obligated to preclude Mr. Worsfold from sitting on other panels of the committee; and

4) Requiring the appellant to prove beyond a reasonable doubt that Mr. Worsfold interfered in the committee's adjudication of Mr. Oleynik's complaint.

[75] These arguments cannot succeed.

[76] In relation to 1) and the appeal judge's conclusion that the record was complete, as discussed earlier in these reasons regarding the application to admit additional evidence, there is no basis in the record to disturb this conclusion. Mr. Oleynik has not shown how the appeal judge erred in concluding that the record filed by the Law Society was complete.

[77] In relation to 2) and whether the committee considered all of the evidence, Mr. Oleynik argues that it is not evident from their Decision Letter or the Summary and Determination that the members considered his expert's report which he

provided to the committee to rebut the lawyer's explanation as to how certain emails may have become altered (Appellant's Factum, at paras. 103-107).

[78] However, as concluded by the appeal judge, there is no basis to conclude that the committee did not consider all of the evidence before it, including Mr. Oleynik's expert's report. Indeed, as referenced earlier in these reasons, in the Decision Letter, at page 2, the committee referred to having considered "all of the information in the file" (Appellant's Appeal Book, at 59).

[79] Further, it is clear from the reasoning of the committee that they were aware that the opinion of Mr. Oleynik's expert may have differed with the lawyer's client's expert's explanation for why there might be alterations in emails that were sent. In explaining why there were no reasonable grounds to believe that the lawyer had misled the court by her explanations for the altered emails, the committee stated at page 2 of the Decision Letter:

> [The lawyer] had a duty to her client to raise every issue and advance every argument. The Committee is of the opinion that she was bound by the Code to advance the client's position with respect to their explanation. The Committee noted that a lawyer cannot mislead the court, however, a lawyer can be wrong in an explanation offered.… [the lawyer] reasonably brought forward her client's position and supported it with their expert's evidence.
>
> (Appellant's Appeal Book, at 59)

[80] The committee concluded they "need not decide whether the metadata and/or documents were altered", because they were satisfied that the lawyer's explanation as offered through her client's expert was well within the ambit of appropriate conduct. It is implicit in this and the above statements that the committee was aware that there was conflicting information. In the end, given the scope of their investigation, the committee reasonably concluded that that issue need not be decided. The appeal judge stated he would defer to the reasoning of the committee. At paragraph 132 of his Decision, the appeal judge stated:

> The Committee has "a broad discretion" in the procedure it adopts when considering allegations. In *Aylward* (at para 48) the NL Court of Appeal concluded, "Considerable deference must be, therefore, given to the Committee to deal with the complaint based on the correspondence it received" from the parties. It was open to the Committee to accept [the lawyer's] explanation, and to decide there was no reasonable basis on the totality of the evidence to investigate further.

[81] I see no error in the committee's conclusions, nor the appeal judge's acceptance of their reasoning.

[82] In relation to 3), Mr. Oleynik alleged that the appeal judge erred because he concluded that Mr. Oleynik had pointed to no legal authority that supported that the Law Society ought to have recused the Chair of the committee, Mr. Worsfold, from hearing complaints on other panels with the committee members. Mr. Oleynik objected to Mr. Worsfold's participation because he was general counsel for MUN.

[83] Although Mr. Worsfold did not sit on the committee that investigated Mr. Oleynik's complaint, Mr. Oleynik asserted to the appeal judge that Mr. Worsfold also should not sit on other panels of the committee in investigating and screening complaints. In my view, the appeal judge correctly concluded that there was no basis in law that would justify excluding Mr. Worsfold from sitting on other panels.

[84] Finally, in relation to 4) and whether the appeal judge held Mr. Oleynik to a standard of proof beyond a reasonable doubt, nowhere in the decision is there any statement by the appeal judge that could be construed as holding Mr. Oleynik to a standard of proof higher than the civil standard, that of the balance of probabilities.

[85] Further, the passage to which Mr. Oleynik points at paragraph 118 of his factum, "paragraph 177", as showing error by the appeal judge, is from a different decision by the appeal judge. The paragraph referred is from a judgment of the appeal judge denying Mr. Oleynik's request that the appeal judge recuse himself in the litigation between Mr. Oleynik and MUN (*Oleynik v. Memorial University of Newfoundland*, 2023 NLSC 86, aff'd 2024 NLCA 44, leave to appeal to SCC refused, 41632 (5 June 2025)). That decision was before this Court previously, and the Court has rendered judgment. It would be inappropriate to revisit that decision as it is no longer before this Court.

[86] I would dismiss this ground of appeal.

ISSUE 6 Did the appeal judge commit palpable and overriding errors?

[87] Mr. Oleynik also alleges palpable and overriding errors committed by the appeal judge. He alleges that the appeal judge erred in fact by finding that:

1) There was no *ex parte* communication between the lawyer and the court.

2) Mr. Oleynik's letter to the court of November 26, 2021 was contained in the court file.

3) The committee chose to give reasons.

4) The amendments requested by Mr. Oleynik could have been made on October 24, 2022.

(Appellant's Factum, at para. 120)

[88] There were no palpable and overring errors committed by the appeal judge as alleged by Mr. Oleynik and, upon review of the record, all of the appeal judge's findings are supported in the record.

[89] As explained by this Court in *Fishery Products International Ltd. v. Rose*, 2018 NLCA 65, a palpable and overriding error is one that goes to the heart of the decision. At paragraphs 30-31, this Court stated:

> [30] The Supreme Court of Canada considered the meaning of "palpable and overriding error" in *Benhaim v. St-Germain*, 2016 SCC 48, [2016] 2 S.C.R. 352. The Supreme Court referenced the descriptive language chosen by appellate courts to illustrate just how very obvious and substantial an error must be, in order to be deemed palpable and overriding.
>
> [31] Justice Wagner, at paragraphs 38 and 39 of *Benhaim*, stated:
>
> > [38] It is equally useful to recall what is meant by "palpable and overriding error". Stratas J.A. described the deferential standard as follows in *South Yukon Forest Corp. v. R.*, 2012 FCA 165, 4 B.L.R. (5th) 31, at para. 46:
> >
> > > Palpable and overriding error is a highly deferential standard of review . . . . "Palpable" means an error that is obvious. "Overriding" means an error that goes to the very core of the outcome of the case. When arguing palpable and overriding error, it is not enough to pull at leaves and branches and leave the tree standing. <u>The entire tree must fall</u>.
> >
> > [39] Or, as Morissette J.A. put it in *J.G. v. Nadeau*, 2016 QCCA 167, at para. 77, [TRANSLATION] "a palpable and overriding error <u>is in the nature not of a</u>

> needle in a haystack, but of a beam in the eye. And it is impossible to confuse these last two notions."
>
> (Emphasis in original.)

[90] With respect to whether there was an alleged error by finding no *ex parte* communication, Mr. Oleynik suggested that the lawyer sent a draft order to the court without including him in the email communication (Appellant's Factum, at paras. 121-137). That this communication occurred is not established in the record. Even if the lawyer did send a draft order to the court that was not also sent to Mr. Oleynik, the appeal judge's failure to correctly state this is not an error that would be palpable and overriding. This kind of misstatement would not be an error which would impact the appeal judge's conclusion that the committee properly dismissed Mr. Oleynik's complaint. This is because, in the absence of evidence otherwise, such communication would not constitute conduct that would be conduct deserving of sanction.

[91] There is absolutely no evidence that the lawyer intended to communicate to the court without including Mr. Oleynik, or that anything would be gained by the lawyer by so doing. Further, it is not as if communication regarding a draft order would result in the order being approved without Mr. Oleynik's input. Indeed, the record shows that Mr. Oleynik had extensive input on how matters unfolded, including the wording of orders.

[92] With respect to the alleged error 2), regarding what is referred to as Mr. Oleynik's administrative letter of November 26, 2021 to the court, whether the appeal judge correctly referred to the letter as being "in" the court file is inconsequential to the issues on appeal. The letter related to Mr. Oleynik's request to be able to make submissions against the order for case management, a procedural issue ancillary to the appeal. As discussed earlier, there was no unfairness to Mr. Oleynik in the court having ordered case management. There is no consequence if the appeal judge misidentified the placement of the letter.

[93] With respect to the alleged error 3), Mr. Oleynik's suggestion, that the appeal judge erred by concluding that because the allegations were serious and the materials voluminous the committee chose to give reasons, is difficult to understand. It is unclear what is the factual error at issue for Mr. Oleynik within this submission. Both statements by the appeal judge, that the committee chose to give reasons and

that the allegations were serious and the record was voluminous, are patent on the record.

[94] Finally, with respect to the alleged error 4), the suggestion that the appeal judge erred in concluding that the amendments to the decision could have been made on October 24, 2022 when the application was called in court, the appeal judge stated the obvious: that the amendments he made could have been made on October 24, 2022. Even if the appeal judge were in error, there is no connection between this and whether the appeal judge erred in dismissing the appeal. Whether the appeal judge would make minor amendments to his written reasons in accordance with the Rules was ancillary to the issues on appeal.

[95] I would dismiss this ground of appeal.

CONCLUSION

[96] The appeal judge properly dismissed the appeal. He made no errors that would merit intervention by this Court.

DISPOSITION

[97] I would dismiss the appeal with costs under Column 3 payable by Mr. Oleynik to the Law Society.

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F.J. Knickle J.A.

I concur : _____

W.H. Goodridge J.A.

I concur : _____

K.J. O'Brien J.A.